

JUDGEMENT AND ORDER

All the writ petitions pertaining to the selection and appointment of Junior Assistant and Grade-IV post in the establishment of the Deputy Commissioner, Goalpara have been heard analogously and are being disposed of by this common judgment and order.

2. While in the first two writ petitions, the petitioners are the aspirants for appointment as Junior Assistant, in the third writ petition, the petitioner aspires for appointment in Grade-IV post. All the petitioners applied for the respective posts and appeared in the selection conducted. While for the posts of Junior Assistant, the selection comprised of typing test, written test and viva-voce, for the Grade-IV post the selection was in the form of interview. The petitioners have failed to qualify in the selection and have filed the writ petitions on the basis of the allegations made that there are illegalities in conducting the selection. The additional ground urged by the petitioner in first writ petition is that the petitioner prior to the selection having worked under the respondents, although on temporary basis, is entitled to get weightage of such service with consequential regularization of service.

3. I have heard Mr. R. Baruah, learned counsel, representing the petitioner in the first writ petition as well as Ms. M. Deb, learned counsel representing the petitioners in the remaining two writ petitions. I have also heard Ms. R. Chakraborty, learned Additional Sr. Govt. Advocate as well as Mr. B.J. Ghosh, learned Jr. Govt. Advocate, representing the State respondents. I have also carefully gone through the materials on record. On an overall consideration of the matter, the grievance of the petitioners as could be gathered are as follows:

(i) The petitioner in WP(C) No. 3191/2008 having worked on temporary basis under the respondents is entitled to get extra weightage in the selection and/or regularization of his service.

(ii) The written examination having been conducted beyond the prescribed syllabus in the rules namely Assam Ministerial District Establishment Service Rules, 1967, the selection made on the basis of such written examination is per-se illegal.

(iii) As per the syllabus the written examinations should have been held on the subjects of general English, précis writing and drafting followed by interview consisting of 100 marks each. But in the instant case, the written examination comprised of only 200 marks and the same was in respect of general knowledge, General English and General math.

(iv) As per Rule 6 (5) of the aforesaid rules, the selection ought to have been against 90% of the vacancies, the remaining 10% of vacancies being reserved for promotion, but instead the respondents conducted the selection for all the posts.

(v) The written test was held in a hostile atmosphere which emerged after distribution of question papers. Some of the candidates were favoured and they were allowed to use mobile phones.

(vi) The selection was conducted by the Deputy Commissioner, Goalpara in an arbitrary manner.

(vii) The interview conducted for the Grade-IV post was a farcical one. The Selection Committee headed by the Deputy Commissioner, conducted the interview in a perfunctory manner. Candidates were selected on extraneous consideration.

4. The respondents in their counter affidavit have denied the allegations made in the writ petitions. As regards the temporary appointment of the petitioner in the first writ petition, it has been stated that such temporary appointment has nothing to do with the impugned selection. Such temporary appointments were for temporary duration and not against any post. So far as the selection is concerned, it has been stated that since the petitioner failed to qualify in the selection, there is no question of his appointment. Altogether 2101 candidates applied for the post of Junior Assistant, out of which 755 candidates qualified in the typing test. In the written examination only 86 candidates could qualify.

5. In the counter affidavit, the respondents have also indicated the cut off marks for being qualified, which is 79 for general category candidates. The petitioner secured 76 marks in the written examination and thus did not qualify. It has also been stated that the Rules of 1967 was amended in 1994 and as per the amendment the required qualification is HSLC passed. As regards the 10% vacancies, it has been stated that out of 29 vacancies 3 are to be filled up by promotion and in case of non-availability of any suitable candidates, the posts against 10% vacancies could be filled up by direct recruitment. Regarding distribution of marks, same has been indicated as follows:

- i) General Knowledge - 50 marks
- ii) General English - 50 marks
- iii) Precise writing & drafting - 60 marks
- iv) General mathematics (High School level) - 40 marks

6. As regards the Grade-IV post, it has been stated in the affidavit that the first round of oral interview was held during the period from 1.7.2008 to 16.7.2008. In the meeting of the Selection Committee held on 30.6.2008, it was decided to hold the interview in two phases. In the first phase, the candidates were graded as A,B,C and D depending on their performance. For the second phase of the interview, only those candidates who could qualify in the first phase were invited. It has been denied that the interview was conducted in a perfunctory manner and on extraneous consideration.

7. It is an admitted position that all the petitioners duly appeared in the selection without any protest and/or any reservation and now have filed the instant writ petition finding that their names are not included in the select list. The petitioners first took a chance for favourable consideration in the selection and having found that the results are not favourable to them, have turned around the selection itself and have invoked the writ jurisdiction questioning the very legality and validity of the selection, which is impermissible in law. Allegations made in the writ petition are only allegations without any supporting materials.

8. It is true that there may not be any estoppel in case of violation of any rules. It is in this context, Mr. Baruah, learned counsel for the petitioner, upon a reference to Rule 6 (5) of the rules has argued that the respondents having not followed the prescribed syllabus under schedule-1 to the rule, the entire selection is vitiated and that merely because the petitioner had appeared in the selection, same will not operate as an estoppel. Schedule - 1 to the rules is only a syllabus. It does not necessarily mean that the respondents are bound to incorporate everything prescribed in the syllabus. A syllabus is prescribed to give a fair idea of the subjects and it does not necessarily mean that the entire course will have to be incorporated in the question paper. As stated in the coun

ter affidavit, with the change of time and considering the fact that the rules were framed way back in 1967, the respondents sought it prudent to incorporate the paper of general mathematics and to hold the written examination comprising of 200 marks. It cannot be said to be violation of the basic rules and/or malafide and/or colourable exercise of power. It also cannot be said to be violative of the statutory rules.

9. The fact that the petitioners duly appeared in the selection knowing it fully well as to what the selection would be comprised of without raising any protest, would operate as an estoppel towards making a challenge to the said selection. Same is the case in respect of the plea raised relating to 10% of the vacancies. It is none of the business of the petitioner to raise such a plea. The petitioner is not an aspirant for promotion, but he is an aspirant for direct recruitment. No one has made any challenge that 10% of the vacancies meant for the promotees have been clubbed together alongwith the 90% posts meant for direct recruitment. The respondents in their counter affidavit have also explained the position, which is that there is no overlapping of the vacancies.

10. As regards the plea of the petitioner that he having worked on temporary spells, his service is to be regularized, same is wholly untenable. Merely because the petitioner had worked under the respondents for some temporary durations, that too without any selection following the recruitment rules, he cannot claim regularization of his service. The recruitment rule does not permit the same. In case of any acceding to such a prayer of the petitioner, same will be violative of Article 14 and 16 of the Constitution of India.

11. So far as the plea of the petitioner in the third writ petition that the interview was perfunctory and the candidates were selected on extraneous consideration, the plea being vague and indefinite without disclosure of any material particulars, same is not acceptable. Apart from the fact that all the petitioners appeared in the selection without raising any protest against the selection method, they have also not arrayed the selected candidates party respondents in this writ proceeding. Thus, in absence of the selected candidates, no adverse order can be passed against them. All the writ petitions are bad for non-joinder of necessary parties

12. Another aspect of the matter is that the petitioners have made the allegations in respect of the selection in the writ petitions only and that too after publication of the select list. If they were aggrieved, immediate reaction would have been to raise protest and/or to come out from the examination hall in protest. Not to speak of any such protest they did not even make any representation to the authorities highlighting their grievance which in the natural course would have been the immediate action.

13. For all the aforesaid reasons I do not find any merit in the writ petitions and accordingly they are dismissed. Interim orders in the writ petitions are vacated.