

PETITIONER:
NAZIRA BEGUM LASHKAR & ORS.

Vs.

RESPONDENT:
STATE OF ASSAM & ORS.

DATE OF JUDGMENT: 07/11/2000

BENCH:
G.B. Pattanaik, S. Rajendra Babu, & B.N. Agarawal.

JUDGMENT:

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PATTANAİK, J.

In this batch of appeals, the judgment of the Division Bench of Gauhati High Court is under challenge. In Civil Appeal No. 278 of 1999, the appellants had been appointed as Assistant Teachers of Primary Schools in the year 1990. But those appointments were cancelled by the State Government, after giving show cause notice to the appellants inasmuch as the appointments had been made, though no posts were available and the appointments had been made, not in accordance with the prescribed procedure. The order of cancellation had been assailed in the High Court by filing writ petition and the learned Single Judge by a cryptic order, without focusing attention to the relevant criteria, allowed the same. The State had assailed the legality of the order of the learned Single Judge by filing writ appeal and the Division Bench having allowed the writ appeal and this Court against the said order having granted special leave, the present appeal is before us.

Civil Appeal Nos .296/99, 279-285/99 and 286/99 are by some of the teachers in the primary schools, who were appointed on 29.9.94 and their services stood terminated by the order dated 20th December, 1994. They filed writ petitions in the Gauhati High Court, which was pending before the learned Single Judge. When the Division Bench was in session on writ appeal filed by the State, as stated earlier, the said Division Bench withdrew the writ petitions filed by the appellants from the Single Judge and disposed them of, by the common order which is being assailed in these appeals.

Civil Appeal Nos. 279-285/99 are also by some of the teachers, who were appointed and whose services stood terminated and they had assailed the order of termination by filing a writ petition before the learned Single Judge, which was brought over by the Division Bench and disposed of, along with the batch of other appeals.

Civil Appeal No. 287/99: In this appeal, the teachers before any order of termination, apprehending termination had approached the High Court and while the matter was pending before the learned Single Judge, the writ petition stood transferred to the Division Bench and

the Division Bench also disposed of the same by the common order.

Civil Appeal Nos. 288-294/99: The facts in these appeals are similar to the facts in Civil Appeal No. 278/99 and in these appeals also, the order of the Division Bench of the Gauhati High Court is under challenge.

Civil Appeal No. 295/99: In this appeal against the order of termination, the teachers had approached the High Court by filing a writ petition and the learned Single Judge by his judgment dated 28th of April, 1994 in Civil Rule No. 4280/91, dismissed the same. Against the said judgment of the learned Single Judge, the teachers had carried appeal to the Division Bench and the Division Bench by judgment dated 24th May, 1995, having dismissed the appeal, the appellants are before this Court, special leave having been granted.

In all these appeals, the appellants claimed to have been appointed as Assistant Teachers of different Primary Schools in the State of Assam. The recruitment to the post of Primary Schools is governed by a set of rules called the Assam Elementary Education (Provincialisation) Rules, 1977 (for short the Recruitment Rules) which had been framed by the Governor of Assam in exercise of powers conferred by Section 27 of the Assam Elementary Education (Provincialisation) Act, 1974. The aforesaid Recruitment Rules provide for method of recruitment, payment of liabilities of the Board and management of Elementary Schools. Rule 3 of the Recruitment Rules provides the method of recruitment. The said Rule 3 is extracted hereunder in extenso:

Rule 3.(i) Method of recruitment. In the month of January every year the D.I. shall invite applications in prescribed form for vacancies of elementary school teachers which are likely to occur in the year in his establishment.

(ii) Age. (a) A candidate shall be within the age limit on 1st January of the year of recruitment as prescribed by Government.

(b) The Upper age limit shall be relaxed in favour of Scheduled Castes and Scheduled Tribes as per Rules made by Government.

(iii) Qualification. (a) Matriculation /High School /School Leaving Certificate Examination or any other examination of equivalent standard shall be the minimum qualification for the post of teacher in Lower Primary and Junior Basic Schools preference being given to candidates trained in Senior Basic, Normal and Junior Basic Training Courses.

(b) For M.V. and Senior Basic Schools qualification shall be Matric, Normal or P.U. or Intermediate or its equivalent.

(iv) Character. A candidate shall furnish the certificates of character from (a) the Principal, Academic Officer of the School/College last attended by the candidate and (b) a respectable person who is well acquainted with (not related to) the candidate.

(v) Selection Committee. There shall be a Selection Committee in each educational sub-Division to be constituted by the Sub-Divisional Level Advisory Board for Elementary Education. The Chairman of the Sub-Divisional Level Advisory Board for Elementary Education and the D.I. of Schools shall be the Chairman and Secretary of the Selection Committee respectively.

(vi) On receipt of applications, the Selection Committee shall scrutinise the mark sheets and other necessary testimonials of the candidates and prepare a list of candidates for interview by the Selection Committee.

The Selection Committee shall then finalise the list of successful candidates in order of merit after interview and shall put up the list before the Board for approval. While approving the list, the Board shall be guided by the declared policies of the Government and instructions issued by the Government from time to time. After approval of the list by the Board the same shall be sent to the Director of Elementary Education for his final approval.

The Deputy Inspector of Schools will appoint the selected candidates in order of merit from the list approved by the Director of Elementary Education as and when required as per Government Rules and Government instructions for the time being in force.

The list shall be valid for one year unless its validity is extended by Government.

(vii) Reservation. There shall be reservation of posts for Scheduled Castes and Scheduled Tribes as per Rules made by Government from time to time.

(viii) physical fitness. (a) A candidate shall be of sound health both physically and mentally and free from organic defects or bodily infirmity likely to interfere with his/her duties. (b) A candidate shall be required to undergo medical examination and to produce a medical certificate of fitness.

(ix) An appointed candidate may be required to undergo such in-service training as Government may decide from time to time.

In view of the allegations that large scale irregular appointments had been made by some officers of the Government, without following the prescribed procedure, the Division Bench of Gauhati High Court, while the writ appeals as well as the writ petitions brought over by the Division Bench from the Single Judge of the said High Court were pending, a direction had been issued by the High Court for holding an inquiry and submitting a report in view of the alleged gross mal-practices adopted in different Districts.

After inquiring into the manner in which these appointments had been made, the Inquiry Committee had submitted a report that the appointment of these teachers had not been made in accordance with the statutory rules and without any advertisement calling for applications and without any constitution of the Selection Committee and

without any interview, appointments had been made as against the allotted posts under the orders of the then Chief Minister and communicated by the then Director of Elementary Education and/or the Secretary in the Education Department. The Division Bench of the Gauhati High Court came to the conclusion that the initial appointment of these teachers itself was not only in contravention of the statutory rules, but against all canons of fairness and the appointment letters were cancelled after giving show cause notice, rules of natural justice having sufficiently complied with, and in such circumstances, the initial appointment being dubious in nature, the issuance of appointment letters will not confer any right on the appointees. Since the Division Bench was hearing matters relating to appointment of Primary Teachers in different Districts, it came to hold that the corrupt practices were not confined to a particular District of the State but spread over the length and breadth of the State right through Cachar, Jorhat, Darrang etc. and the large number of back-door entries of teachers were made and appointed de hors the Rules. Ultimately, therefore the Division Bench in the impugned judgment came to the conclusion that:

.....the appointments conceived in fraud and delivered in deceit cannot be regularised or validated. There was no selection, no interview, or fake or ghost interviews, tampering with records and fabricating documents. In such circumstances as pointed out by the Supreme Court in *Krishan Yadav vs. State of Haryana*, AIR 1994 SC 2166, an inference can be drawn that all was motivated by extraneous considerations. The entire process of making appointments is stinking. Really speaking, the moment posts were allotted to a particular District, it was free play for all and the net result is these appointments. All norms of procedural fairness had been thrown to winds, the rules were given a convenient go-bye. Article 14 and 16 of the Constitution violated with impunity. These petitions are, therefore, liable to be dismissed and accordingly dismissed with no order as to costs."

The appeals filed by the State, therefore, were allowed and in the cases where the writ petitions had been dismissed by the learned Single Judge and the appeals had been preferred by the teachers, those appeals stood dismissed. The State Government was directed to streamline the process of selection at its earliest and while making such selection, it was also further directed that these teachers would get an opportunity to offer themselves as candidates, subject to their fulfilment of conditions of eligibility and if necessary, the age should be relaxed, as permissible under the Rules.

Mr. Sanjay Parikh, the learned counsel, appearing for the appellants in Civil Appeal No. 278/99, vehemently contended before us that the poor teachers should not be penalised, since they had been appointed against available vacant posts by a competent authority and since they do possess the requisite qualification for being appointed. He also vehemently contended that the order in favour of these teachers by the learned Single Judge having been assailed by the State, after long delay of eleven months and objection for condonation having been filed, the Division Bench was not justified while interfering with the order of the learned Single Judge and on that ground alone, the order of the Division Bench is liable to be interfered

with by this Court. He also further submitted that in view of the fact that these teachers have been continuing for a considerable number of years, this Court should direct for adjustment of equities in a manner as was done by this Court in Ashwani Kumar and Ors. Vs. State of Bihar and Ors., 1997(2) SCC Page 1, so that while considering these teachers for the posts pursuant to the directions of the Division Bench of the High Court, due weightage should be given for the experience gained by these teachers who had been teaching for a number of years. In support of this contention, Mr. Parikh also relied upon a decision of this Court in Arun Kumar Rout and Ors. Vs. State of Bihar and Ors., 1998(9) S.C.C. 71, wherein this Court had indicated that the appointees deserve sympathetic consideration in getting appointment against sanctioned posts on humanitarian consideration. The learned counsel also placed reliance on the judgment of this Court in H.C. Puttaswamy and Ors. Vs. The Honble Chief Justice of Karnataka High Court, Bangalore and Ors., 1991 Supp.(2) S.C.C. 421, where-under this Court reviewed the earlier orders of the Court and treated the services of the appointees to be regularly appointed.

Mr. Sudhir Chandra, the learned senior counsel appearing for the appellants in C.A. No. 296/99, C.A. No. 279-285/99 and C.A. No. 286/99, on the other hand contended that the teachers involved in these appeals had applied for, pursuant to an advertisement in Newspaper Dainik Azone and in fact 5474 teachers had been appointed under a special project called Operation Black Board and for such appointments, the provisions of the Recruitment Rules have no application. According to him, a large scale appointments having been made and such appointments having been made after entertaining applications, pursuant to an advertisement and after considering the appointees suitable by an authority, their appointments could not have been terminated and the Division Bench was in error in disposing of the writ petitions filed by them without advertting to the special features of the case, as narrated. According to Mr. Sudhir Chandra, so far as the appointees in these appeals are concerned, there has neither been any back door entry nor has there been any favouritism shown by the authorities, and therefore, their appointments could not have been cancelled and /or terminated within three months of the appointment.

Mr. M.N. Krishnamani, the learned senior counsel, appearing for the appellants in C.A.No. 287/99 also contended that the teachers involved in the said appeal had approached the High Court, apprehending their termination and, therefore, their writ petitions could not have been disposed of by the Division Bench by bringing forth their case, without advertting to the grounds on which the teachers approached the High Court, apprehending termination and he, therefore, submitted that the matter should be remitted back to the learned Single Judge of the Gauhati High Court.

Ms. Indu Malhotra, appearing for the appellants in C.A. No. 295/99 on the other hand contended that so far as the recruitment of the appellants in this appeal is concerned, there was due advertisement and there was due selection and appointments had been made by the Elementary Advisory Board and as such there was substantial compliance

of the provisions of the Recruitment Rules and consequently, the appointments involved in the said appeal could not have been annulled by the Division Bench.

In view of different submissions made by different set of counsel, as referred to earlier, we have examined in detail the report of the Inquiry Committee as well as different orders passed by the High Court and it appears to us that no special case had been made out by the appellants in C.A. No. 296/99, C.A. Nos. 279-285/99 and C.A. No. 286/99 in their writ petitions before the High Court, making out a case that these appointments had been made under a special project called Operation Black Board and as such, the provisions of the Recruitment Rules need not be complied with and the appointments had been bona fide made by the competent authority and the appointees possess the requisite qualification. Even in the special leave petition in this Court, no such stand has been taken. In this view of the matter, we are constrained to agree with the conclusions of the Division Bench of the High Court that the appointments were made to posts of Assistant Teachers of Primary Schools and such appointments are governed by the statutory Recruitment Rules, which rules have been framed by the Governor in exercise of the power conferred under the Assam Elementary Education (Provincialisation) Act, 1974. We also do not find any substance in the argument of Ms. Indu Malhotra that the appointments made in C.A. No. 295/99 were in substantial compliance of the Recruitment Rules inasmuch as the judgment of the Division Bench clearly indicates that the counsel appearing for the teachers conceded that the appointments had been made on the vacant posts but the same were not done in accordance with the provisions of Rule 3 of the Rules of 1977. In view of the aforesaid concession of the appellants through their counsel before the Division Bench, it would be difficult for us to entertain the contention of Ms. Indu Malhotra that there has been substantial compliance of the provisions of the Recruitment Rules. As has been stated earlier, while the matter was pending before the Division Bench, the Court was persuaded to appoint an Inquiry Committee, in view of the allegations of gross irregularities and illegalities committed in the matter of appointment of teachers in different primary schools in different Districts. The said Committee has gone into details and recorded findings that the provisions of the Recruitment Rules have not at all been followed. The High Court even has gone to the extent of recording a finding that there has been no selection, no interview or even fake or ghost interviews and there has been tampering of records and fabricating of documents. Since the appointments to the posts are governed by a set of statutory rules, and the prescribed procedure therein had not been followed and on the other hand appointments have been made indiscriminately, immediately after posts were allotted to different Districts at the behest of some unseen hands, such appointments would not confer any right on the appointee nor such appointee can claim even any equitable relief from any Court. That apart, the appointments stood annulled hardly after six months from the date of appointments and the appointees cannot claim to be continuing for an unusual long period, so as to claim a humanitarian consideration in their case. The decisions cited by Mr. Parikh, in support of his contention, not only do not support his contention but on the other hand, appears to us to be against his contention. In Ashwani

Kumars case, 1997(2) S.C.C.1, this Court in no uncertain terms held that as the appointments had been made illegally and contrary to all recognised recruitment procedures and were highly arbitrary, the same were not binding on the State of Bihar. This Court further went on to hold in the aforesaid case that the initial appointments having been made contrary to the statutory rules, the continuance of such appointees must be held to be totally unauthorised and no right would accrue to the incumbent on that score. The Court had also held that it cannot be said that principles of natural justice were violated or full opportunity was not given to the employees concerned to have their say in the matter before their appointments were recalled and terminated. But, while dismissing the appeals, the Court had issued certain directions as to how the appointments should be made in future and how the case of the illegally recruited teachers should be dealt with. In the facts and circumstances of the present case, we are unable to persuade ourselves to give any such direction, other than the directions given by the Division Bench of the High Court regarding condonation of over age inasmuch as none of the appointees have been allowed to continue for any long period beyond six months and wherever they have been allowed to continue, it is because of the judgment of the learned Single Judge. In this view of the matter, question of issuing any direction for adjustment of equities in favour of the appellants would not arise. It may not be out of place to mention at this stage that even though, the appointments made in favour of the appointees indicated clearly that the appointment is purely temporary and can be terminated without any notice but before cancellation of the appointments, the Government did issue notice to the appointees and it is only after that, the termination orders had been issued. In the aforesaid premises, we do not find any merit in any of these appeals and the appeals accordingly fail and are dismissed, but in the circumstances there will be no order as to costs.