

GAHC010112222016



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

Case No. : WP(C)/3130/2016

PHUKAN DAS
S/O SRI GOLAP DAS, R/O BHANUKUCHI, P.O. KALAG, PIN-781351, DIST-
NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM and 7 ORS.
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
EDUCATION SECO DEPTT., DISPUR, GHY-6, KAMRUP METROPOLITAN
DISTRICT, ASSAM

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19
KAMRUP METRO
ASSAM

3:THE INSPECTOR OF SCHOOLS
NALBARI DISTRICT CIRCLE
N.D.C.
P.O. NALBARI
PIN-781335
DIST- NALBARI
ASSAM

4:THE SELECTION COMMITTEE
CONSTITUTED FOR THE PURPOSE FO FILLING UP OF 3 NOS. OF VACANT
GRADE IV POSTS
IN THE KAMARKUCHI HIGH SCHOOL
KAMARKUCHI
DIST- NALBARI
REP. BY ITS PRESIDENT SRI AJAY BARUAH
KAMARKUCHI HIGH SCHOOL

KAMARKUCHI
P.O. KAMARKUCHI
PIN-781347
DIST- NALBARI
ASSAM

5:THE HEAD MASTER/SECY.
KAMARKUCHI HIGH SCHOOL
KAMARKUCHI
P.O. KAMARKUCHI
PIN-781347
DIST- NALBARI
ASSAM

6:REKIBUDDIN AHMED
KAMARKUCHI HIGH SCHOOL
KAMARKUCHI
P.O. KAMARKUCHI
PIN-781347
DIST- NALBARI
ASSAM

7:NABAJEET TALUKDAR
KAMARKUCHI HIGH SCHOOL
KAMARKUCHI
P.O. KAMARKUCHI
PIN-781347
DIST- NALBARI
ASSAM

8:GAUTAM BORO
KAMARKUCHI HIGH SCHOOL
KAMARKUCHI
P.O. KAMARKUCHI
PIN-781347
DIST- NALBARI
ASSA

Advocate for the Petitioner : MR.N J CHOUDHURY
Advocate for the Respondent : SC, SECONDARY EDUCATION

B E F O R E

Hon'ble MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri P. K. Munir, Advocate.

Advocate for respondents : Shri U. Sarma, SC, Secondary Education,
Dr. P. K. Goswami, Advocate, Respondent Nos. 6, 7 &
8.

Date of hearing : 13.06.2023

Date of judgment : 13.06.2023

JUDGMENT & ORDER

Heard Shri P. K. Munir, learned counsel for the petitioner. Also heard Shri U. Sarma, learned Standing Counsel, Secondary Education Department for the official respondents whereas Dr. P. K. Goswami, learned counsel has appeared for the respondent nos. 6, 7 & 8.

2. Considering that this writ petition is pending since the year 2016 and also taking into account the subject matter which pertains to a selection held in the year 2012-13, this writ petition is taken up for disposal at the admission stage.

3. The matter pertains to a recruitment process for three vacant posts of Grade-IV in the Kamarkuchi High School in the district of Nalbari. An advertisement was published on 04.10.2012 which consisted of written test and interview. The petitioner who claims to be eligible had participated in the said recruitment process along with other candidates including the respondent Nos. 6, 7 & 8. The recruitment process culminated in the selection of the aforesaid private respondents, who were consequently appointed to the said post.

4. The principal grounds of challenge are as follows:-

1. The roster point of reservation has not been followed in filling up the post.
2. There have been anomalies in the marks awarded in the interview.

5. Shri Munir, the learned counsel for the petitioner submits that the petitioner belongs to the OBC category and he had secured the highest marks in the said category. However, by ignoring the roster point, the appointment has been given to the private respondents out of which one belonged to the Scheduled Tribe (P) category and the rest two are Un-reserved. He submits that if the roster point was properly followed, the petitioner would have got the appointment. The learned counsel refers to the averments made in paragraph-7 of the writ petition regarding the roster point.

6. Shri Munir, the learned counsel has also drawn the attention of this Court to the marks allotted to private respondent Nos. 6 & 7 wherein there has been additions and over-writings. He further submits that information could be obtained by RTI regarding the marks and even full information was not divulged with regard to the roster point adopted. Learned counsel clarifies that under duress, he had to withdraw his RTI application which however was again filed by one Jitu Mani Das whom the petitioner has claimed to be his relative and such information was given only to the application by Shri Jitu Mani Das except the information pertaining to roster point.

7. Explaining the delay in approaching the Court, the learned counsel has referred to the averments made in paragraph-16 of the writ petition.

8. Shri Munir, the learned counsel for the petitioner accordingly submits that the selection is liable to be interfered with a direction to follow the roster point and

appoint the petitioner. He further submits that the selection process is otherwise vitiated as there has been glaring anomalies in the marks awarded.

9. *Per Contra*, Shri U. Sarma, the learned Standing Counsel, Secondary Education Department has submitted that the recruitment process was initiated in October, 2012 which had culminated in March, 2013 with the appointment of the private respondents. On the other hand, the writ petition has been filed after about 3 years in the year 2016 and on the ground of delay itself, the writ petition ought not to be entertained. He further submits that the allegations made in the writ petition are wholly unsubstantiated. He submits that no substantial materials have been produced in support of the submission regarding violation of the roster point reservation. As regards, the allegation of anomalies in the markings, the learned Standing Counsel submits that though there have been some corrections, all such corrections are accompanied by the initials of the evaluators. He further submits that the corrections, whatsoever has appeared only in the individual mark-sheet of the respective members of the selection committee and there is no such corrections in the consolidated mark-sheet prepared. Learned Standing Counsel accordingly submits that both on the ground of delay as well as on merits, the writ petition does not deserve any consideration and therefore it is liable to be dismissed.

10. Dr. P. K. Goswami, learned counsel for the respondent Nos. 6, 7 & 8 has endorsed the submission of the learned Standing Counsel of the Department. He submits that apart from the delay in approaching the Court, in the meantime, about a decade has passed since the date of appointment and therefore at this stage, interference by this Court may not be in the interest of justice.

11. Dr. Goswami, learned counsel has also taken the point of waiver by submitting that by withdrawal of the RTI application, the petitioner has waived his right to make the present challenge. He also relies upon the case of ***Madal Lal & Ors. Vs State of***

Jammu & Kashmir reported in **(1995) 3 SCC 486**. Paragraph 9 of the said judgment has been pressed into service which is extracted herein below:-

“ 9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors., (AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

12. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

13. Let us first deal with the preliminary objection of delay in approaching this Court. The recruitment process was initiated vide the advertisement dated 04.10.2012

which had culminated in March, 2013 after completion of the interview and the appointment process. This writ petition has been filed on 18.05.2016. The learned counsel for the petitioner has referred to the averments made in paragraph 16 of the writ petition to explain the delay. According to the same, the RTI reply was received in March, 2014 and in October, 2014 the petitioner had met his counsel. Thereafter more than a year had elapsed when in December, 2015, the petitioner had again met the Counsel and from December it was only in May, 2016 that the writ petition was finally filed. The explanations given in the aforesaid paragraph are not at all convincing or inspires confidence as this Court being a Court of Equity, the conduct of the party in approaching this Court is equally important and such conduct also touches upon the negligence or laches in approaching this Court.

14. Though this writ petition is liable to be dismissed on the ground of delay itself, in the interest of justice, this Court would also deal with the allegations made on merits.

15. The first ground of challenge is alleged violation of the roster point scheme of reservation and to substantiate the said ground, the relevant averments have been made in paragraph 7 of the writ petition. The relevant extract of paragraph-7 is quoted herein below:-

“7. That the petitioner appeared in the selection test held on 26.10.2012 in the school premises of the Kamarkuchi High School. The petitioner faired well in both the written an oral interview and was of the legitimate expectation that he will be selected for one of the vacant post at least against the post reserved for Other Backward Category. It is to be mentioned here that the petitioner belongs to the 'koch' community which is recognized as Other Backward Class (OBC) by the Government of Assam and in the selection process the petitioner had offered his candidature as OBC category candidate. It was informed by the respondent authority that amongst the three post advertised 1 (one) post is reserved for OBC/MOBC category candidate and 1 (one) post for Schedule Tribe Candidate and the other is kept as unreserved.”

16. The petitioner has stated that he was informed by the respondents regarding such roster point and the said averments have been verified as true to records. However, no documents, whatsoever has been annexed in support of the said ground. Though Shri Munir, learned counsel has made an endeavour to convince this Court that the RTI application was not properly responded to, the said contention is liable to be rejected on more than one count. Firstly, the application by the petitioner made under the RTI Act was withdrawn and secondly the petitioner is relying upon certain information obtained by another person. That apart, the RTI Act itself provides that in case of any grievance, an aggrieved party can prefer appeal and second appeal which has not been done and therefore the first ground of challenge regarding to the roster point does not appear to be substantiated at all.

17. With regard to the anomalies alleged in the markings, this Court had noticed that though in case of respondents Rekibuddin Ahmed and Nabajeet Talukdar there were some additions and over-writings, all these were accompanied with the initials of the member. This Court has also noticed that such additions/change in marks have been made also for other candidates with initials and therefore the same cannot be taken as a ground of challenge. This Court has also noticed that one of the Evaluator had given the petitioner more marks in the oral interview than the private respondents. This Court is also of the view that such change in the markings in a selection process with several candidates may not be abnormal. This Court has also noticed that in the consolidated mark-sheet prepared by the selection committee, there is no anomaly of any kind and no allegations have also been made.

18. This Court has also found force in the contention of Dr. Goswami, the learned counsel, who has relied upon the case of **Madan Lal** (supra) wherein it has been laid down that an unsuccessful candidate, who has taken a calculated risk in appearing in the recruitment process cannot be allowed to take a u-turn and challenge the same only because of the fact that he could not come out successful in the said process.

19. Under the aforesaid facts and circumstances, this Court is of the considered opinion that no case for interference is made out and accordingly, the writ petition stands dismissed.

JUDGE

Comparing Assistant