

GAHC010005902013



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

Case No. : WP(C)/1989/2013

RIPAN CHOUDHURY
S/O- SRI NABA KUMAR CHOUDHURY, R/O VILL.- NORTH BOITABARI, P.S.
and DIST.- BONGAIGAON, ASSAM.

VERSUS

THE UNION OF INDIA and 2 ORS
REP. BY THE MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI-
1.

2:THE STAFF SELECTION COMMISSION
REP. BY THE CHAIRMAN
BLOCK NO. 12
CGO COMPLEX
LODHI ROAD
NEW DELHI- 03.

3:THE REGIONAL DIRECTOR
STAFF SELECTION COMMISSION
GUWAHATI
ASSAM
HOUSE FED COMPLEX
DISPUR
GHY- 6

Advocate for the Petitioner : MR.B P SINHA

Advocate for the Respondent : C.G.C.

BEFORE

HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**ORDER****21-07-2023**

Heard Mr. B.P. Sinha, learned counsel for the petitioner. Also heard Mr. H. Gupta, learned CGC appearing for the respondent nos. 1 to 3.

It is submitted by the learned counsels for the parties that the issues involved in the present petition stands covered by the decision of the Apex Court rendered vide judgment dated 17.02.2022 in Civil Appeal No.4585/2018 (*Union of India & Ors. vs. Probir Ghosh & Ors.*). As such, the writ petition may be closed in terms of the said judgment of the Apex Court.

The petitioner before this Court appeared for selection conducted by the Public Selection Commission for recruitment of constable in Central Armed Police Forces (CAPFs) and Rifleman (GD) in Assam Rifles, 2012. The petitioner belongs to the OBC category. Pursuant to the interview and the medical examination the petitioner was expecting to be selected in the said selection process. However, the select list dated 17.10.2012 which reflected the names of the selected candidates did not include the name of the petitioner.

Being aggrieved, the petitioner has approached this Court by filing this writ petition praying for setting aside and quashing the impugned select list dated 17.10.2012 in respect of Assam as published by the Staff Selection Commission represented by the Chairman-respondent no.2 for different categories of posts and a further prayer for issuing of a Mandamus for directing the said respondent no.2 to publish fresh select list in respect of Assam in the order of merit as per tabulation of marks scored by the candidates in the interview incorporating the name of the petitioner and such other relief deemed appropriate. According to the learned counsel for the petitioner being a

candidate in the OBC category, his case was not considered along with other similarly selected candidates belonging to the said category.

While issuing notice by the order dated 10.04.2013 this Court directed the respondents to keep one post of Constable in Assam Rifles vacant until further orders. This was passed in view of the order dated 10.01.2013 passed in WP(C) No.5520/2012 which was filed by such similarly situated candidates and in which the directions were issued to the respondent to keep 26 posts of constable vacant.

The said WP(C) No.5520/2012 was filed by other similarly situated persons assailing the select list by contending that the candidates who secured lesser marks than the petitioner therein were included in the select list. The said writ petition came to be disposed of by a common order dated 04.01.2016 whereby the said writ petition along with 14 other writ petitions were allowed. The intra Court appeal filed by the Union of India with a delay came to be dismissed as the Division Bench of this High Court refused to condone the delay in filing the intra Court appeal.

Being aggrieved the Union of India preferred Civil Appeal 4585/2018, 1441-1442/2022 and Civil Appeal No.4586-4587/2018. The Apex Court by judgment and order dated 17.02.2022 after examining the matter in its entirety held that the High Court was wrong in granting relief to the respondents. The appeals were accordingly allowed and the impugned orders of the High Court were set aside. The relevant Paragraphs of the judgment dated 17.02.2022 passed in Civil Appeal No.4585/2018 (*Union of India & Ors. vs. Probir Ghosh & Ors.*) are extracted below :

“44. Therefore, the High Court was clearly wrong in granting relief to the respondents (i) by diluting the significance of preferences given by candidates; and (ii) in nullifying the

effect of the instructions contained in Column No.16 of paragraph 4 of Annexure-II to the Recruitment Notification.

45. Coming to the second issue which arises only in respect of two respondents in Civil Appeal No.4585 of 2018, the case of the appellant is that those two candidates produced caste certificates to show that they belonged to the OBC category, but those certificates were not in the format prescribed in Annexure-VII, to the Recruitment Notification. It is the argument of the appellant that paragraph 4 of the "important instructions to candidates" in the Recruitment Notification made it clear that certificates in respect of these claims should be in the format prescribed. Paragraph 4 reads as follows: "4. Candidates seeking reservation benefits as SC/ST/OBC/ExS must ensure that they are entitled to such reservation as per eligibility prescribed in the Notice. They should also be in possession of the certificates in the format prescribed by Government of India in support of their claim when the copies of the certificates will be sought after the Written Examination."

46. The High Court rejected the contention of the appellant on the ground that what is of importance is the substance and not the form and that a certificate holder has no control over the format of the certificate.

47. Defending the judgment of the High Court, it is contended by the learned counsel for the respondents that so long as the status of the respondents is not disputed by the Staff Selection Commission, it is not open to them to raise hypertechnical objections on the basis of the format in which the certificate is produced. This is especially so when the candidates have no control over the authorities who are competent to issue the certificates. Therefore, the learned counsel for the respondents submitted that the order of the High Court in respect of the candidates belonging to OBC category, does not call for any interference.

48. It is true that the power to issue caste certificates vests with the officers of the State Government and that there is no uniformity in this regard. Therefore, some leverage has to be given.

49. But the case of the appellant in the above appeal is that the indication regarding noncreamy layer status in the caste certificate is one of substance and not of form. The very eligibility to seek the benefit of reservation would depend upon the non creamy layer status.

50. However, the respondents have filed as Annexure R8, along with their application for vacating the stay (I.A.No.76255 of 2018), a caste certificate which actually contains a declaration about the noncreamy layer status of one of the respondents. On the basis of this certificate it was contended by the learned counsel for the respondents that the certificate was actually in the format prescribed in Annexure-VII to the Notification.

51. But we do not know whether what is produced before us as Annexure R8 along with I.A.No.76255 of 2018 was the caste certificate actually produced by that respondent. If this is the certificate that he had actually enclosed to his application, there would have been no occasion for the High Court to examine whether the objection relates to

substance or mere form. At this level, in an appeal before the highest Court, it is not possible for us to look into this question of fact. This is especially so since the recruitment relates to uniformed services, where physical fitness of the incumbents is of utmost importance. A period of more than 10 years have now passed from the date of Notification. Therefore, at this stage it is not possible to enter into disputed questions of fact and grant relief to those two respondents.

52. In view of the above, these appeals are also liable to be allowed. But before we do so, we must deal with one last contention of Mr. Siddharth Dave, learned senior counsel for the respondents. Inviting our attention to the fact that by the order impugned, the High Court disposed of 15 writ petitions, but the appellants have chosen to file only one appeal against one of those writ petitions. It was contended by the learned senior counsel that after having allowed the common order passed in other writ petitions to attain finality, it is not open to the appellants to blow hot and cold.

53. In normal circumstances, the above argument would have really appealed to us as it is legally well founded. But in this case even admittedly some of the petitioners who approached the court have been granted relief, due to the revision of Merit List. It means that each of the candidates who were before the High Court had some distinguishable feature and some of them got the relief even from the appellants. Therefore, the contention that the appellants cannot blow hot and cold in respect of a few candidates may not hold water.

54. Therefore, the appeals are allowed and the impugned order of the High Court is set aside. There will be no order as to costs”.

In that view of the matter and since the similar issues have been raised and the counsels are in agreement that the judgment of the Apex Court passed on 17.02.2022 in Civil Appeal No.4585/2018 (*Union of India & Ors. vs. Probir Ghosh & Ors.*) will cover the issues raised in the present writ petition, the present writ petition stands closed and is accordingly dismissed in terms of the order of the Apex Court.

No order as to cost.

JUDGE

Comparing Assistant