

GAHC010085632023



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

Case No. : WP(C)/2164/2023

RANBIR KALITA AND ANR
SON OF SHRI TIKEN KALITA,
A RESIDENT OF SALBARI,
P.O. BONGAIGAON, P.S.- BONGAIGAON,
DISTRICT- BONGAIGAON,
PIN- 783380.

2: DHRUPAD SARMA
SON OF LATE BIMAL SARMA
A RESIDENT OF VILLAGE- BAKHARAPARA PART-I
DISTRICT- BONGAIGAON
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
HIGHER EDUCATION (TECHNICAL) DEPARTMENT,
HAVING HIS OFFICE AT ASSAM SECRETARIAT, DISPUR,
GUWAHATI, DISTRICT- KAMRUP(METRO),
ASSAM. PIN- 781006.

2: THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
HIGHER EDUCATION (TECHNICAL) DEPARTMENT
HAVING HIS OFFICE AT ASSAM SECRETARIAT

DISPUR
GUWAHATI
DISTRICT- KAMRUP(METRO)

ASSAM. PIN- 781006.

3:THE SECRETARY TO THE GOVERNMENT OF ASSAM
HIGHER EDUCATION (TECHNICAL) DEPARTMENT
DISPUR
GUWAHATI- 781006.

4:THE DIRECTOR OF TECHNICAL EDUCATION
ASSAM
HAVING HIS OFFICE AT KAHILIPARA MAIN ROAD

KAHILIPARA
GUWAHATI IN THE DISTRICT OF KAMRUP(METRO)

ASSAM
PIN- 781019.

5:THE ASSAM ENGINEERING SERVICE RECRUITMENT BOARD
REPRESENTED BY ITS CHAIRMAN

HAVING HIS OFFICE AT ASSAM TEXTILE INSTITUTE CAMPUS

AMBARI
GUWAHATI IN THE DISTRICT OF KAMRUP(METRO)

ASSAM. PIN- 781001.

6:THE SECRETARY TO THE ASSAM ENGINEERING SERVICE
RECRUITMENT BOARD
HAVING HIS OFFICE AT ASSAM TEXTILE INSTITUTE CAMPUS

AMBARI
GUWAHATI IN THE DISTRICT OF KAMRUP(METRO)

ASSAM. PIN- 781001.

7:THE JORHAT ENGINEERING COLLEGE
REPRESENTED BY ITS PRINCIPAL

JORHAT- 785001
ASSAM

Advocate for the Petitioner : MR. H BURAGOHAIN

Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

26-04-2023

Heard Mr. H. Buragohain, learned counsel for the petitioners and Mr. K. Gogoi, learned Standing Counsel, Higher Education Department for all the respondent Nos. 1 to 7.

2) It is stated by the petitioners that the Principal of Jorhat Engineering College engaged them on contractual basis as Faculty Members in the Mechanical Engineering Department of said Jorhat Engineering College since 2018 from time to time.

3) The petitioner No.1 is serving in said Jorhat Engineering College on contractual basis since 2020, whereas, the petitioner No.2 is engaged in the said College w.e.f., 2012 from time to time. Since December 2018 both the petitioners are pursuing their Ph.D. as full time Scholars in the Mechanical Engineering Department of said Jorhat Engineering College.

4) The Assam Engineering Service Recruitment Board on 21.02.2023 issued an advertisement for filling up of the vacancies of 61 numbers of posts of Assistant Professors in Government Engineering Colleges of Assam, including 15 numbers of such posts of Mechanical Engineering, out of which 6 posts are for unreserved category amongst which 2 are reserved for women; 6 posts are reserved for OBC/MOBC category, out of which 2 are reserved for women; 1 for Schedule Caste community, 1 for ST (Plains) community, 1 for ST (Hills) community and out of all those 15 posts 1 post is reserved for Persons with Benchmark Disability (PwBD).

5) The contention of the petitioners herein is that they have passed their engineering long back and they shall have to compete with the newly passed engineering candidates in Written Test as well as in the Teaching Proficiency Test and as the said advertisement dated 21.02.2023 does not contain any provision for past

service that is inconsistent with the AICTE Guidelines, the petitioners have preferred this writ petition praying amongst others, to set aside and quash the said advertisement dated 21.02.2023 and further, directing the respondent Nos. 1 to 6 to formulate a new scheme for introducing a new marking pattern/scheme in the said advertisement dated 21.02.2023 by amending the said advertisement along with Rules 5, 6 and 8 of Schedule-II of the Assam Technical Education Service Rules, 1981, as amended, by giving due weightage/preference to the petitioners/candidates for the length of services rendered by them in the Engineering Colleges run by the State Government or to award/allot certain percentage of marks for candidates having adequate teaching experience and Research expertise in their respective fields.

6) In the case in hand, it is seen that the petitioners have filed this writ petition 20.04.2023, whereas, the impugned advertisement was issued on 21.02.2023, where the last date of submission of application forms was 13.03.2023.

7) On being enquired, petitioners stated that while engaging them as contractual teachers in the Mechanical Engineering Department at Jorhat Engineering College, but no such advertisement was issued and nor any selection procedure as per Rules was followed for their such appointment except adopting certain procedure.

8) Petitioners submitted that as per the provisions prescribed in the All India Council for Technical Education Pay Scales, Service Conditions and Minimum Qualification for appointment of Staff and other Academic Staff such a Library, Physical Education and Training & Placement of Personnel in Technical Institutions and Measures for the Maintenance of Standards in Technical Education- (DEGREE) Regulation, 2019 provides for consideration of past service for making any such direct recruitment.

9) As provided in Schedule – II under Rule 8, 11 (3) and 12(4) of the Assam Technical Education Service Rules, 1981 relating to Assistant Professor, it is provided that candidate must be First Class Master Degree with Doctorate Degree in

appropriate field with minimum of five years experience in teaching/research in Institution of University standard having specialized knowledge in one or more specified field/subject with outstanding teaching/research experience and Doctorate Degree of published work of equal standard would be preferred.

10) Since the requisite educational qualification as advertised on 21.02.2023 for the post of Assistant Professor in Government Engineering Colleges of Assam does not match with the specific requirement as prescribed in Schedule – II of the Assam Technical Education Service Rules, 1981, on being enquired, both Mr. Buragohain, learned counsel for the petitioners as well as Mr. K. Gogoi, learned Standing Counsel, Higher Education Department submitted that the impugned advertisement dated 21.02.2023 is in conformity with the provisions of said AICTE Regulations, 2019 where, even Bachelors of Engineering Degree holders can also apply for the post of Assistant Professor having requisite eligibilities.

11) Mr. Buragohain, learned counsel for the petitioners placing the provisions of AICTE Regulation, 2019 submitted that in the impugned advertisement dated 21.02.2023, there is no such provisions for counting of past service. In counter, Mr. Gogoi, learned Standing Counsel, Higher Education submitted that the impugned advertisement provides for written examination based on OMRMCQ for 75 marks and Teaching Proficiency Test of 25 marks.

12) From the provisions of AICTE Regulation, 2019 placed before the Court by the petitioners as mentioned at para 17 that relates to Clause 2.25 Counting of Past Service for Direct Recruitment and Promotion, the petitioner have categorically stated that *previous regular service, whether national or international, as Assistant Professor, Associate Professor or Professor or equivalent in a University, College, National Laboratories or other Scientific/Professional Organisations such as the CSIR, ICAR, DRDO, UGC, ICSSR, ICHR, ICMR, DBT or State Public Sector Undertakings etc., should be counted for direct recruitment as an Assistant Professor/Associate*

Professor/Professor provided that:-

- a) The qualifications for the post held should not be lower than the qualifications prescribed by the AICTE for Lecturer, Head of the department and Principal as the case may be.*
- b) The post is/was in an equivalent grade or of the pre-revised scale of pay as the post of Lecturer, Head of the department and Principal.*
- c) The candidate for direct recruitment has applied through proper channel only.*
- d) The concerned person should possess the same minimum qualifications as prescribed by the AICTE for appointment to the post of Lecturer, Head of the department and Principal, as the case may be.*
- e) The post was filled in accordance with the prescribed selection procedure as laid down in the Regulations of the State Government / Central Government / concerned institution, for such appointments.*
- f) The previous appointment was not as guest lecturer for any duration or ad-hoc or in a leave vacancy of less than one year duration. Ad-hoc or temporary service can be counted provided that:*
 - i. The period of service was of more than one year duration;*
 - ii. The incumbent was appointed on the recommendation of duly constituted Selection Committee.*
 - iii. The incumbent was selected to the permanent post in continuation to the ad-hoc or temporary service.*
 - iv. An artificial break in service shall not be used to the prejudice of employee, appointed on permanent basis. The person appointed on permanent basis shall be given the benefit of entire service rendered by him with effect from the date of initial appointment (temporary/contract/ad-hoc) notwithstanding the artificial break / breaks in service.*
 - v. The incumbent was drawing total gross emoluments not less than the*

monthly gross salary at initial stage of a regularly appointed Lecturer, Head of the department and Principal, as the case may be; and

vi. At the time of selection, the negotiated terms and conditions clearly mention the period of experience, nature of experience and same has been consented by the employer.

g) No distinction should be made with reference to the nature of management of the institution where -previous service was rendered (private/local body/Government) for counting past services under this clause.

13) Mr. Gogoi, learned Standing Counsel, Higher Education Department placing the provisions of Clause 2.25 of said AICTE Regulation 2019 submitted that only more than one year duration of ad-hoc or temporary service towards teaching experience can be considered amongst others, subject to the provisions that (i) the period of service was of more than one year duration; (ii) the incumbent was appointed on the recommendation of duly constituted Selection Committee; (iii) the incumbent was selected to the permanent post in continuation to the ad-hoc or temporary service; (iv) the incumbent was drawing total gross emoluments not less than the monthly gross salary at initial stage of a regularly appointed Lecturer, Head of the department and Principal, as the case may be and (v) at the time of selection, the negotiated terms and conditions clearly mention the period of experience, nature of experience and same has been consented by the employer.

14) Mr. Gogoi also submitted that as the petitioners have clearly stated that they have been engaged on contractual basis in Jorhat Engineering College, which is a Government Engineering College, by its Principal but without any advertisement and selection, whereas, it is the Director of Technical Education, Assam who is the appointing authority for any such post in such Government Engineering Colleges of the State and since the petitioners does not fulfill the requisite criteria for considering their past services engaged on contractual basis without any advertisement and selection, the prayer of the petitioners should be rejected.

15) It is already noted above, that the advertisement was issued on 21.02.2023 and the last date of submission of application was 13.03.2023 which was extended upto 20.03.2023 and that the petitioners have moved this writ petition only on 21.03.2023, after the last date of submission of application that was over on 20.03.2023 after extension of time.

16) The terms and conditions of recruitment is to be specified by the concerned recruiting authority/department on the basis of which the concerned authority like Public Service Commission or the Service Recruitment Board issues the necessary advertisement for filling up of any such public post, like the post of Assistant Professor in Government Engineering Colleges of the State.

17) After hearing the learned counsels for the parties and considering entire aspect of the matter, the Court is not inclined to interfere with the prayer of the petitioners in setting aside the impugned advertisement dated 21.02.2023, in exercise of its power under Article 226 of the Constitution which the petitioners have challenged in this writ petition after the expiry of last date of submission of application as specified in the said advertisement dated 21.02.2023.

18) However, since the AICTE Regulation, 2019 provides for consideration of past service as specified at Clause 2.25 of the said AICTE Regulation, 2019, the petitioners are directed to submit a representation before the Secretary to the Government of Assam in the Higher Education (Technical) Department on or before **04.05.2023** along with a certified copy of this order, a copy of this writ petition including the annexures appended thereto with their full details including address, Phone/Mobile Number, E-mail address etc., obtaining necessary acknowledgement from the said authority in that regard.

19) In the event of filing such representation by the petitioners within the time as specified above, the said authority shall dispose of the representation of the petitioners in accordance with law, within a period of 30 (thirty) days from the date of

receipt of the same from the petitioners, after considering the relevant provisions of said AICTE Regulation, 2019 and the relevant recruitment Rules applicable to the post of Assistant Professor in the Government Engineering College of the State, vis-à-vis the appointment of the petitioners on contractual ground in said Jorhat Engineering College intimating the petitioners about the outcome of their such representation.

20) With the above observation and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant