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KANDARPA SARMA

v.

RAJESWAR DAS AND ORS.
(Civil Appeal No.7401 of 2011)

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AUGUST 25, 2011

[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]

Service law:

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Appointment – Post of Gaonburah – State issued an advertisement for filling the post of Gaonburah – Appellant, respondent no.1 and others submitted their candidature – Report along with other records submitted by circle officer regarding suitability of the candidates considered by Selection Committee – Appellant found suitable and appointed as Gaonburah – Respondent no.1 challenged the order of appointment of appellant – Deputy Commissioner set aside the order of the appointment of the appellant and also issued direction to appoint respondent no.1 as the Gaonburah – Second appellate authority affirmed the order of Deputy Commissioner – Writ petition by appellant – Single Judge allowed the writ petition – Division Bench of the High Court set aside the order of the Single Judge and also restored the order of the second appellate authority directing appointment of respondent no.1 – On appeal, held: Post of Gaonburah is an executive post in the sense that he works under the supervision of the Moujadar – He holds a civil post, and, therefore, is entitled to protection under Art.311 of the Constitution – In that view of the matter, there has to be some service conditions governing his service – A Government Servant who is usually appointed to a civil post has to have minimum age requirement for appointment and there is always a maximum age on completion of which he stands retired from the government service – However, Executive

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Instructions relating to appointment of Gaonburah showed that no such terms and conditions of service were envisaged and laid down – A government servant cannot be appointed unless he fulfills a minimum age criteria – He should not also be allowed to continue to work as Gaonburah in perpetuity – State Government to frame such service conditions of the Gaonburahs preferably within a period of three months – Also contents of the Executive instructions relating to appointment of Gaonburah require updating and further amendments to be in tune with the present day requirement, which shall be done simultaneously with the above exercise.

Appointment – Post of Gaonburah – Whether the respondent no. 1 entitled to get a preferential treatment for appointment as a Gaonburah on the ground that he was the nephew of an earlier Gaonburah – Held: Executive instruction provided that in the matter of appointment of Gaonburah, certain factors to be taken into consideration are: the claim of the family of the Gaonburah; the views of the Moujadar (3) the suitability of the person for post – The selection committee considered the suitability of the candidates by allotting 80 marks in all – Selection committee allotted 10 marks for the claims of the family of Gaonburah; for the views of the Moujadar, another 10 marks were allotted and the rest 60 marks were allotted for consideration of the suitability of the person for the post – A joint family could be considered to be a family only when they are sharing a common residence and common mess – To give an extended meaning to mean any 'nephew' would also be inappropriate for the word nephew as a very vague expression for it could include not only nephew being the son from the own brother but it could also be nephew being the son not only from the sister but being son of even from the cousin brothers or sisters – It is difficult to give such a wide meaning to the expression 'family' – It is, therefore, appropriate that the State Government while laying down the criteria identifies the members of the family who could be entitled to some preferential consideration in the

A *matter of such appointment to the post of Gaonburah.*

State of Assam and another v. Nahar Chutia and another
1974 Assam Law Reports 163; State of Assam and Others
v. Kanak Chandra Dutta AIR 1967 SC 884: 1967 SCR 679
– referred to.

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Case Law Reference:

1974 Assam Law Reports 163 referred
to **Para 8**

C **1967 SCR 679** referred to **Para 8**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
7401 of 2011.

D From the Judgment & Order dated 17.11.2006 of the
Gauhati High Court in Writ Appeal No. 228 of 2004.

P.K. Goswami, Parthiv K. Goswami, Rajiv Mehta, S.
Hariharan for the Appellant.

E Pravir Choudhary, Navnit Kumar Deepitka Ghetowar, (for
Corporate Law Group) for the Respondents.

The following order of the Court was delivered

O R D E R

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1. Leave granted.

G 2. This appeal is directed against the judgment and order
passed by the Gauhati High Court on 17.11.2006 allowing the
appeal filed by the respondent no. 1 whereby the learned
Division Bench set aside the judgment and order passed by
the learned Single Judge allowing the writ petition filed by the
appellant herein.

4 3. The respondent State issued an advertisement for filling
up the post of Gaonburah of Tikka Garia Gaon, Mouza: Sariha

in the District of Barpeta. The appellant as also respondent no. 1 along with others submitted their candidature as against the aforesaid advertisement which was issued on 11.11.1998 by the Sub-Divisional Office, Balaji Sub Division. After submission of the applications by the various candidates, the circle officer submitted a report along with other records regarding suitability of the candidates which was considered by the Selection Committee consisting of the Sub-Divisional Officer Balaji Sub Division,, the Circle Officer and the Election Officer. The said selection committee considered the records and found the appellant as the most suitable candidate and appointed him as the Gaonburah.

4. Being aggrieved by the said order of appointment issued by the Sub-Divisional Officer, respondent no. 1 filed an appeal in terms of paragraph 162(B) of the Executive Instructions which was entertained. The aforesaid appeal was heard by the Additional Deputy Commissioner and upon consideration he set aside the order of appointment of the appellant and also issued a direction to appoint respondent no. 1 as the Gaonburah in place of the appellant. The said decision of the First Appellate Authority was challenged by the appellant herein in Second Appeal as provided for under paragraph 162(C) of the Executive Instructions.

5. The aforesaid Second Appeal was dismissed consequent upon which the appellant herein filed a Writ Petition before the High Court which was registered as Writ Petition (C No. 8019/2001. The learned Single Judge by a judgment and order dated 11.5.2004 allowed the writ petition and directed that the appellant be allowed to continue as Gaonburah of Tikka Garia Gaon, Mouza: Sariha in the District of Barpeta.

6. Being aggrieved by the aforesaid judgment and order passed by the learned Single Judge, respondent no. 1 filed an appeal before the Division Bench of the Gauhati High Court which was registered as Writ Appeal No. 228 of 2004. The

- A Division Bench, after hearing the counsel appearing for the parties on 15.11.2006 allowed the appeal by its judgment and order dated 17.11.2006 whereby the Division Bench not only set aside the judgment and order of the learned Single Judge but it also restored the order passed by the Second Appellate Authority directing appointment of respondent no. 1 as Gaonburah. By virtue of the aforesaid order, respondent no. 1 assumed charge of the office and he, as of today, continues to hold the post of Gaonburah.

- C 7. Being aggrieved by the aforesaid order passed by the Division Bench, the appellant herein filed the present appeal on which we have heard the learned counsel appearing for the parties.

- D 8. Mr. P.K. Goswami, learned senior counsel appearing for the appellant has submitted before us that the Division Bench committed manifest error in holding that the expression 'family' used in the Executive Instructions should receive an extended meaning so as to include 'nephew' within the expression 'family'. He has also submitted before us that the selection committee after taking into consideration all the factors found the appellant as the best candidate for the post and the said decision being based on records should not have been interfered with by the Appellate Authority as also by the Division Bench of the High Court on extraneous consideration and also by wrongly reading the documents particularly when the learned Single Judge has upheld the aforesaid order of the selection committee. In support of his contention, he has relied upon the decisions of Constitution Bench of this Court in *State of Assam and another Vs. Nahar Chutia and another* reported in 1974 Assam Law Reports 163 as also in *State of Assam and Others Vs. Kanak Chandra Dutta* reported in AIR 1967 SC 884. He has also drawn our attention to the Executive Instructions which are part of the Assam Land Revenue Regulation by referring to paragraph 162 of the said instructions as also paragraph 163.

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9. It was also brought to our notice that in terms of the ratio of the decisions of the aforesaid two cases decided by the Constitution Bench of this Court, the status of Gaonburah in Assam is that he holds a Civil post under the State of Assam and he is entitled to the protection as provided for under Article 311 of the Constitution of India. Consequently, the State has the power and also the jurisdiction to select and appoint a Gaonburah and also to dismiss him. He has also pointed out to us the settled position that Gaonburah works under the supervision of Moujadar who is also a State government servant as held in the aforesaid Constitution Bench decision of this Court.

10. Mr. Pravir Choudhary appearing for the respondent no. 1, however, has submitted that the judgment and order passed by the High Court is justified as in the context of the expression 'family' used in the Executive Instructions. According to him, the said expression should receive a wider and extensive interpretation so as to include a nephew. He has also submitted that respondent no. 1 was working with and helping and assisting the earlier Gaonburah for a very long time and, therefore, he has sound experience in the working and functioning of the Gaonburah and, so he was the best candidate and the High Court was justified in directing for his appointment to the aforesaid post.

11. The State is also represented by the counsel who has submitted that the impugned judgment and order should not have been interfered with for the reasons that the decision of the selection committee should have been preferred as the selection committee had the privilege of looking into all the records and also had the privilege of interviewing the candidates.

12. Having heard the learned counsel appearing for the parties and having gone through the connected records, we propose to dispose of this appeal by giving our reasons thereof.

A 13. The post of Gaonburah is an executive post in the
sense that he works under the supervision of the Moujadar. He
holds a civil post and, therefore, is entitled to the protection as
provided for under Article 311 of the Constitution of India. In that
view of the matter, there has to be some service conditions
B governing his service. A Government Servant who is usually
appointed to a civil post has to have minimum age requirement
for appointment and there is always a maximum age on
completion of which he stands retired from the government
C service. He has other service conditions also prescribed for his
service and status. However, on going through the Executive
Instructions, we do not find any such terms and conditions of
service envisaged and laid down which would govern his
D service condition. A government servant cannot be appointed
unless he fulfills a minimum age criteria. He should not also be
allowed to continue to work as Gaonburah in perpetuity. There
has to be some age limit or duration of period for his service
on completion of which he should stand relieved. The other
E service conditions like the reasons for removal of the
Gaonburah are also required to be clearly stated by the State
Government either in the executive instruction or by framing a
separate set of rules. Since all these fall within the domain of
the State Government, we request and leave it to the State
F Government to frame such service conditions of the
Gaonburahs as expeditiously as possible preferably within a
period of three months from today keeping in view the
observation made hereinbefore. We also feel that the contents
of the Executive instructions relating to appointment of
Gaonburah requires updating and further amendments to be in
G tune with the present day requirement, which shall be done
simultaneously with the aforesaid exercise.

G 14. The next question that arises for our consideration is
whether the respondent no. 1 herein is entitled to get a
preferential treatment for appointment as a Gaonburah on the
ground that he was the nephew of an earlier Gaonburah. The
H executive instruction in para 162 provides that in the matter of

appointment of Gaonburah, certain factors are to be taken into consideration which are (1) claim of the family of the Gaonburah (2) the views of the Maujadar (3) the suitability of the person for the post.

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15. On going through the records, we find that the selection committee considered the suitability of the candidates by allotting 80 marks in all. For the factors stated above, the selection committee had allotted 10 marks for the claims of the family of Gaonburah and for the views of the Moujadar, another 10 marks were allotted by the selection committee and it appears that the rest 60 marks were allotted for consideration of the suitability of the person for the post.

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16. For the scheme of compassionate appointment in government service, the expression 'family' in the natural course, includes the family of the deceased, namely, his son, daughter and widow. The surviving dependents in the family are considered for such appointment on compassionate grounds. The said expression 'family' in those cases is always restricted to the aforesaid members, namely, son, daughter or widow. This expression also has come to be used in various ceiling Acts in the Assam Fixation of Ceiling on Land Holdings Act, 1956. The expression 'family' has been defined to mean a family consisting of any one or more or all of the following namely (1) husband, (2) wife, (3) minor children, and also includes a joint family. In the explanation thereto, joint family has been defined to mean a family of which the members are descendents from a common ancestor and have a common mess, and shall include wife or husband, as the case may be, but shall exclude married daughters, married sons and their children.

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17. A joint family could be considered to be a family only when they are sharing a common residence and common mess. To give an extended meaning to mean any 'nephew' would also be inappropriate for the word nephew is a very

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A vague expression for it could include not only nephew being the son from the own brother but it could also be nephew being the son not only from the sister but being son of even from the cousin brothers or sisters. It is difficult to give such a wide meaning to the expression 'family'. It is, therefore, appropriate that the State Government also while laying down the criteria identifies the members of the family who could be entitled to some preferential consideration in the matter of such appointment to the post of Gaonburah. The State Government should also therefore frame proper guidelines laying down the conditions as stated hereinbefore.

18. Now, coming to the facts of the present case, we find that the Circle Officer submitted a report on consideration of all the materials on record that the appellant should be considered for appointment to the post of Gaonburah as he satisfies all the requirements and because he is the best candidate. The selection committee considered the records and thereafter selected the appellant herein despite being aware of the fact that the recommendation of the Moujadar is for another candidate neither being the appellant nor being respondent no. 1 and also being aware of the fact that respondent no. 1 was related to the earlier Gaonburah. The said selection was made keeping in view the mandate of executive instructions. The executive instructions which lay down the criteria for selection have force in law as they were made part of the Assam Land Revenue Regulation. They also have a binding force having been issued in exercise of constitutional powers conferred under Article 162 of the constitution of India.

19. Pursuant to the aforesaid selection made by the selection committee which had considered all the factors and also the criteria laid down for the purpose, the appellant was appointed to the said post which came to be set aside by the Appellate Authority which order was confirmed by the Second Appellate Authority. Having gone through the records, we find that the First Appellate Authority has set aside the appointment

of the selection committee and the order passed by the Sub-Divisional Officer on the ground that respondent no. 1 is entitled to a preferential treatment, he being the nephew of the earlier Gaonburah. We have found that the aforesaid view taken by the Deputy Commissioner was incorrect and without jurisdiction and, therefore, the aforesaid findings which are also rendered by the Division Bench and also by the First Appellate Authority and Second Appellate Authority have to be set aside which we hereby do.

20. In our considered opinion, the entire matter of appointment to the post of Gaonburah in the present case has to be considered afresh in accordance with law de novo taking into consideration the relevant factors only and in the light of the observations made hereinbefore. Therefore, while setting aside the orders of the Division bench of the High Court and also of the learned Single Judge, we remit back the matter to the selection committee who shall consider the records and take a final decision regarding the appointment of Gaonburah as expeditiously as possible preferably within a period of four months from the date of receipt of a copy of this order. The State Government shall make the entire records available to the concerned selection committee so as to enable them to take a conscious and informed decision. It would be also appropriate that the State Government would also take a decision regarding updating the administrative instructions in this regard and also laying down the service conditions of the Gaonburah in terms of this order. It would be appropriate that these decisions are also taken within three months so that the selection committee may be in a position to consider the said criterion which are laid down by the State afresh in terms of this order.

21. Since the selection committee has been directed to complete the entire process of fresh selection and appointment within four months from the date of receipt of the copy of this order, respondent no. 1 would continue to hold the post till the

- A order of appointment is issued by the sub-Divisional Officer in accordance with law within a period of four months. The said continuation would be only as a stop gap arrangement so that the working of Gaonburah is not affected in any manner. He shall in no case be allowed to continue beyond a period of four months. We make it clear that respondent no. 1 will not claim any equity also to hold the post beyond four months and also beyond the terms as mentioned herein.
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22. The appeal is allowed to the aforesaid extent leaving the parties to bear their own costs.

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23. I.A. is also disposed of in terms of the aforesaid order.

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Appeal allowed.