

GAHC010068232022



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

Case No. : WA/389/2023

DIPEN SINGHA
S/O- SRI SURA SINGHA, R/O VILL.- DAKSHIN BIDYA NAGAR, P.O.- SINGARI
BASTI, DIST.- HOJAI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
EDUCATION DEPTT. SECONDARY, DISPUR, GHY- 6.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY- 19.

3:THE INSPECTOR OF SCHOOLS
NAGAON DIST. CIRCLE
ASSAM.

4:HEADMASTER
DAKSHIN HOJAI HIGH SCHOOL
P.O.- HOJAI- 782435
DIST.- HOJAI
ASSAM.

5:DY. COMMISSIONER
NAGAON
DIST.- NAGAON.

6:DY. COMMISSIONER
HOJAI
DIST.- HOJAI.

7:BIJIT KR. SINGHA
S/O- SRI BIRENDRA KR. SINGHA
R/O- NATUN BAZAR
P.O.
P.S. and DIST.- HOJAI
ASSAM
PIN- 782435

For the appellant	: Mr. P. Mahanta, Mr. R.B. Gohain, Advocates
For the respondents	: Mr. R. Majumdar, Ms. A. Das, S.C., Education Ms. R.B. Bora, Govt. Advocate, Assam

– B E F O R E –

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE KARDAK ETE

13-10-2023

S. Mehta, C.J.

The instant intra-Court writ appeal is directed against the judgment and final order dated 03.03.2022 dismissing the writ petition, being, WP(C) 5286/2016 preferred by the petitioner (appellant herein).

The appellant/writ petitioner preferred the aforesaid writ petition seeking to assail the selection and appointment of respondent No.7 to the post of LDA in the Dakhin Hojai High School pursuant to the Advertisement dated 12.12.2015. The appellant/writ petitioner raised a grievance that the respondent No.7 though stood higher in merit in the written examination followed by interview, he was ineligible to apply for the post on the ground that he was overage on the date of issuance of the advertisement. It was also contended that the disability

certificate, which the respondent No.7 relied upon so as to claim the advantage of age relaxation under the Office Memorandum dated 19.07.2010, was issued by the Medical Board on 31.12.2015, which was well after the date of advertisement and thus, the same could not have been accepted as a valid certificate entitling the respondent No.7 to relaxation of age.

We have heard and considered the submissions advanced by Mr. P. Mahanta, learned counsel representing the appellant; Mr. R. Majumdar, learned Standing Counsel, Education Department and Ms. R.B. Bora, learned Government Advocate representing the State respondents.

On a perusal of the impugned judgment and the material available on record, we find that the respondent No.7 was holding a disability certificate issued by the District Social Welfare Officer, Government of Assam which was originally issued in the year 2008 and the validity thereof had subsequently been extended up to 31.10.2012 and thereafter up to 02.03.2021.

The appellant/writ petitioner earlier approached this Court by filing writ petition, being, WP(C) 3226/2016, which was disposed of vide order dated 30.05.2016, wherein the learned Single Judge gave a direction to the Deputy Commissioner, Nagaon to consider the representation of the appellant/writ petitioner after providing opportunity of hearing to the appellant/writ petitioner as well as the respondent No.7, Bijit Kr. Singha. The Deputy Commissioner, Nagaon, thereafter, passed an order on 08.07.2016 rejecting the representation of the appellant/writ petitioner and affirmed the status of the selected candidate Bijit Kr. Singha as a disabled person and held him entitled to the age relaxation under the Office Memorandum dated 19.07.2010. On account of splitting of the districts, representation was also considered by the Deputy Commissioner, Hojai, who also rejected the same vide order dated 02.08.2016. While filing the writ

petition, the appellant/writ petitioner did not lay a challenge to those two orders. However, subsequently, by way of an affidavit-in-reply, these orders were brought on record.

Having considered the submissions advanced at the Bar and after going through the material available on record, we are of the firm view that the certificate/identity card issued to the respondent No.7 by the District Social Welfare Officer in the year 2008 validity whereof stood extended up to 02.03.2021 establishes the fact that the respondent No.7 is an orthopedically handicapped person. Thus, the respondent was definitely a candidate entitled to claim the benefits of disability on the date of issuance of the advertisement. The certificate dated 31.12.2015, which the respondent No.7 procured from the medical board, seems to be just as a measure to reaffirm his disability status and nothing beyond that.

In any event, the competent officers, being, the Deputy Commissioner concerned rejected the representations of the appellant/writ petitioner affirming the disability status of the respondent No.7 and directed his appointment against the post of LDA way back in the year 2016. Thus, the learned Single Judge was fully justified in rejecting the writ petition preferred by the appellant/writ petitioner holding that the two orders dated 08.07.2016 and 02.08.2016 issued by the Deputy Commissioners concerned rejecting the representations of the appellant/writ petitioner were not impugned in the writ petition and that the respondent No.7 was rightly appointed on the post of LDA under the handicapped category.

Upon perusal of the observations made at paragraph 15 of the impugned order, it becomes clear that the services of the respondent No.7 have been confirmed against the substantive post vide order dated 08.12.2021.

In this background, we do not find any infirmity in the impugned order dated 03.03.2022 warranting interference in this intra-Court writ appeal.

Hence, the writ appeal fails and is dismissed as being devoid of merit.

JUDGE

CHIEF JUSTICE

Comparing Assistant