

GAHC010084912023



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

Case No. : WP(C)/2138/2023

KRISHNAMONI SAIKIA
W/O- SRI BIDYUT BORA,
R/O- VILL.- UJANI BHARALUA,
P.O.- BHARALUA TINIALI,
DIST.- SIVASAGAR, ASSAM,
PIN- 785664.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
HIGHER EDUCATION DEPARTMENT,
SACHIVALAYA, DISPUR,
GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPARTMENT
SACHIVALAYA
DISPUR
GUWAHATI-6.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPARTMENT
SACHIVALAYA
DISPUR
GUWAHATI-6.

4:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

5:DEPUTY SECRETARY TO THE GOVT. OF ASSAM

HIGHER EDUCATION DEPARTMENT
SACHIVALAYA
DISPUR
GUWAHATI-6.

6:THE GOVERNING BODY OF THE DIKHOWMUKH COLLEGE
MOGLOW
DIKHOWMUKH

P.O.- BHARALUA TINIALI

SIVASAGAR
ASSAM
PIN- 785664

REPRESENTED BY ITS SECRETARY.

7:THE SECRETARY
GOVERNING BODY OF DIKHOWMUKH COLLEGE
MOGLOW
DIKHOWMUKH

P.O.- BHARALUA TINIALI

SIVASAGAR
ASSAM

PIN- 785664.

8:THE PRINCIPAL
DIKHOWMUKH COLLEGE
MOGLOW
DIKHOWMUKH

P.O.- BHARALUA TINIALI

SIVASAGAR
ASSAM

PIN- 785664

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

19-04-2023

Heard Mr. S. Borthakur, learned counsel for the petitioner and Mr. A. R. Tahabildar, learned Standing Counsel, Higher Education Department for the respondent Nos. 1, 2, 4 and 5. Also heard Mr. P. Saikia, learned Government Advocate, Assam for the respondent No. 3.

2. Matter pertains to advertisement dated 14.10.2022, for selection and appointment to the post of Grade-IV (Library Bearer), reserved for the category of Other Backward Classes (OBC) at Roster Point No. 06 in Dikhowmukh College, Moglow, District-Sivasagar, advertised by the Principal of the said College.

3. Being appointed by the authorities of the said College on 26.08.2015, since 1st September, 2015, the petitioner, who belongs to OBC category, is serving in consolidated pay as a Grade-IV Library Bearer in said Dikhowmukh College. The brother of the petitioner Pranjal Saikia, who was serving in the said College, as died untimely and in harness on 17.02.2013, the authorities of said Dikhowmukh College, appointed the petitioner on compassionate ground as well as on the ground that she belongs to the family who donated land for the said College.

4. Pursuant to the said advertisement dated 14.10.2022, as a candidate belonging to the OBC category, as she on 01.01.2022, crossed the over age of 43 years (40 years for unreserved category + 3 years relaxation for OBC/MOBC category), the petitioner through the Principal of said College filed an application for condonation of her over age before the authorities in the Higher Education Department of the State, that was forwarded by the Director of Higher Education, Assam on 04.05.2022. The said application of the petitioner for condoning her over age is yet to be disposed of.

5. In spite of her application for that post, since her name did not figure in the list

issued by the Principal of said Dikhowmukh College on 12.11.2022 calling the candidates for the written test as well as personal interview for the said post of Grade-IV (Library Bearer), reserved for the category of OBC, that was advertised on 14.10.2022; the petitioner earlier preferred a writ petition being WP(C) No. 7406/2022 that was disposed of on 21.11.2022.

6. The written test and interview for the said advertised post of Grade-IV (Library Bearer) reserved for OBC category at Roster Point No.6 as advertised by the authorities of Dikhowmukh College on 14.10.2022 have now been fixed on 20.04.2023 at 10:00 am in the premises of the said College, i.e., tomorrow.

7. As per the direction of this Court passed in said WP(C) No. 7406/2022 by communication under Ref. No.DMC/Interview/G-4/ Lib.Bearer/2023/2674 dated 12.04.2023, the Principal of said Dikhowmukh College has issued call letter to the petitioner asking her to appear in the written test and interview for the said advertised post of Grade-IV Library Bearer reserved for OBC category to be held on 20.04.2023 at 10:00 am in the premises of the said College, as noted above.

8. In addition to the above, the Principal of Dikhowmukh College by the said call letter dated 12.04.2023 directed the petitioner that while appearing in the said written test and interview she shall have to provide the necessary documents along with her upper age condonation order from the competent authority before the Selection Committee to facilitate the selection process, as stated in the said order of the Hon'ble High Court.

9. From the perusal of the order dated 21.11.2022 passed in said writ petition, WP(C) No. 7406/2022 preferred by the petitioner, noted above, photocopy of the certified copy of the said order, annexed to this writ petition as Annexure-I it is seen that said WP(C) No. 7406/2022 was disposed of on 21.11.2022 with the following observation:--

“Mr. Borthakur, learned counsel for the petitioner submitted that her

application for condonation of her upper age duly forwarded by the Principal of said Dikhowmukh College as well as by the Director of Higher Education, Assam way back on 04.05.2022 is still pending for consideration before the State Government in the Higher Education Department and therefore, the petitioner should be allowed to participate in the said selection process for the post of Grade-IV Library Bearer under OBC category as advertised on 14.10.2022 by the Principal of said Dikhowmukh College.

After hearing the learned counsels for parties, the authorities of said Dikhowmukh College, Moglow, Sivasagar including its Principal and the Governing Body of the College are directed to allow the petitioner to participate in the selection process for the Grade-IV post of Library Bearer under the OBC category in said Dikhowmukh College as advertised by its Principal on 14.10.2022 subject to the condition that petitioner applied for the said post within fifteen days from the date of said advertisement with necessary Demand Draft of Rs.300/- in terms of the said advertisement dated 14.10.2022 issued by the Principal of the said College.

Subject to the above, if the petitioner is selected to the post of Grade-IV Library Bearer under OBC category in said Dikhowmukh College, Sivasagar, Assam as advertised on 14.10.2022, her selection and appointment shall be subject to the condonation of her upper age by the State Government in the Higher Education Department, which is presently pending before it for consideration on being forwarded by the Director of Higher Education, Assam on 04.05.2022, noted above.

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

10. On perusal of the said order dated 21.11.2022 passed in WP(C) No. 7406/2022 that was preferred by the petitioner, it can be seen that the Court by said order dated 21.11.2022 directed the authorities of said Dikhowmukh College, Moglow, Sivasagar including its Principal and the Governing Body of the College to allow the petitioner to participate in the selection process for the Grade-IV post of Library Bearer under the OBC category in the said College as advertised on 14.10.2022 and it was subject to the condition of filing application by the petitioner for the said post with necessary

Demand Draft of Rs.300/- within fifteen days from the date of the said advertisement dated 14.10.2022 that was issued by the Principal of the said College.

11. The Court in the said order dated 21.11.2022 passed in WP(C) No. 7406/2022 did not state nor directed the petitioner to submit any such order condoning her upper age at the time of written test and interview for the said post of Grade-IV Library Bearer under the OBC category in the said College as advertised on 14.10.2022.

12. However, the Court in the said order dated 21.11.2022 passed in WP(C) No. 7406/2022 categorically observed that if the petitioner is selected to the post of Grade-IV Library Bearer under OBC category in said Dikhowmukh College, Sivasagar, as advertised on 14.10.2022, in that case, her selection and appointment shall be subject to the condonation of her upper age by the State Government in the Higher Education Department that is pending for consideration before the authority concerned, which was forwarded by the Director of Higher Education, Assam on 04.05.2022.

13. Mr. Borthakur, learned counsel for the petitioner on instruction submitted that the application of the petitioner for condonation of her over age as on 01.01.2022 is still pending for consideration before the authorities concerned in the Higher Education Department of the State.

14. On being enquired, Mr. Tahabildar, learned Standing Counsel, Higher Education Department submitted that he needs some time to obtain instruction in that regard.

15. It is already noted above that the written test and interview for the post of Grade-IV Library Bearer reserved for OBC category in said Dikhowmukh College, Moglow, Sivasagar, as advertised on 14.10.2022 is fixed tomorrow i.e., on 20.04.2023 at 10:00 am in the premises of the said College.

16. On being enquired, it is stated that against the said order dated 21.11.2022, passed in WP(C) No. 7406/2022 the authorities of said Dikhowmukh College, Moglow, Sivasagar has not preferred any appeal as yet and in the meanwhile the authorities of

the said College have issued the said call letter dated 12.04.2023, noted above.

17. After hearing the learned counsels for the parties and considering the entire aspect of the matter, the authorities of Dikhowmukh College, Moglow, Sivasagar including its Principal and the Governing Body of the said College are directed to allow the petitioner to participate in the selection process of written test and interview for her selection to the post of Grade-IV Library Bearer reserved for the OBC category at Roster Point No.06 in the said College as advertised on 14.10.2022 in terms of the call letter issued to her by the Principal of said Dikhowmukh College Moglow, Sivasagar under Ref. No.DMC/ Interview/G-4/Lib.Bearer/2023/2674 dated 12.04.2023, to be held tomorrow i.e., on 20.04.2023 in the premises of said Dikhowmukh College, Moglow, Sivasagar without asking for and without insisting for production of any such order issued by the authority concerned in the Higher Education Department of the State condoning her upper age to be submitted by the petitioner before the Selection Committee while appearing in said written test and interview.

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

JUDGE

Comparing Assistant