GAHC010033132022

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

Case No. : WP(C)/1268/2022

MAITRI MANNA
D/O- BIMAL KUMAR MANNA, VILL.- AMDABAD, P.O. AMDABAD, P.S. NANDIGRAM, DIST.- PURBA, MEDINIPUR, WEST BENGAL AND PRESENTLY RESIDING AT NO. 35/1, VEVEKANADA ROAD, SANTOSHPUR, P.S. SURVEY PARK, KOLKATA, WEST BENGAL.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM, HIGHER EDUCATION DEPARTMENT, DISPUR, GAUHATI-781006.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
HIGHER EDUCATION DEPARTEMNT
DISPUR
GAUHATI-781006.

3:THE UNDER SECRETARY TO THE GOVERNMENT OF ASSAM
HIGHER EDUCATION DEPARTMENT
DISPUR
GAUHATI-781006.

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

5:THE PRINCIPAL -CUM- MEMBER SECRETARY
GOVERNING BODY OF CACHAR COLLEGE
SILCHAR

ASSAM
PIN- 788001

Advocate for the Petitioner : MR. J AHMED

Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

21.02.2023.

Heard Mr. J Ahmed, learned counsel for the petitioner and Mr. K Gogoi, learned Standing counsel, Higher Education Department, Assam for the respondent Nos. 1 & 2.

2. Cachar College, Silchar, District-Cachar is a provincialised college of the State affiliated to the Assam University, Silchar.

3. The Principal of the said college on 06.11.2020 issued an advertisement vide Advertisement No. Advt./2020/257 inviting applications from the eligible candidates for direct recruitment to various posts of Assistant Professors including one post of Assistant Professor of subject Bengali under un-reserved category, clarifying that the same has been issued in terms of the Notification No. AHE.28/2020/4 dated 04.02.2020 of the State Government in the Higher Education Department as well as letter No. DHE/CE/Misc/12/2020/4 dated 06.02.2020 of the Director of Higher Education, Assam.

4. Clause C of the said advertisement dated 06.11.2020 specified that the candidates must be Indian citizens having proficiency in local language. The eligibility criteria specified in Clause C of the said advertisement dated 06.11.2020 was in terms of the Office Memorandum of the State Government in the Higher Education Department issued under No. 407/2017/44 dated 08.11.2018.

5. The petitioner is a resident of District-Purba Medinipur, West Bangal.

6. Pursuant to the said advertisement dated 06.11.2020 of Cachar College, Silchar,

District-Cachar, the petitioner having the requisite eligibility applied for the said post and was called for interview by the college authority along with other candidates for the post of Assistant Professor of Bengali.

7. All together 25 candidates were found eligible for the post of Assistant Professor of Bengali pursuant to the advertisement dated 06.11.2020, for which selection was held on 10.02.2021 from 11 A.M. onwards in the premises of Cachar College, Silchar, itself.

8. The Assam College Employees (Provincialisation) Rules, 2010 framed under the provisions of Sub-Section 12 (1) of the Assam College Employees (Provincialisation) Act, 2005 having statutory force came into effect from 22.11.2010.

9. Rule 5 of said 2010 Rules relates to method of recruitment.

10. Rule 5 (2) of said 2010 Rules stipulates that "*for the post of Lecturer/Librarian appointment shall be made by direct recruitment with prescribed qualifications through open advertisement in two leading dailies atleast in two consecutive issues*."

11. Rule 5 (7) of said 2010 Rules provides that "*in all these cases, the Governing Body shall conduct the selection process and recommend to the Director, who shall issue orders of appointment.*"

12. Rule 7 of said 2010 Rules relates to Direct Recruitment, which provides that –

> "(a) *All appointment either by direct recruitment or by promotion shall be made by the Director on the basis of recommendations of the Governing Body based on the recommendations of the Selection Committee/Departmental Promotion Committee duly constituted.*
>
> *(b) The Director shall communicate his orders within thirty days;*
>
> *(c) The Selection Committee may hold such test of interview for all posts as may be considered necessary. For posts for which UGC has prescribed norms, no candidate shall be recruited without having the required norms;*
>
> *d) All fresh appointments shall be made on receipt of police verification report.*".

13. Following the same, the concerned Selection Committee of Cachar College, Silchar found the petitioner to be the suitable candidate and recommended her name for the post of Assistant Professor of Bengali in terms of the advertisement dated 06.11.2020 and the Governing Body of the said college along with the records of selection forwarded the name of the petitioner to the Director of Higher Education, Assam for necessary approval and issuance of order of appointment.

14. However, the Director of Higher Education, Assam informed the college authorities of all the provincialised colleges of the State that the State Government in the Higher Education Department vide letter No. AHE.429/2021/Pt/3 dated 01.02.2022 intimated that the Government of Assam in the Higher Education Department regretted to consider the proposal for appointment of Assistant Professor in the provincialised colleges, who are from outside the State of Assam.

15. Since the petitioner is from the State of West Bengal, though her name was recommended for the post of Assistant Professor of Bengali in Cachar College, Silchar in terms of her selection pursuant to the advertisement dated 06.11.2020, the Director of Higher Education, Assam did not give its approval for appointment of the petitioner in the said advertised post of Cachar College, Silchar in pursuance of the said letter dated 01.02.2022 of the State Government in the Higher Education Department, noted above.

16. Being aggrieved, the petitioner has filed this writ petition on 18.02.2022, praying amongst others, to set aside and quash the said letter of the State Government in the Higher Education Department dated 01.02.2022, the communication of the Director of Higher Education, Assam dated 10.02.2022, noted above, and also for a direction to the respondent authorities to appoint her in the post of Assistant Professor of Bengali in Cachar College, Silchar against the un-reserved post as advertised on 06.11.2020 on the basis of her selection.

17. The Court on 23.02.2022 while issuing notice to the respondents specifically directed the respondent authorities to file an affidavit stating in precise terms as to under what circumstances and under which decision of the Government of Assam it

found the petitioner ineligible to be appointed, pursuant to the said advertisement dated 06.11.2020 issued by the authorities of Cachar College, Silchar, District-Cachar.

18. However, the respondent authorities did not file any affidavit in the matter till date.

19. Pursuant to the order of the Court, the respondent authorities in the Higher Education Department of the State placed the relevant record in original, in which the State Government in the Higher Education Department issued the letter No. AHE.429/2021/Pt/3 dated 01.02.2020.

20. From the records it is seen that the Director of Higher Education, Assam submitted its report before the Government of Assam in the Higher Education Department containing the list of 137 Nos. of selected candidates for the post of Assistant Professors in different provincialised colleges of the State, selected and approved by the concerned authorities of the provincialised colleges and on preparation of the appointment orders of those 137 Nos. of approved candidates, it was detected that 4 candidates are from outside the State of Assam and accordingly, the Director of Higher Education, Assam by its communication No. DHE/CE/Misc/49/2021/65 dated 26.11.2021 wrote to the State Government in the Higher Education Department for its approval in which the concerned Departmental Minister on 27.11.2021 observed not to allow any such appointments.

21. Pursuant to said observation dated 27.11.2021, the State Government in the Higher Education Department on 01.02.2022 issued the communication No. AHE.429/2021/Pt/3 expressing its regret to consider the proposal for appointment of Assistant Professor in provincialised colleges of the State, who are from outside the State, directing the Director of Higher Education, Assam to take action accordingly.

22. On the basis of the same, the Director of Higher Education, Assam on 10.02.2022 informed the Principals of all the provincialised college/Mahavidyalaya of the State about the decision of the State Government in the Higher Education Department about such regret of the State Government in the Higher Education Department regarding appointment of Assistant Professor in the provincialised colleges

of Assam, who are from outside of the State.

23. It is to be noted herein that since the 2010 Rules, noted above, do not provide for any such guidelines for selection of Assistant Professor in provincialised colleges of the State, as such, the State Government in the Higher Education Department vide No. AHE.407/2017/44 dated 08.11.2018 issued an Office Memorandum in that regard. Thereafter, the State Government in the Higher Education Department vide No. AHE.407/2017/54 dated 25.11.2020 issued another Office Memorandum stipulating the guidelines for selection of Assistant Professor/Librarian in provincialised colleges and Government Model Colleges of the State and in both of these Office Memorandums dated 08.11.2018 and 25.11.2020, respectively, one of the criteria is that a candidate must have proficiency in local language, amongst other eligibility criteria.

24. However, both of these Office Memorandums, noted above, do not specify any such clause that only the resident and/or domicile of Assam shall be eligible to apply for the post of Assistant Professor in the provincialised colleges of the State. Moreover, the Advertisement dated 06.11.2020 issued by the Cachar College authority, pursuant to which the petitioner appeared did not state the candidates must be from the State of Assam or must be a domicile of Assam.

25. From the records it is also seen that the Director of Higher Education, Assam gave its approval for appointment of the petitioner and even the State Government in the Higher Education Department also conveyed its Administrative Approval vide letter No. AHE.429/2021/23 dated 18.11.2021, but when the Director of Higher Education, Assam while preparing the appointment orders found that the petitioner belongs to the State of West Bangal, then on 26.11.2021 it wrote to the State Government in the Higher Education Department seeking necessary instruction regarding issuance of appointment orders of such selected candidates who are from outside the State of Assam for whom there is already Administrative Approval from the State Government in the Higher Education Department.

26. Article 16 of the Constitution of India provides that-

"(1) *There shall be equality of opportunity for all citizens in matters*

relating to employment or appointment to any office under the State.

(2) No citizen shall, on ground only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

[4(A) Nothing in this article shall prevent the State from making any provision for reservation (in matters of promotion, with consequential seniority, to any class) or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]"

[4(B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause 4 (A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.]

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body

thereof shall be a person professing a particular religion or belonging to a particular denomination.

[(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.]"

27. Mr. K Gogoi, Standing counsel, Higher Education Department fairly submitted that there can not be any such restrictions with regard to the public employments violating the provision of Article 16 of the Constitution of India.

28. For proper adjudication of the matter, Mr. Gogoi has also placed a Constitutional Bench decision of the Hon'ble Apex Court in the case of "*Chebrolu Leela Prasad Rao & Others. -Vs- the State of Andhra Pradesh and Others.*" reported in *(2021) 11 SCC 401* as well as in the case of "*Satyajit kumar and Others. -Vs- the State of Jharkhand & Others.* " reported in *(2022) 4 JLJR 60 : (2022) 8 JT 50 : (2022) 11 SCALE 640.*

29. Mr. Gogoi further placed a Constitution Bench decision of the Hon'ble Apex Court in the case of "*D.P. Joshi -Vs- the State of Madhya Bharat and Another."* reported in *AIR 1955 SC 334* that relates to domicile/residence and with regard to admission in a particular course in the State of Madhya Bharat, now Madhya Pradesh.

30. Considering the entire aspect of the matter and after hearing the learned counsels for the parties, it is found that the decision of the State Government in the Higher Education Department communicated vide letter No. AHE.429/2021/Pt/3 dated 01.02.2022 being in violation of the provisions of the Article 16 of the Constitution of India, is not tenable in law.

31. Accordingly, the said decision of the State Government in the Higher Education Department communicated vide letter No. AHE.429/2021/Pt/3 dated 01.02.2022 being illegal, is hereby set aside and quashed.

32. Consequently, the communication dated 10.02.2022 of the Director of Higher

Education, Assam informing the Principals of all the provincialised colleges of Assam about the said decision of the State Government in the Higher Education Department also being not tenable in law, is hereby set aside and quashed.

33. Since the Director of Higher Education, Assam had already granted its approval regarding selection of the petitioner to the Post of Assistant Professor of Bengali under the un-reserved category in the Cachar College, Silchar, District-Cachar in pursuance of the advertisement dated 06.11.2020, which has also got the Administrative Approval of the State Government in the Higher Education Department under No. AHE. 429/2021/23 dated 18.11.2021, therefore, the Director of Higher Education, Assam is directed to issue Appointment Order to the petitioner for the Post of Assistant Professor of Bengali in the Cachar College, Silchar, District-Cachar in terms of the advertisement dated 06.11.2020 forthwith.

34. With the above observation and direction, this writ petition stands disposed of.

35. The relevant records of the respondents in the Higher Education Department of the State – File No. AHE. 429/2021/Pt with eCF No. 180628 in original placed before the Court pursuant to the order of the Court dated 07.02.2023, be returned to Mr. K Gogoi, Standing counsel, Higher Education Department, obtaining necessary acknowledgment from him in that regard.

JUDGE

Comparing Assistant