

GAHC010036402020



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

Case No. : WP(C)/1460/2020

UPAMA CHAKRAVARTY AND 4 ORS.
D/O- LT. BASANTA CHAKRAVARTY
VILL- JYOTINAGAR
P.O. KRISHNAI
DIST.- GOALPARA
ASSAM
PIN- 783126

2: FIRDUS ALI
S/O- ABDUL MANNAN
VILL- PADUPARA
P.O. AMBARI
P.S. DHUPDHARA
DIST.- GOALPARA
ASSAM
PIN- 783123

3: RAJESH KUMAR MITRA
S/O- BADAL MITRA
VILL- RAVAPARA
P.O. DHUPDHARA
P.S. DHUPDHARA
DIST.- GOALPARA
PIN- 783123

4: PUTUL KAKATY
S/O- SADANANDA KAKATY
VILL- PUB GHAGRA MAZGAON
P.O. GHAGRA BASTI
P.S. GOHPUR
DIST.- BISWANATH
PIN- 784168

5: BABUL GOSWAMI

S/O- LT. HARA NATH GOSWAMI
VILL- PUB BARANGABARI
P.O. BARANGABARI
P.S. GOHPUR
DIST.- BISWANATH
PIN- 784172
VERSUS

THE STATE OF ASSAM AND 9 ORS.
REP. BY THE SECY. TO THE GOVT. OF ASSAM
POWER (ELECTRICITY) DEPTT.
A-BLOCK
4TH FLOOR
ASSAM
SECRETARIAT
DISPUR
GHY-06

2:THE CHAIRMAN
APDCL
BIJULI BHAWAN
PALTAN BAZAR
GHY-01

3:THE MANAGING DIRECTOR
APDCL
BIJULI BHAWAN
PALTAN BAZAR
GHY-01

4:THE CHIEF GENERAL MANAGER (HRA)
APDCL
BIJULI BHAWAN
PALTAN BAZAR
GHY-01

5:THE CHIEF GENERAL MANAGER (DISTRIBUTION)
CAR
APDCL
BIJULI BHAWAN
PALTAN BAZAR
GHY-01

6:ASSTT. GENERAL MANAGER
GOALPARA ELECTRICAL DIVISION
APDCL
BHALUKDUBI
GOALPARA

7:ASSTT. GENERAL MANAGER
BISWANATH ELECTRICAL BRANCH
APDCL
BISWANATH

8:THE SUB DIVISIONAL ENGINEER
GOHPUR ELECTRICAL SUB-DIVISION
APDCL
CAR GOHPUR
9:THE SUB DIVISIONAL ENGINEER
DHUPDHARA ELECTRICAL SUB DIVISION APDCL
DHUPDHARA
10:THE SELECTION COMMITTEE-B
APDCL/APDCL/AEGCL
BIJULI BHAWAN
PALTAN BAZAR
GHY-01
REP. BY ITS CHAIRMAN

Advocate for : MR. A SARMA
Advocate for : SC
APDCL appearing for THE STATE OF ASSAM AND 9 ORS.

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT

Date : 12-12-2023

1. Heard Mr. A Sarma learned counsel for the petitioners. Also heard Mr. B Choudhury, learned standing counsel, APDCL.
2. The present writ petition is filed with the following prayers:
 - I. The provisional merit list of all the 1423 candidates published on 10.2.2020 under the authority of respondent No.3 for the post of Office cum Field Assistant (experience) in APDCL/AEGCL/APGCL on the basis of OMR based examination held on 28.4.2019 should not be set aside and quashed.
 - II. The notification bearing No.APDCL/Selection Committee – B/2017-18/Pt-I/1 dated 10.2.2020 issued by the respondent No.3

short listing as many as 692 candidates from the provisional merit list published on the same date, should not be set aside and quashed as a whole for want of jurisdiction as well as violation of the Hon'ble Court's order dated 27.2.2019 passed in WP(C) No.1359/2019.

3. The grievance of the petitioners is that the petitioners were not allowed to participate in a selection process for recruitment to the post of Office cum Field Assistant, Sahayak and Mali pursuant to an advertisement dated 14.08.2018 issued by the Assam Power Distribution Company limited (APDCL) and two of its sister companies i.e., Assam Electricity Grid Corporation Limited (AEGCL) and Assam Power Generation Corporation Limited (APGCL).

4. This Court at the motion stage itself allowed the petitioners to participate in the selection process subject to filing an appropriate application by the petitioners within the time in terms of an advertisement before the competent authority. This court vide order dated 27.02.2019 passed an order on the basis of a similar order of this Court dated 13.02.2019 passed in WP(C) No.990/2019. Subsequent to that the petitioners have participated in the selection process.

5. A large number of petitioners with a similar grievance approached this court by filing different writ petitions and by a common judgment dated 27.08.2019 passed in different writ petitions including that of the writ petition preferred by the petitioner, this Court issued the following directions:

- I. The reconstituted committee shall examine and find out the actual experience of the outsourced workers including that of the petitioners in terms of the office order dated 24.08.2019;
 - II. Those applicants who are found to be eligible as per the experience criteria in terms of the advertisement and who could not appear in the written examination, a separate written examination shall be arranged for such candidates. Those who had appeared in the written examination need not appear again;
 - III. The result of the written examination already conducted on 28.04.2019 should not be declared now and should await completion of the separate examination of those found eligible by the committee;
 - IV. Thereafter results of both the examination should be combined and a consolidated select list should be declared;
 - V. The above exercise shall be completed within a period of 3 months from the date of receipt of a certified copy of this order;
 - VI. If any applicant has any further grievance relating to non-suitability on the ground of experience etc., it will be open to him/her to avail his/her legal remedy in accordance with law.
6. Pursuant to such direction after an enquiry the Employer submitted a final report of actual experience of the petitioners and all the similarly situated outsourced workers.
 7. Pursuant to order of this court dated 28.11.2023 the relevant excerpts pertaining to the petitioners were produced and copies were

also given to the learned counsel for the petitioners.

8. The aforesaid excerpts of the report reflects that the Petitioner No. 1 Upama Chakravarty had only two months of experience, petitioner Nos.2 and 3 namely Firdus Ali and Rajesh Kumar Mitra and petitioner No. 4 Putul Kakaty had only four years of experience and petitioner No.5 Babul Goswami had only 4 years two months of experience respectively which is far less than the required experience of five years or 1780 days in the last 7 (seven) years and accordingly their candidatures were rejected.

9. In the considered opinion of this court, as prior to filing of this present petition, a determination was made pursuant to an order of this court passed in WP(C) No.2643/2019 and after verification of record by an Enquiry Committee, whereby the candidature of the petitioners was rejected for want of experience, this court cannot endeavor to decide the correctness or otherwise of the determination made by the enquiry committee so far the same relates to the petitioners and determine the merit of the claim of the petitioners. Such exercise shall amount to decide the correctness of the determination made by the Enquiry Committee without the same being under challenge.

10. The direction of this court passed in WP(C) No.2643/2019 is unambiguous and it was directed to the Committee to examine and find out the actual experience of all the outsourced workers and it was not confined only to the writ petitioners. It is also clear from the direction that claim of those applicants who were found to be eligible

as per experience were required to be considered. There are two categories of such persons, firstly, those who participated in the earlier selection process having experience and secondly, those who has not been allowed to participate in the selection process. Accordingly, it was provided that those who participated in the earlier selection process and are found to be eligible need not participate in a fresh selection process, however, those who could not participate in the selection process be allowed to participate in a fresh selection process to be conducted for those persons. Therefore, in all meaning and purport, such examination and consideration is to be based on first finding of the fact of eligibility which also includes actual experience of the outsourced workers.

11. From the said direction of this court, it is also clear that if any candidate is having any grievance relating to the dictum of non suitability on the ground of experience etc, it will be open for him/her to avail his/her legal remedy in accordance with law. However, in the case in hand such legal remedy has not been sought for in the present writ petition.

12. That being the position this Court is of the view that the present petition cannot be entertained and accordingly the same stands closed. However, a liberty is granted to the petitioner, if so advised, to take recourse of the remedy as envisaged in the direction issued by this court under the direction No.6 of order dated 27.08.2019 passed in WP(C) No.2643/2019, if permissible under law.

13. With the aforesaid, the present writ petition stands closed.

Parties to bear their own cost.

JUDGE

Comparing Assistant