

GAHC010011282023



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

Case No. : WP(C)/636/2023

MUKUL SANGMAI
S/O- LT. CHANDAR SANGMAI, R/O- MORA GAON, P.O. MORANCHIGA, P.S.
GAURISAGAR, DIST.- SIVSAGAR, PIN- 785683

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
DEPTT., DISPUR, GHY-06

2:THE DIRECTOR
HIGHER EDUCATION ASSAM
KAHILIPARA
GHY-19

3:THE DY. COMMISSIONER
SIVASAGAR

4:THE PRINCIPAL
JHANJI HEMNATH SARMA COLLEGE
JHANJI
DIST.- SIVSAGAR
PIN- 785683

5:BHOBANI DWARAH
S/O- BABDHON DUWARA
R/O- AMGURI LALIMSIGA
P.O. AND P.S. AMGURI
DIST.- SIVASAGAR
PIN- 78568

Advocate for the Petitioner : MR. SK N MOHAMMAD

Advocate for the Respondent : SC, HIGHER EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

10-02-2023

Heard Mr. Sk. N. Mohammad, learned counsel for the petitioner and Mr. A.R.Tahbildar, learned Standing counsel, Higher Education Department for the respondent Nos. 1 & 2. Ms. D.D.Barman, learned Government Advocate, Assam for the respondent No. 3.

It is submitted by the petitioner that on his application dated 02.01.2008, the Principal of said Jhanji Hemnath Sarma College, Jhanji, District-Sivasagar on 18.08.2008 issued a letter of appointment to him against a non-sanctioned post of Grade-IV giving effect from 19.08.2008 on honorary basis by making internal arrangement. Accordingly, he joined the said College as a Grade-IV employee. The Governing Body of said College on 21.12.2009 recommended his said appointment dated 18.08.2008.

The Principal-cum-Secretary of said College on 28.09.2022 advertised a vacant sanctioned post of Grade-IV in roster point No. 6 reserved for OBC/MOBC category, pursuant to which, the petitioner applied for it.

Finding his application in proper form, the college authority vide Reference No. JHNSC/Interview/2022 dated 07.12.2022 intimated the petitioner that the interview for the said Grade-IV post as advertised on 28.09.2022, shall be held on 18.12.2022 from 09:00 am onwards in the college premises itself and accordingly, asked him to appear in the written examination along with his original testimonials i.e. mark sheets and certificates of educational qualification, permanent residential certificate and other certificates etc. In that regard, said college authorities have also issued Admit Card to him for the said interview held on 18.12.2022.

The petitioner submitted that without considering his past service since 18.08.2008, disregarding his better claim, the College authorities selected the respondent No. 5 in said advertised Grade-IV post. He also stated that the College authorities have asked him not to attend his duty in the said College from January, 2023.

Being aggrieved with such selection of the respondent No. 5 for the post of Grade-IV in said college pursuant to the advertisement dated 28.09.2022 without considering his case, the petitioner filed this writ petition on 04.02.2023 praying for a direction to the respondent authorities in Higher Education Department to allow him to continue in his service in said Jhanji Hemnath Sarma College, District-Sivasagar.

The petitioner stated that the Principal of said college on 25.02.2012 requested the Director of Higher Education, Assam to sanction additional posts including the post of Grade-IV. He further stated that as the college authorities of said Jhanji Hemnath Sarma College, District-Sivasagar did not consider his case, he filed an application before the Deputy Commissioner, Sivasagar and the Deputy Commissioner of Sivasagar have stayed the said selection process.

As on date, the petitioner is not serving against any public post following the due process of any advertisement and selection following the procedure laid down in the Articles 14 and 16 of the Constitution of India.

Since the petitioner was engaged by the College authority against a non-sanctioned post of Grade-IV by making internal arrangement and as noted above and as his such appointment was not against any public post, the Court in exercise of its power under Article 226 of the Constitution of India shall not pass any order as prayed for by the petitioner issuing any such order to the respondent authorities allowing him to continue in service against such non-sanctioned post of Grade-IV in the same college. Accordingly, this writ petition being devoid of merit, stands dismissed.

However, it is made clear that the petitioner may approach the authorities of said Jhanji Hemnath Sarma College, District-Sivasagar, if so advised, stating his grievances and to allow him to serve in that college against such non-sanctioned post, if possible under any provision, by a provincialised college and that such decision will be taken by the college authorities following the due procedure and in accordance with law.

JUDGE

Comparing Assistant