

GAHC010109162022



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

Case No. : WP(C)/3758/2022

FATEMA NARGIS CHOUDHURY
D/O- BADRUL ISLAM CHOUDHURY
R/O- SARAL KHA ROAD, WARD NO- 3, SETTLEMENT, KARIMGANJ TOWN,
P.O AND DIST- KARIMGANJ, ASSAM,
PIN-788712

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPTT. OF HIGHER EDUCATION, ASSAM SECRETARIAT DISPUR
GUWAHATI-781006

2:THE DIRECTOR
OF HIGHER EDUCATION
ASSAM
KAHILIPARA GUWAHATI
KAMRUP (M) ASSAM
PIN-781019

3:THE GOVERNING BODY
LALA RURAL COLLEGE
LALA
HAILAKANDI

P.O- LALA
DIST- HAILAKANDI
ASSAM
PIN-788163
(REP. BY ITS PRINCIPAL /SECRETARY)

4:THE SELECTION COMMITTEE

LALA RURAL COLLEGE
LALA
P.O- LALA

DIST- HAILAKANDI
ASSAM
PIN-788163
REP BY ITS CHAIRMAN

5:UNIVERSITY GRANTS COMMISSION
BAHADUR SHAH ZAFAR MARG
NEW DELHI
PIN-110002
(REP. BY ITS CHAIRMAN)

6:PRIYOTOSH SHARMA
R/O- VILAGE- SONABARIGHAT

P.O- SONABARIGHAT

DIST- CACHAR
ASSAM
PIN-78801

Advocate for the Petitioner : DR. B AHMED

Advocate for the Respondent : SC, HIGHER EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

24-01-2023

Heard Mr. K. Uddin, learned counsel for the petitioner and Mr. S. Das, learned Standing counsel, Higher Education Department, Assam for the respondent Nos. 1 & 2. Also heard Mr. A. Dhar, learned counsel for Lala Rural College, Hailakandi, respondent Nos. 3 & 4; Mr. A. Chamuah, learned Standing counsel, University Grants Commission for the respondent No. 5 and Mr. S.P. Choudhury, leaned counsel for the private respondent No. 6.

2. On 13.03.2022, the Principal of Lala Rural College, Lala, District-Hailakandi, a provincialised College of the State, issued an advertisement, amongst others for filling up of a post of Assistant

Professor of Political Science in said College under Un-reserved category in pursuance of the order dated 09.02.2022 of the Director of Higher Education, Assam.

3. Petitioner obtained her graduation with major in Political Science from Cotton University, Guwahati and also obtained her Master Degree in Public Administration from Aligarh Muslim University, Aligarh and passed the UGC-NET December, 2020 & June, 2021 held on November, 2021 result of which was declared in February 2022. Having the requisite qualification, she applied for the post of Assistant Professor of Political Science in said Lala Rural College, Hailakandi as advertised on 13.03.2022 along with other candidates including the respondent No. 6.

4. Finding her application proper, the respondent College authority by communication under reference No. LRC/GB-6/2022/190 dated 04.04.2022 called the petitioner for the interview scheduled on 11.04.2022 at 10:00 am in the college premises and accordingly, she appeared before the concerned Selection Committee of said college.

5. It is alleged by the petitioner that the Selection Committee of said Lala Rural College, Hailakandi raised the issue of her eligibility for the post of Assistant Professor in Political Science as she is a Master Degree holder in Public Administration and rejected her candidature recommending the name of the respondent No. 6 for the said post.

6. Being aggrieved with the said decision of the concerned Selection Committee as well as the authorities of said Lala Rural College in recommending the name of the respondent No. 6, disregarding her better claim and violating the guidelines, provisions and regulations issued by the University Grants Commission (UGC) as well as the Directorate of Higher Education, Assam; the petitioner has filed this writ petition on 02.06.2022, praying amongst others (i) to set aside the impugned selection/recommendation of the respondent No. 6 for the post of Assistant Professor in Political Science at Lala Rural College, Lala, District-Hailakandi pursuant to the advertisement 13.03.2022 published in "Dainik Jugasankha" on the same date itself (ii) to direct the respondent authorities to conduct the selection afresh for the post of Assistant Professor in Political Science at Lala Rural College pursuant to the said advertisement dated 13.03.2022 published in "the Dainik Jugasankha", (iii) to direct the respondent authorities, particularly, the respondent No. 2, Director of Higher Education, Assam not to proceed with the process of appointment of the respondent No.6 and/or not to approve the selection of the respondent No. 6 for the post of Assistant Professor in Political Science at Lala Rural College, Lala and (iv) to direct the respondent authorities particularly, the respondent No. 2, Director of Higher Education, Assam to take a decision on the eligibility of the petitioner for the post of Assistant Professor in Political Science.

7. It is to be noted herein that in the said advertisement dated 13.03.2022 issued by the Principal of Lala Rural College, Hailakandi, it was specified that the educational qualification and the selection procedure shall be as per the Government Office Memorandum No. AHE.239/2021/68 dated 24.01.2022 as uploaded in the website of the Directorate of Higher Education, Assam.

8. Copy of the said Office Memorandum dated 24.01.2022 of the State Government in the Higher Education Department has been annexed by the petitioner as Annexure-12 to this petition, wherein amongst others, the eligibility qualification for the candidates as has been provided that the qualification for direct recruitment of Assistant Professor, reference to be made at Clauses 3.0.0/4.0.0/4.4.0/4.4.1 of the University Grants Commission Regulations dated 30.06.2010, which provides that good academic record as defined by the concerned University with at least 55% marks or an equivalent grade in a point scale at the Master Degree level in a relevant subject from an Indian University or an equivalent degree from an accredited Foreign University.

9. Mr. Dhar, learned counsel for the respondents in the Lala Rural College and its Authority, submits that after the interview held on 11.04.2022, the concerned Selection Committee for recruitment of an Assistant Professor of Political Science in the said College on evaluating the marks secured by the candidates recommended the name of the respondent No. 6 for the said advertised post of Assistant Professor of Political Science as he secured highest marks on the basis of his performance as well as on evaluation of his credentials and that the Governing Body of the said College on 23.04.2022 resolved to accept the said selection of the Selection Committee and accordingly, the Governing Body of the College forwarded the proposal to the Director of Higher Education, Assam recommending in favour of the respondent No.6, requesting the said authority to accord necessary approval and to issue appointment to the respondent No. 6 as an Assistant Professor in Political Science in said Lala Rural College, Hailakandi in terms of the said advertisement dated 13.03.2022.

10. Mr. Dhar, learned counsel for the respondents on behalf of Lala Rural College and its Authority, submitted that as the said college authority including the Expert Selection Committee required expertise in the subject of Political Science for filling up the post of Assistant Professor in Political Science in the said college as advertised, the Selection Committee concerned had rightly rejected the candidature of the petitioner who did Masters in Public Administration from Aligarh Muslim University in 2021 considering the Public Notice dated 04.07.2018 issued by the University Grants Commission.

11. On being enquired, Mr. Dhar, learned counsel for the respondents in the Lala Rural College, stated that by letter under reference No. LRC-29/Apptt/Staff/Appointment-3/TNT/2022-211 dated

23.04.2022 the concerned authority of the College submitted the detail report along with the relevant documents before the Director of Higher Education, Assam for its approval and for issuance of necessary appointment order to the post of Assistant Professor of Political Science in the said College.

12. Mr. Dhar, also stated that as the Court by order dated 08.06.2022, passed an interim order observing that the post of Assistant Professor of Political Science in said Lala Rural College, Hailakandi, shall not be filled up until further order, the Director of Higher Education, Assam has not yet taken any decision in that regard.

13. Mr. Dhar, placed before the Court that the University Grants Commission vide Public Notice No. F.27-9 (Orissa)2010(L)/PS dated 04.07.2018 specifically provided that – *“it is hereby informed that on the issue, whether subjects of Political Science and Public Administration, can be considered interchangeably for the purpose of appointment of Assistant Professor, it has been decided that both the subjects are inter-dependent yet discerningly distinct in nature and hence, the candidates with Masters degree/NET either in Political Science or Public Administration may be considered for faculty position in Political Science as well as Public Administration depending upon the requirement of expertise in the concerned Higher Education Institution (HEI) which may be decided by the concerned HEI.”*

14. Mr. Uddin, learned counsel for the petitioner, on the other hand, submits that the petitioner passed the State Level Eligibility Test (SLET) for Assistant Professor conducted by the State Level Eligibility Test Commission, Assam in the year, 2022 and the SLET Commission, Assam have given the relevant certificate that the petitioner is eligible for the post of Assistant Professor in the subject of Political Science in a provincialised College of the State.

15. Moreover, the petitioner passed her National Eligibility Test for Assistant Professor in the subject of Public Administration and the said Test was held on 22.11.2021 conducted by the National Testing Agency.

16. Section 12 of the Assam College Employees (Provincialisation) Act, 2005 that came into force w.e.f. 01.12.2005 published in the Assam Gazette Extra Ordinary on 23.12.2005 provides for “Power of the Government to make Rules”.

17. Pursuant to the same, the State Government in the Higher Education Department formulated the Assam College Employees (Provincialisation) Rules, 2010 which has the statutory force and it came into force w.e.f. 22.11.2010 from the date of its publication in the Assam Gazette Extra Ordinary.

18. Rule 5 of the said 2010 Rules relates to "Method of Recruitment."

Rule 5(2) of the said 2010 Rules provides that "*recruitment shall be made for the post of Lecturer/Librarian by the direct recruitment with prescribed qualifications through open advertisement in two leading dailies at least in two consecutive issues.*"

19. 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.*"

20. 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.

21. The State Government in the Higher Education Department on 24.01.2022 as noted above, have issued an Office Memorandum providing the guidelines for Selection of Assistant Professor in the Provincialised Colleges of the State.

22. Following the provisions of the University Grants Commission Regulations dated 30.06.2010, in the said Office Memorandum dated 24.01.2022 it is provided for constitution of the Selection Committee and also about the granting of marks to be awarded to each of the candidates by the members of the said Selection Committee during such selection process.

23. A co-ordinate Bench of this Court in a similar issue, where one of the candidates for the post of Assistant Professor pertaining to a provincialised college raised a dispute regarding selection of a candidate by the concerned Selection Committee of the College who was recommended by the Governing Body of the said College, in the case of *Sonali Bora Saharia Vs. State of Assam and others* reported in 2016 (5) GLT 263 have held as follows:-

"The post of Lecturer in colleges has been re-designated as Assistant Professor following notification issued by the UGC. Recruitment of Assistant Professor in colleges is governed by a set of statutory rules called Assam College Employees (Provincialisation) Rules, 2010 which has been framed in exercise of powers conferred under Section 12(1) of the Assam College Employees

(Provincialisation) Act, 2005. Rule 5 lays down the method of recruitment. As per Rule 5(2), for the post of Lecturer, re-designated as Assistant Professor, appointment shall be made by direct recruitment with prescribed qualifications through open advertisement in two leading dailies at least in two consecutive issues. As per Sub-Rule (7) of Rule 5 the Governing Body shall conduct the selection process and make recommendation to the Director who shall issue order of appointment. Rule 7 lays down the detailed procedure while making such direct recruitment. From a perusal of Rule 7, it is seen that the recommendation of the Governing Body would be based on the recommendation of the Selection Committee duly constituted for the purpose whereafter the Director shall pass appropriate order and communicate the same within 30 days. Implicit in this is that the Director has to examine the recommendation and approve the same whereafter consequential appointment order is to be issued. For posts for which UGC has prescribed norms, no candidate shall be recruited without having the required norms. Constitution of Selection Committee is laid down in Rule 10. Having gone through the scheme of selection provided under the Rules, it is quite apparent that the matter relating to selection for appointment to the post of Lecturer/Assistant Professor, Education in Sipajhar College has not yet attained finality. The Director who is the appointing authority is yet to consider the recommendation made by the Governing Body. In his affidavit, the Director has stated that he has not yet received the entire set of documents relating to the selection. In so far contention of the petitioner is concerned regarding all location of marks to respondent No. 7 under the heads of M.Phil. and teaching experience, it is evident that the same is yet to be examined by the appointing authority. In the opinion of the Court, at the stage when the writ petition has been filed, no definitive cause of action can be said to have accrued enabling the petitioner to move the Court. No final decision has been taken by the appointing authority under Rules 5 (7) and 7 of the Rules. Intervention by the Court at this stage would amount to preempting a decision by the designated authority. It is only when a decision is taken as provided under the Rules an unsuccessful candidate can be said to be an aggrieved party and such order of the Director either granting approval or not granting approval to the recommendation of the Governing Body would give rise to a cause of action enabling the aggrieved person to initiate a legal proceeding. Recommendation of the Selection Committee or recommendation of the Governing Body per se would not give rise to a cause of action for initiating a legal proceeding because no finality is attached to such recommendation at a stage prior to acceptance or non-acceptance of the same by the Director. Viewed in that context, the writ petition appears to be pre-mature as the appropriate authority is yet to take a decision one way or the other."

24. In the case of *Dr. Akhil Ch. Kalita Vs. State of Assam and 4 others* decided on 04.11.2016

relating to selection and appointment of the vacant sanctioned post of Principal in a provincialised College of the State for which advertisement was issued in the year, 2016, a Co-ordinate Bench of this Court have held that *"As per provisions contained in the Assam College Employees (Provincialisation) Act, 2005 and the Assam College Employees (Provincialisation) Rules, 2010, appointment is to be made by the Director of Higher Education on the basis of recommendation of the Governing Body based on the recommendation of the Selection Committee. Issuance of appointment order by the Director is not an empty formality. The Director of Higher Education while passing such order is required to scrutinize the selection record and only after satisfaction he is to issue the consequential appointment order."*

25. As per the provisions of the 2010 Rules, noted above, it is the Director of Higher Education, Assam is required to issue orders of appointment.

26. In the case of *Dr. Mrinal Kumar Borah Vs. State of Assam and others* reported in 2017 (1) GLT 737, the Court have held as follows:-

"Extending the rationale of Section 15 of the General Clauses Act, 1897, inferred the power to accord approval would also include the power not to accord approval provided the Director is satisfied that the re commendation is not as per law, a decision which has to be taken by the Director, any intervention by the writ court prior to such decision being taken by the competent authority would amount to pre-empting the decision of the designated authority. It is trite that the writ court is not the primary authority to arrive at a finding based on evaluation of facts. That decision has to be taken or such finding has to be reached by the designated authority at the first instance and if a legal challenge is made to such decision or finding, the writ court would then examine the legality and validity of the same. Therefore, it would be in tune with the settled legal proposition to eschew any intervention by the writ court at a stage prior to such decision being taken by the designated authority."

27. It is seen that the representation of the petitioner submitted on 25.04.2022 regarding selection of the respondent No. 6 disregarding her qualification by the respondent authorities in the Lala Rural College, Hailakandi is pending before the Director of Higher Education, Assam (Annexure-16 to this petition)

28. Since the appointment to the post of Assistant Professor in a provincialised College as provided Rules 5, 7 and 10 of said 2010 Rules, is to be made by the Director of Higher Education, Assam therefore, the said authority is required to satisfy himself that the selection and recommendation are

carried out in accordance with law conforming the norms specified by the UGC and the relevant guidelines issued by the State Government in the Higher Education Department with regard to selection of Assistant Professor/Principal in provincialised Colleges of the State as the case may be.

29. Though Mr. Uddin, learned counsel for the petitioner submitted that this writ petition is not premature, but it is found that the Director of Higher Education, Assam has not yet passed any final order granting approval of the said selection as well as consequential appointment for the post of Assistant Professor in the department of Political Science in Lala Rural College, Hailakandi as advertised on 13.03.2022 and the issue raised by the petitioner in this writ petition has not yet reached the stage of finality, since it is pending in the level of Directorate of Higher Education, Assam who is the concerned authority to give approval of such selection and to issue necessary appointment order.

30. It is settled that only when a decision is taken as provided under the Rules and the recommendation of the Selection Committee or the recommendation of the Governing Body is approved, an unsuccessful candidate can be said to be an aggrieved party and can raise the issue of dispute before the Writ Court.

31. Considering the entire aspect of the matter, the Court is of the view that this writ petition is premature one as the appropriate authority, i.e., the Director of Higher Education, Assam is yet to take a decision on the recommendation of the Selection Committee that was approved by the Governing Body of Lala Rural College, Hailakandi with regard to the post of Assistant Professor of Political Science in said College in terms of the advertisement dated 13.03.2022, noted above.

32. The Court is also aware of the fact that the representation of the petitioner dated 25.04.2022 filed before the Director of Higher Education, Assam is still pending for consideration and disposal after verifying all the relevant documents and the records which the said authority is required to consider, to pass an appropriate order in terms of Rules 5 & 7 of the said 2010 Rules regarding selection and appointment to the post of Assistant Professor of Political Science in said Lala Rural College as advertised on 13.03.2022.

33. For the reasons above, the prayer made by the petitioner in this writ petition cannot be entertained being prematured and accordingly rejected.

34. However, the petitioner may submit a fresh representation before the Director of Higher Education, Assam forthwith stating her grievances along with a certified copy of this order obtaining necessary acknowledgment from the said authority in that regard.

35. It is also made clear that the Director of Higher Education, Assam while considering the recommendation made by the Selection Committee approved by the Governing Body of said Lala Rural College, Hailakandi pertaining to the post of Assistant Professor of Political Science in that College as advertised on 13.03.2022 and while considering the representation of the petitioner shall verify all the relevant documents and the records which the said authority is required to consider including any such Notifications/Regulations of the UGC pertaining to the issue whether subjects of Political Science and Public Administration and whether it can be considered interchangeably for the purpose of appointment of Assistant Professor as well as the requirement of Assistant Professor in the concerned subject by the Lala Rural College, Hailakandi being the concerned Higher Education Institution and then to pass an appropriate order in terms of Rules 5 & 7 of the said 2010 Rules regarding selection and appointment to the post of Assistant Professor of Political Science in said Lala Rural College as advertised on 13.03.2022.

36. The petitioner and the respondent authorities in Lala Rural College, Hailakandi as well as the respondent No. 6 shall submit their relevant documents before the Director of Higher Education, Assam forthwith obtaining necessary acknowledgment from the said authority in that regard.

37. The Director of Higher Education, Assam shall do the needful in accordance with law, following the provisions of the relevant Acts and Rules as well as the Guidelines, Office Memorandums of the State etc. as well as the Regulations of the UGC in that regard while passing its order.

38. The interim order passed earlier on 08.06.2022 in the present proceeding is hereby recalled.

39. With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant