

GAHC010094682023



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

Case No. : WP(C)/2406/2023

RAHUL THAKURIA AND ANR
S/O- BIBHUTI THAKURIA,
R/O- VILLAGE DOKUCHI (PUKHURIPARA),
P.O AND P.S- NAGARBERA,
DIST- KAMRUP , ASSAM, PIN-781127
ROLL NO - BPCC/G4/023

2: NAJIMA AHMED
D/O- MOBARAK ALI MANDAL
R/O- VILLAGE NAITOR
P.O AND P.S- NAGARBERA
DIST- KAMRUP
ASSAM
PIN-781127
ROLL NO - BPCC/G4/01

VERSUS

THE STATE OF ASSAM AND 10 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF HIGHER EDUCATION,
DISPUR, GUWAHATI, ASSAM, PIN- 781006.

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

3:THE PRESIDENT
GOVERNING BODY
B.P CHALIHA COLLEGE
NAGARBERA

P.O AND P.S- NAGARBERA
DIST- KAMRUP (R)
ASSAM
PIN-781127

4:THE PRINCIPAL AND SECRETARY
B.P CHALIHA COLLEGE
NAGARBERA
P.O AND P.S- NAGARBERA
DIST- KAMRUP (R)
ASSAM
PIN-781127

5:NAYAN JYOTI KALITA
S/O- LATE KAMAL KALITA
R/O- VILLAGE PUKHURIPARA
P.O AND P.S- NAGARBERA
DIST- KAMRUP (R)
ASSAM
PIN-781127

6:BHARGAB THAKURIA
S/O- LATE BHAGABAN THAKURIA
R/O- VILLAGE PUKHURIPARA
P.O AND P.S- NAGARBERA
DIST- KAMRUP (R)
ASSAM
PIN-781127

7:BIJOY MEDHI
S/O- LATE SUKO MEDHI
R/O- VILLAGE PUKHURIPARA
P.O AND P.S- NAGARBERA
DIST- KAMRUP (R)
ASSAM
PIN-781127

8:KABERI RABHA
D/O- BABUL RAVA
R/O- VILLAGE NAGARBERA
P.O AND P.S- NAGARBERA
DIST- KAMRUP (R)
ASSAM
PIN-781127

9:NITUL KALITA
S/O- JOGESH KALITA
R/O- VILLAGE DOKUCHI

P.O AND P.S- NAGARBERA
DIST- KAMRUP (R)
ASSAM
PIN-781127

10:SUPIL BEY
S/O- MOHESWAR BEY
R/O- VILLAGE DOKUCHI
P.O AND P.S- NAGARBERA
DIST- KAMRUP (R)
ASSAM
PIN-781127

11:BASANTA KALITA
S/O- MADHU KALITA
R/O- NAGARBERA
P.O AND P.S- NAGARBERA
DIST- KAMRUP (R)
ASSAM
PIN-78112

Advocate for the Petitioner : MR. K R PATGIRI

Advocate for the Respondent : SC, HIGHER EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

08-05-2023

Heard Mr. K. R. Patgiri, learned counsel for the petitioners and Mr. A. R. Tahabildar, learned Standing Counsel, Higher Education Department for the respondent Nos. 1 and 2.

2) The Principal-cum-Secretary of B. P. Chaliha College, Nagarbera, District-Kamrup on 20.12.2022 issued an Advertisement inviting applications amongst others, for 7 vacant posts of Grade-IV, Library Bearer and Laboratory Bearer including (1) 4 posts of Grade-IV- (i) one post reserved for PwD at Roster Pointe No.1, (ii) one post reserved for OBC/MOBC

at Roster Point No.2, (iii) one post for unreserved category at Roster Point No.4 and (iv) one post reserved for ST (Hills) at Roster Point No.10; (2) one post of Library Bearer for un-reserved category at Roster Point No.7 and (3) 2 posts of Laboratory Bearer-(i) one post reserved for ST (Plains) at Roster Point No.5 and (ii) one post reserved for EWS at Roster Point No.9.

3) The petitioners submitted their applications for those advertised posts of Grade-IV and by communication dated 10.04.2023, the Principal-cum-Secretary of said B. P. Chaliha College directed the petitioners to appear in the written test as well as in the interview for Grade-IV/Laboratory Bearer/Library Bearer that was scheduled on 21.04.2023 at 10:00 am at the College premises itself, issuing relevant Admit Cards to them with Roll Nos. BPCC/G4/023 and BPCC/G4/019 respectively. Accordingly, the petitioners along with other candidates, appeared in the written test as well as in the interview that was held on 21.04.2023 for those 7 posts of Grade-IV, as advertised on 20.12.2022.

4) However, in the selection process, the College authorities of said B.P. Chaliha College disregarding their better claims selected the private respondent Nos. 5 to 11 for those 7 posts of Grade-IV in the said College.

5) Being aggrieved, the petitioners have preferred this writ petition.

6) Petitioner No.1 is serving as a Grade-IV employee in said B.P. Chaliha College, Nagarbera on contractual basis and the respondent No.2 is suffering from locomotor disability of 50%. In that regard, the Medical authority i.e., the Joint Director of Health Services, Kamrup, Amingaon issued her necessary certificate on 13.07.2015 itself.

7) Petitioners contended that selection of the private respondent Nos. 5 to 11 as Grade-IV in the said College is bad in law, alleging that those selected private respondents submitted blank copies of their answer scripts and further stated that the respondent No.5 illegally obtained his disability certificate; the respondent No.6 has illegally obtained his OBC Caste Certificate though his father belongs to General category and that the respondent No.7 collected his minimum qualification certificate by illegal means before applying for those advertised Grade-IV posts.

8) Hence, this writ petition by the petitioners praying to set aside and quash the impugned select list/merit list dated 23.04.2023 (Anneuxre-14 to this writ petition) published by the Principal-cum-Secretary of said B.P. Chaliha College, Nagarbera for selection to those 7 posts of Grade-IV as advertised on 20.12.2022.

9) It is to be noted herein that said B.P. Chaliha College, Nagarbera is a provincialised College of the State, provincialised under the provisions of the Assam College Employees (Provincialisation) Act, 2005.

10) The Assam College Employees (Provincialisation) Rules, 2010 being framed under Section 12 (1) of the said 2005 Act, has a statutory force. Rules 5 of said 2010 Rules relates to method of recruitment, where at Rule 5 (2) it is provides that in respect of Grade III and Grade IV posts, the list of candidates shall be collected from the local employment exchange/Advertisement in newspaper.

11) Rule 5 (5) stipulates that the post of LDA/Library Assistant/Laboratory Assistant in such Colleges required to be filled up by way of direct recruitment from the Laboratory Bearer/Library Bearer/Grade-IV having qualification as prescribed in the ratio of 75:25.

12) Rule 5 (7) provides that in all these cases, the Governing Body shall conduct the selection process and recommend to the Director, who shall issue orders of appointment.

13) Rule 7 of said 2010 Rules relates to direct recruitment and stipulates as follows:--

7. Direct Recruitment-

(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;

14) The right to claim for appointment as advertised on 20.12.2022 of the petitioners

shall accrue only when the Director of Higher Education, Assam approves any appointment to the post as advertised in which proceeding the petitioners had participated.

15) As per 2010 Rules, selection and recommendation of the respondent Nos. 5 to 11 to the posts of Grade-IV will accrue only when the Director of Higher Education, Assam gives its approval and issues appointment orders in their favour.

16) It is 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.

17) 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 the selection and appointment of the respondent Nos. 5 to 11 as Grade-IV Library Bearer and Laboratory Bearer as advertised on 20.12.2022, is a prematured one, since the Director of Higher Education, Assam respondent No. 2 is yet to give its approval and issue appointment orders in favour of those respondents against the posts of Grade-IV, Library Bearer and Laboratory Bearer in said B.P. Chaliha College as advertised on 20.12.2022.

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

19) Accordingly, the claim of the petitioners made in this writ petition for the reasons above stands rejected.

20) However, the petitioners, may submit a representation annexing a certified copy of this order including their addresses, Phone/Mobile Nos. and E-mail ids etc., before the

Director of Higher Education, Assam raising their grievances regarding selection of the respondent Nos. 5 to 11 to the posts of Grade-IV Library Bearer and Laboratory Bearer by the authorities of B.P. Chaliha College, in terms of the advertisement dated 20.12.2022, noted above, forthwith, on or before fifteen days from today.

21) In the event of filing any such representation by the petitioners before the Director of Higher Education, Assam, on or before fifteen days from today, as directed above, the said authority shall consider the said representation of the petitioners and shall dispose it of in accordance with law, before considering any such approval of the recommendation of the authorities of said B.P. Chaliha College, Nagarbera with regard to his approval and appointment of the respondent Nos. 5 to 11 against Grade-IV Library Bearer and Laboratory Bearer in the said College as advertised on 20.12.2022, intimating the petitioners about the outcome of their said representation.

22) With the above observation and direction, this writ petition stands dispose of.

JUDGE

Comparing Assistant