

GAHC010094132023



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

Case No. : WP(C)/2495/2023

MOFSIDA KHANAM AND ANR
W/O- SHOWKAT ALI TALUKDAR,
VILLAGE- KALGACHIA, PO- KALGACHIA,
DISTRICT- BARPETA, ASSAM.

2: REJIA SULTANA
W/O- AZAD HUSSAIN

VILLAGE- KALGACHIA
PO- KALGACHIA

DISTRICT- BARPETA
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER SECRETARY TO THE
GOVERNMENT OF ASSAM,
DEPARTMENT OF HIGHER EDUCATION,
DISPUR, GUWAHATI-6.

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

3:THE PRINCIPAL CUM SECRETARY OF GOVERNING BODY OF
NABAJYOTI COLLEGE
KALGACHIA
DISTRICT- BARPETA
ASSAM

PIN- 781319.

4:THE SELECTION COMMITTEE
REPRESENTED BY ITS PRESIDENT

NABAJYOTI COLLEGE

C/O- PRINCIPAL OF NABAJYOTI COLLEGE

PO- KALGACHIA
DISTRICT- BARPETA.

5:THE GOVERNING BODY OF NABAJYOTI COLLEGE
REPRESENTED BY ITS PRESIDENT

C/O- PRINCIPAL NABAJYOTI COLLEGE

PO- KALGACHIA

DISTRICT- BARPETA
ASSAM

Advocate for the Petitioner : MR. A R SIKDAR

Advocate for the Respondent : SC, HIGHER EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

09/05/2023

Heard Mr. A R Sikdar, learned counsel for the petitioners and Mr. K Gogoi, learned Standing counsel, Higher Education Department for the respondent Nos. 1 & 2.

2. The Principal-cum-Secretary of Nabajyoti College, Kalgachia, District-Barpeta on 18.12.2022 with due approval of the Director of Higher Education, Assam issued an advertisement for 1 (one) post of Junior Assistant (Grade-III) under unreserved category at Roster Point-13 along with some other posts of Grade-IV in that college indicating that within 15 days from the date of publication of the said advertisement, eligible candidates, Graduate in Arts/Science/Commerce from a recognized College/Institution affiliated to a recognized University with a Diploma or Certificate course in

Computer Operation of minimum 3 months duration, having working knowledge in Assamese and English Typing in Words and Simple Excel may apply for the same.

3. The petitioners, having the requisite eligibilities for a Grade-III (Junior Assistant) post in a provincialised college applied for the said post of Junior Assistant advertised on 18.12.2022.

4. The authorities of the Nabajyoti College initially by communication dated 16.03.2023 informed the petitioners that on 27.03.2023 at 10:30 AM in the college premises, there shall be a written test for the post of Grade-III (Junior Assistant) under unreserved category and further, informed him to appear in the said written test along with the admit card that will be issued on 24.03.2023. However, in the admit card, the written test for the Grade-III post in the said college is reschedule on 09.04.2023. Petitioners appeared in the written test as well as in the computer test.

5. The petitioners submitted that during their computer test, the college authorities of Nabajyoti College allowed them to use pen drive and thereby suspicion arose in their mind regarding such selection and on 24.04.2023, the petitioners submitted a representation before the concerned Departmental Minister, who in turn on 27.04.2023 referred the matter to the Director of Higher Education, Assam for necessary examination.

6. Petitioners submitted that the State Government in the Higher Education Department on 28.07.2022 by forwarding the guideline/communication No. PC/HE/Plan/13/2016/157 dated 18.05.2017 informed the Director of Higher Education, Assam that said guideline shall be applicable for selection of Grade-III and Grade-IV employees and in turn, the Director of Higher Education, Assam by its communication dated 28.07.2022 informed all the Principals of Provincialised Colleges, Government Model Colleges and Pandit Deendayal Upadhyay Adarsha Mahavidyalayas about the said O.M. dated 18.05.2017.

7. Petitioners submitted that as per the said guideline/communication dated 18.05.2017, there is no requirement of any such written test for the post of Grade-III in provincialised colleges excepting the Computer Test and that said guideline dated 18.05.2017 provides for marks @ 10% secured in the Class X (HSLC) Examination, @ 20% secured in the 10+2 (HSSLC) Examination, @ 50% secured in the Graduation and @ 20% secured in the Computer Test out of the total marks in those respective four examinations making it 100%.

8. However, on perusal of the said communication dated 18.05.2017 of the State Government in the Higher Education Department, annexed to this writ petition as Annexure-15, it is seen that the

guidelines for selection of Grade-III and Grade-IV posts is applicable only with regard to Pandit Deendayal Upadhyay Adarsha Mahavidyalayas and it does not specify anything with regard to its applicability in other provincialised colleges of the State.

9. The Assam College Employees (Provincialisation) Rules, 2010 framed under the provisions of Section 12 (1) of the Assam College Employees (Provincialised) Act, 2005, having statutory force, provides for "Method of Recruitment" in provincialised colleges of the State.

10. On being enquired, Mr. Gogoi, learned Standing counsel, Higher Education Department submitted that Nabajyoti College, Kalgachia is a provincialised college of the State. As such, it comes under the provisions of said 2005 Act as well as the 2010 Rules.

11. In respect of Grade-III and Grade-IV posts, Rule 5 (2) of the said 2010 Rules provides that – "the list of candidates shall be collected from the local employment exchange/Advertisement in newspaper".

12. Rule 5 (5) of the said 2010 Rules provides 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. Rule 5(7) of the said 2010 Rules provides that "the Governing Body shall conduct the selection process and recommend to the Director, who shall issue orders of appointment."

14. Rule 7 of the said 2010 Rules relates to "Direct Recruitment" that 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.

15. It is submitted on behalf of the petitioners that the authorities of Nabajyoti College, Kalgachia

after selection by the concerned selection committee of the college have already recommended the name of the candidate selected for the said post of Grade-III (Junior Assistant) as advertised on 18.12.2022 for which selection was held on 09.04.2023. The matter is presently pending before the Director of Higher Education, Assam for necessary consideration, approval and appointment.

16. As per 2010 Rules, right to challenge selection and recommendation of any candidate in a provincialised college against a vacant sanctioned post, being a public post, selected by the Selection Committee of such provincialised college concerned and recommended by the Governing Body of the said provincialised college, will accrue only when the Director of Higher Education, Assam gives its approval and issues appointment orders in favour of the concerned selected and appointed candidate to the post concerned.

17. It is also well settled that the issuance of appointment order by the Director of Higher Education, Assam against a vacant sanctioned post in a provincialised College, i.e., a public post, in terms of the said 2010 Rules is not an empty formality, as, before passing any such order of approval and appointment, the Director of Higher Education, Assam is required to scrutinize the records of selection and only after being satisfied, the said authority is required to issue the consequent appointment orders.

18. Considering the above, the right of the petitioners against any such selection and appointment to the post of Junior Assistant in Nabajyoti College, Kalgachia, District-Barpeta pursuant to the advertisement dated 18.12.2022, for which selection was held on 09.04.2023, will accrue only when the Director of Higher Education, Assam approves any appointment to the post as advertised in which proceeding the petitioners had participated.

19. For the reasons above and considering the provisions of Rules 5 and 7 of the Assam College Employees (Provincialisation) Rules, 2010 as discussed above, the Court is of the view that the claim of the petitioners against selection and appointment to the post of Junior Assistant in Nabajyoti College, Kalgachia, District-Barpeta pursuant to the advertisement dated 18.12.2022, noted above, is a premature one, since the Director of Higher Education, Assam respondent No. 2 is yet to give its approval and issue appointment orders in favour of the approved and selected candidates.

20. Accordingly, the Court in exercise of its power conferred under Article 226 of the Constitution of India is not inclined to entertain this writ petition being a premature one as the matter is yet to reach the finality being pending before the Director of Higher Education, Assam.

21. For the reasons above, the prayer of the petitioners made in this writ petition stands rejected.

22. However, the petitioners may approach the Director of Higher Education, Assam by submitting a fresh representation stating their grievances, if any, forthwith on or before 19.05.2023 along with a certified copy of this order and a copy of this writ petition including the Annexures appended thereto.

23. In the event of filing such representation by the petitioners, as directed above, the Director of Higher Education, Assam shall forthwith dispose of the said representation of the petitioners in accordance with law, intimating them about the outcome of the same.

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

JUDGE

Comparing Assistant