

THE GAUHATI HIGH COURT
(High Court of Assam Nagaland Meghalaya Manipur Tripura Mizoram
and Arunachal Pradesh)

WRIT APPEAL NO 197 OF 2008

The 29th day of July, 2010

P R E S E N T

THE HON'BLE THE CHIEF JUSTICE MR MADAN B LOKUR
THE HON'BLE MR JUSTICE RANJAN GOGOI

Appellant:

Smt Kalyanee Borgohain,
Daughter of Shri Daneswar Borgohain,
Assistant Chemist, State Public Health Laboratory,
Bamunimaidam, Guwahati, Assam.

By Advocates:

Mr AM Mazumdar, Sr Advocate,
Mr AY Choudhury,
Mr IH Borbhuiyan,

Respondents:

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Health & Family Welfare (A) Department, Dispur, Guwahati-6.
2. The Director of Health Services, Assam, Hengrabari, Guwahati-36.
3. The Public Analysis, Government of Assam, State Public Health Laboratory, Bamunimaidam, Guwahati-21, Assam.
4. The Assam Public Service Commission, represented by the Chairman, APSC, Jawahar Nagar, Khanapara, Guwahati-22.
5. Shri Anupam Gogoi, C/o The Chairman, APSC, Khanapara, Guwahati-22.

By Advocates:

Mr TC Chutia, SC, APSC.
Mr D Choudhury, SC, Finance
Mr P Katoky, counsel for Pvt. Respondent.

THIS WRIT APPEAL HAVING BEEN HEARD ON 25TH DAY OF JUNE, 2010, THE COURT PASSED THE FOLLOWING-

J U D G M E N T

(MADAN B LOKUR, CJ),

The sole question agitated before us is whether the learned Single Judge was right in upholding the direct recruitment of Respondent No. 5 (Anupam Gogoi) as an Assistant Public Analyst (Class-I)/Assistant Analyst in the office of the Public Analyst of the Government of Assam under the Public Health and Family Welfare Department. Our answer to the question raised is in the affirmative and in our opinion, this writ appeal directed against the judgment and order dated 3rd January, 2008 deserves to be dismissed.

2. An advertisement was issued in the Assam Tribune of 10th April, 2004 (read with the corrigendum dated 30th June, 2004) for direct recruitment to one post of Assistant Public Analyst (Class-I) in the office of the Public Analyst of the Government of Assam under the Public Health and Family Welfare Department. The advertisement reads as follows:

“2(Two) posts pf Asstt. Public Analyst (Class- I) in the office of the Public Analyst of the Govt. of Assam, under H & FW Deptt.

One post reserved for ST(P) and the other for ST(H) candidates.

Scale of pay: Rs. 5725/- to Rs. 11,825/- p.m. plus other allowances as admissible under Rules.

Age : Minimum age 36 years as on 1.1.2009. In case of ST candidate the age relaxation will be as per existing rules of Govt.

Educational qualification:

M. Sc. In Chemistry or M. SC. In Food and Drugs with at least 55% marks.

Experience:

Candidates having experience in laboratory works and instrumentation will be preferred also candidates having considerable research experience in any branch of Chemistry will be considered.”.

3. A perusal of the advertisement makes it quite clear that the essential educational qualification for recruitment is that the

candidate must have an M.Sc. in Chemistry or M.Sc. in Food and Drugs with at least 55% marks. Work experience is not essential but candidates having experience in laboratory works and instrumentation will be preferred. As we understand it, what this simply means is that if two candidates are equally placed in merit, then preference will be given to the candidate having experience in laboratory works and instrumentation.

4. There is no dispute that both the Appellant (Smt. Kalyani Borgohain) and Anupam Gogoi fulfill the essential qualification that is of having an M.Sc. degree in Chemistry. While Smt. Kalyani Borgohain passed her M.Sc. in the second class, Anupam Gogoi passed it in the first class. But, Smt. Kalyani Borgohain argues that since she has some work experience, she should be given preference in direct recruitment over Anupam Gogoi.

5. Learned counsel for Smt. Kalyani Borgohain referred to the following passage from **Rajasthan SEB Accountants Assn. v. Rajasthan SEB, (1997) 3 SCC 103** (paragraph 18):

“18. The decision in **Mohd. Shujat Ali [(1975) 3 SCC 376]** thus gives recognition to the principle that difference in educational qualifications can be made up by longer experience. This principle was given effect to in the various provisions which came up for consideration before this Court in the cases referred to earlier wherein longer experience was prescribed for employees possessing lesser qualifications as compared to employees possessing higher qualifications for the purpose of promotion to higher post and such provisions were upheld as valid.”

6. We do not see how this decision helps learned counsel. All that the Supreme Court says is that the prescription of a longer experience can make up for the possession of a lesser qualification. That is not the situation here – in the case before us, both candidates have the same or equivalent qualification. It is not as if Smt. Kalyani Borgohain has a lesser qualification than Anupam Gogoi. When both candidates have the same qualification the question of greater merit arises as it

has in this case, and Anupam Gogoi happens to be more meritorious than Smt. Kalyani Borgohain.

7. Reference was also made by learned counsel to paragraph 6 and 7 of ***B.N. Saxena v. N.D.M.C., (1990) 4 SCC 205*** which read as follows:

6. The question is whether the petitioner possesses the prescribed qualification. The revised rules provides alternate qualifications for the post of Head Draftsman. The first part of the rule prescribes a diploma with a minimum of three years service as Senior Draftsman in the scale of Rs 250-400. The second limb of the revised rule refers to the service rendered by the candidate. It provides for six years of service as Senior and Junior Draftsman. The first part of the rule is almost similar to the qualification prescribed prior to the amended rules. The old rule provided:

“Matric with Diploma/Certificate in Draftsmanship from a recognised institution with 3 years experience in preparation of Engineering Drawings in an electric supply undertaking or an engineering manufacturing organisation.”

7. The second limb of the rule was evidently to benefit all those persons who have gained sufficient experience as Senior and Junior Draftsmen without possessing any qualification. Experience gained for a considerable length of time is itself a qualification (See the observation in ***State of U.P. v. J.P. Chaurasia, [(1989) 9 SCC 121]***. It would be unreasonable to hold that in addition to this considerable experience, one must also have the diploma qualification prescribed under the first part. It could not have been the intention of the rule making authority that persons who were designated as Senior Draftsmen without any diploma qualification should acquire such diploma qualification for further promotion. Such a view would not be consistent and coherent with the revised rule and its object. We have no doubt that the second limb of the revised rule is independent of the first. The High Court seems to have erred in this aspect of the matter.”

8. Again, we cannot see the relevance of this decision to the facts of the case before us. The decision relied on concerned the interpretation of the old rule for promotion as a Head Draftsman in the New Delhi Municipal Committee in contradistinction with the new

rule. In that context, the Supreme Court observed that experience gained for a considerable length of time is itself a qualification. In the fact situation before us, it is nobody's case that Smt. Kalyani Borgohain is so experienced in the field that the greater merit of Anupam Gogoi should be overlooked. There is also no material before us to come to such a conclusion.

9. There is clearly a distinction between an essential qualification for recruitment and a minimum qualification for recruitment. The advertisement (and indeed the applicable recruitment rules, that is, The Assam Food Control Organization (Recruitment and Promotion to the service) Order, 1986) prescribe an M.Sc. degree in Chemistry as an essential qualification. Experience is not an essential qualification – it is only preferable if the merit of the competing candidates is equal.

10. In the case at hand, it has been found by the Assam Public Service Commission that Anupam Gogoi is more meritorious than Smt. Kalyani Borgohain. The learned Single Judge has also seen the original records which reveal that Anupam Gogoi is evaluated to be more meritorious than Smt. Kalyani Borgohain. That being the position, the merit of the two candidates not being the same, preference cannot be accorded to Smt. Kalyani Borgohain only because she has some work experience. If preference must be given, then it is only to merit.

11. There is no substance in the appeal. It is accordingly dismissed.

JUDGE

CHIEF JUSTICE