

GAHC010068532019



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

Case No. : WP(C)/2183/2019

SURUJ GOGOI
S/O- SUREN GOGOI, R/O.- LAKHIMI ALI, P.O. NAZIRA, DIST.- SIBSAGAR,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY, EDUCATION
(SECONDARY) DEPTT., DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF SECONDARY EDUCATION

KAHILIPARA
GUWAHATI-19.

3:THE INSPECTOR OF SCHOOLS
SIVSAGAR DISTRICT CIRCLE
SIVSAGAR
ASSAM.

4:THE PRINCIPAL-CUM- MEMBER SECRETARY
DEMOW H.S. SCHOOL
DEMOW
P.O. AND P.S. DEMOW
SIVSAGAR
ASSAM- 785662.

5:SMT. DIMPI BORA
C/O BHABEN CH. BORA
R/O ARUNODOI PATH
NEAR CIVIL HOSPITAL
SECTOR-2

TINSUKIA
P.O. AND P.S. TINSUKIA
PIN- 786125

Advocate for the Petitioner : MS. J CHETTRY

Advocate for the Respondent : MS. P CHAKRABORTY (SC, SECONDARY EDUCATION.)

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the petitioner	: Ms. S. Kanungo, Advocate.
For State respondent Nos.1 to 3	: Mr. U. Sarma, standing counsel.
For respondent No.5	: Mr. B.D. Goswami, Advocate.
Date of hearing	: 10.05.2023.
Date of judgment	: 26.06.2023.

JUDGMENT AND ORDER

(CAV)

Heard Ms. S. Kanungo, learned counsel for the petitioner. Also heard Mr. U. Sarma, learned standing counsel for the Secondary Education Counsel representing respondent nos. 1 to 3 and Mr. B.D. Goswami, learned counsel for respondent no. 5. None appears on call for respondent no. 4.

2. In brief, the case of the petitioner is that he has the educational qualification of M.Sc. in Physics. Pursuant to an advertisement dated 23.02.2018, published in newspaper, *Dainik Janambhumi*, for filling up the post of Post Graduate Teacher in Physics in Demow H.S. School, the petitioner had applied for being selected and appointed to the said post. It is projected that although the petitioner is holding post graduate degree in the concerned subject, the respondent authorities had appointed the private respondent no. 5 although he was a M.Sc. in Electronics Science. Accordingly, the appointment of the respondent no. 5 has been assailed in this writ petition filed under Article

226 of the Constitution of India.

3. The learned counsel for the petitioner has submitted that in the said employment advertisement, it was specifically mentioned that "Applications are invited in Standard Form from the intending HS TET qualified candidates having M.A./M.Sc./ M.Com. from a recognized university in the mentioned subjects with B.Ed. (NCTE approved) for filling up ..." As per the said advertisement, amongst others, one of the post advertised was for the post of Post Graduate Teacher in Demow H.S. School, Demow in Sivasagar District in Physics, which was reserved for OBC category and the date of interview was fixed on 28.02.2018. In the select list published, the name of the respondent no. 5 was placed at first position and the name of the petitioner was placed at serial no. 2 and the respondent authorities had issued appointment letter dated 28.12.2018 in favour of the respondent no. 5. It was submitted that through RTI reply received by the petitioner, he came to learn that the respondent no. 5 was having M.Sc. Degree in Electronics Science. It was submitted that the petitioner also came to know that during the interview process, the respondent no. 5 had produced a certificate dated 17.06.2014 of the then Professor and Head of Department of Electronics and Communication Technology, Gauhati University that any candidate having M.Sc. in Electronics Science may be considered for recruitment for teaching/ non-teaching post in Department of Physics in any school/ college. It was submitted that the appointment was illegally made for extraneous considerations and therefore, it was prayed that the appointment of the respondent no. 5 be set aside. In support of her submissions, the petitioner has placed reliance on the case of *Dimpi Bora v. The State of Assam & 10 others*, W.P.(C) 4923/2014, decided by this Court by order dated 17.09.2015.

4. Per contra, supporting the selection and appointment of the respondent no. 5 to the post of Post-Graduate Teacher in Physics in Demow HS School, it was submitted by the learned counsel for the respondent no. 5 that in order to acquire M.Sc. Degree in Electronics Science, the respondent no. 5 had obtained her B.Sc. Degree, where she had Physics as a subject and accordingly, the copy of B.Sc. Degree mark-sheet has been referred to. It is also submitted that as per the recruitment norms of Kendriya Vidyalaya Sangathan and Navodaya Vidyalaya Sangathan, "Electronics" is a branch of "Physics" and that only those under-graduates, who have Physics as a subject are eligible to pursue M.Sc. Degree in Electronics Science. It was further submitted that the respondent no. 5 has rendered more than 4 years of continuous service in Demow HS School with utmost sincerity to the satisfaction of all concerned including school management, students and parents, without any complaint whatsoever and in the process, she has earned sufficient experience in teaching Physics. By referring to additional affidavit filed by the respondent no. 5, it was submitted that vide communication bearing no. ASE.633/2019/44 dated 11.10.2021, issued by the Addl. Secretary to the Govt. of Assam, Secondary Education Department, the candidates having Post-Graduate Degree in Biotechnology were permitted to apply for the post of Post Graduate Teacher in Zoology provided that such candidate has B.Sc. (Major) in Zoology at degree level. Accordingly, it was submitted that by same analogy, the respondent no. 5 was otherwise qualified to be appointed as Post-Graduate Teacher in Physics as she had Physics as a subject in Under Graduate level. The learned counsel for the respondent no.5 has also referred to another additional affidavit filed by the respondent no. 5 on 03.05.2023, and had submitted that in an employment advertisement dated 27.07.2016, issued by Himachal Pradesh Public Service

Commission it was submitted that essential qualification for the post of Post Graduate Teacher in Physics was Master's Degree in Physics/Electronics/ Nuclear Physics. It was also submitted that the Haryana Staff Selection Commission, vide advertisement no. 4/2015 dated 28.06.2015, had invited applications for the post of Post Graduate Teacher in Physics and the prescribed educational qualification was M.Sc. in Physics/ Applied Physics/ Nuclear Physics/ Electronics Science. It was further submitted that similarly, the Atomic Energy Education Society, which is an autonomous body under Department of Atomic Energy, Govt. of India, had issued a employment notice no. AEES/01/2022, for appointing candidates to the post of Post graduate Teacher in Physics, where the qualification prescribed was Post Graduate in Physics/ Electronics/ Applied Physics/ Nuclear Physics. It was also submitted that similarly, the Satish Dhawan Space Centre, Shar, which is an autonomous body under Department of Space, Govt. of India, had issued an employment notice dated 06.08.2022, wherein for appointing candidates to the post of Post graduate Teacher in Physics, the qualification prescribed was Post Graduate in Physics/ Applied Physics/Nuclear Physics/Electronics. Accordingly, it was submitted that the petitioner has not been able to make out any case for interference with the appointment of the respondent no. 5.

5. Considered the submissions and also considered the materials available in the writ petition, affidavit-in-opposition and two additional affidavits filed by respondent no. 5 and affidavit-in-reply filed by the petitioner.

6. It may be mentioned that by order dated 28.04.2023, this Court had directed the learned standing counsel for the Secondary Education Department to obtain specific instructions as to whether the Directorate of

Secondary Education, Assam permits M.Sc. Degree holder in any discipline to be appointed as Post Graduate Teacher in any science related subject taking note of the fact that the respondent no. 5 is a M.Sc. in Electronics Science and has been selected for appointment as Post Graduate Teacher in Physics, which would have a *vice versa* effect that any post graduate degree holder in Arts, Science and Commerce stream to be eligible for being appointed as a lecturer for the post graduate teacher in any discipline covered by the Department of Arts, Science and Commerce. On such query, the Director of Secondary Education, Assam had written to the Academic Registrar, Gauhati University regarding clarification on M.Sc. Degree in Electronics, and the reply of the Academic Registrar was still awaited. In this regard, by order dated 10.05.2023, the Court is of the view that the Court required the view of the appointing authority, i.e. the Director of Secondary Education, Assam, and not a third party opinion from Gauhati University. Therefore, the Court was disinclined to accept a third party opinion. In this regard, it may be mentioned that a third party opinion was not solicited by the Court, though it may be of the Gauhati University, for the simple reason that the Gauhati University is not the appointing authority in this case and moreover, it is not the stand of the Director of Secondary Education, Assam on oath that in principle, they value opinion expressed by Gauhati University to be final authority for all intents and purpose for deciding equivalence of a educational qualification, and that in that regard they do not take any decision.

7. It is not in dispute that in the employment advertisement issued in the present case in hand, for applying to the post of Post Graduate Teacher in Physics in Demow HS School, the essential qualification was that the candidate must be HS TET qualified having M.A./M.Sc./ M.Com. degree from a recognized

university in the mentioned subjects with B.Ed. (NCTE approved).

8. Nothing has been brought on record to show that the Education Department of the Govt. of Assam had declared "Electronics Science" to be equivalent to "Physics" for the purpose of recruitment to the post of Post Graduate Teacher in Physics for Higher Secondary School.

9. The submissions of the learned counsel for the petitioner is that Physics/ Applied Physics/ Nuclear Physics/ Electronics Science are not equivalent to each other because in the employment advertisement such a condition was not prescribed. There may be many persons holding Post Graduate Degree in Applied Physics/ Nuclear Physics/ Electronics Science, but did not apply for the post of Post Graduate Teacher in Physics in Demow HS School by considering themselves not having Post Graduate Degree in Physics. Merely because some authorities consider Applied Physics/Nuclear Physics/Electronics Science equivalent to Physics, but their decision or opinion would not be enough for the respondents to not follow the employment advertisement published in this case.

10. As per the employment advertisement, the essential qualification to the post of Post Graduate Teacher in Physics was "Post Graduate in the mentioned subject", the subject being Physics, the Court is inclined to hold that the essential qualification for appointment to the post of Post Graduate Teacher in Physics in Demow HS School should be "Post Graduate Degree in Physics", and not Post Graduate Degree in Applied Physics/ Nuclear Physics/ Electronics Science or any other Degree which, in the opinion of other employing authorities is equivalent.

11. As the respondent no. 5 did not have the essential educational

qualification of Post Graduate Degree in Physics, which was prescribed in the employment advertisement, the appointment of the respondent no. 5 to the post of Post Graduate Teacher in Physics is not sustainable and *dehors* the conditions prescribed in the employment advertisement.

12. The learned counsel for the respondent no. 5 had submitted that she has rendered satisfactory service for more than 4 (four) years as Post Graduate Teacher in Physics in Demow HS School without any grievance from any quarter. In the said regard, the Court is of the considered opinion that though all concerned were satisfied with the teaching ability of the respondent no. 5, but as her entry into service is not found to be in accordance with law, the appointment of the respondent no. 5 cannot be sustained and her appointment has to be set aside and quashed.

13. The learned counsel for the respondent no.5 had also referred to a certificate provided by the Professor and Head of Department, Gauhati University that Electronics Science may be considered for recruitment to teaching/non-teaching post in Department of Physics in any school and college can only be read as an expression of opinion, but as per the employment advertisement, the Head of Department of Electronics and Communication Technology, Gauhati University was not the prescribed authority to decide equivalency.

14. The learned counsel for the petitioner had cited the case of *Dimpi Bora (supra)*. It was submitted that the respondent no. 5 was the writ petitioner in the said case. A short question that arose for consideration of this Court was whether the expression "subject teacher in Physics from TET qualified

candidates having Master Degree in concerned subject” is “M.Sc. Degree in Electronics Science or not.” After a detailed discussion, this Court had categorically held as follows:-

“4. ... The petitioner is holding a degree of M.Sc. in Electronics Science whereas the advertisement clearly stipulates the qualification of "Subject Teacher in Physics from TET qualified candidates having Master Degree in concerned subject" which means M.Sc. Degree in Physics and nothing else. It defies logic to equate a Degree of M.Sc. in Physics with a Degree of M.Sc. in Electronic Science. It is also beyond my comprehension as to how the petitioner holding a Degree of M.Sc. in Electronic Science can teach students of Physics which is admittedly a wider subject than Electronic. ...”

15. Therefore, from the above, it is apparent that the respondent no. 5 had participated in the present selection process with full knowledge of the dismissal of her earlier writ petition, i.e. *W.P.(C) 4923/2014- Dimpi Bora (supra)*. It may be mentioned that the Director of Secondary Education, Assam was also arrayed as respondent no. 2 in the said writ petition.

16. Although in ordinary course, the decision of the Selection Committee is not liable to be interfered with in a writ proceeding, which is a well settled legal proposition as this Court is not sitting in appeal over the decision of the Selection Committee. However, in this present case in hand, the decision making process itself is held to be bad in law because the Selection Committee had selected the respondent no. 5 although she did not have the essential educational qualification that was prescribed in the employment advertisement published in newspaper on 23.02.2018, where it was not mentioned that the selection committee, in its discretion may also take into consideration any other educational qualification like M.Sc. in Applied Physics/ Nuclear Physics/ Electronics Science. Therefore, the Selection Committee had not only treated unequal as equal, but they are deemed to have deprived others who might be

situated similar to the respondent no. 5, but did not apply because of educational qualification prescribed in the advertisement. Hence, the Selection Committee applied a hidden/undisclosed criteria to select and appoint the respondent no. 5, which was not disclosed in the employment advertisement and therefore, such action is held to be contrary to the principles enshrined in Article 14 of the Constitution of India.

17. Therefore, in the considered opinion of the Court the decision making process is vitiated by non-adherence to the qualifications prescribed in the advertisement, which could not be shown to be otherwise permissible either on facts or in law.

18. In light of the discussions above, this writ petition deserves to be and is accordingly, allowed. Resultantly, the impugned order no. GB-EST/Apptt (PGT/TET/3/2018/88 dated 28.12.2018, issued by the Director, Secondary Education, Assam (respondent no. 2), thereby appointing the respondent no. 5 as Post Graduate Teacher in Physics in Demow Higher Secondary School, Demow, is set aside and quashed.

19. Consequently, the Court is inclined to issue direction to the Director, Secondary Education, Assam (respondent no. 2) to offer appointment to the petitioner, namely, Suruj Gogoi to the post of Post Graduate Teacher in Physics in Demow H.S. School, Demow. The appointment of the petitioner would relate back to the date on and from such date when the respondent no. 5 had been appointed, however, the petitioner would not be entitled to any back and/or arrear wages/ salary by applying the principle of "no work no pay". However, the petitioner would be entitled to notional benefit for all other purpose including seniority, future pay and pension.

20. The petitioner shall produce a certified copy of this order before (i) The Director of Secondary Education, Assam (respondent no. 2), and (ii) The Principal- cum- Member Secretary, Demow HS School, Demow (respondent no.4) so as to take all consequential steps and/or pass such order as may be necessary to give effect to this order, which shall be done within a period of 1 (one) month from the date of service of a certified copy of this order at their respective offices.

21. This writ petition is allowed to the extent as indicated above, leaving the parties to bear their own cost.

JUDGE

Comparing Assistant