

GAHC010061222023



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

Case No. : WP(C)/1808/2023

MUKLESUR RAHMAN
S/O- LATE HASEN KHAN,
VILLAGE- KAMALPUR PAM,
P.O.- BARBALA,
DISTRICT- BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
ELEMENTARY EDUCATION,
DISPUR, GUWAHATI- 781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DEPUTY COMMISSIONER
BARPETA
ASSAM
PIN- 781301.

4:THE SUB-INSPECTOR OF SCHOOLS
BARPETA
DIST.- BARPETA
ASSAM
PIN- 781301

Advocate for the Petitioner : Mr M U Ahmed
Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

08-05-2023

Heard Mr. M.U.Ahmed, learned counsel for the petitioner and Mr. B. Kaushik, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1, 2 & 4. Also heard Mr. G. Bokolial, learned Government Advocate, Assam for the respondent No. 3.

2. It is stated by the petitioner that he passed Class 10 + 2 examination in the year 2002 under the Assam Higher Secondary Education Council and obtained his graduation in the year 2005 from Gauhati University and that he also passed Upper Primary Teacher Eligibility Test which was held on 31.10.2021 and the result of which was declared on 28.01.2022. Further, he obtained Diploma in Elementary Education (D.El.d) in the year 2019 from the District Institute of Education and Training, Barpeta.

3. Pursuant to the Advertisement-A issued earlier on 18.09.2021 by the Director of Elementary Education, Assam though the petitioner applied for his appointment to the post of Assistant Teacher for provincialised elementary schools of the State but he could not succeed.

4. The Director of Elementary Education, Assam on 11.02.2023 issued another advertisement being Advertisement-B No. 255733/15 for filling up of 1433 Nos. of posts of Assistant Teachers and Science Teachers in provincialised upper primary schools of the State and he being eligible, applied for the said post of Assistant Teacher for the District of Dhubri giving his 2nd preference district of Kamrup (Metro) and 3rd preference district of Dhemaji.

5. The petitioner stated that his date of birth is 31.12.1983 and if he is not selected and does not get any appointment pursuant to the said advertisement dated 11.02.2023, noted above, as he is going to attain the maximum age for recruitment in any public post, he will be left out from any such appointment to the public post.

6. Hence, this writ petition preferred by the petitioner.

7. It is stated by the petitioner that in the year 2021, he met with an accident and sustained injuries on his hand, pursuant to which, he annexed the Disability Certificate bearing No.

AS0420619830082893 dated 15.02.2022 as Annexure-8 to this petition, whereby the Issuing Medical Authority, Barpeta, Assam specified that the petitioner is found to be with locomotor disability, diagnosed with his case of Fracture 4th Metucarpul & with stiffer left hand and 40% temporary disability in relation to his fingers of left hand stating that the said certificate of disability issued in favour of the petitioner dated 15.02.2022 is valid till 15.02.2023.

8. It is also stated by the petitioner that though the period of Disability Certificate issued in his favour on 15.02.2022 by the Issuing Medical Authority, Barpeta, Assam has ceased to exist but till date, he is suffering from disability in his left hand.

9. Considering the same, the petitioner has prayed for direction to the respondent authorities to appoint him pursuant to the said Advertisement-B dated 11.02.2023 issued by the Director of Elementary Education, Assam in provincialised upper primary schools of the State as an Assistant Teacher as he fulfils the requisite eligibility and further to issue writ of mandamus directing the respondent authorities, more particularly, the Director of Elementary Education, Assam to initiate appropriate step to appoint the petitioner on the grounds comes under the category of Disability and Economically Weaker Section (EWS).

10. From the Advertisement-B dated 11.02.2023, noted above, it is seen that Clause-20 of said Advertisement dated 11.02.2023 has specifically provided for reservation for OBC/MOBC/SC/ST(P)/ST(H)/PwD/Women/Ex-servicemen etc. as per existing Government Rules and there is no such reservation in the heading of Economically Weaker Section (EWS).

11. Further, it is seen from the Disability Certificate issued in favour of the petitioner by the Issuing Medical Authority, Barpeta, Assam on 15.02.2022 regarding his locomotor disability with 40% temporary disability in relation to his fingers of left hand was only for a period of one year, it is upto 15.02.2023 and from the application of the petitioner that he submitted on 25.02.2023 pursuant to the Advertisement-B dated 11.02.2023 issued by the Director of Elementary Education, Assam annexed to this petition as Annexure-11, it is seen that the petitioner has not claimed for any benefit under the reservation policy of PwD category.

12. Clause 22 of the said Advertisement-B dated 11.02.2023 clearly provides the selection process for the posts of Assistant Teachers and Science Teachers in provincialised upper primary schools of the State wherein with regard to the (i) Higher Secondary School Leaving Certificate Examination or its equivalent, (ii) Graduation, (iii) Assam Teachers Eligibility Test/Central Teachers Eligibility Test for upper primary schools, (iv) Professional qualification (Diploma in Elementary Education or Bachelor of Education etc.) marks are proportionate to the percentage of marks secured in the examination to the

maximum marks of 100, wherein an example has also been provided that if a candidate secures 54% aggregate marks in Higher Secondary School Leaving Certificate Examination, he/she shall be given 54 marks for the Higher Secondary School Leaving Certificate Examination, (v) maximum of 10 marks under the heading of NCC-C Certificate and 5 marks for NCC-B Certificate, (vi) maximum of 10 marks for Certificate in Recognized Sport representing Assam officially at National Level and (vii) maximum of 10 marks for Achievements in Fine Arts and Cultural Activities representing the State officially at National Level, altogether maximum marks obtained 430.

13. Needless to say that the petitioner's name shall figure in the position for appointment to the post of Assistant Teacher in Upper Primary Schools in terms of the marks that he shall obtain as determined in pursuance of said selection process specified in Clause-22 of the said Advertisement-B dated 11.02.2023 (Annexure-10 to this petition).

14. Considering the above, the Court is not inclined to pass any such order and/or direction as prayed for in exercise of power conferred under Article 226 of the Constitution of India to the State respondents for appointment of the petitioner as an Assistant Teacher in provincialised upper primary schools of the State in terms of the said Advertisement-B dated 11.02.2023, noted above. To that extent, the prayer of the petitioner made in this petition stands rejected.

15. Any such appointment and selection to the post of Assistant Teacher of Upper Primary Schools of the State Government shall be in terms of the said Advertisement-B dated 11.02.2023 issued by the Director of Elementary Education, Assam including the selection process as prescribed in Clause-22 of the said Advertisement-B dated 11.02.2023, noted above.

JUDGE

Comparing Assistant