

GAHC010131052022



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WA/227/2022

AMIYA KUMAR KALITA AND 7 ORS
S/O- AMULYA KALITA, R/O- VILL.- TRILOCHAN, P.O. CHAMARIA, P.S.
BOKO, DIST.- KAMRUP, ASSAM, PIN- 781136.

2: ABHIMANYA BARAI
S/O- HARAN BARAI
R/O- VILL.- TRILOCHAN
P.O. CHAMARIA
P.S. BOKO
DIST.- KAMRUP
ASSAM
PIN- 781136.

3: DHANANJOY ROY
S/O- KUTISWAR ROY
R/O- VILL.- TRILOCHAN
P.O. CHAMARIA
P.S. BOKO
DIST.- KAMRUP
ASSAM
PIN- 781136.

4: HEMKANTA KALITA
S/O- LATE KISTIRAM KALITA
R/O- VILL.- TRILOCHAN
P.O. CHAMARIA
P.S. BOKO
DIST.- KAMRUP
ASSAM
PIN- 781136.

5: RABIN KR. KALITA
S/O-LATE GANGARAM KALITA
R/O- VILL.- TRILOCHAN

P.O. CHAMARIA
P.S. BOKO
DIST.- KAMRUP
ASSAM
PIN- 781136.

6: BABUL KALITA
S/O- MOHAN KALITA
R/O- VILL.- TRILOCHAN
P.O. CHAMARIA
P.S. BOKO
DIST.- KAMRUP
ASSAM
PIN- 781136.

7: RAMA KALITA
S/O- ANIL KALITA
R/O- VILL.- TRILOCHAN
P.O. CHAMARIA
P.S. BOKO
DIST.- KAMRUP
ASSAM
PIN- 781136.

8: KUSUM SARKAR
W/O- PABITRA SARKAR
R/O- VILL.- TRILOCHAN
P.O. CHAMARIA
P.S. BOKO
DIST.- KAMRUP
ASSAM
PIN- 781136

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, REVENUE AND D.M. (L.R.) DEPARTMENT, ASSAM, DISPUR,
GUWAHATI-781006.

2:THE DEPUTY COMMISSIONER
KAMRUP
AMINGAON
PIN- 781031.

3:THE SELECTION BOARD FOR THE POST OF GAON PRADHAN
OF VARIOUS VILLAGES IN THE KAMRUP DISTRICT
REPRESENTED BY THE DEPUTY COMMISSIONER

KAMRUP
AMINGAON
PIN- 781031.

4:DINABANDHU KALITA
S/O- LATE RAM MOHAN KALITA
R/O- VILL.- TRILOCHAN
P.O. CHAMARIA
P.S. BOKO
DIST. KAMRUP
ASSAM
PIN- 781136

Advocate for the Petitioner : MR. M A SHEIKH

Advocate for the Respondent : GA, ASSAM

-B E F O R E-
HON'BLE THE CHIEF JUSTICE MR. R.M. CHHAYA
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

30.07.2022

(R.M. Chhaya, CJ)

Feeling aggrieved and dissatisfied with the judgment and order dated 08.06.2022 passed by the learned Single Judge in WP(C) No. 3764/2022, the present writ appeal has been filed by the original petitioners.

The case of the appellants/original petitioners before the learned Single Judge was that even though a criminal case is pending against the respondent No.4 herein, he has been made Gaon Pradhan of Village Trilochan under Chamaria Revenue Circle in Kamrup District. It appears from the records of the appeal that the respondent authorities issued an advertisement on 01.12.2021 inviting on-line applications from the intending candidates for appearing in viva voce interview for filling up sanctioned vacant posts of Gaon Pradhan in Kamrup district. It further appears that the viva voce was held for the post of Gaon Pradhan for different places and the respondent No.4

came to be appointed as the Gaon Pradhan of Village Trilochan.

The appellants herein filed a writ petition under Article 226 of the Constitution of India contending that the respondent No.4 who is selected to the said post has violated the criteria of the connected advertisement. It was also contended that the respondent No.4 being a criminal, cannot be considered to be a person of high status and respectable position in the society and, therefore, the selection of the respondent No.4 is liable to be cancelled. It was further contended that the impugned selection of the respondent No.4 has violated the principles of natural justice, administrative fairplay, equity and good conscience. The following prayer was made in the writ petition:

“Under the facts and circumstance it is therefore prayed that your Lordships would be pleased to admit this Writ Petition, call for the records, issue a rule calling upon the Respondents to show cause as to why a writ in the nature of mandamus/or any other appropriate writ, order or direction shall not be issued to cancel the selection of respondent no.4 as Gaon Pradhan of village- Trilochan, selected vide impugned selection notice dated 25.05.2022 under no. KRM-81/2020/2011/231-236 by the respondent no.2 and to show cause as to why either of the petitioners shall not be selected for the post of Gaon Pradhan of village- Trilochan and on perusal of records and reply show cause if any and after hearing the parties would be pleased to make the Rule absolute by cancelling the selection of respondent no.4 as Gaon Pradhan of village- Trilochan selected vide notice dated 25.05.2022 under no. KRM- 81/2020/2011/231-236 issued by the respondent no.2 and directing the respondent no.2 and 3 to select either of the petitioner as Gaon Pradhan of village- Trilochan an/or to pass any other order/ orders or direction as your Lordships may deem fit and proper in the interest of justice.

-AND-

Further it is prayed that pending disposal of the writ petition the Respondent No.2 may be directed not to appoint the private Respondent No.4 as Gaon Pradhan of village- Trilochan, in the interest of justice. ”

The learned Single Judge dismissed the writ petition on the ground that an alternative remedy is available to the petitioners by way of filing an appeal under Executive Instruction No. 162C before the Divisional Commissioner. Being aggrieved, the present appeal has been filed.

We have heard Mr. M.A. Sheikh, learned counsel for the appellants; Ms. N. Bordoloi, learned counsel for the respondent No.1 and Mr. P. Sarmah, learned Additional Senior Government Advocate, Assam for the respondent Nos. 2 and 3.

Mr. M.A. Sheikh, learned counsel for the appellants contended that the learned Single Judge has misread the provisions of Executive Instruction Nos. 162B and 162C. He further contended that it is not a case of appointment but it is a case of selection and, therefore, the conclusion arrived at by the learned Single Judge that an appeal would be maintainable is erroneous. It was thus contended that on wrong appreciation of facts and misinterpretation of law, the learned Single Judge has committed an error in dismissing the writ petition on the ground of alternative remedy.

Ms. N. Bordoloi and Mr. P. Sarmah, learned counsels for the respondents, on the other hand, have supported the impugned order and have contended that the petitioners have an alternative efficacious remedy as provided under Executive Instruction No. 162B and, therefore, the learned Single Judge has not committed any error and the appeal being without any merit, deserves to be dismissed. No further submissions, grounds or contentions have been raised by the learned counsels for the respective parties.

Before appreciating the contentions raised, it would be apt to refer to the relevant provisions of the Executive Instructions. Executive Instruction Nos. 162A, 162B, 162C and 162D read as under:

“162A. – Gaonburas shall be appointed, suspended and dismissed in case of the Sadar Sub-division by the Deputy Commissioner or the Sub-Divisional Officer (Sadar) and in case of outlying Sub-Divisions by the Sub-Divisional Officers.

If however the post of S.D.O. is vacant in case of outlying Sub-Division, the power of appointment, suspension and dismissal of Gaonburas may be exercised by the Assistant Commissioner or the Extra Assistant Commissioner of the outlying Sub-division as may be authorised by the Deputy Commissioner by an order in writing in this behalf.

When a Gaonbura is suspended, the Notice of suspension shall ordinarily be served on the Gaonbura by an officer of the status of Revenue Officer who

shall take-over all official books and papers from him.

The fact of Gaonbura's suspension shall be communicated to the raiyats of the villages concerned through the Gaon Panchayats or in any convenient manner and shall be reported to the Deputy Commissioner without delay, in case of outlying Sub-Divisions by the S.D.Os and in case of Sadar Sub-divisions by the S.D.Os (Sadar), if the order is passed by such Officer. In the matter of appointment of a Gaonbura, the following factors shall be taken into consideration :-

- (1) *the claims of the family of the late Gaonbura;*
- (2) *the views of the Mauzadar;*
- (3) *the suitability of the person for the post.*

Gaonburas shall be entitled to the protection provided under Article 311 of the Constitution of India.

162B. *An appeal against the order of appointment, suspension and dismissal of a Gaonbura by the Sub-Divisional Officer (Sadar) and the Sub-Divisional Officers of the outlying Sub-Divisions shall lie to the Deputy Commissioner within a period of 60 days from the date on which the appellant receives a copy of the order.*

162C. *A second appeal from the order of the Deputy Commissioner shall lie to the Commissioner of Divisions within a period of 60(sixty) days from the date of passing of the order by the Deputy Commissioner and the Commissioner may,-*

- (a) *confirm or set aside the order,*
- (b) *remit the case to the Deputy Commissioner, directing him such further action or inquiry as he considers proper in the circumstances of the case.*

162D. *A petition for review the order of the Commissioner of Divisions shall lie to the State Government within a period of 90(ninety) days from the date of passing of such order by the Commissioner. The State Government, on receipt of such application for review and after giving reasonable opportunity of being heard to the parties likely to be affected, may, -*

- (a) *confirm or set aside the order of the Commissioner,*
- (b) *remit the case directing him to take such further action or inquiry as he considers proper in the circumstances of the case provided that petition shall however be accepted by the State*

Government for review of any petition after the expiry of 90(ninety) days and unless the relief sought under different appellate authorities were exhausted as provided under Executive Instructions 162B and 162C."

The scheme of the Executive Instructions and the materials available on record clearly postulate that the respondent authority gave an advertisement for filling up the posts of Gaon Pradhan and after conducting viva voce the respondent No.4 has been appointed as Gaon Pradhan of Trilochan Village under Chamaria Revenue Circle. The contention raised by the learned counsel for the appellants that it is not an appointment but a selection runs contrary to the provisions of Executive Instruction No. 162A as the same speaks of appointment. Similarly, the provisions of Executive Instruction No. 162B also speak of an appeal against an order of appointment. Only because the word "selection" is used, the same does not mean that no appeal would lie, inasmuch as the words "selection" and "appointment" are interchangeable and thus an alternative remedy is available as provided under Executive Instruction No. 162B. The provisions of Executive Instruction No. 162C provide for a second appeal and the provisions of Executive Instruction No. 162D provide for review of the order of the Commissioner. Thus, a full fledged alternative remedy and machinery is provided by the Executive Instructions and in such an event when the appellants have an efficacious alternative remedy which is required to be exhausted before exercise of extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, more particularly in the facts of the present case, the contentions raised by the learned counsel for the appellants are baseless and deserve to be negated. It cannot be said that the learned Single Judge has misinterpreted the provisions of law and has wrongly applied Executive Instruction No. 162B to the facts of the present case. As far as other contentions are concerned, the same are on merits and it would be open for the appellants to raise them before the appropriate forum.

Resultantly, the appeal fails and is hereby dismissed with cost quantified at Rs.

5000/- to be paid by the appellants to the Assam State Legal Services Authority within a period of seven days from today.

JUDGE

CHIEF JUSTICE

Comparing Assistant