



GAHC010017372017

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

Case No. : WP(C)/1802/2017

ALL ASSAM ELEMENTARY TEACHER EDUCATORS' ASSOCIATION
A REGISTERED ASSOCIATION HAVING ITS OFFICE AT P.O. DALGAON,
DIST. DARRANG, ASSAM REP. BY ITS GENERAL SECRETARY SRI TAPAN
KR. HAZARIKA

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMMISSIONER AND SECY. GOVT. OF ASSAM, ELEMENTARY
EDUCATION DEPTT. DISPUR, GUWAHATI -6.

2:THE DIRECTOR SCERT

ASSAM KAHILIPARA
GUWAHATI -19.

3:THE ASSAM PUBLIC SERVICE COMMISSION
APSC REP. BY THE DEPUTY SECRETARY JAWAHAR NAGAR
GUWAHATI -19

4:CANDIDATE BEARING ROLL NO. 0000001
FOR INTERVIEW/VIVA-VOCE PURSUANT TO NOTIFICATION NO.
119PSC/DR-48/2/2014-15 DATED 15.03.2017
FOR THE POST OF INSPECTOR OF TRAINING SCERT HQ ESTT. C/O ASSAM
PUBLIC SERVICE COMMISSION APSC JAWAHAR NAGAR
GUWAHATI -19.

5:CANDIDATE BEARING ROLL NO. 0000002
FOR INTERVIEW/VIVA-VOCE PURSUANT TO NOTIFICATION NO.
119PSC/DR-48/2/2014-15 DATED 15.03.2017
FOR THE OST OF INSPECTOR OF TRAINING SCERT HQ ESTT. C/O ASSAM
PUBLIC SERVICE COMMISSION APSC JAWAHAR NAGAR



GUWAHATI -19

Advocate for the Petitioner : MS B DEVI

Advocate for the Respondent : MR.P SAIKIA R-4

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

JUDGMENT

Date : 11-03-2022

When this writ petition was moved, this Court had passed an order dated 28.03.2017 issuing notice of motion and as an interim measure, it was provided that while the interview/*viva-voce* for the post of Inspector of Training (SCERT) HQ Estt. can be proceeded with by the APSC, the result of the same was directed not to be published and no further steps to be taken towards filling up the said post until further orders. Upon receipt of notice, the respondent no. 4 had filed I.A.(Civil)/120/2021 for vacation/ alteration/ modification of the *ex parte* interim order dated 28.03.2017. The petitioner had also filed I.A.(Civil)/1289/2021 for continuation / extension of the interim order dated 28.03.2017. Since, the writ petition is of the year 2017, and as agreed upon by the parties, instead of hearing the connected interlocutory applications, the writ petition itself is taken up for disposal. The parties are also in agreement that I.A.(Civil)/120/2021 filed by the respondent no. 4 be treated as the affidavit-in-opposition.

2. Before going to the issue which has arisen for adjudication, it would be convenient to state the concise facts of the case.

3. The petitioner, as the name suggest, is an Association with the nomenclature All Assam Elementary Teacher Educators' Association. It is the admitted case that the

members of the petitioner-Association are Graduate Instructors/Science Graduate Instructors/Language Instructors of the various Basic Training Centres in the State of Assam and few of them have also been promoted to the post of Principal, Basic Training Centre. It is the contention of the petitioner-Association that their promotions done as per the Assam SCERT (Basic Training Centre) Service Order 2004 (hereinafter referred to as the Service Order, 2004). The next promotional post is in the cadre of Inspector of Training and Controller of Examination which are in the Class I category. The grievance of the petitioner is that the vacant post of Inspector of Training has been sought to be filled up by way of direct recruitment for which a notification dated 15.03.2017 has been issued. It is the case of the petitioner-Association that only two persons were called for the interview/*viva-voce* by ignoring the members of the petitioner-Association, who were holding the post of Principal, Basic Training Centre and had claimed to be eligible.

4. As per the petitioner, in the said notification dated 15.03.2017, a mention has been made regarding a purported Advertisement No. 17/2015 followed by an interview/ *viva-voce* held in the month of July/August 2016 which has been alleged to be done surreptitiously. It is the case of the petitioner that the impugned action is contrary to the mandate of the Service Order, 2004 wherein the role of the APSC is said to be minimal. It is, however not in dispute that the State of Assam has subsequently framed the Assam State Council of Educational Research and Training Service Rules, 2005 (hereinafter referred to as the Service Rules, 2005)

5. I have heard Shri A. Dasgupta, learned Senior Counsel assisted by Shri G Goswami, learned counsel for the petitioner-Association. I have also heard Shri P Nayak, learned Standing Counsel, SCERT; Shri B. Sharma, learned Standing Counsel, APSC; Shri PK Borah, learned Standing Counsel, Elementary Education Department, Assam and Shri J Patowary, learned counsel for the respondent no. 4. None has

appeared for the respondent no. 5. The materials on record have also been carefully perused.

6. Shri Dasgupta, learned Senior Counsel for the petitioner-Association submits that under the Service Order, 2004 whereas Inspector of Training was a Class-I post, Principal of Basic Training Centre is a Class-II post. Clause-5 thereof, pertains to the recruitment and under Clause-5 (2), it has been laid down that the said post shall be filled up from the select list of Principal and Principal has been defined under Clause-2 (k) as Principal of a Basic Training Centre. The learned Senior Counsel submits that though there is no dispute that subsequently, the Service Rules, 2005 were framed, in absence of any specific provision laying down the mode of recruitment to the post of Inspector of Training, the Service Order, 2004 still have to be relied upon. The learned Senior Counsel further submits that the Service Rules, 2005 do not even mention the post of Principal of Basic Training Centre and therefore, it is incumbent to fall upon the earlier Service Order, 2004. By referring to Rule-12 of the Service Rules, 2005, it is submitted on behalf of the petitioner-Association that Inspector of Training is one of the specific posts mentioned under Rule 12 (I) which is to be filled up by promotion and in view of the above, the present process to fill up the post by direct recruitment is wholly in violation of the statute.

7. *Per contra*, Shri P Nayak, learned Standing Counsel, SCERT submits that the contentions of the petitioner-Association are not correct. By referring to the affidavit-in-opposition dated 04.09.2021 filed by the respondent no. 2-SCERT, Shri Nayak, learned Standing Counsel submits that the basic contention of the petitioner-Association claiming promotion from the post of Principal to the post of Inspector of Training is erroneous, as both the posts, in question, are of equivalent status with same pay scale. It is submitted that though under the earlier Service Order, 2004, the scope of promotion was open, after coming into operation of the Service Rules, 2005,

the post of Inspect of Training is filled up by direct recruitment and subsequently, the scale of pay of the Principal of Basic Training Centres has been upgraded to that of Class-I. In this connection, specific reference has been made to the averments made in paragraph 3 (iii) of the said affidavit-in-opposition dated 04.09.2021 which is extracted hereinbelow:

“(iii) The salary structure and status of Principal of Basic Training Centres have been upgraded to Class-I, in the PB-4 (Rs. 30,000/- to Rs. 1,10,000/-) with Grade Pay Rs. 13,300/- vide Government Notification No. FPC.10/2017/Pt-I/39, dated 27.12.2019, which is equivalent to the post of Inspector of Training. Hence, question of promotion from the post of Principal, Basic Training Centres to the post of Inspector of Training does not arise as both the posts are equivalent status.”

8. The copy of the notification dated 27.12.2019 by which the pay scale of the post of Principal, Basic Training Centre was upgraded has been annexed as Annexure IV to the said affidavit-in-opposition. Lastly, it is submitted by Shri Nayak, learned Standing Counsel that during the pendency of this writ petition, the Director of SCERT has issued a communication dated 04.01.2020 to the Elementary Education Department. In the said communication, it has been stated that though the Service Rules, 2005 has superseded the Service Order, 2004, there is some anomaly so far as filling up of the post of Inspector of Training is concerned. However, considering the fact that the pay scales of Principal, Basic Training Centre and that of Inspector of Training have been made equivalent vide notification dated 27.12.2019, modification may be made to keep the post of Inspector of Training in the list of direct recruitment.

9. Shri B Sarma, learned counsel for the APSC and Shri PK Bora, learned Standing Counsel, Elementary Education Department, Assam endorse the submissions made on behalf of SCERT. By referring to the affidavit-in-opposition dated 08.02.2018, the learned Standing Counsel, APSC submits that the notification dated 15.03.2017 which is the subject matter of challenge is in continuation of the Advertisement No. 17/2015

published on 17.10.2015 and the said advertisement is not the subject matter of challenge. It is further clarified that by the notification dated 15.03.2017, interview was rescheduled only for certain posts contained in the advertisement dated 17.10.2015.

10. Shri Patowary, learned counsel for the respondent no. 4, apart from objecting to the writ petition on merits, has also raised a preliminary objection questioning the maintainability of the writ petition itself. It is submitted that the writ petition is not filed by any individual holding the post of Principal, Basic Training Centre but by an Association, that too, comprising of incumbents holding other posts than the post of Principal. The further objection is that the aforesaid Association is an unregistered one and lacks the eligibility to maintain a writ petition. Therefore, even assuming that an issue for adjudication is made out, that issue has to be raised only by aggrieved persons, which is not seen in the instant case and therefore, the writ petition is not maintainable.

11. By referring to the IA(C)/120/2021 which was filed for modification of the interim order and has been admitted to be treated as the affidavit-in-opposition, Shri Patowary, learned counsel submits that the petitioner is not even a registered Association to maintain the challenge. It is further submitted that the Service Order, 2004 had become otiose in the year 2005 itself after coming into the Service Rules, 2005 in force and this fact has been suppressed in the writ petition. The learned counsel has also raised the allegation of suppression touching the merits of the case inasmuch, as the initial Advertisement No. 17/2015, dated 17.10.2015 published by the APSC has not even been mentioned in the writ petition though the order impugned, viz, 15.03.2017 makes a direct reference to the said advertisement. Shri Patowary, learned counsel submits that the initial Advertisement No. 17/2015 was in connection with a number of posts, including 1 (one) post of Inspector of Training,

SCERT, against which the respondent no. 4 had applied. The subsequent notification dated 15.03.2017, however is in connection with rescheduling the interview of certain candidates whose roll numbers were mentioned for few of the posts. It is submitted that in the meantime, the recruitments to the other posts were duly done and only because of the interim order passed in this case that the process has not been completed. Attention of this Court has also been drawn to the communication dated 31.03.2017 made by the APSC to the Elementary Education Department that so far as the post in issue is concerned, the result has been withheld in compliance of the direction of this Court.

12. In support of his submissions, Shri Patowary, learned counsel for the respondent no. 4 has relied upon the following case laws:

i) (1977) 2 SCC 148, *D Nagaraj & Ors. Vs. State of Karnataka & Ors.*;

ii) (1990) 2 SCC 134, *Pushpa Devi & Ors. Vs. Milkhi Ram*;

iii) 1993 Supp. (1) SCC 730, *Indian Administrative Service (SCS) Association, UP & ors. Vs. Union of India & Ors.*;

vi) (2001) 4 SCC 734, *Vinoy Kumar Vs. State of UP & Ors.*;

vii) 2010 (2) GLT 673, *Meghalaya Wine Dealers Association Vs. State of Meghalaya*.

13. The case of ***D Nagaraj*** (*supra*) has been cited to question the *locus* of the petitioner to maintain the present challenge, as admittedly, the petitioner association consisted of persons other than those in the feeder cadre of Principal.

“7. The sole question that requires to be determined in these appeals is whether the appellants could maintain the aforesaid writ petitions. It is well settled that though Article 226 of the Constitution in terms does not describe the classes of persons entitled to apply thereunder, the existence of the right is implicit for the exercise of the extraordinary jurisdiction by

the High Court under the said Article. It is also well established that a person who is not aggrieved by the discrimination complained of cannot maintain a writ petition. The constitutional validity of the Abolition Act abolishing all hereditary village offices including the office of the Shambogue or Village Accountant having been upheld by this Court in B. R. Shankaranarayana v. State of Mysore (AIR 1966 SC 1571) (supra) and the first preference in the matter of appointment of Village Accountants having been given by Rule 4 of the 1970 Rules to all persons belonging to the category and class of the appellants who had served as Village Officers, the appellants who did not apply for appointment as Village Accountants in response to the aforesaid notification issued by the Recruitment Committee and did not possess the prescribed qualification, could not complain of the unconstitutionality of the 1970 Rules or of the Infringement of Arts. 14 and 16 of the Constitution which merely forbid improper or invidious distinctions by conferring rights or privileges upon a class of person arbitrarily selected from out of a larger group who are similarly circumstanced but do not exclude the laying down of selective tests nor prevent the Government from laying down general educational qualifications for the post in question. The High Court was, therefore, right in holding that the appellants have no right to maintain the aforesaid writ petitions. The appeals accordingly fail and are dismissed but without any order as to costs.”

14. The case of ***Pushpa Devi*** (supra) has been cited on the requirement of a harmonious interpretation by the Courts in case the language of the statute lacks clarity.

15. In the case of ***Indian Administrative Service (SCS) Association*** (supra), the Hon'ble Supreme Court has laid down that in appropriate cases, the ambiguity in a statute can be removed by the Courts to give meaning to the legislative intent which is required to be gathered from the attending facts and circumstances.

“7. No statute shall be construed so as to have retrospective operation unless its language is such as plainly to require such a construction. The Legislature, as its policy, gives effect to the statute or statutory rule from a specified time or from the date of its publication in the State Gazette. It is equally settled law that court would issue no mandamus to the Legislature to make law much less retrospectively. It is the settled canons of construction that every word, phrase or sentence in the statute and all the provisions read together shall be given full force and effect and no provision



shall be rendered surplus age or nugatory. It is equally settled law that the mere fact that the result of a statute may be unjust, does not entitle the court to refuse to give effect to it. However, if two reasonable interpretations are possible, the court would adopt that construction which is just, reasonable or sensible. courts cannot substitute the words or phrases or supply casus omissus. The court could in an appropriate case iron out the creases to' remove ambiguity to give full force and effect to the legislative intention. But the intention must be gathered by putting up fair construction of all the provisions reading together. This endeavour would be to avoid absurdity or unintended unjust results by applying the doctrine of purposive construction."

16. In the case of ***Vinoy Kumar*** (*supra*), the Hon'ble Supreme Court has emphasised on the requirement of *locus* to maintain a writ petition. It is argued that the petitioner in the instant case, which is an Association, lacks *locus* to maintain the present challenge.

“2. Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas-corpus or quo warranto or filed in public interest. It is a matter of prudence, that the Court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organisation which can take care of such cases. Even in cases filed in public interest, the Court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason or poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief.”

17. The case of ***Meghalaya Wine Dealers Association*** (*supra*) has been cited to support the contention that a writ petition under Article 226 of the Constitution of

India by an unregistered body is not maintainable.

18. Rejoining his submission, Shri Dasgupta, learned Senior Counsel submits that though Schedules I (against Sl. No. 13) and III to the Service Rules, 2005 mention the post of Inspector of Training to be filled up by direct recruitment, the said schedules cannot override the substantive provision of the Rules and therefore, it is submitted that the contention on the part of the respondents is not correct. As regards the contention of the earlier order being repealed vide Rule 29, the learned Senior Counsel submits that in Rule 29, there is no specific mention regarding repeal of the earlier Service Order, 2004 and therefore, the same can still be acted upon. In this connection, the affidavit-in-reply dated 29.09.2021 has been referred to.

19. The contentions and submissions made on behalf of the parties have been duly considered and the materials before this Court carefully examined.

20. Since a preliminary objection has been raised on the maintainability of the writ petition, this Court is required to answer that question first. The objection of the private respondent is that the petitioner is an unregistered Association and therefore, a writ petition under Article 226 of the Constitution of India cannot be filed and in this connection, the case in **Meghalaya Wine Dealers Association** (*supra*) case has been referred to. Though registration of an Association is not only a formality but brings the said Association within a legal format, this Court is of the view that lack of registration may not be a sufficient enough reason for not entertaining a writ petition. As held by the Hon'ble Supreme Court in a catena of cases, including the case of **Dwarka Nath Vs. Income Tax Officer & Anr.**, reported in **AIR 1966 SC 81** has held that the arms of a High Court exercising powers under Article 226 are long enough to remove any injustice if brought to its notice. However, it is not the point of registration which this Court is concerned with but the constitution of the Association

which would be of crucial importance to decide the question of *locus*. The petitioner describes itself to be an Association of Teacher Educators/Principals in different Basic Training Centres. The relevant averments are found in paragraphs 2 and 4 which are quoted hereinbelow:

“4. We shall first take the preliminary objection, for it we maintain it, no other question will arise for consideration. Article 226 of the Constitution reads:

“.....every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.”

*This Article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Art. 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article thorough defined channels. This interpretation has been accepted by this Court in *T. C. Basappa v. Nagappa*, 1955-1 SCR 250 : (AIR 1954 SC 440) and *Irani v. State of Madras*, 1962-(2) SCR 169: (AIR 1961 SC 1731).”*

21. As per the petitioner, the feeder post for promotion to the post of Inspector of

Training is Principal, Basic Training Centre. However, the Association consists of members who are not Principals but various kinds of Instructors who are not even eligible to be recruited to the post of Inspector of Training. Therefore, the present challenge by the petitioner-Association is not maintainable. Even if benefit is given to the petitioner-Association by assuming that each of its members are eligible to be promoted to the post Inspector of Training, the number of vacancies being one, there would be an apparent clash of interest and in that view of the matter, the writ petition is, otherwise also not maintainable.

22. Though the writ petition has been held to be not maintainable, since arguments on the *inter-se* merits have been advanced by the parties, this Court would also like to answer the issue raised on merits.

23. There is no dispute to the fact that while the Service Orders, 2004 was an Executive Instruction, the Service Rules, 2005 are framed under proviso to Article 309 of the Constitution of India and therefore, would supersede the said Service Order. In any case, Rule 29 of the Service Rules, 2005 makes it abundantly clear that any earlier law in the field stood repealed. Therefore, the Court has to decide the issue on the basis of the Service Rules, 2005.

24. A bare perusal of the Service Rules, 2005 would indicate that the post of Principal, Basic Training Centre is not even a post under the said Rules. Therefore, an incumbent holding the post of Principal cannot stake any claim to be promoted to the post of Inspector of Training irrespective of the fact that in the said Rules, there may be some indication that the post of Inspector of Training is a post to be filled up by promotion. The aspect as to whether such mention would be enough to come to a conclusive finding that the post of Inspector of Training is to be filled up by promotion would be considered subsequently by this Court. This Court is also fortified to come to

a conclusion that the post of Inspector of Training cannot be a post to be filled up by promotion from Principal, Basic Training Centre from the notification whereby the scales of pay of both the posts are identical and therefore, the question of promotion is wholly ruled out.

25. Coming to the issue of the mode of recruitment to the post of Inspector of Training, though Rule 12 (I) of the Service Rules, 2005 lays down that the post would be filled up by promotion “in the manner prescribed below”, there is no manner prescribed in the said Rule 12 or any other subsequent Rules. However, Schedules I and III of Service Rules, 2005 has clearly laid down that the said post of Inspector of Training is a post to be filled up by direct recruitment. Though this Court is inclined to accept the submission that Schedule to a statute cannot override the substantive law, in the instant case, the aforesaid proposition needs to be tested with the availability of the mode of recruitment in the statute. As indicated above, there is no mention, whatsoever regarding the mode of recruitment in the substantive part of the statute. In absence of the same, there is no other option but to fall back on the two Schedules which clearly state that the mode of recruitment to the aforesaid post of Inspector of Training is direct recruitment for which the eligibility criteria and qualifications have been laid down in Schedule III of Service Rules, 2005.

26. The aforesaid view of this Court is also supported by the letter dated 04.01.2020 of the Director, SCERT to the Department of Elementary Education, Assam on the subject of modification of the Service Rules, 2005 and Service Orders, 2004. The said letter which has been annexed as Annexure V to the affidavit-in-opposition filed by the SCERT 04.09.2021 mentions that the Revised Pay Band and Grade Pay of the post of Principal, Basic Training Centre is Rs. 30,000.00 – Rs. 1,10,000.00 (Pay Band – 4) and Rs. 13,300.00 (Grade Pay), respectively which is equivalent to the Pay Band and Grade Pay of the Inspector of Training. The said letter therefore, proposed a clarification to



keep the post of Inspector of Training in the list of direct recruitment.

27. An argument was sought to be made on behalf of the petitioner that incumbents holding the post of Principal, Basic Training Centre will not have any avenue for promotion if such an interpretation is given. Apart from the fact that the aforesaid issue is not an issue for adjudication, the same has to be raised in an appropriate proceeding and forum. As indicated above, to take care of this stagnation, vide notification dated 27.12.2019, the Pay Band and Grade Pay of the post of Principal, Basic Training Centre has already been made at par with that of Inspector of Training.

28. In view of the aforesaid discussions, this Court is of the opinion that no case for interference has been made out by the petitioner. Therefore, apart from the fact that the writ petition is dismissed on the ground of maintainability as the petitioner does not have any *locus*, even on merits, no enforceable right of the petitioner appears to have violated and there is no apparent violation of any statute. Accordingly, the writ petition stands dismissed. Interim order passed earlier stands vacated.

29. No costs.

JUDGE

Comparing Assistant