

GAHC010108172011



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

Case No. : WP(C)/5284/2011

RANJIT KUMAR BASUMATARY
S/O- LT. NALA RAM BASUMATARY, R/O VILL.- MECHPARA, NO. 2
BAKHARUPARA, P.O.- BONGAIGAON, DIST.- BONGAIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY ITS COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
FINANCE TAXATION DEPTT., DISPUR, GHY- 6.

2:THE UNDER SECY. TO THE GOVT. OF ASSAM
FINANCE TAXATION DEPTT.
DISPUR
GHY- 6.

3:THE COMMISSIONER OF TAXES
ASSAM
KAR BHAWAN
DISPUR
GHY- 6

Advocate for the Petitioner : MR.A M BUZARBARUAH

Advocate for the Respondent : MR.R DUBEY

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 21-06-2023

Heard Mr. U. K. Nair, the learned Senior counsel assisted by Mr. M. Islam, the learned counsel appearing on behalf of the Petitioner and Mr. B. Gogoi, the learned Standing counsel appearing on behalf of the Respondent Nos. 1, 2 and 3.

2. The instant writ petition has been filed by the Petitioner seeking a Writ of Mandamus directing the Respondents to declare the Petitioner to have obtained the minimum qualifying marks of 45% and/or for a Writ of Mandamus directing the Respondents to consider the qualifying marks of STP candidates in the departmental written examination to be 35% or 40% and accordingly declare the petitioner to have qualified in the departmental written test and thereupon to consider his case for promotion in due course.

3. In order to decide as to whether Petitioner is entitled to the reliefs sought for, it would be relevant to take note of the Assam Taxation Service Rules, 1995 (for short "the Rules of 1995"). A perusal of the said Rules of 1995 reveals that Rule 5 relates to method of recruitment. Rule 5(vi) of the Rules of 1995 stipulates that recruitment against one fourth of the cadre strength of Inspector of Taxes shall be made by promotion from Ministerial Staff of the Office of the Commissioner of Taxes and other Apex Offices of the Commissioner of Taxes in accordance with Rule 11. In Rule 11 of the Rules of 1995 and more particularly, Sub-Rule (f) stipulates that for promotion against one fourth of the cadre of Inspector of Taxes, a member of Ministerial Staff must have rendered

meritorious service for a minimum period of 10 years as a Ministerial Staff of which at least one year as Upper Division Assistant or 10 years as Statistical Assistant and must not have crossed 45 years of age on the 1st day of January of the year in which the promotion is considered in accordance with the Clause (vi) of Sub-Rule (1) of Rule 5. It further reveals that the Rules of 1995 was amended vide the Assam Taxation Service (Amendment) Rules, 2005 (hereinafter referred to as the "Amending Rules"). Rule 3(ii) of the Amending Rules stipulates that a Note shall be inserted to Rule 11(f). In terms with the said amendment therefore, the Note so inserted reads as under:

"Note :- The rules for Departmental Written Test are given in Schedule III"

4. In the said Amending Rules, there is Schedule III. In Schedule III, Clause 4(i) stipulates that the written test shall be taken on one paper of total 100 marks consisting of various subjects. Clause 4(ii) stipulates that the duration of the written test shall be 3 (three) hours. Clause 4(iii) stipulates that the qualifying marks to be secured by the candidate in the written test to be eligible for consideration for promotion shall be 45% marks.

5. In the backdrop of the above, it is therefore relevant to take note of that the Petitioner herein admittedly got 42 marks and did not have the qualifying marks of 45%. It is under such circumstances the instant writ petition has been filed seeking a Writ of Mandamus upon the State Respondents to give relaxation to the Petitioner as the Petitioner belongs to the Schedule Tribe (Plains) category on the basis of the proviso to Article 335 of the Constitution. Article 335 of the Constitution is reproduced hereinunder:

"335. Claims of Scheduled Castes and Scheduled Tribes to services and posts. - The claims of the members of the Scheduled Castes and the

Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State:

[Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Schedule Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.]”

6. A perusal of the above Article would show that the claims of members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of the State. The proviso to Article 335 stipulates that nothing in Article 335 of the Constitution shall prevent in making of any provision in favour of the members of the Schedule Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of the State. The said proviso to Article 335 of the Constitution in the opinion of this Court is an enabling provision by which a power is conferred upon the Union as well as the State to make any provisions in favour of Schedule Castes and/or the Schedule Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation for reservation in matters of promotion to any class or classes of services or posts in connection with their affairs.

7. Now, the question therefore arises as to whether this Court in exercise of

powers under Article 226 of the Constitution can issue a Writ in the nature of Mandamus directing the State to make any provision in terms with the proviso to Article 335 of the Constitution thereby granting relaxation in the instant case. This Court finds it relevant at this stage to take note of the judgment of the Supreme Court in the case of ***Chairman and Managing Director, Central Bank of India and Others Vs. Central Bank of India SC/ST Employees Welfare Association and Others*** reported in **(2015) 12 SCC 308** wherein the Supreme Court was dealing with a question as to whether the Court can issue a Mandamus directing the State to grant benefits in terms with Clauses (4) or (4A) of Article 16 of the Constitution which are enabling provisions. The Supreme Court at paragraph No.26 categorically observed that it is for the State to act in a given situation and to take such affirmative action. It was further held that though the power lies with the State but the Courts cannot issue a Mandamus to the State to necessarily make such a provision. Paragraph No.26 of the said judgment being relevant is quoted hereinunder:

“26. In the first instance, we make it clear that there is no dispute about the constitutional position envisaged in Articles 15 and 16, insofar as these provisions empower the State to take affirmative action in favour of SC/ST category persons by making reservations for them in the employment in the Union or the State (or for that matter, public sector/authorities which are treated as State under Article 12 of the Constitution). The laudable objective underlying these provisions is also to be kept in mind while undertaking any exercise pertaining to the issues touching upon the reservation of such SC/ST employees. Further, such a reservation can not only be made at the entry level but is permissible in the matters of promotions as well. At the same time, it is also to be borne in mind that clauses (4) and (4-A) of Article 16 of the Constitution are only the enabling provisions which permit the State to make provision for reservation of these category of persons. Insofar as making of

provisions for reservation in matters of promotion to any class or classes of post is concerned, such a provision can be made in favour of SC/ST category employees if, in the opinion of the State, they are not adequately represented in services under the State. Thus, no doubt, power lies with the State to make a provision, but, at the same time, courts cannot issue any mandamus to the State to necessarily make such a provision. It is for the State to act, in a given situation, and to take such an affirmative action. Of course, whenever there exists such a provision for reservation in the matters of recruitment or the promotion, it would bestow an enforceable right in favour of persons belonging to SC/ST category and on failure on the part of any authority to reserve the posts, while making selections/promotions, the beneficiaries of these provisions can approach the Court to get their rights enforced. What is to be highlighted is that existence of provision for reservation in the matter of selection or promotion, as the case may be, is the sine qua non for seeking mandamus as it is only when such a provision is made by the State, a right shall accrue in favour of SC/ST candidates and not otherwise."

8. In the instant case as the proviso to Article 335 of the Constitution is an enabling provision whereby power has been exclusively reserved to the Union or the State, this Court is of the opinion that the Mandamus so sought for by way of the instant writ petition cannot be issued.

9. Accordingly, the instant writ petition is devoid of any merits and stands dismissed.

JUDGE

Comparing Assistant