

GAHC010044292023



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

Case No. : WP(C)/1112/2023

FAKAR UDDIN SARKAR
S/O- ABDUL HAMID SARKAR, R/O- VILL. AND P.O. KHOIRABARI, DIST.
BARPETA, ASSAM, PIN- 781315.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM, REVENUE AND DISASTER MANAGEMENT
(L.R.) DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT (L.R.) DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE COMMISSIONER OF LOWER ASSAM DIVISION
PANBAZAR
GUWAHATI-1.

4:THE DEPUTY COMMISSIONER
BARPETA
P.O. AND DIST. BARPETA
ASSAM
PIN- 781301.

5:THE CIRCLE OFFICER
BARNAGAR REVENUE CIRCLE
SORBHOG
DIST. BARPETA
ASSAM
PIN- 781317.

6:SUJIT SAHA
S/O- LATE NIRANJAN SAHA
R/O- VILL. AND P.O. KHOIRABARI
DIST. BARPETA
ASSAM
PIN- 781315.

7:THE BLOCK PRESIDENT OF BHARATIA JANATA PARTY
GOBORDHANA MONDAL COMMITTEE
KATAJHAR PATHAR
P.O. KATAJHAR
DIST. BARPETA
ASSAM
PIN- 781315

Advocate for the Petitioner : MR. I H SAIKIA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 27.02.2023

Heard Mr. I.H. Saikia, the learned counsel appearing on behalf of the Petitioner. Mr.S. Dutta, the learned counsel appears for the Respondent Nos. 1 and 2 and Mr. J.K. Goswami, the learned counsel appears for the respondent Nos. 3, 4 and 5.

2. Taking into account the order which this Court proposes to pass the name of the respondent Nos. 6 and 7 are struck off.

3. The instant matter has been taken up for disposal at the motion stage itself.

4. The case of the petitioner herein is that the father of the petitioner was earlier the Goan Pradhan of Charge No.20 of Gobardhana Mouza, under Barnagar Revenue Circle, Sorbhog in the district of Barpeta. The father of the petitioner retired on 01/04/2022. Prior to the retirement of his father, the petitioner was allowed by the Circle Officer to assist his father in discharging the duties of the post of Gaonburah.

5. It is the case of the petitioner that an advertisement was issued on 3/9/2022 for filling up the vacant post of Gaon Pradhan. The petitioner in pursuance to the said advertisement applied for the post of Goan Pradhan of Charge No.20, Gobardhana Mouza, Barnagar Revenue Circle, Sorbhog. But surprisingly the respondent authorities vide the notification dated 3/1/2023 selected the respondent No. 6 in respect of Charge No.20, Gobardhana Mouza, under Barnagar Revenue Circle, Sorbhog in the district of Barpeta.

6. Being aggrieved, the petitioner the petitioner had filed a writ petition which was registered and numbered as W.P.(C) No. 241/2023 challenging the selection of one Sujit Saha as Gaon Pradhan. However, the said writ petition was withdrawn by the petitioner with a liberty to approach the appropriate forum. Thereupon the petitioner filed an appeal under Executive Instructions No. 162(C) of the Assam Land and Revenue Regulation, 1886 challenging the selection order by way of notification dated 3/1/2023 issued by the Deputy Commissioner, Barpeta before the Court of the Commissioner, Lower Assam Division, Guwahati who is the respondent No. 3 in the instant proceedings. The appeal was filed on 21/2/2023 as could be seen from paragraph 10 of the writ petition. However, the office of the respondent No. 3 neither have registered the appeal nor the respondent No. 3 have taken up the matter for adjudication. It is under such circumstances that the petitioner has approached this Court under Article 226 of the Constitution challenging the select list dated 3/1/2023 and also praying for other consequential reliefs. The primary ground on which the instant writ petition has been filed is that the office of the respondent no. 3 which is the appellate authority as per the executive instructions have neither registered the appeal nor taken up the appeal for consideration and as such the remedy which has been sought for in the appeal proceedings become otiose.

7. Mr. J.K. Goswami, the learned counsel appearing on behalf of the respondent Nos. 3, 4 and 5 submitted that the instant writ petition can be disposed off with a direction to the office of the respondent No. 3 to immediately register, if not already

registered, and for taking up the appeal expeditiously.

7. Upon hearing the learned counsel for the parties, this Court is of the opinion that as an appeal has already been filed before the respondent No. 3, it would not be proper for this Court to deal with the same matter inasmuch as it would result in two parallel proceedings challenging the same order.

8. Considering the above, this Court therefore directs the office of the respondent No. 3 to register the appeal so filed by the petitioner on 21/2/2023 forthwith, if not already registered and the appeal be taken up for consideration by the respondent No. 3 immediately thereafter.

9. The direction to consider the appeal by the respondent No. 3 is to be done not later than 6th of March, 2023. In the meantime, the respondent authorities shall till 6th of March, 2023 or till the consideration by the respondent No. 3 whichever is earlier shall not give effect to the selection proceedings dated 3/1/2023.

10. With the above observations and directions the petition stands disposed off.

JUDGE

Comparing Assistant