

GAHC010031532018



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

Case No. : WP(C)/951/2018

DR. Y. MONOJIT SINGHA
S/O. LT. Y MADAN MOHAN SINGHA, R/O. VILL. CHIRIRPAR PART-I, P.O.
TOLENGRAM, P.S. LAKHIPUR, DIST. CACHAR, ASSAM, PIN-788103

VERSUS

THE STATE OF ASSAM AND 5 ORS.
THROUGH THE SECRETARY, TO THE GOVT. OF ASSAM, EDUCATION
(HIGHER) DEPTT., DISPUR, GUWAHATI-781006

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHIPARA
GUWAHATI-781019

3:THE GOVERNING BODY OF CACHAR COLLEGE
REP. BY THE PRINCIPAL OF CACHAR COLLEGE
P.O. SILCHAR
DIST. CACHAR
ASSAM
PIN-788001.

4:THE PRINCIPAL OF CACHAR COLLEGE
P.O. SILCHAR
DIST. CACHAR
ASSAM
PIN-788001

5:THE SELECTION COMMITTEE FOR CACHAR COLLEGE
FOR SELECTION OF ASSISTANT PROFESSOR IN POLITICAL SCIENCE
REP. BY THE PRINCIPAL OF CACHAR COLLEGE
P.O.SILCHAR

DIST. CACHAR
ASSAM
PIN-788001

6:DR. JAYASHREE SEN
D/O ANUPAM ROY
R/O. LAKHIPUR TOWN
WARD NO. 8
P.O. AND P.S. LAKHIPUR
DIST. CACHAR
ASSAM
PIN-78810

Advocate for the Petitioner : MR. D DAS SR. ADV

Advocate for the Respondent : SC, HIGHER EDU

Linked Case : WP(C)/3620/2018

DR. JAYASHREE SEN
W/O. DR. NABENDU SEN
VILL. AND P.O. TARAPUR PART-VIII
KHUDIRAM SARANI
SHIBBARI ROAD
SILCHAR
DIST. CACHAR
ASSAM

VERSUS

STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECY.
TO THE GOVT. OF ASSAM
DEPTT. OF HIGHER EDUCATION
DISPUR
GHY.
ASSAM

2:THE DIRECTOR OF HIGHER EDUCATION

ASSAM
KAHILIPARA

GUWAHATI
ASSAM

3:THE PRINCIPAL

CACHAR COLLEGE
SILCHAR
DIST. CACHAR
ASSAM

4:THE PRESIDENT

GOVERNING BODY
CACHAR COLLEGE
SILCHAR
DIST. CACHAR
ASSAM

5:DR. Y MONOJIT SINGHA

S/O. LT. Y MADAN MOHAN SINGHA
R/O. VILL. CHIRIPAR PART-I
P.O. TOLENGRAM
P.S. LAKHIPUR
DIST. CACHAR
ASSAM

Advocate for : MR. B PURKAYASTHA

Advocate for : SC

HIGHER EDU appearing for STATE OF ASSAM AND 4 ORS.

– B E F O R E –

HON'BLE Mr. JUSTICE NELSON SAILO

Date of Hearing	: 12.10.2023 & 13.10.2023
Date of Order	: 18.10.2023

ORDER (CAV)

This order will dispose of both the writ petitions.

[2.] Heard Mr. D Das, learned Senior Counsel assisted by Mr. JUNM Laskar for the petitioner in WP(C) No. 951/2018. Also heard Mr. B D Das, learned Senior Counsel assisted by My. B Purkayastha for the petitioner in WP(C) No. 3620/2018. The petitioner in WP(C) No. 3620/2018 is the respondent No. 6 in WP(C) No. 951/2018 and likewise, the petitioner in WP(C) No. 951/2018 is the respondent No. 5 in WP(C) No. 3620/2018.

[3.] Brief facts of the case is that an Advertisement dated 23.12.2015 was floated by the Principal-in-Charge, Cachar College, Silchar for filling up of one post of Assistant Professor in Political Science (Unreserved) in the said College apart from similar posts in other subjects. The petitioner in both the writ petitions and others who applied for the said post underwent the selection process by submitting their documents and testimonials as was required. The constituted Selection Committee then prepared a comparative statement which contained marks obtained by each of the applicants and the petitioner in WP(C) No. 3620/2018 was shown to have secured the highest marks with a total of 62.92 marks. As for the petitioner in WP(C) No. 951/2018, he was shown to have secured the 3rd highest marks by scoring 58.11 marks. The petitioner in WP(C) No. 951/2018 upon coming to learn about the same through an RTI application submitted by him and being aggrieved, filed a complaint

petition dated 28.09.2016 before the Governing Body of the College with a copy to the Director Higher Education, Assam (DHE) claiming that he is entitled to be given 5 marks under the heading "teaching experience" as per Office Memorandum dated 25.06.2012. The DHE then vide his letter dated 05.12.2016 directed the Principal of the College to place the matter again before the Selection Committee by stating that the Office Memorandum dated 14.08.2015 had already been withdrawn and therefore, the Office Memorandum dated 25.06.2012 where there was no mention about teaching experience to be confined to those who acquired eligibility being revived, the same will be applicable.

[4.] In terms of the said communication, the Principal of College placed the matter before the Selection Committee and the Selection Committee in its review meeting held on 26.07.2017, reiterated its earlier decision by concluding that no marks for teaching experience can be awarded on the ground that the petitioner in WP(C) No. 951/2018 did not have the requisite qualification as prescribed by the UGC Regulations, 2000 and also on the ground that the College where he earlier served was neither a Government nor a provincialised College.

[5.] The decision taken by the Selection Committee in its review meeting held on 26.07.2017 was placed before the Governing Body of the College on 25.09.2017 and the Governing Body accepted the decision of the Selection Committee and further resolved to forward the name of the writ petitioner in WP(C) No. 3620/2018 to the

DHE for approval and appointment to the post concerned. However, the DHE vide his Order dated 30.12.2017 passed a Speaking Order which was to the effect that the request of the Directorate made on 05.12.2016 to place the matter again before the Selection Committee and Governing Body of the College not being complied with, the recommendation was therefore cancelled. The College was also directed to advertise the post after seeking formal approval for the purpose.

[6.] Aggrieved with the decision, the petitioner in WP(C) No. 951/2018 filed his writ petition and this Court vide Order dated 21.02.2018 passed an interim order to the effect that the post of Assistant Professor in Political Science in the said College shall not be put for re-advertisement but liberty was given to the DHE to pursue rectification of the earlier selection. Likewise, the petitioner in WP(C) No. 3620/2018 also being aggrieved with the Speaking Order passed by the DHE filed his writ petition praying for setting aside of the same and for a direction to the respondent authorities to appoint him to the post of Assistant Professor in terms of the recommendation made by the Selection Committee. This Court while issuing notice of motion on 08.06.2018 directed that the interim order dated 21.02.2018 passed in WP(C) No. 951/2018 will also cover the second case.

[7.] Mr. B D Das, learned Senior Counsel for the petitioner in WP(C) No. 3620/2018 submits that the Office Memorandum dated 14.08.2015 may have been cancelled and the earlier Office Memorandum dated 25.06.2012 revived but that by

itself is not enough unless one has the essential qualification prescribed by the UGC norms, one cannot be appointed as Asst. Professor of a College. The learned Senior Counsel by referring to a Communication dated 18.08.2005 written by the Dy. Secretary to the Govt. of Assam, Education (Higher) Department to the DHE submits that the Government concurrence given to Satindra Mohan Dev College, Cachar where the petitioner in WP(C) No. 951/2018 was working is only a permission to start 1st year class in TDC in general course in Arts with subject such as English, Bengali (MIL), Manipur (MIL), Political Science, Economics, History, etc., and the same is not an affiliation to Government College. The said communication also provides that concurrence was accorded subject to removal of under qualified Lecturer from the College, if any. The learned Senior Counsel submits that the petitioner in WP(C) No. 951/2018 acquired NET only on 29.09.2015 and Ph.D on 15.10.2015. Therefore, the services rendered by him prior to obtaining NET and his Doctorate degree cannot be counted towards teaching experience for the purpose of allotting him marks in the selection process. The learned Senior Counsel submits that as per the UGC Regulations of 2000 and 2010, NET is compulsory even for Ph.D holder in order to be eligible for appointment as Assistant Professor. In order to substantiate his submission, the learned Senior Counsel has referred to the relevant provision of the 2010 UGC Regulations contained in Clause 3.00 and 10.0. The learned Senior Counsel also relies upon the case of *P Suseela & Ors., vs. University Grants Commission & Ors., (2015) 8 SCC 129*.

[8.] Per contra, Mr. D Das, learned Senior Counsel in WP(C) No. 951/2018 submits that the O.M dated 25.06.2012, which was brought back into force after the cancellation of the Office Memorandum dated 14.08.2015 clearly provides for allotment of 1 marks for each completed years of service in an affiliated Government last degree College subject to maximum of 5 marks. He submits that the petitioner was accordingly allotted marks for teaching experience in two other colleges where he had also applied for a similar post. The learned Senior Counsel submits that the Communication dated 18.08.2005 made by the Deputy Secretary to the Govt. of Assam, Education (Higher) Department to the DHE granting Government concurrence to start 1st year class in various subject as mentioned in the communication to the Satindra Mohan Dev College, Lakhipur, Cachar where the petitioner was working speaks for itself. Referring to the said communication, the learned Senior Counsel submits that the Government's concurrence and permission/affiliation for starting subject as indicated was conveyed to the College and therefore, the petitioner is entitled to be allotted marks towards teaching experience in terms of the Office Memorandum dated 25.06.2012. The same having been denied to him by the Selection Committee, appropriate direction should be issued by this Court for allotting marks to the petitioner towards his teaching experience. The learned Senior Counsel further submits that the petitioner had 4 (four) research paper publication and as per the norms adopted by the Selection Committee, 2 marks can be allotted for each publication subject to the maximum of 3 publication. However, the Selection

Committee awarded only 4 marks to the petitioner depriving him of 2 marks. Therefore, if the petitioner is awarded marks towards his experience and towards his research paper publication, he would have scored the highest marks in the selection process. As such, the learned Senior Counsel submits that respondent authorities concerned should be directed to re-assess the marks given to the petitioner by adding marks towards his teaching experience and his book publication.

[9.] The learned counsel submits that insofar as the case of *P Suseela & Ors.* (supra) is concerned, the same only helps the case of the petitioner since as per the said decision, persons who obtained Ph.D degree on or before 31.02.2009 and had registered himself for Ph. D before this date are exempted from the requirement of having NET for the purpose of appointment as Lecturer/Assistant Professor. He submits that the petitioner got himself registered for Ph.D on 13.11.2009 and completed the same on 15.10.2015 and therefore, he is exempted from the requirement of having NET to be appointed as Assistant Professor of the College.

[10.] Mr. K Gogoi, learned Standing Counsel, Higher Education Department appears for the said Department and submits that affidavit-in-opposition has been filed by the DHE in WP(C) No. 3620/2018 and that the same will serve the purpose for the other writ petition as well. Referring to the affidavit-in-opposition filed by the DHE, the learned Standing Counsel submits that the petitioner in WP(C) No. 951/2018 filed a complaint petition on 28.08.2016 on receipt of an RTI reply before the DHE alleging

inter alia that the Selection Committee did not give him 5 marks for his teaching experience as per the Office Memorandum dated 25.06.2012 as he was working as a Lecturer in Satindra Mohan Dev College, Lakhipur, Cachar w.e.f., 16.08.2004 to 23.10.2010. On receipt of the complaint petition, the DHE vide Letter dated 05.12.2016 directed the Principal of Cachar College to place the matter before the Selection Committee. Thereafter, the Principal vide his Letter dated 24.10.2017 submitted the minutes of the Governing Body meeting dated 26.08.2017 to the DHE wherein it was stated that no marks for teaching experience has been awarded to the private respondents as he did not possess the required qualification as prescribed in the UGC Regulation and the College where he served earlier was neither a Government College nor a provincialised College. The learned Standing Counsel submits that under the facts and circumstances, the DHE having no option, decided to cancel the recommendation and go for re-advertisement. He however submits that if the Court deems it appropriate, a direction may be issued to the DHE to look into the matter and to take a final decision.

[11.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[12.] From the projection made by the parties, the issue to be decided is whether Satindra Mohan Dev College, Lakhipur where the petitioner in WP(C) No. 951/2018 was working is a Government affiliated College and if so, whether marks can be given

to him towards teaching experience in terms of Office Memorandum dated 25.06.2012 though he did not have the qualification at the relevant time to be a Lecturer as per the UGC norms i.e., while working in the Satindra Mohan Dev College, Lakhipur, Cachar.

[13.] In order to decide the issues, it would have been helpful if the Govt. of Assam in the Department of Higher Education had filed a concise affidavit-in-opposition projecting the stand of the Govt. in this regard. It is seen that the Secretary to the Govt. of Assam, Education (Higher) Department is impleaded as respondent No. 1 in both the writ petitions and the DHE as respondent No. 2. However, the respondent No. 1 has not filed any counter affidavit and it is only the respondent No. 2 who has filed affidavit-in-opposition in WP(C) No. 3620/2018 but not in WP(C) No. 951/2018.

[14.] A perusal of the affidavit-in-opposition of the respondent No. 2 does not contain or indicate any particular stand of the Directorate of Higher Education. All that it narrates is the stand taken by the writ petitioner himself. Be it stated herein that the Directorate of the Higher Education at any rate cannot have its own stand independent of the Government policy in force. Therefore, due to such deficiency, this Court is not in a position to render a decision on the issues on merit. No doubt the Office Memorandum dated 14.08.2015 has been withdrawn and the earlier Office Memorandum dated 25.06.2012 revived but then, the question which still remains is

whether marks towards teaching experience can be given for each completed years of service to the petitioner in WP(C) No. 951/2018 for having worked in SMD College, Silchar despite he not having the prescribed qualification of an Assistant Professor as per the UGC norms and also whether the College is an Government affiliated College. It is an admitted position that UGC norms are adopted in the State of Assam like any other Colleges or Institutions in the rest of the Country. There is also no argument to the fact that as per the UGC Regulations starting from the year from 2000, NET qualification is compulsory even for those having Ph.D degree. Therefore, the question is as to whether the Office Memorandum dated 25.06.2012 can be applied independently by ignoring the prescription of the UGC guidelines.

[15.] In the above background and under the facts and circumstance, this Court deems it fit that the matter should be examined by the respondent No. 1 on the following terms of reference:-

(1) Whether Satindra Mohan Dev College, Lakhipur is a Government affiliated College for the purpose of being given marks towards teaching experience as provided under the Office Memorandum dated 25.06.2012 and the period concerned being 16.08.2004 to 23.10.2010.

(2) Whether Office Memorandum dated 25.06.2012 can be applied independently for giving marks towards teaching experience by ignoring

the prescription of UGC Regulations which lays down the qualification for being appointed as Assistant Professor amongst others.

[16.] Depending upon the answer and reply to the above terms of reference, the allotment of marks by the Selection Committee will have to be upheld or modified. Since the result will be for or against either of the rival parties, there will be no occasion for having a fresh advertisement. Accordingly, the interim order passed earlier is made absolute.

[17.] As regards, the claim of the petitioner in WP(C) No. 951/2018 for being given more marks due to his 3 (three) research paper publication, the question which also requires to be answered is as to whether the same was raised by him in his complaint petition dated 28.09.2016 which he submitted to the Governing Body of the College and to the DHE. If he had indeed raised the claim, the respondent No. 1 shall have to refer the same to the Selection Committee only on this limited issue for allotment of appropriate marks in accordance with the norms. If he had not made such a claim, the same will have to be ignored.

[18.] The respondent No. 1 shall examine the matter in terms of the observations and term of reference made herein above and shall conclude the same by passing a Speaking Order within a period of 6 weeks from the date of receipt of a certified copy of this order after giving both the writ petitioners an opportunity of hearing and for

submitting any such documents they wish to rely upon within a time frame.

[19.] With the above observations and directions, both the writ petitions are disposed of. No cost.

JUDGE

Comparing Assistant