

GAHC010056332023



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

Case No. : WP(C)/1715/2023

DR. HAFIZA KHATUN
D/O- LATE MD. HABIBAR RAHMAN, VILL AND P.O. TARAKANDI, P.S.
KALGACHIA, DIST.- BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
TO BE REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HIGHER
EDUCATION, DISPUR, GHY-06

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE GOVERNING BODY OF DHING COLLEGE
REP. BY THE SECRETARY OF THE COLLEGE
DHING
DIST.- NAGAON
PIN- 782123

4:THE SELECTION COMMITTEE FOR THE POST OF ASSISTANT PROFESSOR
DEPTT. OF ENGLISH
DHING COLLEGE
REP. BY ITS CHAIRPERSON
DHING COLLEGE
DHING
NAGAON
PIN- 782123

5:THE PRINCIPAL CUM SECRETARY
DHING COLLEGE

DHING
DIST.- NAGAON
ASSAM

6:SHIBASISH PURKAYASTHA
ASSISTANT PROFESSOR
DEPTT. OF ENGLISH
OFFICE OF THE PRINCIPAL S.S. COLLEGE HAILAKANDI
DIST.- HAILAKANDI
PIN- 78815

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

27.03.2023

Heard Mr. H R A Choudhury, learned Senior counsel assisted by Mr. F U Barbhuiya, learned counsel for the petitioner and Mr. A R Tahbildar, learned Standing counsel, Higher Education Department, Assam for the respondent Nos. 1 & 2.

The authorities of Dhing College, District-Nagaon on 12.07.2022 issued an Advertisement inviting applications for the posts of Assistant Professor against sanctioned vacant posts in various subjects including a post of Assistant Professor of English at Roster Point No. 07 for un-reserved category, intimating all the concerned candidates that applications for the said posts should reach the Office of the Principal cum Secretary of the Dhing College, Nagaon on or before 15 days from the date of publication of the said advertisement.

It is stated that the petitioner having a brilliant academic record, 68.50% of marks in Class-X HSLC Examination; 77.60% marks in Higher Secondary Examination (Arts); 51.50% of marks in her Graduation with major in English; 75% marks in her Master Degree in English and Ph.D. Degree from OPJS University, Rajasthan and also has qualification of the State Level Eligibility Test (SLET) in the year 2021.

The petitioner also stated that she has sufficient number of paper publications,

publication of two books as well as two numbers of Scopus publications with regard to the subject of English.

The petitioner further stated that she is serving as an Assistant Professor of English in C.K. College, Chakla, District-Bongaigaon since 11.10.2017.

Petitioner submitted that disregarding her better claim and without awarding proper marks to her as per her entitlements in terms of the Office Memorandum No. AHE.239/2021/68 dated 24.01.2022 issued by the State Government in the Higher Education Department that relates to guidelines for selection of Assistant Professor in Provincialised/ Government/ Government Model colleges of Assam; the authorities in the Dhing College, Nagaon recommended the name of the respondent No. 6 for the said advertised post of Assistant Professor of English in terms of the advertisement dated 12.07.2022 where the Governing Body of said Dhing College forwarded the name of the said respondent No. 6 for necessary approval and appointment to the said post which is presently pending before the Director of Higher Education (DHE), Assam.

The petitioner has also brought to the notice of the Court that she filed an application under the RTI Act with regard to the marks allotted to her vis-à-vis the respondent No. 6 during the selection for the post of Assistant Professor in English in Dhing College, Nagaon in terms of the advertisement dated 12.07.2022, but the same has not yet been furnished to her stating that all the relevant records regarding selection to the post of Assistant Professor in Dhing College, Nagaon as advertised on 12.07.2022 as had been forwarded to the DHE, Assam, those are with the said authority.

The Assam College Employees (Provincialisation) Rules, 2010 framed under Section 12 of the Assam College Employees (Provincialisation) Act, 2005 having statutory force regulates the recruitment and condition of service of the employees of the provincialised colleges of the State of Assam.

As per Rule 5(2) of said 2010 Rules, the post of Lecturer in a provincialised college is to be made by direct recruitment with prescribed qualifications through open advertisement in two leading dailies atleast in two consecutive issues.

Rule 5 (7) of the said 2010 Rules provides that the Governing Body shall conduct the selection process and recommend to the Director, who shall issue orders of

appointment.

Rule 7 of the said 2010 Rules relates to Direct Recruitment which stipulates 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 recruited without having the required norms;*
- (d) All fresh appointments shall be made on receipt of police verification report.”*

On being enquired and on instruction, Mr. Choudhury, learned Senior counsel submitted that the recommendation of the Dhing College, Nagaon recommending the name of the respondent No. 6 for the post of Assistant Professor of English as advertised on 12.07.2022 is presently pending before the DHE, Assam.

Mr. Choudhury, on instruction further submitted that the respondent No. 6 is presently serving as an Assistant Professor of English in a provincialised college, namely, Srikishan Sarda College, Hailakandi.

It is to be noted herein that an application of the petitioner submitted before the DHE, Assam on 08.12.2022 is presently pending before the said authority for necessary consideration.

It is well settled that the right of the petitioner for the post of Assistant Professor of English in Dhing College, Nagaon pursuant to the selection in terms of the advertisement dated 12.07.2022 shall accrue only when the Director of Higher Education, Assam following the provisions of Rule 7 of said 2010 statutory Rules issues an appointment order for the said post.

Since the matter of appointment of the Assistant Professor of English in Dhing

College, Nagaon as advertised on 12.07.2022 is presently pending before the DHE, Assam, the Court is of the considered opinion that this writ petition is a premature one.

However, it is made clear that the petitioner may approach the Director of Higher Education, Assam, by submitting a representation on or before 03.04.2023, stating her grievances regarding the selection to the post of Assistant Professor of English in Dhing College, Nagaon in terms of the advertisement dated 12.07.2022, noted above, along with a certified copy of this order and a copy of this writ petition including the annexures appended thereto, obtaining necessary acknowledgment from the said authority in that regard.

In the event of filing such representation by the petitioner stating her grievances as directed above, the Director of Higher Education, Assam on due verification of the relevant records with regard to the grievances and allegations made by the petitioner, shall consider the same in accordance with law and the Rules provided in the said 2010 Rules, noted above, and shall dispose of the same within a period of 60 (sixty) days from the date of its receipt, intimating the petitioner about the outcome of the same.

In the event of filing such representation by the petitioner as directed above, the DHE, Assam without disposing of the said representation of the petitioner shall not pass any such order of appointment to the recommended candidates by the Dhing College, Nagaon with regard to the post of Assistant Professor of English pursuant to the said advertisement dated 12.07.2022, noted above.

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

JUDGE

Comparing Assistant