

GAHC010077192023



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

Case No. : WP(C)/2070/2023

ANJAN JYOTI DAS
S/O- SRI NRIPEN DAS,
VILL.- BAZARAPARA, P.S.- PALASBARI,
P.O.- PALASBARI, DISTRICT- KAMRUP(RURAL),
ASSAM, PIN- 781128.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
DEPT. OF SCHOOL EDUCATION,
GUWAHATI- 781006.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
DEPT. OF SCHOOL EDUCATION (HIGHER DEPARTMENT)
DISPUR
GUWAHATI- 781006.

3:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

4:SELECTION COMMITTEE OF THE GOVERNING BODY OF DAKSHIN
KAMRUP COLLEGE
MIRZA
KAMRUP
PIN- 781125
ASSAM

REPRESENTED BY THE CHAIRMAN.

5:PRINCIPAL OF DAKSHIN KAMRUP COLLEGE
MIRZA
KAMRUP
PIN- 781125
ASSAM.

6:PHANIDHAR NATH
OF RANGAMATI
RECOMMENDED OBC CANDIDATE FOR THE POST OF GRADE IV BY THE
SELECTION COMMITTEE OF THE COLLEGE.
NOTICE MAY BE SERVED TO THE RESPONDENT NO. 6 THROUGH
THE PRINCIPAL OF DAKSHIN KAMRUP COLLEGE

MIRZA
KAMRUP
PIN- 781125

ASSAM.

7:JITEN KUMAR
OF MIRZA

RECOMMENDED OBC CANDIDATE FOR THE POST OF GRADE IV BY THE
SELECTION COMMITTEE OF THE COLLEGE.
NOTICE MAY BE SERVED TO THE RESPONDENT NO. 7 THROUGH
THE PRINCIPAL OF DAKSHIN KAMRUP COLLEGE

MIRZA
KAMRUP
PIN- 781125

ASSAM.

8:PINKU BORAH
OF PARLIEY
RECOMMENDED OBC CANDIDATE FOR THE POST OF GRADE IV BY THE
SELECTION COMMITTEE OF THE COLLEGE.
NOTICE MAY BE SERVED TO THE RESPONDENT NO. 8 THROUGH
THE PRINCIPAL OF DAKSHIN KAMRUP COLLEGE

MIRZA
KAMRUP
PIN- 781125

ASSAM

Advocate for the Respondent : SC, HIGHER EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

12/04/2023

Heard Mr. A Deka, learned counsel for the petitioner and Mr. A R Tahbildar, learned Standing counsel, Higher Education Department for the respondent Nos. 1 to 3.

The authorities of Dakshin Kamrup College (D.K. College), Mirza, District-Kamrup on 13.10.2022 issued an advertisement for filling up of various posts of non-teaching staff in the said college including 4 (four) posts of Laboratory Bearer that includes 1 (one) post at Roster Point 02 reserved for OBC/MOBC category and also 1 (one) post of Library Bearer at Roster Point 11 that is reserved for OBC/MOBC category.

The petitioner belongs to OBC/MOBC (Saloi community) category and he being eligible, applied for the posts of Laboratory Bearer under Roster Point 02 as well as Library Bearer at Roster Point 11 and the college authority by letter dated 29.12.2022 informed him that the written test for those Grade-IV will be held on 09.01.2023 from 10 AM to 11 AM in the college premise itself.

The authority of the said college on 25.01.2023 notified that the petitioner along with 29 others were qualified in the written test for those advertised Grade-IV posts in that college and they were asked to appear in the Viva-Voce on 29.01.2023 scheduled at noon in that college itself. Accordingly, the petitioner and the other candidates appeared in the Viva-Voce for those advertised posts on 29.01.2023 before the concerned selection committee.

Petitioner has come to know that the respondent Nos. 5, 6 & 7 have been selected by the selection committee and recommended by the Governing Body of said D.K. College for their appointment to the posts of Laboratory Bearer and Library Bearer reserved for OBC/MOBC category.

Further, petitioner has now reliably learnt that the respondent No. 8, Pinku Borah, one of the selected candidates for such reserved post of Grade-IV/Laboratory Bearer/Library Bearer is the

brother of Smt. Himadri Borah, who was the member of the Selection Committee for selection of the candidates to the Grade-IV posts/Laboratory Bearer/Library Bearer of said D.K. College, Mirza for those posts as advertised on 13.10.2022.

Through RTI, petitioner has also come to know that he secured more marks in the written test and Viva-Voce than the respondent Nos. 6, 7 & 8, but he was not considered for selection and appointment to the Grade-IV post as advertised.

Hence, this writ petition by the petitioner praying to set aside and quash the recommendation of the selection committee of the Governing Body of D.K. College, Mirza with regard to appointment of the respondent Nos. 6, 7 & 8 as Grade-IV/Laboratory Bearer/Library Bearer posts that are reserved for OBC/MOBC category.

It is well settled that the right of a petitioner to the post accrues only when the authority concerned publishes the select list for the particular post when appointment order is issued by the authority concerned.

Rule 5 of the Assam College Employees (Provincialisation) Rules, 2010 framed under Section 12(1) of the Assam College Employees (Provincialisation) Act, 2005, having statutory force, provides for recruitment to any such post in a provincialised college including Grade-IV post by the process of direct recruitment where the Governing Body of the college is required to conduct the selection process and recommend the name of the selected candidate to the Director, who in turn after due consideration issue orders of appointment.

Rule 7 of the said 2010 Rules provides that all appointment either by direct recruitment or by promotion shall be made by the Director of Higher Education on the basis of recommendations of the Governing Body based on the recommendations of the Selection Committee/Departmental Promotion Committee duly constituted and that all fresh appointments shall be made on receipt of police verification report.

In the case in hand, it is the Director of Higher Education, Assam, who is required to verify the selection process for the post of Grade-IV/Laboratory Bearer/Library Bearer advertised by the authority concerned of D.K. College, Mirza as well as the candidate whose names have been recommended by the Governing Body of the said college for filling up of any such vacant sanctioned post in that college and the duty of the Director of Higher Education while considering the recommendation for granting approval and appointment and issuing appointment order is not an

empty formality.

Since, the Director of Higher Education, Assam is yet to give its approval and issue appointment order with regard to the selection to the posts of Laboratory Bearer/Library Bearer/Grade-IV reserved for OBC/MOBC category in said D.K. College, Mirza in terms of the advertisement dated 13.10.2022, the Court is of the view that this writ petition at this stage is premature one.

Considering the above, the Court at this stage is not inclined to exercise its power under Article 226 of the Constitution of India.

However, the petitioner is at liberty to approach the Director of Higher Education, Assam by submitting a representation stating his grievances forthwith along with a certified copy of this order and copy of this writ petition including the Annexures appended thereto.

In the event of filing any such representation by the petitioner, the said Director shall accordingly consider such representation of the petitioner in accordance with law.

Subject to the condition of submission of such representation by the petitioner as directed above, the Director of Higher Education, Assam, only after its consideration and disposal in accordance with law, shall give its approval and shall make appointments to the posts of Laboratory Bearer/Library Bearer/Grade-IV reserved for OBC/MOBC in said Dakhin Kamrup College, Mirza in terms of the advertisement dated 13.10.2022.

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

JUDGE

Comparing Assistant