

GAHC010102992023



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

Case No. : WP(C)/2683/2023

BABITA ADHIKARY
D/O NIRUPAM ADHIKARY W/O RAMU MAHANTA VILL. AND P.O. NORTH
RAIPUR PART III P.S GOLAKGANJ DIST. DHUBRI ASSAM PIN 783334

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM DEPTT. OF
EDUCATION DISPUR GUWAHATI 6

2:THE DIRECTOR OF ELEMENTARY EDUCATION ASSAM
KAHILIPARA GUWAHATI 1

Advocate for the Petitioner : MR H I CHOUDHURY

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

23.05.2023

Heard Shri PK Roychoudhury, learned counsel for the petitioner. Also heard Shri B. Kaushik, learned Standing Counsel, Elementary Education Department representing all the respondents.

2. Considering the nature of the grievance and the attending facts and

circumstances, this matter is taken up for disposal at the motion stage. In fact, when this matter was called upon in the 1st half, this Court had directed the learned Standing Counsel to obtain instructions and has been called again in the 2nd half and the learned Standing Counsel is equipped with the instructions.

3. The matter pertains to a selection process for the post of Assistant Teacher in various Lower Primary and Upper Primary Schools in the State of Assam. Without going into the detail facts, the grievance is with regard to the assessment of marks. The case of the petitioner is that the evaluation is done by following objective criteria and marks are deduced from the marks obtained by the candidates in various examinations starting from higher secondary. The specific case of the petitioner is that she had appeared in a betterment examination of the higher secondary and there was an improvement by 6%. In fact, she had annexed the mark sheet pertaining to the betterment examination wherein there was an increase in the marks obtained in the subject of "English" from 38 to 66 where there was a decrease in the subject of "Economics" from 49 to 46. However, there was an overall increase by 27 marks. The contention of the petitioner is that the marks obtained after the betterment examination have not been taken into consideration as a result of which the assessment has not been properly done. The learned counsel further submits that in consonance with the Rules, the petitioner has also filed a representation before the Director on 05.05.2023 which is also yet to be taken into consideration.

4. On the other hand, Shri Kaushik, learned Standing Counsel, Elementary Education Department has submitted that it was mandatory upon all the candidates to submit the necessary documents and if the petitioner was actually taking recourse to the betterment marks, the relevant mark sheets should have been submitted which was not done. He further submits that there is no specific averment that the mark sheet of the betterment examination was submitted. He accordingly submits that since the mark sheet of the petitioner pertaining to her performance in the Higher

Secondary examination held on 2011 was only before the authorities, no fault can be attributed in making the assessment. The learned Standing Counsel further submits that he has specific instructions that though a copy of the representation said to have been submitted by the petitioner is annexed to the writ petition, no such representation was actually received by the Office of the Director and he also points out that in the annexure to the writ petition, there is no endorsement of receipt of the said representation. The learned Standing Counsel however fairly submits that over and above the present vacancies, there would be further appointments as more vacancies are likely to come up.

5. Shri Roychoudhury, learned counsel for the petitioner submits that since there is an internal mechanism for redressal of grievance and since a submission has been made by the Department that the representation was not received, he may be given liberty to submit a fresh copy of the representation. He further prays for a direction that in the event, a fair assessment is done and the petitioner is held entitled for such appointment, she may be accommodated in any vacancy which may be existing.

6. After hearing the learned counsel for the parties and on perusal of the materials before this Court, this Court is of the view that if the averments made by the petitioner regarding the mark secured in the betterment is correct, the petitioner would be entitled to have an assessment. At the same time, this Court cannot attribute any fault upon the authorities as it has been categorically stated that the mark sheet pertaining to the betterment examination was never before authorities and there is no reason as to why the marks entitled by a candidate would not be considered. Under those facts and circumstances, this Court gives liberty to the petitioner to submit a fresh copy of the representation to the Director, Elementary Education as per notification itself within a period of 3(three) days from today which is directed to be considered.

7. It is made clear that the representation is required to be considered on merits

and the aspect of delay in filing the representation should not come into the way of such consideration.

8. It is needless to state that along with the representation, the petitioner would annex all the documents including the mark sheet of the betterment examination and also have the original in hand for ready verification. If on such consideration, the marks secured by the petitioner is found within the cut off, she would be offered an appointment in any vacancies which may be existing or would occur in near future which has been submitted by the learned Standing Counsel of the Department.

9. The writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant