

GAHC010183942018



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

Case No. : WA/337/2018

DIPANKAR DIHINGIA

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI-06

2:THE COMMISSIONER AND SECRETARY
DEPARTMENT OF HEALTH SERVICES
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI 781006

3:THE DIRECTOR
DIRECTORATE OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI-781036

4:THE JOINT DIRECTOR OF HEALTH SERVICES (TB)
ASSAM
DIRECTORATE OF HEALTH SERVICES
HENGRABARI
ASSAM
DISPUR
36
ASSAM

5:THE STATE PROGRAMME OFFICER

STATE HEALTH SOCIETIES
RNTCP
ASSAM
OFFICE OF THE DIRECTORATE OF HEALTH SERVICE
ASSAM
HENGRABARI
36

6:THE JOINT DIRECTOR OF HEALTH SERVICES CUM DISTRICT TB
OFFICER

DISTRICT HEALTH SOCIETY DHEMAJI
ASSAM.

7:SMTI. ALPANA BARUAH

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : SC, HEALTH

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGMENT

Date : 19-10-2023

[Kardak Ete, J]

We have heard Mr. M. Biswas, learned counsel for the appellant and also heard Mr. D.P. Borah, learned Standing Counsel for Department of Health Services and Mr. E. Ahmed, learned counsel for respondent No. 7.

This intra court writ appeal has been preferred by the appellant/writ petitioner against the judgment and order dated 18.07.2018 passed by the learned Single Judge in Writ petition No. 4659/2015 whereby the writ petition preferred by the appellant/writ petitioner has been dismissed.

2. The challenge laid in the writ petition was to the selection and appointment Order No. JDTH/RNTCP/2000/Pt-III/262 dated 29.05.2015 of respondent No. 7 for the post of Senior Treatment Supervisor (herein after STS in short) at Dhemaji T.B. Cell, Dhemaji District, Assam.

3. The facts of the case, in brief, is that on 12.03.2015, the Directorate of Health Services, Government of Assam had issued an advertisement inviting applications for filling up of various posts including 69 (sixty nine) posts of STS in different Districts/T.B. Cells in the State of Assam. In the advertisement qualification and the salary attached to each post were mentioned but did not indicate the procedure that would be adopted for selection of the candidates. Pursuant to the said advertisement the appellant/writ petitioner applied for the post of STS in respect of Dhemaji TB Cell and he participated in the written examination and scored 86 marks.

4. Thereafter, the appellant/writ petitioner appeared for *viva voce* test. The respondent No. 7 who had scored only 47 marks in the written examination was selected for one of the posts of STS solely on the basis of her score in the *viva voce* test and was awarded a gross total of 62 marks against 57 marks obtained by the appellant/writ petitioner. Vide Order No. JDTH/RNTCP/2000/Pt-III/262 dated 29.06.2015 the respondent authority recommended and appointed respondent No. 7 as one of the candidates for the post of STS out of 2 (two) posts in the Dhemaji T.B. Centre, Dhemaji.

5. Aggrieved of the said selection and appointment of respondent No. 7, the appellant/writ petitioner approached this Court by filing writ petition being WP(C) No. 4659/2015. The learned Single Judge vide impugned judgment and order dated 18.07.2018 has dismissed the writ petition on the ground of non-joinder of necessary parties and omission to challenge the resolution dated 12.03.2015 as well as on failure to substantiate the allegation of malafide. Hence, this present writ appeal.

6. Mr. M. Biswas, learned counsel for the appellant/ petitioner submits that no criteria for selection has been mentioned in the advertisement notice. However, after the applications were received, the respondent authorities had secretly evolved a selection criteria whereby it was decided that the marks obtained in the *viva voce* test would only be taken into account for final selection of the candidates and accordingly, prepared the merit list on the marks obtained in the *viva voce* test so as to suit their preferred candidate. He submits that originally the name of the respondent No. 7 was not shortlisted for *viva voce* test but taking advantage of the fact that her father was serving in the post of Joint Director of Health Services-cum-District T.B. Officer, Dhemaji the exercise was redone so as to accommodate respondent No. 7 and she was selected for appointment only on the basis of very high marks awarded to her in the *viva voce* test.

7. Mr. Biswas, learned counsel submits that the learned Single Judge has failed to appreciate the fact that in the written test the appellant/writ petitioner had secured 86 marks as compared to the much poorer performance of respondent No. 7 who scored only 47 marks. It is the marks in the *viva voce* test which tilted the mandate of selection in favour of the respondent No. 7 in as much as in *viva voce* test respondent No. 7 was awarded 62 marks and the

appellant/writ petitioner awarded only 57 marks and marks of written examination was completely ignored. Thus, it is apparent that extraneous consideration played its role in a matter of selection of respondent No. 7.

8. Mr. Biswas, learned counsel submits that in the advertisement dated 12.03.2015 nowhere stipulates that *viva voce* marks would be the sole criteria for final selection for the posts in question. The resolution dated 12.03.2015 was never published and as such the petitioner had no occasion to know regarding the internal resolution dated 12.03.2015, which made *viva voce* to be the sole criteria for final selection and as such the petitioner did not or rather could not challenge the said resolution dated 12.03.2015.

9. Mr. Biswas, learned counsel submits that the other selected candidate namely Bidyut Sarma was not made party, primarily because of two reasons, namely: that the name of Bidyut Sarma appeared in the original shortlisted candidates who cleared the written test whereas the name of respondent No. 7 did not figure and Sri Bidyut Sarma secured 82 marks as compared to 47 marks secured by the respondent No. 7 in written examination. Further in *viva voce* test Sri Bidyut Sarma secured 59 marks as compared to 62 marks awarded to the respondent No. 7.

10. He further submits that the father of respondent No. 7 is respondent No.6 who is the Joint Director of Health Services -cum- District T.B. Officer of Dhemaji District. Thus, it is evident that the selection of respondent No. 7 was made at the instance of her father.

11. Mr. D.P. Borah, learned Standing Counsel for Health Department, on the other hand, while referring to the affidavit-in-opposition filed on behalf of respondent authorities, submits that in the minutes of the meeting dated

12.03.2015 for selection of the contractual staff under RNTCP in respect of advertisement dated 12.03.2015, it was decided to hold a screening test for the post of STS considering the fact that there were as many as 1500 applicants against 69 posts. Following the written test, it was decided to shortlist candidates for the *viva voce* at the ratio of 1:4 against each post against each district. Initially after written examination in the Dhemaji District, merit list was prepared in the ratio of 1:3 which was done due to mistake of the staff and accordingly, against two vacancies only 6 candidates were shortlisted for *viva voce* test. However, subsequently the said Merit List was modified in terms of the aforesaid Minutes and the list of candidates to be invited for *viva voce* was prepared at the ratio of 1:4 and accordingly as against two vacancies, 8 candidates were shortlisted for *viva voce* test. In the said list the name of the respondent No. 7 appeared at serial No. 8. Mr. D. P. Borah, learned Standing Counsel further submits that the list of shortlisted candidates were initially prepared erroneously in the ratio of 1:3 as a result of which the name of the respondent No. 7 did not figure in the first list. However, realizing the mistake, a fresh list was prepared as per the resolution dated 12.03.2015 by following the ratio of 1:4 in which list the name of respondent No. 7 was included on the basis of marks obtained by her in the written test.

12. While denying the allegation of malafide in the selection process, Mr. Borah, learned counsel submits that the appellant/writ petitioner has failed to implead the necessary parties and also he has not challenged the resolution dated 12.03.2015. He submits that the father of the respondent No. 7 did not take part in the selection process. Therefore, the learned Single Judge has rightly dismissed the writ petition of the appellant/writ petitioner after careful consideration of the facts and law.

13. We have considered the submissions of learned counsel for the parties and materials brought on record.

14. This Court on 27.09.2023 had directed the learned Standing Counsel for Health Department to keep available the government notification on the basis of which revised merit list was issued inviting candidates for *viva voce* in the ratio of 1:4 and also to keep the original record of selection available for the Court's perusal. Accordingly, the learned Standing Counsel Mr. D.P. Borah has produced the records before us. We have perused the records.

15. Pursuant to the advertisement dated 12.03.2015 the written examination was conducted on 28.05.2015. The merit list was published wherein the name of the appellant/writ petitioner appeared at serial No. 1 wherein 6 candidates were selected and shortlisted for the *viva voce* test. We have perused the records.

16. The records reveals that vide minutes of the meeting dated 12.03.2015 it was decided to hold the screening test for the post of STS purportedly considering the fact that there were more than 1500 applicants as against 69 posts.. Following the written test, it was decided to shortlist candidates for the *viva voce* at the ratio of 1:4 against each post for respective districts based only on the *viva voce* marks for final selection of STS. It reveals that marks for *viva voce* were fixed at 40 for each interview Board member.

17. On bare perusal of the marks awarded by the members of the interview Board, the respondent No. 7 was awarded high marks by all the members of the interview Board.

18. We are of the view that when the written examination was conducted and select list was published thereafter, it would be absolutely not permissible

for the respondent authorities to take a resolution by way of minutes of the meeting to decide that the final selection would be made purely on the basis of the *viva voce* marks. Such action on the part of respondent authorities, in our considered view, has given a leeway/premium to the respondent No. 7 undeservingly. Admittedly the respondent No. 7 is the daughter of the incharge of the Dhemaji T.B. Cell, who was serving as Joint Director of Health Services -cum- District T.B. Officer of Dhemaji District. Moreover, the learned Standing Counsel could not produce any notification which permits short listing of candidates for the *viva voce* at the ratio of 1:4. On the contra, as per the various notifications of the State Government including the Assam Judicial Service (Amendment) Rules, 2016 Schedule 3(c), the ratio in which candidates are to be invited for the viva-voce is 1:3. The records also reveal that in the written test the appellant/writ petitioner had scored 86 marks as compared to poor performance of respondent No. 7 who scored only 47 marks. In the select list of written test the name of respondent No. 7 did not figure at all. It is only on the basis of the vested resolution dated 12.03.2015 to the effect that candidates for viva voce will be invited in the ratio of 1:4 that the name of the respondent No. 7 figured in the subsequent shortlisted candidates.

19. It clearly transpires that the resolution dated 12.03.2015 which was also not based on any Government notification or rules had been drawn so as to facilitate the selection of respondent No. 7 on extraneous consideration who is the daughter of Joint Director of Health Services -cum- District T.B. Cell, District Health Society, Dhemaji District. When the notifications in vogue in the State requires for short listing of candidates for viva-voce test in the ratio of 1:3, there is no question of wrong short listing of candidates for the *viva voce* test. In our considered view, it is apparent that despite the meritorious performance of the appellant/writ petitioner in the written test, the unusually high viva-voce marks awarded by almost all members of the interview board have entirely tilted the

balance in favour of the respondent No. 7 since the mark in the written test were ignored altogether by taking a resolution dated 12.03.2015 obviously to favour the respondent No. 7.

20. With regard to the submissions of learned counsels for the respondents and the conclusion of learned Single Judge on non-joinder of necessary parties and omission to challenge the resolution dated 12.03.2015 as well as on failure to substantiate the allegation of malafide, we find that the other selected candidate Shri Bidyut Sarma based on marks scored was included in the original list of shortlisted candidates who cleared the written test whereas the name of respondent No. 7 did not figure and Sri Bidyut Sarma secured 82 marks as compared to 47 marks secured by the respondent No. 7 in written examination. In the *viva voce* test Sri Bidyut Sarma secured 59 marks as compared to 62 marks awarded to the respondent No. 7. The father of respondent No. 7 has been arrayed as respondent No.6 who is the Joint Director of Health Services -cum- District T.B. Officer of Dhemaji District. The resolution dated 12.03.2015 was neither published nor brought in public domain, therefore, appellant/writ petitioner had no occasion to know about such internal decision which was taken in a clandestine manner and as such could not be expected to challenge the said resolution dated 12.03.2015. Thus, such stand of the respondents is purely hyper technical and inconsequential in the facts and circumstances of the present case. We, therefore, are unable to accept the conclusion of the learned Single Judge.

21. The Hon'ble Supreme Court in the case of **Praven Singh vs. State of Punjab** reported in (2000) 8 SCC 633, had observed that there is always a room for suspicion for the common appointments if the oral interview is taken up as the only criteria. Though the interview undoubtedly is a significant factor in the

matter of appointment, it plays a strategic role but it also allows creeping in of a lacuna rendering the appointment illegitimate. Obviously it is an important factor but ought not be the sole guiding factor since reliance thereon only may lead to a sabotage of the purity of proceedings.

22. In the present case, illegality is writ large and it is so glaring on the face of it for having recourse to resolution dated 12.03.2015 which in turn has undeservingly favoured the respondent No. 7 evidently not in accordance with principles governing the selection process which is wholly impermissible under the law. Therefore, in our considered view extraneous consideration has played a prominent role in the matter of selection of respondent No.7, a candidate who performed so poorly in the written test and was made qualified, selected and appointed by taking recourse to a procedure not supported by any service Rule. Thus, we hold that the selection and appointment of respondent No. 7 solely on the basis of marks obtained in the *viva voce* is totally illegal and unsustainable.

23. In view of our discussions and conclusion herein above, the selection and appointment of respondent No. 7 solely on the basis of marks obtained in the *viva voce* is illegal and accordingly, selection and appointment Order No. JDTH/RNTCP/2000/Pt-III/262 dated 29.05.2015 of respondent No. 7 is hereby set aside and quashed.

The appointment of the respondent No. 7 as Senior Treatment Supervisor made vide order dated 29.05.2015 had been stayed during pendency of the writ petition. *Status quo* was also operating during pendency of the writ appeal. Hence, the appointment order dated 29.05.2015 was never acted upon.

24. In view of the above discussion and pursuant to the quashing of the impugned orders, it is hereby directed that the appellant herein, who secured

the top position on merit in the written examination, will be offered appointment on the second post of Senior Treatment Supervisor in the District T.B. Cell, Dhemaji, in case the said post is still vacant. If the appellant has crossed the age limit for appointment, he shall be granted appropriate age relaxation as well.

25. Consequently, the impugned judgment and order dated 18.07.2018 passed by the learned Single Judge is interfered with and set aside. The writ appeal is allowed accordingly. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant