

GAHC010072842023



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

Case No. : WP(C)/2079/2023

ARUNJYOTI DAS
SON OF SRI BHADRESWAR DAS,
RESIDENT OF VILLAGE- DUWARPAR,
P.O.- NARAGAON,
P.S.- NORTH- LAKHIMPUR,
DISTRICT- LAKHIMPUR, ASSAM.
PIN- 787001.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY COMMISSIONER AND SECRETARY,
GOVT. OF ASSAM (HIGHER EDUCATION DEPARTMENT),
DISPUR, GUWAHATI- 06.

2:THE DIRECTORATE OF HIGHER EDUCATION
ASSAM
P.O.- KAHILIPARA
DIST- KAMRUP(M)
ASSAM PIN- 781019.

3:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPARTMENT
P.O.- DISPUR
DIST- KAMRUP(M)
ASSAM. PIN- 781006.

4:THE PRINCIPAL NORTH LAKHIMPUR COLLEGE
NORTH LAKHIMPUR
DIST.- LAKHIMPUR
ASSAMPIN- 787001.

5:THE REGISTRAR
DIBRUGARH UNIVERSITY

DIST.- DIBRUGARH
ASSAM PIN- 786001

Advocate for the Petitioner : MR. A RAJKHOWA

Advocate for the Respondent : SC, HIGHER EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

19-04-2023

Heard Mr. R. P. Hazarika, learned counsel for the petitioner and Mr. A. R. Tahabildar, learned Standing Counsel, Higher Education Department for the respondent Nos. 1 and 2. Also heard Mr. N. C. Das, learned Senior Counsel as well as Standing Counsel, Dibrugarh University assisted by Mr. A. Das, learned counsel for the respondent No.5.

2. Issue relates to an advertisement for the post of Grade-IV Library Bearer issued by the Principal of North Lakhimpur College, an Autonomous College under the State Government Director of Higher Education Department published on 16.02.2023.

3. It is stated that the Principal of North Lakhimpur College on 15.11.2008 issued an appointment letter in favour of the petitioner appointing him as a Laboratory Bearer in the said College w.e.f., 15.11.2008 in the fixed Pay Scale of Rs.15,000/- per month for a period of 2 years from the date of his joining in the vacant post on expiry of one Ram Nath Gogoi. The said appointment of the petitioner continued from time to time and he is still serving in the said College.

4. The petitioner belongs to Schedule Tribe (Plains) category.

5. In the meanwhile, the said North Lakhimpur College was considered to be an Autonomous College under the Director of Higher Education, Assam; through its Principal on 16.02.2023 issued an advertisement for one post of Grade-IV Library

Bearer reserved for candidates belonging to Schedule Tribe (Plains) category at Roster Point No.5 and another post of Grade-III Library Assistant reserved for candidates belonging to Schedule Caste category at Roster Point No.8.

6. The petitioner on 22.02.2023 submitted a representation before the Governing Body of the said College to promote him to the post of Library Assistant as advertised on 16.02.2023 reserved for Schedule Caste stating that the relevant recruitment Rules provides that the post of LDA/Library Assistant/Laboratory Assistant in such Colleges required to be filled up by way of direct recruitment from the Laboratory Bearer/Library Bearer/Grade-IV having qualification as prescribed in the ratio of 75:25.

7. The petitioner also placed the provisions of the Assam Ministerial District Establishment Service Rules, 1967 stating that the post of LDA in the district establishment should be filled up by direct recruitment on the basis of a competitive examination and further by selection on the basis of seniority-cum-merit from amongst Grade-IV staff of the district establishment concerned having requisite criteria and experience.

8. Petitioner stated that since 15.11.2008, he is serving as a Laboratory Bearer though in a fixed pay but in a permanent post in said North Lakhimpur College in terms of the said appointment dated 15.11.2008 issued by the Principal of said College and as such, he is entitled for promotion to the post of Laboratory Assistant.

9. The petitioner has filed this writ petition praying amongst other for a direction to the Principal of North Lakhimpur College, North Lakhimpur and the authorities of the said College in exercise of the powers conferred under Article 226 of the Constitution of India with regard to the said Grade-III post of Library Assistant as advertised on 16.02.2023 and further in the interim prayed for a direction to stay the impugned selection process for the post of Grade-III Library Assistant as well as Grade-IV Library Bearer in North Lakhimpur College, North Lakhimpur as advertised on 16.02.2023.

10. Mr. Das, learned Senior Counsel appearing for the respondent Dibrugarh

University on specific instruction submitted that in the meanwhile, the Principal of said North Lakhimpur College, North Lakhimpur placed the representation of the petitioner before the Governing Body of the said College and after considering the same, the Governing Body of the said College rejected petitioner's said representation dated 22.02.2023.

11. On being enquired, Mr. Tahabildar, learned Standing Counsel, Higher Education Department submitted that North Lakhimpur College, North Lakhimpur is a provincialised College of the State and was brought under the Assam College Employees (Provincialisation) Act, 2005 w.e.f., 01.12.2005.

12. The Assam College Employees (Provincialisation) Rules, 2010 framed under Section 12 (1) of the said 2005 Act, being a statutory Rule at its Rule 5 provides for method of Recruitment wherein at Sub Rule (5) of Rule 5 it is clearly laid down that the post of Lower Division Assistant, Laboratory Assistant, Library Assistant shall be filled up by direct recruitment and from Laboratory Bearers/Library Bearers/Grade IV having qualification as prescribed in the ratio of 75:25.

13. Further Sub Rule (2) of Rule 5 of said 2010 Rules provides that the list of candidates for Grade-III and Grade-IV posts is required to be collected from the local employment exchange/Advertisement in newspaper and should be filled up through direct recruitment by advertisement in newspapers.

14. Moreover, Sub Rule (7) of Rule 5 of 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 orders of appointment.

15. Rule 7 of said 2010 Rules relates to direct recruitment and 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;*

16. It is to be noted herein that once an educational institution including a College is provincialised, all the posts sanctioned by the Government in that educational institution becomes public post. For filling up of any such public post or recruitment to such public post, the provisions of Articles 14 and 16 of the Constitution of India have to be followed or the relevant recruitment Rules to such post must be followed.

17. With regard to the present case, petitioner was appointed as Grade-IV, Laboratory Bearer in the provincialised College by the authority of the College, in November, 2008, whereas, the College was provincialised w.e.f., 01.12.2005 and prior to said 2010 Rules came into force. Even then, at the time of appointment of the petitioner in November, 2008, proper advertisement and selection should have been made by following the provisions of Articles 14 and 16 of the Constitution of India.

18. In the case in hand, though the petitioner is claiming for his promotion to the single post of Grade-III Library Assistant reserved for Schedule Caste as Roster Point No.8 in terms of the advertisement dated 16.02.2023 issued by the Principal of North Lakhimpur College claiming his promotion as per Sub Rule (5) of Rule 5 of said 2010 Rules at the ratio of 75:25 from Grade-IV/Laboratory Bearers/Library Bearers having qualification but from his appointment order annexed to this writ petition dated 15.11.2008 issued by the Principal of North Lakhimpur College under Ref. No.NLC/Apptt./22/208-09/1953, it can be seen that the same is not in conformity with the provisions of Articles 14 and 16 of the Constitution of India by way of direct

recruitment after advertisement and selection to a public post.

19. It is also not the case of the petitioner that he has been appointed in the said North Lakhimpur College as Laboratory Bearer on 15.11.2008 after due advertisement and selection, except stating that he has been appointed by the Principal of the said College on the recommendation of the Governing Body of the College in the vacant post of one Ram Nath Gogoi.

20. Since the petitioner's appointment is in violation of the provisions of Articles 14 and 16 of the Constitution of India against a regular sanctioned vacant public post of Grade-IV, the Court is of the view that the petitioner cannot claim for his promotion to the post of Grade-III Library Assistant that is reserved for Schedule Caste at Roster Point No.8 as advertised on 16.02.2023 by the Principal of North Lakhimpur College since his initial appointment on 15.11.2008 in a Grade-IV post of Laboratory Bearer itself is not valid in the eye of law.

21. Accordingly, the Court in exercise of its powers conferred under Article 226 of the Constitution of India is not inclined to interfere with the advertisement dated 16.02.2023 issued by the Principal of North Lakhimpur College for the post of Grade-III Library Assistant which is reserved for Schedule Caste at Roster Point No.8 as well as the single post of Grade-IV Library Bearer reserved for Schedule Tribe (Plains) at Roster Point No.5.

22. Accordingly, this writ petition being devoid of any merit stands dismissed.

JUDGE

Comparing Assistant