

GAHC010013102017



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

Case No. : WP(C)/929/2017

RATUL DEKA
S/O. LT. BISHNU RAM DEKA, R/O. HABERIKURA, P.O. PUTHIMARI, P.S.
KAMALPUR, DIST. KAMRUPM, ASSAM.

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE SECRETARY, LEGISLATIVE DEPTT., GOVT. OF ASSAM,
DISPUR, GUWAHATI- 06.

2:THE MEMBER SECRETARY

ASSAM STATE LEGAL SERVICES AUTHORITY
HIGH COURT OLD BUILDING CAMPUS
PANBAZAR
GUWAHATI- 01
DIST. KAMRUPM
ASSAM.

3:THE DISTRICT AND SESSION JUDGE CUM CHAIRMAN

DIST. LEGAL SERVICE AUTHORITY
KAMRUPMETRO
ASSAM.

4:SRI MRINAL KUMAR NATH

S/O. SHRI AJAN NATH
R/O. VILL. and P.O.- CHANGSARI
P.S.- CHANGSARI - 781101
DIST. KAMRUPRURAL
ASSAM

B E F O R E

HON'BLE MR. JUSTICE KALYAN RAI SURANA

Advocates for the petitioner	: Mr. K.N. Choudhury, Senior Advocate, : Mr. N. Alam, Mr. S.U. Ahmed, Mr. K. Jain.
Advocates for respondent no.1	: Mr. D. Nath, Addl. Senior Govt. Advocate.
Advocates for respondent no.2	: Mr. U.K. Nair, Senior Advocate, : Standing Counsel, Gauhati High Court.
Advocates for respondent no.3	: Mr. M. Mahanta.
Advocates for respondent no.4	: Mr. M.K. Choudhury, Senior Advocate, : Mr. T.N. Srinivasan, Mr. A. Barkataki, : Mr. N. Baruah, Mr. P. Bharadwaj, : Ms. A. Choudhury.
Date of hearing	: 22.03.2021 and 24.03.2021.
Date of judgment	: 18.06.2021

**JUDGMENT AND ORDER
(CAV)**

Heard Mr. K.N. Choudhury, learned senior counsel, assisted by Ms. R. Kakoti, learned counsel for the petitioner, Mr. D. Nath, Addl. Senior Government Advocate for the respondent nos.1 and 2, Mr. M. Mahanta, learned counsel for respondent no.3 and Mr. M.K. Choudhury, learned senior counsel, assisted by M. Sarma, learned counsel for respondent no.4.

2. The petitioner claims to have passed the Higher Secondary School examination. It is projected that in the year 2013, a vacancy arose in the establishment of the respondent no.3 for the post of contractual peon to be appointed for a period of one year under 13th finance Commission award w.e.f. 01.04.2013, and on that he was selected and appointed vide order dated 21.03.2013 on contractual basis for one year in the consolidated pay of Rs.4,500/- per month under the notified terms and conditions. The period of service was extended for a further period of one year by order dated 08.04.2014. Thereafter, the petitioner had participated in the selection process for appointment to the temporary vacant post of peon in the establishment of the District Legal Services Authority, Kamrup (DLSA, Kamrup) for short) pursuant to advertisement published in the newspaper on 08.06.2016 by the District & Sessions Judge- Cum- Chairman, DLSA, Kamrup (respondent no.3). The name of the petitioner was at serial no. 85. By notice dated 29.12.2016, viva-voce test was

scheduled on 21.01.2017 and 23.01.2017. However, vide select list dated 24.01.2017, the respondent no.4 was selected for appointment to the post of peon. The appointment of respondent no.4 has been assailed by filing this writ petition under Article 226 of the Constitution of India.

3. The learned senior counsel for the petitioner has submitted that as per clause 2(b) of the advertisement, it was provided that the candidate was to be Class VII standard pass and it was further provided that preference will be given to those candidates who have already worked or working temporarily as contractual/ fixed pay/ wages basis in subordinate Judicial Court/ Offices. Accordingly, it is submitted that the respondent no.4 had never served in any manner as peon or in any capacity in the subordinate Judicial Court/ Offices. Therefore, it is submitted that the appointment of the respondent no.4 was vitiated by gross illegality and irregularity and that the respondent no.3 had over-looked Clause 2(b) of the terms and conditions of the employment advertisement. It was also submitted that the experience of the petitioner was ignored, his status as temporary contractual worker in the DLSA, Kamrup as peon was ignored. It is submitted that the appointment of respondent no.4 was whimsical, arbitrary and that the non-adherence to the herein before referred terms and conditions amounted to changing the rules of the game after the game had been played. It was further submitted that on the ground of experience, the petitioner ought to have been awarded 8 marks on the basis of 2 marks each by 4 member selection body. It was also submitted that the stand taken by the respondent no.3 in paragraphs 7 and 9 of the affidavit-in-opposition were contradictory to each other.

4. The learned Addl. Senior Government Advocate and the learned Standing Counsel of this Court appearing for respondent no.2 have submitted that this is a dispute between the petitioner and the respondent no.4 and their presence is only to protect the interest of the respondent nos. 1 and 2.

5. The learned counsel for respondent no.3 has produced the record of selection and he had submitted that there was no irregularity or illegality in the selection process, which was transparent and in accordance with the well established procedure for

selection and appointment, and that the Selection was done by a Board consisting of 4 persons. The learned counsel has relied on the following cases, viz., (i) *Secy. (Health) Deptt. of Health & F.W. & Anr. Vs. Dr. Anita Puri & Ors., (2003) 5 SCC 341*, and (ii) *Secretary, A.P. Public Service Commission Vs. Y.V.V.R. Srinivasulu & Ors., (1996) 6 SCC 282*.

6. The learned senior counsel for the respondent no.4 has submitted that this Court is not sitting in appeal over the decision of the selection Committee. It is also submitted that the purpose of interview is just for elimination in the absence of any written test. It is submitted that Clause 2(b) of the advertisement cannot be given any restrictive meaning as "office" could be any office and not necessarily "subordinate Judicial Court/ Offices". Moreover, it was submitted that 'preference' was applicable only if everything is equal. The learned senior counsel has also referred to the statements made in para-6 of I.A.(C) 90/2017. In support of his submissions, reliance has been placed on the following cases, viz., (i) *M.V. Thimmaiah Vs. Union Public Service Commission, (2008) 2 SCC 119*, (ii) *Dr. Anita Puri & Ors. (supra)*, (iii) *Bibhudatta Mohanty Vs. Union of India & Ors., (2002) 4 SCC 16*, (iv) *Y.V.V.R. Srinivasulu & Ors. (supra)*.

7. Records produced reveal that by advertisement was made pursuant to Memo No. DJK/2433-34 dated 07.06.2016 issued by the respondent no.3. The advertisement was for filling up temporary posts of (i) LDA-cum- Typist, and (ii) Peon. As per Clause 2(b), in respect of the post of peon, the required education qualification was as follows – "Class-VIII standard pass. *Preference will be given to those candidates who have already worked or working temporarily as contractual/ fixed pay/ wages basis in subordinate Judicial Court/Offices.*"

8. On the point as to whether the petitioner and the respondent no.4 had the requisite qualification of having worked in "Judicial Court/office", the learned senior counsel for the petitioner and respondent no.4 had made their respective erudite submissions, which led the Court to search the internet on use of symbol (/), which is termed as the slash, the stroke, the virgule, the oblique, the solidus. It appears from the materials available in the internet that one of the uses of the said symbol is to depict relationship like one appearing in

the following sentence - "They were in love/hate relationship". The symbol of slashes are also commonly used to signify alternatives as in "and/or" and "his/her/they". The said symbol is also has usage to replace *and*, *per*, or *or*. Slashes can also appear in place of the word *and*, as in "She's a writer/ producer/actor;" or the word *or*, as in "You can post on your favorite social media platform: Twitter/ Instagram/Facebook." In the State of Assam, the police and the judiciary use the said symbol in lieu of a comma, for example, "The accused has committed offence punishable under Sections 302/323/ 325/326/149/34 IPC." In job advertisements, it is found to be used as suggesting alternatives, for example "Each candidate shall carry his/her proof of identity". The said symbol is also used to show a period time, for example "The 1989/90 football season was marred by frequent scandals.", "This office is open Tuesday/ Saturday each week." Thus, it is seen that the symbol (/) appears to have a varied/ variety of usage. Accordingly, the Court is of the considered opinion that in the present case in hand the words "Judicial Court/office" cannot be given a limited use to mean that the word "office" must be one attached to "judicial Court", as sought to be projected by the learned senior counsel for the petitioner.

9. On a perusal of selection record produced, it is seen that the Selection Board consisted of four members. It is seen that while the petitioner got the score of 33 by adding the marks awarded by all four members, the respondent had got the score of 37 marks by adding the marks awarded by all four members. In this order, for the sake of convenience, the respondent no.1 is referred to as Chairman and the three members are referred to as 2nd Member, 3rd Member and 4th Member. The Board had awarded the following marks to the petitioner and respondent no.4:-

Petitioner (Ratul Deka):

Sl.	Board Member	Presentation	General knowledge	Experience	Total
1	Chairman	3	3	2	8
2	2 nd Member	4	3	1	8
3	3 rd Member	3	3	2	8
4	4 th Member	4	3	2	9

					33
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Respondent no.4 (Mrinal Kumar Nath):

S l.	Board Member	Presentation	General knowledge	Experience	Total
1	Chairman	4	4	1	9
2	2 nd Member	4	3	2	9
3	3 rd Member	4	3	2	9
4	4 th Member	4	4	2	10
					37

10. Therefore, on the basis of comparison of marks scored by the petitioner vis-a-vis the respondent no.4, the Court is unable to accept the contention of the learned senior counsel for the petitioner that the appointment of respondent no.4 was whimsical, arbitrary or that there was non-adherence to the terms and conditions contained in the employment advertisement or that the rules of the game was changed after the game had been played. Moreover, even if for the sake of argument, it is accepted that on ground of experience, the petitioner ought to have been awarded 8 marks on the basis of 2 marks each by 4 member selection body, as the petitioner was awarded a total of 7 marks, the addition would be of 1 mark, which would not affect the final result.

11. In the case of *Dr. Anita Puri & Ors. (supra)*, the Supreme Court had held, *inter alia*, to the effect that when an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidates and that by no stretch of imagination it can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed and it was further observed that in adjudging the suitability of person for the post, the expert body like Public Service Commission in the absence of any statutory criteria has the discretion of evolving its mode of evaluation of merit and selection of the candidate and

that the competence and merit of a candidate is adjudged not on the basis of the qualification he possesses but also taking into account the other necessary factors like career of the candidate throughout his educational curriculum, experience in any field in which the selection is going to be held, his general aptitude for the job to be ascertained in course of interview, extracurricular activities like sports and other allied subjects, personality of the candidate as assessed in the interview and all other germane factors which the expert body evolves for assessing the suitability of the candidate for the post for which the selection is going to be held. Moreover, in the case of *Y.V.V.R. Srinivasulu & Ors. (supra)*, it was held to the effect that a mere rule of preference meant to give weightage to the other qualification cannot be enforced as a rule of reservation or rule of complete precedence.

12. Therefore, in view of the discussion above, this writ petition fails on all counts. Resultantly, this writ petition stands dismissed. However, with no order as to cost.

13. The learned counsel for respondent no.3 is at liberty to collect the selection records from the Court Master.

JUDGE

Comparing Assistant