

GAHC010099972021



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

Case No. : WP(C)/3227/2021

AJANTA DUTTA AND 2 ORS.
D/O LATE SURENDRA KUMAR DUTTA,
RESIDENT OF GOVERNMENT QUARTER NO. C-4/IV, JIST CAMPUS PS
TEOK, DIST JORHAT, ASSAM

2: SMTI BIDYARTHI BORA
D/O AMAL CHANDRA BORA
RESIDENT OF RAJAHOWLI
SONARIGAON
PS AND DIST JORHAT
ASSAM

3: SMTI NABANITA BORTHAKUR
D/O ANANTA BORTHAKUR
RESIDENT OF SOUMARPITH CHOLADHASA
PS AND DIST JORHAT
ASSA

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HIGHER EDUCATION DEPARTMENT, DISPUR GUWAHATI 06

2:DIRECTOR TECHNICAL EDUCATION
KAHILIPARA
GUWAHATI 19

3:JORHAT INSTITUTE OF SCIENCE AND TECHNOLOGY
PPO CHENIJAN SOTAI
JORHAT
785010

4:TREASURY OFFICER
JORHAT
ASSAM
78500

Advocate for the Petitioner : MR. B CHAKRABORTY

Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

06.06.2023

O R D E R

Heard Mr. D. Das, learned Senior counsel assisted by Ms. S. Sharma, learned counsel for the petitioners. Also heard Mr. K. Gogoi, learned Standing Counsel, Education (Technical) Department, Government of Assam.

2. Jorhat Institute of Science and Technology (JIST) feeling necessity for constitution of an examination cell for the purpose of being in-charge of all kinds of examinations, constituted JIST Examination Cell pending approval of the Director of Technical Education, Assam.

Initially, JIST decided to outsource some of the staff on contractual basis to be paid from the tuition fees of the students. Accordingly, by Office Order dated 18.11.2016, the JIST Examination Cell was constituted and the petitioner Nos.1, 2 and 3 were appointed as UDA and LDA respectively along with other staffs.

3. Thereafter, Notice dated 18.06.2016 was issued by the Principal, JIST, Jorhat for filling up the posts of Section Officer UDA (Gr-III), Computer Operator LDA (Gr-III), Section Assistant LDA (Gr-III), Data Entry Operator LDA (Gr-III) and Helper (Grade-IV) to constitute Examination Cell in JIST. However, as there was no response, another Notice dated 28.10.2016 was issued for the same posts. The petitioner Nos.1, 2 and 3 accordingly applied for the posts of Computer Operator LDA (Gr-III), Section Assistant LDA (Gr-III) and Data Entry Operator LDA (Gr-III). Consequently, after the recruitment process, the petitioner No.1 was appointed as Section Officer at JIST on

contract basis, and the petitioner No.2 was also appointed as Office Assistant on contract basis by separate Office Orders both dated 29.05.2017. The petitioner No.3 was also appointed as Computer Operator on contract basis by Office Order dated 31.12.2018.

4. While the petitioners were functioning against their respective posts on contract basis, the Principal, JIST issued an Order dated 22.01.2019 on the basis of the instructions of the Director of Technical Education constituting a Selection-cum-Screening Committee with three Members to verify the testimonials and other relevant documents and performance of the employees of JIST Examination Cell, which was established after due approval by the Director of Technical Education, Assam for onward transmission of the proposal for regularisation of the services of the employees appointed on contract basis against sanctioned vacant posts.

5. The Selection-cum-Screening Committee held its proceedings on 25.02.2019 and by Resolution-I, the names of the petitioner Nos.1, 2 and 3 were recommended for regularisation of their service against their respective posts, i.e., Section Officer, Office Assistant and Computer Operator respectively.

6. Thereafter, Director of Technical Education, Government of Assam by an Order dated 20.07.2019 on the basis of the recommendation of the Selection Committee and proposal submitted by the Principal, JIST, appointed the petitioner Nos.1, 2 and 3 against the sanctioned vacant post along with scale of pay. The order further mentions that the petitioners shall be governed by the New Pension Rules.

7. Accordingly, the petitioners started receiving regular salary up to the month of October, 2019. However, they were not paid salary, despite rendering service, from the month of November, 2019 onwards.

Being aggrieved, the petitioners made a representation before the Additional Chief Secretary to the Government of Assam, Education (H) on 20.01.2020 praying for release of their regular monthly salary.

8. While matters rest thus, the Secretary to the Government of Assam, Higher Education (Technical) Department wrote a letter dated 05.03.2021 to the erstwhile in-Charge Director of Technical Education to clarify the reason of changing nomenclature of the original sanctioned posts as internal arrangement and reason for issuing appointment letters for three persons (petitioners) for different posts on the same date. The query put in the letter dated 05.03.2021 was replied vide letter dated 07.04.2021 clarifying the position.

9. Thereafter, the impugned Order dated 24.06.2021 was issued by the Director of Technical Education, Assam terminating with immediate effect the services of the petitioners on the ground that gross irregularities were made while appointing them on regular basis.

10. Being aggrieved, the petitioners are before this Court by way of the present writ petition assailing the Order dated 24.06.2021.

11. It is the submission of Mr. Das, learned Senior counsel for the petitioners, that the petitioners were initially appointed on contract basis in the Examination Cell of JIST as there were requirement of their services. The appointment was made after issuance of notice for filling up the said vacancies. Thereafter, on the instructions of the Director of Technical Education, the Principal, JIST had constituted the Screening-cum-Selection Committee for considering the case of the petitioners for appointment on regular basis. After examination of all the testimonials and the performance report of the petitioners, the Selection-cum-Screening Committee passed a resolution on 25.02.2019 recommending the case of the petitioners for appointment on regular basis. Accordingly, the Director of Technical Education, Assam issued the order dated 20.07.2019 appointing the petitioners on regular basis.

12. It is further submitted by Mr. Das, learned Senior counsel for the petitioners, that as the petitioners were appointed on regular basis by Order dated 20.07.2019, a show-cause notice should have preceded before issuance of the termination order dated 24.06.2021, which has not been done by the respondents. He also submits that

if the termination order dated 24.06.2021 is not interfered with by this Court, the petitioners should automatically be reverted back to their contractual appointment to their respective posts and, thereafter, they should be permitted to continue on contract basis till such time the respondents fill up those posts on regular basis after following the due process of law.

13. Mr. Gogoi, learned Standing Counsel, Education (Technical) Department, on the other hand, submits that the appointment Orders issued in favour of the petitioners appointing them on regular basis in the establishment of JIST was issued without the approval of the Government and further submits that the appointment orders of the petitioners on regular basis were fake appointment orders. He also submits that the File bearing No.TE(E)A-73/Pt/2019/46 is a fake file. Moreover, there was no requirement for issuing show cause notice prior to termination of the services of the petitioners by order dated 24.06.2021 as they were appointed without following the due procedure of law. He, therefore, submits that there is no merit in the writ petition and the same should be dismissed.

14. I have heard the learned counsel for the parties.

15. This Court has considered the notice issued by the Principal, JIST while appointing the petitioners on contractual basis to their respective posts, i.e., Section Officer, Office Assistant and Computer Operator. It is seen that the initial appointment of the petitioners were on contractual basis and, thereafter, on the advice of the Director of Technical Education, the Principal, JIST constituted a Selection-cum-Screening Committee for scrutinising the testimonials and the performance report of the petitioners. The Selection-cum-Screening Committee in its meeting held on 25.02.2019 resolved to recommend the case of the petitioners for appointment on regular basis. The same was forwarded to the concerned Director of Technical Education and, thereafter, the Director of Technical Education issued the Order dated 20.07.2019 appointing the petitioners on regular basis.

16. This Court has noticed that while the petitioners were appointed on regular basis, no advertisement was made calling for applications from the open market and the manner in which the petitioners have been appointed on regular basis cannot be held to be valid in the eyes of law particularly when such regular appointments were made to sanctioned posts.

17. Accordingly, this Court is not interfering with the impugned order dated 24.06.2021 by which the petitioners were terminated from their regular services. However, it is important to note that the petitioners, prior to their appointment on regular basis, were serving on contractual basis in the same posts. Therefore, when the regular appointment of the petitioners were cancelled by the Order dated 24.06.2021, the petitioners should have been reverted to their contractual appointments. This has not been done and they have been deprived of their means of livelihood.

18. In that view of the matter, this writ petition is disposed of by directing the respondents, particularly, the Principal, JIST to re-appoint the petitioners on contractual basis if their services are still required. In the event, the petitioners are taken back to service on contractual basis, they shall be allowed to continue in their contractual service till regular appointments are made following the due procedure of law.

19. Writ petition is accordingly disposed of.

JUDGE

Comparing Assistant