



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

Case No. : WA/9/2023

Satish Kumar Pandey
S/o Uday Pratap Pandey, Permanent Resident of Chhawani Mulhala Ward No. 9
Bhabhua, Near Nirmal Mills, PO and PS Bhabhua, District Kaimur, Bihar. Phone No.
9033701578

VERSUS

1.The State of Arunachal Pradesh
Represented by the Commissioner (Education) to the Govt. of Arunachal Pradesh,
Higher Education Deptt. Itanagar, Arunachal Pradesh.

2:The Commissioner & Secretary, to the Govt. of Arunachal Pradesh, Finance
Deptt, Itanagar, Arunachal Pradesh.

3:The Arunachal Pradesh Public Service Commission represented by its
Secretary, Itanagar (A.P)

4:Shri Dheerendra Kumar Srivastav, C/O Office of the Secretary, Arunachal
Pradesh Public Service Commission, Itanagar, Arunachal Pradesh.

5:Md. Abdul Latif, S/O Late Abdul Kaddus, Resident of village Bhowkamari,
Post Office-Kayakuchi, District Barpeta, Assam.

Advocate for the Petitioner : Mudang Batt

Advocate for the Respondent : GA (AP), Ajing Apang, Sr. Advocate, S/C APPSC,
Tagum Jamoh, SC (Education), DFA Ahmed, J Laskar

BEFORE
HONBLE MR. JUSTICE ARUN DEV CHOUDHURY
HONBLE MR. JUSTICE KARDAK ETE

ORDER

14.11.2023

(Kardak Ete, J.)

Heard Mr. M. Batt, learned counsel for the appellant. Also heard Mr. K. Tabang, learned counsel for the Education Department, representing the respondent no. 1; Mr. I. Riram, learned Additional Senior Government Advocate for the respondent no. 2 and Mr. J. Laskar, learned counsel for the respondent no. 5.

2. This intra Court appeal is directed against the judgment and order dated 22.07.2022, passed by the learned Single Judge in Writ Petition (C) 291/2019 whereby the learned Single Judge has allowed the writ petition with the following reliefs:-

“...23. In the result this writ petition succeeds and is hereby allowed. The petitioner is found to the following reliefs:-

(a) The Arunachal Pradesh Public Service Commission represented by its Secretary (respondent no.3) is directed to declare and/or notify the result of the petitioner in respect of his candidature for the post of Assistant Professor (Hindi) against vacancies reserved for being filled up by "Persons with Disabilities (Orthopedically) category [i.e. PwD(O)]. The said exercise shall be carried out as expeditiously as possible, but not later than 30 (thirty) days from the date when a certified copy of this order is served in the office of the respondent no.3; and

(b) Upon declaration and/or notification of result of the petitioner by the respondent no.3, thereby recommending for appointment of the petitioner for the post of Assistant Professor (Hindi), the Commissioner and Secretary to the

Govt. of Arunachal Pradesh, Higher Education Department (respondent no.1) is directed to consider the case of the petitioner for appointment in the vacant post of Assistant Professor in Hindi, reserved for being filled up by Persons with Disabilities (Orthopedically) category [i.e. PwD(O)], by ignoring the letter no. HE/CE-58/99 Pt./144 dated 01.03.2018 by the Under Secretary (Education), Govt. of Arunachal Pradesh to the Secretary APPSC (Annexure-II) to the affidavit-in-opposition filed by the respondent no.1; and

(c) It is further provided that the selection and appointment of the petitioner to the post of Assistant Professor (Hindi) shall relate back to the result notification dated 01.08.2019, by which the select list was published by the Arunachal Pradesh Public Service Commission pursuant to employment advertisement dated 31.05.2018. Thus, except for payment of salary and other emoluments, notional benefits and seniority of the petitioner shall be counted from such date.

(d) The aforesaid exercise as indicated in sub-para - (b) and (c) above of notifying the result/ select-list shall be carried out and completed by the respondent no.1 as expeditiously as possible, but not later than 60 days from the date of publication of the selection result by the Arunachal Pradesh Public Service Commission. The petitioner shall also serve a certified copy of this order on the respondent no.1 separately.

3. The case of the appellant in brief is that the appellant being a Person with Disability (Orthopaedically) and having Master of Philosophy in Hindi & Literature and pursuing for Doctorate had applied for the post of Assistant Professor (Hindi) pursuant to an advertisement by The Arunachal Pradesh Public Service Commission to fill up 62 (sixty-two) posts for the Government Colleges of Arunachal Pradesh in various disciplines including Hindi subject. The appellant appeared in the selection process which was held on 30.07.2019. On the declaration of the result, it was found that the respondent no. 3 had stated in the result sheet that 3 (three) posts reserved for PWD candidates were to be carried forward to the next recruitment

year as per Section 34(2) of the Right of Persons with Disabilities Act, 2016, as there were no candidates under the PWD category for concerned discipline.

4. The appellant obtained the marks statement of all the candidates who appeared in the selection process and also the merit list of candidates for the post of Assistant Professor in Hindi subject. On perusal of the marks statement, it is found that the appellant secured 57.4 marks and is ranked 1st amongst the candidates of PWD (Orthopaedically) category.

5. According to the appellant, he came to learn that one candidate namely Abdul Latif, respondent no. 5/writ petitioner who secured 55.25 marks, had approached this Court by filing Writ petition being WP (C) No. 291/2019 and the said writ petition was disposed of with a direction to the respondent authorities to appoint him to the post of Assistant Professor in Hindi subject under PWD (Orthopaedically) quota. The respondent no. 5/writ petitioner did not implead the appellant as party respondent and as a result, according to the appellant, the impugned judgment & order dated 22.07.2022 had adversely affected him, as he secured 1st rank amongst the candidates of PWD (Orthopaedically) category. Hence, this intra Court appeal against the judgment and order dated 22.07.2022.

6. Mr. Batt, learned counsel for the appellant submits that the learned Single Judge ought to have directed the respondent authorities to fill up the post of Assistant Professor (Hindi) amongst the candidates who secured the highest marks in the merit list of the PWD (Orthopaedically) quota. The respondent no. 5/writ petitioner is ranked 3rd amongst the candidates and the appellant being 1st rank, the learned Single Judge ought not to have directed for appointment of the writ petitioner/respondent no. 5 as it violates the rule of merit in service law. He further submits that the petitioner had not impleaded the appellant in the writ petition, who is ranked above the respondent no. 5/writ petitioner. The writ petitioner/respondent no. 5 being 3rd rank in the merit list amongst the candidates

of the PWD (Orthopaedically) has no *locus-standi* to claim for appointment to the post of Assistant Professor in Hindi subject under the reserved quota for PWD (Orthopaedically) Category. Thus, the learned counsel for the appellant prays for modification/alteration/setting aside and quashing of the impugned judgment and order dated 22.07.2022.

7. Mr. J. Laskar, learned counsel for the respondent no. 5/writ petitioner has submitted that the appellant has no *locus-standi* to file the present appeal inasmuch as the appellant ought to have been vigilant about his rights by filing appropriate writ petition if he is aggrieved by any action of the State respondents. Just because the learned Single Judge after careful consideration of the writ petition of the respondent no. 5/writ petitioner, directed for selection and appointment of the petitioner to the post of Assistant Professor (Hindi), the appellant is not entitled for any relief as the same amounts to chance petition.

8. We have considered the submissions of the learned counsel for the parties and perused the materials available on record.

9. This Court on 21.08.2023 had allowed the appellant's application for permission to file a third-party appeal and vide order dated 09.11.2023 delay of 201 days in filing the present writ appeal has been condoned.

10. Having considered the submissions of the learned counsels for the parties and the nature of prayer made by the appellant in the present intra Court appeal, we are of the considered view that the present intra-court appeal lacks merit as the appellant has filed this appeal only on the ground that he is 1st rank in the merit list of the candidates under PWD (Orthopaedically) quota and the respondent no. 5/writ petitioner is 3rd rank in the merit list. The appellant seeks modification/alteration of the impugned judgment and order dated 22.07.2022 passed by the learned Single Judge in the writ petition of the respondent no. 5/writ petitioner. We are also of the view that since the appellant has not asserted his

right at the appropriate time and forum, the reliefs sought for cannot be considered in this intra Court appeal.

11. Having considered above, we are of the view that appropriate course for the appellant would be to approach the learned Single Judge by filing an appropriate application considering the fact that the appellant was not arrayed as party to the writ proceeding and it is his case that he is more meritorious than the respondent No. 1.

12. Accordingly, this intra-court appeal is disposed of with a direction to the appellant to approach the learned Single Judge by filing appropriate application inasmuch as the adjudication of the factual disputes raised before us by the appellant were not before the learned Single Judge, may be for the reason that the appellant is not arrayed as party to the writ proceeding.

13. Accordingly, the present appeal stands closed with a liberty to the appellant to file appropriate application, if so advised.

14. While parting with the record we make it clear that we have not entered into the merit of the judgment assailed.

JUDGE

JUDGE

Comparing Assistant