

GAHC010109632023



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

Case No. : WA/178/2023

RASHITA RABHA
W/O. SRI SAMBHU CHARAN RABHA, R/O. RAILWAY QUARTER NO.
N/102/B-II, WEST COLONY, P.O. NEW BANGAIGAON, DIST. BONGAIGAON,
ASSAM, PIN-783381.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, SECONDARY
EDUCATION DEPTT., DISPUR, GHY.-06.

2:DIRECTOR OF SECONDARY EDUCATION

ASSAM KAHILIPARA GHY.-19.

3:INSPECTOR OF SCHOOLS

BONGAIGAON DIST. CIRCLE
P.O. BONGAIGAON
DIST. BONGAIGAON
ASSAM PIN-783381

For the appellant	:	Ms. A.S. Baidya
		Mr. K.M. Haloi, Advocates
For the respondents:		Mr. N.J. Khataniar,
		Standing Counsel, Education.

– B E F O R E –

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

31-05-2023

S. Mehta, C.J.

The instant intra-Court writ appeal is directed against the order dated 21.04.2023 passed by the learned Single Judge whereby the writ petition, being, WP(C) 279/2017 filed by the writ petitioner (appellant herein) seeking a direction to the respondents for appointing her on the post of Assistant Teacher (Arts) against the backlog vacancies for the ST(P) category in pursuance of the Advertisement issued in the year 2005, was dismissed.

2. We have heard the learned counsel appearing for the parties and have gone through the impugned order and also perused the material available on record.

3. Brief facts relevant and essential for disposal of the appeal are noted hereinbelow.

The writ petitioner/appellant has claimed that she appeared before the interview board on 10.02.2006 and a select list was published on 03.06.2006 wherein, the name of the writ petitioner/appellant appeared at Sl. No.3. However, the select list was revised and re-published on 08.05.2007, wherein the name of the writ petitioner/appellant was scaled down to Sl No.4. The candidates at Sl Nos.1, 2 and 3 from the revised select list were appointed. However, one of the selected persons, namely, Bijay Boro did not join service at Bongaigaon Bidyapeeth High School. The writ petitioner/appellant having come

to know the said fact, approached the respondent authorities seeking appointment in the said post. The writ petitioner/appellant further claimed that one Mrs. Matoo Das of Dhemaji district, who was similarly situated to the appellant, was recommended and was appointed in the year 2010. As the writ petitioner/appellant was not appointed, she approached this Court by filing WP(C) 279/2017.

The said writ petition came to be dismissed by learned Single Judge observing that the principle of negative equality could not come to the aid of the petitioner and cannot be used to perpetuate a blatant illegality. It was further observed that Rule 8 (f) of the Assam Secondary Education (Provincialisation) Service Rules, 2003 clearly stipulates that the select list would not extend beyond a period of one year from the date of publication.

4. Learned counsel for the writ petitioner/appellant tried to harp that other persons similarly situated with the writ petitioner/appellant have been given appointment by operating the reserve list even after one year. However, we are not in the least convinced by the said argument. Suffice it to say that the petitioner filed the subject writ petition in the year 2017 with the prayer to operate the select list which would unquestionably expire after one year from the date of issuance, i.e. in the year 2008 as per Rule 8(f) of the Rules of 2003. Since, three persons who stood higher in merits had been offered appointment against the advertised posts in the category the writ petitioner/appellant sought selection, the appellant's grossly belated claim for operating the select list agitated through the writ petition filed in the year 2017, could not have been entertained and was rightly dismissed by the learned Single Judge.

5. The Hon'ble Supreme Court in a recent judgment in the case of ***State of***

Karnataka & Ors vs. Smt. Bharathi S. reported in ***2023 0 Supreme (SC) 553 (Civil Appeal No.3062/2023, decided on 19.05.2023)*** has held that mere publication of a candidate's name in the additional list (waiting list) for purpose of recruitment will not create any right to be appointed in favour of such candidate. The duty to fill up the vacancies from the additional list can arise only on the basis of mandatory rule.

6. In light of the above judgment of Hon'ble the Supreme Court, it is apparent that the respondents were fully justified in not offering appointment to the writ petitioner/appellant after the expiry of the select list in accordance with the Rule 8(f) of the Assam Secondary Education (Provincialisation) Service Rules, 2003.

7. Thus, we are of the firm opinion that the view taken by the learned Single Judge in rejecting the claim of the petitioner on the ground of gross delay and laches is the only plausible view of the matter and hence, the impugned order dated 21.04.2023 does not warrant interference of this Court. Consequently, the writ appeal fails and is dismissed as being devoid of merit.

No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant