

GAHC010013232015



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

Case No. : WP(C)/2688/2015

SMTI NAYANTI BASUMATARY
D/O- SHRI ALARAM BASUMATARY, W/O- SHRI CHARLESH BRAHMA, R/O
VILL.- DWIMUGURI, P.O.- NAYEKGAON, P.S., DIST.- KOKRAJHAR, B.T.C.,
ASSAM, PIN- 783370.

VERSUS

THE UNION OF INDIA and 3 ORS
REP. BY THE SECY., DEPTT. OF HIGHER EDUCATION, MINISTRY OF HRD,
NEW DELHI- 110001.

2:THE DY. CHIEF OF BTAD-CUM-PRESIDENT
CENTRAL INSTITUTE OF TECHNOLOGY
KOKRAJHAR
B.T.C.
ASSAM.

3:THE PRINCIPAL
CENTRAL INSTITUTE OF TECHNOLOGY
KOKRAJHAR
BTC
ASSAM.

4:THE ACCOUNTANT
CENTRAL INSTITUTE OF TECHNOLOGY
KOKRAJHAR
BTC
ASSAM

Advocate for the Petitioner : MS.C TALUKDAR

Advocate for the Respondent : MS P BARUAH, ASGI

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

17/01/2023

Heard Mr. B Ramchiary, learned counsel for the petitioner and Mr. S K Medhi, learned CGC for the respondent Nos. 1, 3 and 4.

2. Petitioner belongs to Schedule Tribe (Boro) Community. It is stated that the Registrar of the Central Institute of Technology, Kokrajhar, a Centrally Funded Institute under Ministry of Human Resources Development, Government of India within the Bodoland Territorial Council, Kokrajhar, Assam in the interest of public service engaged her as Helper cum Cleaner of CIT Library at a fixed pay of Rs.3500/- per month for a period of 6 months w.e.f. 01.01.2009. Her engagement as Helper cum Cleaner of CIT Library on contractual basis in the CIT, Kokrajhar continued till February, 2015.

3. By an order No. CIT/KOK/Esstt./Misc./Part-III/65/09/16/1699 dated 05.03.2015, the Registrar of CIT, Kokrajhar discontinued the services of 18 nos. of Housekeeping Staff of the said Institute w.e.f. 05.03.2015 including the petitioner.

4. The Registrar of the CIT, Kokrajhar on 21.08.2012 issued the advertisement No. 9/2012 inviting applications on prescribed formats from eligible candidates for filling up of different posts in the CIT, Kokrajhar, BTAD, Assam including two posts of Peons, one reserved for the Schedule Caste and the other reserved for the Schedule Tribe. The petitioner by paying the requisite application fee by way of demand draft applied for the post of Peon on 07.09.2012 pursuant to the said advertisement dated 21.08.2012.

5. As the respondent authorities did not conduct any interview for the said posts of Peon as advertised on 21.08.2012, the petitioner filed this writ petition on 28.04.2015 praying amongst others to set aside and quash the impugned order dated 05.03.2015, whereby her engagement as Housekeeping staff of the CIT Library was discontinued and further, for a direction to the respondent authorities to conduct the interview for filling up the posts of Grade-IV categories in terms of the said advertisement dated 21.08.2012 issuing call letter to her so as to appear in the interview and to select

and appoint her to the post of Peon in the office of the CIT, Kokrajhar on priority basis.

6. The respondent authorities have filed their affidavit on 31.08.2022 to which the petitioner has not filed any reply.

7. In the affidavit filed by the Registrar of the CIT, Kokrajhar on behalf of the respondent authorities, it is categorically stated that engagement of the petitioner as Helper cum Cleaner of CIT Library in terms of her engagement order dated 02.02.2009 came to an end on 30.06.2009. However, considering her financial constraints, the respondent authorities extended her engagement as Helper cum Cleaner of CIT Library till her discontinuation vide order dated 05.03.2015 and for the entire period, the petitioner received her consolidated monthly emoluments till the last date of her service.

8. The respondent authorities submitted that as a matter of policy decision in the absence of recruitment Rules in effect and in the interest of the local community, the authorities in the CIT, Kokrajhar took a decision with the welfare of its staff in mind and gave an option to all those 18 casual workers, whose services were discontinued w.e.f. 05.03.2015 including that of the petitioner, to work through an outsourcing agency under suitable terms and conditions and that excepting the petitioner, all the remaining 17 out of 18 Housekeeping staff of the CIT, Kokrajhar whose services were discontinued on 05.03.2015 have joined immediately and serving as Outsourcing casual workers in the CIT, Kokrajhar, an autonomous Institute as per the directions of the Government of India in the Department of Expenditure, Ministry of Finance issued vide its Office Memorandum No. F.7(1)/E.Coord.I/2006 dated 24.02.2006 that relates to ban on creation of posts.

9. The respondent authorities also submitted that this fact has already been made known to the petitioner in the reply dated 17.04.2015 to her application dated 13.04.2015 filed under Right to Information Act.

10. With regard to the prayer for her absorption in service in CIT, Kokrajhar, the respondent authorities submitted that she was engaged only as a casual worker for a limited period which was extended from time to time up to 04.03.2015 and as such, the service of the petitioner cannot be considered for regular absorption in CIT, Kokrajhar.

11. The respondent authorities also submitted that though it communicated to the petitioner on numbers of occasions for her engagement but she did not respond.

12. Regarding not holding of selection for the post of Peon in CIT, Kokrajhar in terms of its

advertisement dated 21.08.2012, the respondent authorities submitted that by notice dated 14.07.2015, the Registrar of CIT, Kokrajhar informed all the concerned applicants, whose interview could not be conducted, to collect back their application fee from the Accounts Section of the said Institute during 10th to 14th August, 2015.

13. The respondent authorities also submitted that the relevant recruitment Rules was notified w.e.f. 30.11.2021 that pertains to the posts of Registrar, Deputy Registrar, Assistant Registrar, Section Officer, Office Superintendent/Junior Superintendent, Senior Assistant, Junior Assistant, Multi-Tasking Staff, Senior Accountant, Accountant, Junior Accountant, Store Keeper, Workshop Superintendent, Junior Technical Superintendent, Laboratory Assistant, Medical Officer, Staff Nurse, Pharmacist, Executive Engineer, Assistant Engineer, Junior Engineer (Civil/Electrical), Assistant Librarian and Security Officer and not for any post of Peon. Further, the respondents submitted that as there is no such recruitment Rules for engagement of casual workers, the respondent authorities were not authorized to directly recruit casual workers in the CIT, Kokrajhar.

14. The respondent authorities placing the Office Memorandum of the Government of India in the Department of Expenditure, Ministry of Finance dated 24.02.2006 stated that there is a ban on creation of posts including the posts of Grade-B, C and D and that the proposals would necessarily have to be based on new organization accompanied by matching savings from existing related establishments with the observation that outsourcing of routine services, such as, cleaning, maintenance, moving papers/dak etc. needs to be encouraged.

15. The respondent authorities have also placed that the Government of India, Ministry of Human Resources Development, Department of Higher Education by its communication No.F.No.24-2/2011-T.S.VII dated 23.04.2020 informed the CIT, Kokrajhar that 27 nos. of teaching and 18 nos. of non-teaching posts have been created for the said Institute (Annexure-B to the affidavit of the respondents CIT) that does not include any post of Grade-IV including the post of Peon in the CIT, Kokrajhar.

16. Further, the Registrar, CIT, Kokrajhar by its notice No. CIT/KOK/Apptt./08/Pt-II/231/460 dated 14.07.2015 notified that due to unavoidable circumstances, interviews for the 10 different posts advertised under advertisement No. 9/12 dated 21.08.2012 could not be conducted that includes the posts of Peons.

17. From the perusal of the advertisement No. 9/12 dated 21.08.2012 issued by the Registrar,

CIT, Kokrajhar including the two posts of Peon, one reserved for the Schedule Caste and the other reserved for Schedule Tribe, it is seen that under the heading 'General Instructions to Candidates' at Clause-8, it was specified that – *"the number of vacancies indicated in the notification is tentative. The Institute reserves the right to increase or decrease the number of advertised posts at the time of selection. Further, the CIT, Kokrajhar also reserves the right NOT to fill any of the post advertised."*

18. It is seen that the petitioner was fully aware of the Clause-8 provided under the general instructions to candidates in the said advertisement No. 9/12 dated 21.08.2012 issued by the Registrar, CIT, Kokrajhar. Moreover, the petitioner has not objected the cancellation of the advertisement for the post of Peons advertised vide advertisement No. 9/12 dated 21.08.2012 notified on 14.07.2015, whereby the candidates applied for such posts were requested to collect back their application fee from the Accounts Section of the said Institute during 10th to 14th of August, 2015.

19. During the deliberation of the matter, the Secretary to the Government of India in the Ministry of Human Resources Development clarified that all together 79 posts of faculties and 87 posts of non-faculties have been created for the CIT, Kokrajhar and the created posts of non-faculties/non-teaching do not contain any post of Grade-IV Peon.

20. Further, the authorities in the CIT, Kokrajhar by its communication dated 11.08.2022 placed before the Court that the CIT, Kokrajhar did not make any further advertisement for filling up the posts of Peon as advertised on 21.08.2012 after its cancellation.

21. The CIT, Kokrajhar also clarified that the petitioner and the other 17 Housekeeping staff of the said CIT, Kokrajhar after their discontinuation on 05.03.2015 were transferred to Outsourcing Staff out of which 17 such discontinued staff joined as Outsourcing Staff except the petitioner.

22. The CIT, Kokrajhar also clarified that the posts of Office Peon, Cook, Helper, Driver, Attendant in the CIT, Kokrajhar could not be conducted since those posts have been abolished by the Government of India in the Ministry of Human Resources Development.

23. It is also not the case of the petitioner that she was engaged as a Housekeeping staff in the CIT, Kokrajhar after due process of advertisement and selection following the provisions of Articles 14 and 16 of the Constitution of India.

24. Further, the initial appointment of the petitioner as Helper cum Cleaner of CIT Library in the CIT, Kokrajhar in terms of her appointment order dated 02.02.2009 came to an end on 30.06.2009

after completion of 6 months' period in terms of her engagement order No. 79 dated 02.02.2009 issued by the Registrar, CIT, Kokrajhar.

25. Mr. Ramchiary, learned counsel for the petitioner submitted that after taking much time, the respondent authorities have filed their affidavits in the matter only on 31.08.2022 more than after 7 years after issuance of notice by the Court on 13.05.2015 in the present proceeding. As such, all the actions initiated by the respondent authorities can be considered as an afterthought.

26. After hearing the learned counsels for the parties and for the reasons above, the Court is of the opinion that the prayers made by the petitioner are devoid of any merit.

27. Accordingly, this writ petition stands dismissed.

JUDGE

Comparing Assistant