

GAHC010148642020



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

Case No. : WP(C)/2797/2020

SANCHAYITA KHAKHOLARY
D/O. SRI MANOJ KUMAR KHAKHOLARY
LAKSHMI VILLA
WARD NO.14
NEAR BONGAIGAON COLLEGE
DOLAIGAON
PIN-783380
DIST. BONGAIGAON
ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
DISPUR
GUWAHATI-06.

2:THE DIRECTOR OF HIGHER EDUCATION

KAHILIPARA
GUWAHATI-19.

3:THE COTTON UNIVERSITY

REP. BY THE PRESIDENT OF THE GOVERNING BODY/EXECUTIVE COUNCIL
GUWAHATI-781001
DIST. KAMRUP
ASSAM.

4:THE VICE-CHANCELLOR

COTTON UNIVERSITY
GUWAHATI-781001

KAMRUP
ASSAM.
5:THE SELECTION COMMITTEE

REP. BY ITS CHAIRPERSON CONSTITUTED FOR THE PURPOSE OF
INTERVIEW AND SELECTION OF ASSTT. PROFESSOR IN THE DEPTT. OF
HISTORY
COTTON UNIVERSITY
GUWAHATI-781001
KAMRUP
ASSAM.
6:THE REGISTRAR

COTTON UNIVERSITY
GUWAHATI-781001
KAMRUP
ASSAM.

Advocate for : MR. A SARMA
Advocate for : SC
EDU appearing for THE STATE OF ASSAM AND 5 ORS.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

16/03/2023

Heard Mr. K Kalita, learned counsel for the petitioner. Also heard Mr. A R Tahbildar, learned Standing counsel, Higher Education Department for the respondents Nos. 1 & 2 and Mr. P D Nair, learned Standing counsel, Cotton University for the respondents Nos. 3 to 6.

The respondent Cotton University on 19.06.2019 issued an advertisement inviting applications from eligible Indian citizens for various teaching positions in the said University including 2 (two) posts of Assistant Professors of History, 1 (one) for unreserved category with the specialization of Ancient Indian History and the other reserved for Schedule Tribe (Plains) with the specialization of Medieval Indian History.

Petitioner stated that she belongs to Schedule Tribe (Plains) category and possesses the requisite eligibility for the post of Assistant Professor in History with the specialization of Medieval

Indian History reserved for Schedule Tribe (Plains) category and accordingly she applied for the same.

The respondent Cotton University on 07.02.2020 published the list of shortlisted candidates for the posts of Assistant Professors as advertised including the subject of History in the post of Assistant Professor reserved for ST(P) with specialization of Medieval Indian History. As her name was enlisted in the said list of shortlisted candidates, she was called for the interview on 27.02.2020 and pursuant to the same, the petitioner on 27.02.2020 appeared before the interview board constituted by the respondent Cotton University.

As her name did not figure in the select list, the petitioner on 05.03.2020 submitted an application through RTI to get the information from the said University to know the reason for not recruiting any candidate from ST(P) category for the post of Assistant Professor in History in the respondent University and to provide the marks obtained by her in said interview as well as the marks obtained by other shortlisted ST(P) category candidates for the said post of Assistant Professor of History along with other details.

The respondent Cotton University by a communication dated 05.06.2020 informed the petitioner that no candidate was recommended by the Interview Board for the post of Assistant Professor of History in Cotton University under the category of ST(P) as advertised on 19.06.2019 for which interview was held on 27.02.2020 and that amongst the four such candidates, she secured 51.12 marks during the selection, whereas the other 3 candidates secured the marks of 37.4, 44.1 and 49.6, lesser than her.

Petitioner is aggrieved as the respondent Cotton University instead of selecting her did not publish any select list for the post of Assistant Professor (History) reserved for ST(P) category pursuant to the advertisement dated 19.06.2019, intimating her with regard to the said RTI application that none of the candidate for the said post was found suitable.

Hence, this writ petition by the petitioner praying amongst others for a direction to the respondent Cotton University to appoint her to the post of Assistant Professor in the Department of History as she secured the highest marks in the interview that was held on 27.02.2020 and to restrain the respondent Cotton University from issuing any fresh advertisement for recruitment to the post of Assistant Professor in History (Medieval) in Cotton University.

No notice in this case was issued till date. But in the meanwhile, the respondent Cotton University filed its affidavit in the matter on 14.08.2020 to which the petitioner submitted her reply on

08.10.2020 and also filed an additional affidavit on 14.10.2020.

Issue herein is with regard to the non-selection of any such candidate for the post of Assistant Professor (History) reserved for ST(P) category with the specialization of Medieval Indian History in Cotton University advertised on 19.06.2019 for which interview amongst the shortlisted candidates was held on 27.02.2020.

It is stated by the petitioner that though she secured highest marks of 51.12 amongst the 4 shortlisted candidates, but the Selection Committee in her RTI reply stated that the said committee did not find anyone suitable for the said post. However, it is seen that the petitioner did not challenge the said decision of the selection committee regarding its finding being in violation of any such constitutional provisions, but challenge only with regard to the finding of the said Selection Committee that no candidate was found suitable for the said post.

It is well settled that the Selection Committee consisting of Experts in the field is normally presided over by a Chairman or a Member Expert in the subject. Such Selection Committee in Cotton University is comprised of the Vice Chancellor of the University; nominee of the Hon'ble Governor/Chancellor; nominee of the University's Executive Council; nominee of the University's Academic Council; the Head of the Department of History of the University, who herself is a lady belonging to the Schedule Tribe category; three Subject Experts and the Registrar of the Cotton University as its Member Secretary.

The petitioner did not raise any such objection with regard to the constitution of the said Selection Committee at any point of time. Such committee had the expertise in the matter when such an Expert Committee or Expert Body considered the merit of each of the candidates, assessed them considering their performance in the interview and other academic qualifications and granted them marks and thereafter, found none of the candidates suitable for the post of Assistant Professor reserved for ST (P) with the specialization of Medieval Indian History.

It is not open for the High Court in a writ petition filed under Article 226 of the Constitution of India to sit over the assessment made by such an Expert Body, i.e., the Selection Committee, as an appellate authority. The question as to how the candidates were assessed, what norms the Selection Committee applied in making such assessment is exclusively to be determined by the Selection Committee since the jurisdiction to make any such selection as per law is the matter.

It is not open for the High Court to interfere with such a selection process consisting of

Subject Experts, who have got their expertise in the matter of assessment where there is no such allegation on the part of the petitioner that such selection was bias, malafide or arbitrary.

Therefore, a writ Court cannot act as an appellate forum with regard to any such decision of the Selection Committee consisting of experts in the field for selecting a candidate for the post of Assistant Professor of History reserved for ST(P) category specialized in the subject of Medieval Indian of History.

Whether a candidate is suitable and fit for a particular post or not is required to be decided only by a duly constituted selection body or a Selection Committee when the Courts in exercise of the jurisdiction under Article 226 of the Constitution of India have hardly any scope of judicial review in such matter except to find out such decision of the Selection Committee was bias, malafide or arbitrary.

During the deliberation of the matter, Mr. K Kalita, learned counsel for the petitioner submitted that the Selection Committee was consisted of one lady Professor belonging to Schedule Tribe category only, but not from a Schedule Tribe (Plains) category. Even assuming such submission of the petitioner as valid but the petitioner failed to establish that she raised such objection immediately after appearing in the Interview Board on 27.02.2020 and has filed this writ petition only on 14.10.2020 after finalization of the selection procedure for the post of Assistant Professor of History reserved for ST(P) category, noted above.

It is also pointed out by Mr. Nair, learned Standing counsel, Cotton University that the petitioner did not mention about the issue of not having a lady in the Selection Committee, who belonging to ST (P) category or any representation from the ST(P) category in the Selection Committee in the pleadings of this writ petition.

It is well settled that the doctrine of fairness evolved in administrative law cannot convert a Court into an appellate forum. As the petitioner has failed to establish anything before the Court that the decision of the Selection Committee of the Cotton University not finding any suitable candidate for the post of Assistant Professor of History reserved for ST(P) category specialized in the subject of Medieval Indian History as advertised on 19.06.2019, for which interview was held on 27.02.2020 suffers from any bias or it is malafide or arbitrary, the Court in exercise of its power under Article 226 of the Constitution of India shall not interfere with the said decision of the Selection Committee.

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

During the deliberation of the matter, Mr. Nair, learned Standing counsel, Cotton University has also placed the original copy of the decision of the Selection Committee for the post of Assistant Professor in the Department of History reserved for Schedule Tribe (Plains) category with the specialization of Medieval Indian History advertised on 19.06.2019 containing the signatures of all the 9 (nine) members of the Selection Committee, noted above, which is already annexed to the reply of the RTI filed by the petitioner which was without the signatures of the Members of the Selection Committee.

JUDGE

Comparing Assistant