GAHC010125462018

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

WP(C) No.3864 of 2018

1. Shri Jibon Kalita,
Son of Shri Dhenuram Kalita,
Resident of Village: Titabor, PO: Mahimabari, PS: Titabor Chaboti, District: Jorhat, Assam, PIN – 785630.

2. Shri Jitu Sonowal,
Son of Late Ajit Sonowal,
Resident of Village: Bajal Kata Gaon, PO: Urangial,
PS: Borhola, District: Jorhat, Assam, PIN – 785631.

3. Shri Prasanta Hazarika,
Son of Late Bapuram Hazarika,
Resident of Village: Borpasi Gaon, PO: Tipomia, PS: Borholla, District: Jorhat, Assam, PIN – 785630.

.....Petitioners

-***Versus***-

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Revenue and Disaster Management (LR) Department, Dispur, Guwahati, PIN – 781006.

2. The Joint Secretary to the Government of Assam, Revenue and Disaster Management (LR) Department, Dispur, Guwahati, PIN – 781006.

3. The Deputy Commissioner, Jorhat, District: Jorhat, Assam.

4. The Additional Deputy Commissioner, Titabor Civil Sub-Division, Titabor, District: Jorhat, Assam.

5. The Sub-Divisional Officer, Titabor, (Revenue Branch), District: Jorhat, Assam.

6. The Circle Officer, Titabor/Mariani Revenue Circle, District: Jorhat, Assam.

.....Respondents

For the Petitioners : Mr. M. Sarma, Advocate.

For the Respondents : Mr. J. Handique, SC, Revenue Department.
Mr. D. Nath, Govt. Advocate, Assam.

Date of Judgment & Order : *10th May, 2022.*

– B E F O R E –

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

JUDGMENT & ORDER (ORAL)

Heard Mr. M. Sarma, learned counsel for the petitioners. Also heard Mr. J. Handique, learned standing counsel, Revenue Department, appearing for the respondent Nos.1 & 2 and Mr. D. Nath, learned Government Advocate, appearing for the respondent Nos.3, 4, 5 & 6.

2. The petitioners' case is that pursuant to an Employment Notice dated 18.07.2016 issued by the respondent No.5, for filling up the post of Gaonburah of Mahimabari (4 No. Lat), Kakotykuri Gaon (7 No. Lat), Patigaon (4 No. Lat), Bajalkota Missing Gaon (6 No. Lat) and Shaidal Kacharigaon (1 No. Lat), the petitioners applied for the same. The petitioners were successful in the recruitment process and thereafter police verification was conducted with regard to their character and antecedent.

The said verification was also completed and while the petitioners were awaiting for their appointment orders, the respondents issued the advertisement dated 28.05.2018 for filling up the vacant post of Gaonburahs of the villages that were already advertised by the Employment Notice dated 18.07.2016. The petitioners who belong to the Shaida Kacharigaon No.1 Lat of Borhola Mouza under Titabor Revenue Circle in the district of Jorhat, Bajalkota and Miri Gaon No.6 Lat of Borhola Mouza under Titabor Revenue Circle in the district of Jorhat and Mahimabari Grant No.4 Lat of Amguri Kharikatiya Mouza under Titabor Revenue Circle in the district of Jorhat are before this Court challenging the fresh advertisement dated 28.05.2018.

3. The petitioners' counsel submits that the Employment Notice dated 18.07.2016 has not been cancelled, though the same appears to have been kept in abeyance vide W.T. Message dated 20.02.2017 issued by the Joint Secretary to the Government of Assam, Revenue & Disaster Management (LR) Department. The petitioners' counsel submits that the State respondents decided to issue a new advertisement dated 28.05.2018, for filling up the above mentioned posts of Gaonburah, in view of there being amendments made to the Executive Instructions contained in the Assam Land Revenue Regulations, 1886 (hereinafter referred to as the "1886 Regulations"). He submits that the amendments have been made by way of the Assam Land Revenue Regulations, 1886 (Amendment) 2018, hereinafter referred to as the "2018 Amendment" vide Notification dated 10.04.2018.

4. The petitioners' counsel submits that the petitioners have been selected in terms of the selection process held pursuant to the Employment

Notice dated 18.07.2016 and that police verification of the selected candidates had also been done on 25.11.2016. As the only requirement for completing the selection process was the issuance of appointment orders, the State respondents should be directed to issue appointment orders appointing the petitioners as Gaonburahs of their respective villages.

5. Mr. D. Nath and Mr. J. Handique, learned counsels for the respondents submit that the amendments have been made to the Executive Instructions by way of the "2018 Amendment", in respect of some of the clauses of the Executive Instructions provided in the "1886 Regulations". As such, the new advertisement dated 28.05.2018 had to be issued in terms of the "2018 Amendment", as the earlier Employment Notice had been made by way of the earlier amended regulations provided in the Notification dated 06.01.2016.

Mr. D. Nath submits that after the selection process was over, the appointment orders could not be issued due to the pendency of Title Suit No.7/2016 and Title Suit No.8/2016 in the Court of the Munsiff, Titabor. Though the Title Suit No.7/2016 and Title Suit No.8/2016 were disposed of on 14.08.2017, the selection process was not completed due to the fresh advertisement being issued on 28.05.2018 by the respondents, pursuant to the amendment of the Executive Instructions vide Notification dated 10.04.2018. He further submits that the appointment orders of the petitioners were not issued in view of the W.T. Message dated 20.02.2017 issued by the Joint Secretary to the Government of Assam, Revenue and Disaster Management (LR) Department, which directed the respondents not to act upon the Executive Instructions dated 06.01.2016, which was the basis for issuance of the Employment Notice dated 18.07.2016.

6. I have heard the learned counsels appearing for the parties.

7. The selection process and appointment for Gaonburahs in terms of the Employment Notice dated 18.07.2016 had been made in terms of the requirements/ eligibility criteria provided in the Notification dated 06.01.2016, which was the amended Executive Instructions contained in the 1886 Regulations. The subsequent advertisement dated 28.05.2018 has been made on the basis of the "2018 Amendment".

8. The major difference between the Notification dated 06.01.2016, which is an earlier amendment of the Executive Instructions and the "2018 Amendment" is with respect to Clause 162(1)(ii) and 162(1)(v). In the earlier Notification dated 06.01.2016, a candidate for the post of Gaonburah was to have a minimum age of 21 years and was not to be older than 40 years, though for persons belonging to the SC/ST Community, the age limit was enhanced to 45 years. In terms of the "2018 Amendment", the minimum age of the candidate was raised to 35 years.

The other difference in the Notification dated 06.01.2016 and the "2018 Amendment" is that Clause 162-A(1)(v) of the Notification dated 06.01.2016 states that "Deputy Commissioner should make the appointment after obtaining Police Verification Report and no criminal case should be pending against him". However, the said provision is missing in the "2018 Amendment" and one qualification has been inserted in the Executive Instruction No.162(1)(v) under the "2018 Amendment", which is to the following effect :

> "*Preference shall be given to the family members of Gaonburas and view of the Mouzadar shall be taken into consideration*"

9. Also, there is another amendment in the "2018 Amendment", inasmuch as, a Selection Board has been constituted for appointment of Gaonburahs, which was not there in the earlier Executive Instructions provided under the Notification dated 06.01.2016.

10. As has been submitted by the learned counsels appearing for the parties, the selection process that had been undertaken for appointment of Gaonburahs in terms of the Executive Instructions operating on 06.01.2016 had basically been completed, except for the State respondents not issuing appointment orders to the selected candidates.

11. The petitioners were selected as Gaonburahs and police verification had also been completed on 25.11.2016. Title Suit No.7/2016 and Title Suit No.8/2016 were disposed of on 14.08.2017 and as such there was no bar on the part of the State respondents in issuing appointment orders to the petitioners from 15.08.2017 onwards. The respondents could have issued appointment orders in the year 2017, as the amendment to the Executive Instructions was made only on 10.04.2018.

12. In the case of ***Madan Mohan Sharma & Anr.-Vs- State of Rajasthan & Ors.***, reported in ***(2008) 3 SCC 724***, the Apex Court had held that once advertisements have been issued on the basis of a circular operating at that particular time, the effect would be that the selection process should continue on the basis of the criteria which were laid down and it cannot be on the basis of the criteria, which has been made subsequently.

13. In the case of ***Assam Public Service Commission & Ors. -Vs- Pranjal Kumar Sarma & Ors.***, reported in ***2019 (17) Scale 542***, the Apex Court had held that the recruitment process pursuant to the advertisement issued by the APSC on 21.12.2018 must necessarily be conducted under the selection norms as applicable on the date of the advertisement.

14. In the case of ***A.A. Calton -Vs- Director of Education & Anr.***, reported in ***(1983) 3 SCC 33***, the Apex Court had held that though the Legislature may pass laws with retrospective effect subject to the recognized constitutional limitations, it is equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have retrospective effect.

In the present case, the amendment made to the Executive Instructions vide Notification dated 10.04.2018 has not been given any retrospective effect and as such, the doing away with the selection process that has been completed prior to the Notification dated 10.04.2018 is patently unfair and unreasonable.

15. In the present case, the advertisement was issued on the basis of the prevailing provisions of the Executive Instructions prevalent at the time of issuance of the Employment Notice dated 18.07.2016. During the selection process, up till the police verification done on 25.11.2016, the provisions of the Executive Instructions that was applicable during the time the Employment Notice dated 18.07.2016 was published, remained the same.

16. In view of the above reasons and keeping in view the law laid down by the Apex Court, this Court is of the view that the State respondents cannot justify the cancellation of the earlier selection process made in terms of the Employment Notice dated 18.07.2016 by publishing a new advertisement dated 28.05.2018. Consequently, the advertisement dated 28.05.2018, insofar as it relates to the selection process for the villages in which the petitioners have been selected, is hereby set aside. The respondents are directed to issue appointment orders to the petitioners in terms of the selection process held pursuant to the Employment Notice dated 18.07.2016 at the earliest. The above is subject to the condition that the petitioners are not having any criminal case against them.

17. The writ petition is accordingly allowed.

JUDGE

Comparing Assistant