

GAHC010028402017



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

Case No. : WP(C)/3806/2017

JITEN SAIKIA
S/O- SRI PUTUL SAIKIA, R/O- VILL- KSHETRIGAON, P.S- JAJORI, P.O-
CHAKALAGHAT, PIN- 782142, DIST- NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM and 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
EDUCATIONSECONDARY DEPTT., DISPUR, GUWAHATI, PIN- 781006,
KAMRUP METROPOLITAN DIST, ASSAM

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIAPARA
GUWAHATI
PIN- 781019
KAMRUP METROPOLITAN DIST
ASSAM

3:THE INSPECTOR OF SCHOOLS
NAGAON DISTRICT CIRCLE
P.O- NAGAON
PIN- 782001
DIST- NAGAON
ASSAM

4:THE HEAD MASTER/ MEMBER SECRETARY
PUB NONOI MADHAB KANDOLI HIGH SCHOOL
NAGAON
P.O- NONOI
PIN- 782101
DIST- NAGAON

ASSAM

5:THE SCHOOL SELECTION COMMITTEE
PUB NONOI MADHAB KANDOLI HIGH SCHOOL
NAGAON
P.O- NONOI
PIN- 782101
DIST- NAGAON
ASSAM
REP. BY THE PRESIDENT
SCHOOL MANAGEMENT AND DEVELOPMENT COMMITTEE

6:THE SUPERVISING OFFICER CUM PRINCIPAL INCHARGE
KAMALA NEHRU GIRLS HIGHER SECONDARY SCHOOL
NONOI
P.O- NONOI
PIN- 782101
DIST- NAGAON
ASSA

Advocate for the Petitioner : MR.N J CHOUDHURY

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 17.03.2023

Heard Mr. U.K. Nair, learned senior counsel, assisted by Mr. M. Mahanta, learned counsel for the petitioner and Mr. R. Mazumdar, learned counsel for the respondents.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing of the impugned order dated 30.12.2016, issued by the Inspector of Schools, Nagaon District Circle (respondent no.3), thereby cancelling the selection process for filling up the

post of Junior Assistant/ Lower Division Assistant at Pub Nonoi Madhab Kandoli High School, Nagaon, and for a direction to the respondent no.3 to bring the process of selection to its logical conclusion.

3. It is the case of the petitioner, in brief, that pursuant to an employment advertisement dated 11.12.2015 for selection and appointment to the post of Junior Assistant (i.e. JA for short)/ Lower Division Assistant (i.e. LDA for short), the petitioner had applied for the post of LDA. The School Selection Committee had conducted the selection process in conformity with the Assam Secondary Education (Provincialisation) Service Rules, 2003. After written test was conducted on 21.01.2016, computer test, type-writing test and oral interview were held on 30.01.2016 and the results were declared on the same day and the select list was prepared on 01.02.2016, declaring the petitioner to have secured the first position, and the said recommendation was sent to the Inspector of Schools. The inaction on part of the Inspector of Schools for about 5 months compelled the petitioner to approach this Court by filing W.P.(C) 4620/2016, which was disposed of by this Court by order dated 20.12.2016, by which direction was issued to the Inspector of Schools to either bring the selection process to its logical end before 31.12.2016 and according approval to the select list and to make appointment in terms thereof or to assign reasons for not approving the select list by a speaking order. Thereafter, the Inspector of Schools, Nagaon District Circle, by a speaking order dated 30.12.2016, cancelled the selection process, purportedly on the basis of public complaint and as doubt was created in the mind of the candidates about transparency in the selection process.

4. At the outset, it may be mentioned that the learned senior

counsel for the petitioner has raised doubt in the correctness of the reasoning given in the impugned order because of failure of the Secondary Education Department to produce the records even after 5 long years and despite several orders passed by this Court for production of records. In this regard, the learned standing counsel for the petitioner had submitted that when the matter was last listed on 10.03.2023, he had received a whatsapp message from the competent authority, informing him to the effect that the relevant records was send by the Headmaster of the School to the Office of the Inspector of Schools, Nagaon District Circle and accordingly, the said records was forwarded to the then standing counsel for the Secondary Education Department vide forwarding letter dated 02.05.2018. However, it has been submitted that despite his effort, hands could not be laid on the said records. Therefore, with the consent of both sides, the matter has been heard in the absence of the records.

5. The learned senior counsel for the petitioner has submitted that in the complaint it was projected that the Headmaster of the concerned school had kept the answer scripts in his residence instead of securely keeping the said answer scripts in the safe custody of police station and that candidates who came to inspect the written examination papers got selected and that a news clip was telecast on 23.01.2016 at 3.00 pm, 6.00 pm, 7.00 pm and 11.00 pm regarding bribe being given to the Headmaster of the concerned school. Accordingly, it is submitted that from the chain of events, it was evident that the 8 (eight) unsuccessful candidates had lodged a manufactured complaint dated 05.06.2016 and the Inspector of Schools concerned had acted merely on the complaint without making any enquiry either in the police station or with the Supervisor, i.e. Principal i/c. of Kamala Nehru Girls H.S. School (respondent no. 6) regarding inability of the Headmaster of Pub Nono Madhab Kandoli High

School (respondent no. 4) to store the answer scripts at the Police Station. Moreover, despite the statement by the Supervisor that on the next date when the sealed envelope was opened in presence of four committee members, no anomaly was found, proceeded to cancel the process. In the said context, it was further submitted that the complaint was signed by 8 (eight) candidates, out of which four candidates had not even appeared in the written tests, and out of the remaining four candidates, two candidates did not appear in the computer test and type writing test. Thus, it was submitted that 6 (six) out of 8 (eight) candidates could not have made any complaint and that out of the two appearing candidates, the petitioner was selected.

6. It is submitted that none of the candidates had made any complaint at earlier in point of time, but only after the results were declared and they were unsuccessful, the complaint was orchestrated. Accordingly, it is submitted that it is well settled that when the candidates took a calculated chance and appears in the interview, challenge to procedure cannot be made after they were adjudged unsuccessful.

7. Considered the materials on record as well as the submissions made by the learned senior counsel for the petitioner and the learned standing counsel for the Secondary Education Department.

8. It is seen that in the affidavit-in-opposition filed on behalf of the respondent nos. 4 and 5, the respondent no. 4 has denied the allegations as false. Nonetheless, in para 6 thereof, it is admitted that the father of a candidate tried to bribe the respondent no. 4, but he refused and scolded him. In the impugned order dated 30.12.2016, the Inspector of Schools has referred to the statement made by the respondent no. 4 on 26.02.2016, wherein he had stated

that no candidate was allowed in the typing test without Diploma in computer knowledge and type-writing and it was also admitted that the answer script was not kept in the police station as there was no almirah in the police station and he had also stated that one candidate had forcefully offered him bribe of Rs.1,20,000/-, he had returned the amount.

9. Thus, it is not the case of the respondent nos. 4 and 5 that the Officer-in-charge of concerned Police Station had refused to keep the answered script. It is also not their case that any prior permission was taken from the Inspector of Schools or from the Selection Committee or its Governing Body to store the answer scripts at his home. Therefore, from the impugned order dated 30.12.2016, it appears that the respondent nos. 4 and 6 took a decision not to store the answer scripts at police station due to lack of almirah. Moreover, the candidate did offer bribe to the respondent no. 4, and the news of offer of bribe was made viral in a TV news channel. In the advertisement, it was stated that "*Application invited for post of 1 No. LDA (UR) at Pub Nonoi Madhab Kandoli High School. Qualification H.S. pass, Diploma in typewriting (Ass/Eng) with computer knowledge. ...*" However, as per the impugned order, the respondent no. 4 did not allow candidates to appear in typing test without Diploma in Computer knowledge and typewriting, which is not as per the scope of the advertisement, which required Diploma in type-writing (Ass/Eng) with computer knowledge.

10. Under such circumstances, notwithstanding that some of the candidates did not appear in computer skill test, the Court is unable to find fault with the decision of the Inspector of Schools, Nagaon District Circle (respondent no.3) to direct that the post of Junior Assistant in the concern school be filled up

through re-advertisement.

11. Therefore, the writ petition fails and the same is dismissed.

12. However, before parting with the records, the Court is inclined to provide that in the event the petitioner is over-aged while applying again, his prayer to the competent authority to condone the over-age shall be considered by taking note of the pendency of this writ petition filed on 19.06.2017.

JUDGE

Comparing Assistant