

GAHC010054032023



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

Case No. : WP(C)/1355/2023

PRANJAL HANDIQUE
S/O- HIRA NATH HANDIQUE ,
R/O- VILLAGE AND P.O- KHOWANG,
DIST- DIBRUGARH, ASSAM, PIN-785676

VERSUS

THE STATE OF ASSAM AND 8 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
DEPTT OF HIGHER EDUCATION, DISPUR, GHY- 781006, ASSAM

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI
ASSAM
PIN- 781019.

3:THE PRINCIPAL
TINGKHONG COLLEGE
AS WELL AS MEMBER SECRETARY OF SELECTION COMMITTEE
P.O- TINGKHONG
DIST- DIBRUGARH
ASSAM
PIN-786612

4:THE GOVERNING BODY
TINGKHONG COLLEGE
REP. BY ITS PRESIDENT
P.O- TINGKHONG
DIST- DIBRUGARH
ASSAM
PIN-786612

5:RUPAM CHANGMAI (RP NO-4)
UR
C/O- TINGKHONG COLLEGE
P.O- TINGKHONG
DIST- DIBRUGARH
ASSAM
PIN-786612

6:SURAJIT SONOWAL
RP- NO.5
ST
(P)
C/O- TINGKHONG COLLEGE
P.O- TINGKHONG
DIST- DIBRUGARH
ASSAM
PIN-786612

7:DIBAKAR KOTOKY
RP NO-6
OBC
C/O- TINGKHONG COLLEGE
P.O- TINGKHONG
DIST- DIBRUGARH
ASSAM
PIN-786612

8:BONITA CHOWDANG
RP NO- 7
UR
C/O- TINGKHONG COLLEGE
P.O- TINGKHONG
DIST- DIBRUGARH
ASSAM
PIN-786612

9:JISHUWANTA CHANGMAI
RP NO-3
UR
GRADE IV
C/O- TINGKHONG COLLEGE
P.O- TINGKHONG
DIST- DIBRUGARH
ASSAM
PIN-78661

Advocate for the Respondent : SC, HIGHER EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

13/03/2023

Heard Mr. J Roy, learned Senior counsel assisted by Mr. R Hazarika, learned counsel for the petitioner and Mr. A R Tahbildar, learned Standing counsel, Higher Education Department for the respondent Nos. 1 & 2.

Matter pertains to selection and appointment to the post of Laboratory Bearer and Grade-IV in Tingkhong College, Tingkhong, District-Dibrugarh advertised on 23.11.2022.

The Principal-cum-Secretary of Tingkhong College, Tingkhong on 23.11.2022 amongst others advertised 4 (four) posts of Laboratory Bearer (Grade-IV) including Roster Point No. 4 for Unreserved, Roster Point No. 5 for Schedule Tribe (Plains), Roster Point No. 6 for OBC and Roster Point No. 7 for Unreserved and 1 (one) post of Grade-IV at Roster Point No. 3 for Unreserved.

The petitioner along with others including the respondent Nos. 5 to 9 applied for the posts of Laboratory Bearer at Roster Point No. 4 (Unreserved), Roster Point No. 6 (OBC) and Roster Point No. 7 (Unreserved) and also for Grade-IV post at Roster Point No. 3, whereas the respondent No. 7 applied for the post of Laboratory Bearer at Roster Point No. 4 (Unreserved), Roster Point No. 6 (OBC), Roster Point No. 7 (Unreserved).

The petitioner on being called for appeared in the written test held on 22.01.2023 for the said advertised posts as well as for Viva Voce held on 14.02.2023. The respondent college authority is yet to declare the results of the said selection.

The petitioner has reliably learnt that on 21.02.2023, the respondent No. 7 submitted an application before the Governing Body of said Tingkhong College, Dibrugarh stating that he applied for the posts of Grade-IV at Roster Point No. 3 as well as for the post of Laboratory Bearer (Grade-IV) at Roster Point Nos. 4, 6 and 7 in that college as advertised on 23.11.2022 and appeared in the written test held on 22.01.2023 and also in the Viva Voce held on 14.02.2023 and that on advice and suggestion of the interview committee, he signed a letter stating that he had withdrawn his

candidature from the post of Grade-IV at Roster Point No. 3 as well as (Grade-IV) Laboratory Bearer at Roster Point Nos. 4 and 7 and that after consulting with his family members, he came to know that his said decision to withdraw his candidature for those posts was wrong on that day in such a situation and as such, by the said application dated 21.02.2023, the respondent No. 7 intimated the Governing Body of the said college regarding cancellation of his said withdrawal of candidature submitted on 14.02.2023.

In the meanwhile, the petitioner submitted representations before the Director of Higher Education (DHE), Assam on 04.02.2023, 23.02.2023, 24.02.2023 and 27.02.2023 submitting that the said letter of the respondent No. 7 written to the Governing Body of Tingkhong College pertaining to withdrawal of his candidature created suspicion in the mind of the candidates that the process of selection for the posts advertised on 23.11.2022 was not free and fair rather it indicated that the members of the Selection Committee conducting the entire process of selection at the behest of someone else so as to accommodate the interested candidates.

As such, by the said representations, the petitioner prayed before the DHE, Assam that before according any such approval to the selection recommended by the Selection Committee and the Governing Body of Tingkhong College and before issuance of any appointment order to those Grade-IV posts advertised on 23.11.2022, the said authority shall pass an order for an enquiry into the matter of selection to the single post of Grade-IV and 4 (four) posts of Laboratory Bearer in said Tingkhong College.

By placing the Annexure-12 to this petition that relates to the relevant portion of the copy of the Office Peon Book of Tingkhong College, the petitioner placed before the Court that the authorities of the respondent college recommended the respondent No. 5 for the posts of Laboratory Bearer at Roster Point No. 4 (Unreserved); respondent No. 6 for the posts of Laboratory Bearer at the Roster Point No. 5 (Schedule Tribe (Plain)); respondent No. 7 for the posts of Laboratory Bearer at Roster Point No. 6 (OBC); respondent No. 8 for the posts Laboratory Bearer at Roster Point No. 7 (Unreserved) category and the respondent No. 9 to the lone post of Grade-IV at Roster Point No. 3 in an Unreserved category.

Further, by placing a communication dated 16.02.2023 of the Principal of Tingkhong College (Annexure-13 to this petition), the petitioner placed before the Court that in terms of the said communication dated 16.02.2023, the Governing Body of said Tingkhong College in its meeting held on 21.02.2023 reiterated those facts noted in their communication dated 16.02.2023, noted above

and as such, there could not have been any such meeting of the Governing Body of said Tingkhong College on 17.02.2023.

The *Assam College Employees (Provincilisation) Rules, 2010* framed under Section 12(1) of the *Assam College Employees (Provincialisation) Act, 2005* has a statutory force.

Rule 5 of the said 2010 Rules relates to "Method of Recruitment" and Rule 7 of the said 2010 Rules prescribes for "Direct Recruitment".

Rule 5 (2) of the said 2010 Rules amongst others provides that *in respect of Grade-III and Grade-IV posts, the list of candidates shall be collected from the local Employment Exchange/advertisement in newspaper.*

Rule 5(7) of the 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 the orders of appointment.*

From the above provisions, it can be seen that the recruitment to the post of Grade-IV in any such provincialised college in the State as provided under the said 2010 Rules is to be made by way of direct recruitment.

Rule 7 of the said 2010 Rules provides for "Direct Recruitment" and reads as follows :

- (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 recruitment without having the required norms;*
- (d) All fresh appointments shall be made on receipt of police verification report.*

From the perusal of Rules 5 and 7 of the said 2010 Rules, it can be seen that it is the Director, who is the concerned authority to issue necessary appointment order to the teaching and

non-teaching staff of a provincialised college of the State that too on the basis of the approval of the Governing Body based on the duly constituted recommendation of the Selection Committee/Departmental Promotion Committee.

Till such decision is taken by the DHE, Assam to appoint any such Grade-III/Grade-IV on the basis of selection, the petitioner cannot submit that it has any such right for his selection and appointment since it is the Director of Higher Education, Assam only, who on proper scrutiny shall issue the necessary appointment order to the candidate selected by the Selection Committee and recommended by the Governing Body of the college concerned.

Considering the above, the prayer made by the petitioner at this stage found to be premature.

However, the petitioner on or before 30.03.2023 along with the certified copy of this order and a copy of this writ petition including the Annexures appended thereto may approach the DHE, Assam by filing a representation for redressal of his grievance regarding the process of selection and appointment to the 4 (four) posts of Laboratory Bearer and 1 (one) post of Grade-IV in said Tingkhong College, Tingkhong for which advertisement was issued on 23.11.2022.

In the event of filing any such representation/application by the petitioner within the time so specified as directed above, the DHE, Assam after due verification of such selection shall pass a reasoned order, within a period of 45 (forty five) days, regarding the selection and appointment to the 4 (four) posts of Laboratory Bearer (Grade-IV) and 1 (one) post of Grade-IV advertised on 23.11.2022 in said Tingkhong College, Tingkhong, intimating the petitioner about the outcome of his said representation.

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

JUDGE

Comparing Assistant