

GAHC010113582023



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

Case No. : WA/182/2023

SALIM UDDIN AHMED
S/O HAZRAT ALI MONDAL VILL and P.O. JALESWAR DIST. GOALPARA,
ASSAM. PIN - 783132.

VERSUS

SK. MAHBUBUL KARIM AND 5 ORS.
S/O ABDUL KASHEM SHEIKH VILL- BAMUNIRVITA, P.O.JALESWAR DIST.
GOALPARA, ASSAM, PIN - 783132.

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
DEPARTMRNT OF SCHOOL EDUCATION (SECONDARY)
DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI- 781019.

4:THE INSPECTOR OF SCHOOLS

GDC
GOALPARA
P.O. and DIST. GOALPARA
ASSAM. PIN -783101.

5:THE SELECTION COMMITTEE OF JALESWAR GIRLS HIGH SCHOOL

REP. BY ITS PRESIDENT NAMELY AFTAB UDDIN MOLLAH
VILL- SUPARIBHITA
P.O. TULSIBARI DIST. GOALPARA
ASSAM
PIN -783132.

6:THE HEAD MASTER CUM MEMBER SECRETARY OF THE
SELECTION COMMITTEE
JALESWAAR GIRLS HIGH SCHOOL
JALESWAR
PO.JALESWAR
DIST. GOALPARA
ASSAM PIN - 783132

Advocate for the Petitioner : MR. B C DAS

Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HONOURABLE THE CHIEF JUSTICE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. B.C. Das, Senior Advocate.
Mr. D.A. Kaiyum, Advocate.

For the Respondents : Mr. U.K. Nair, Senior Advocate.
Mr. R. Islam, Advocate.

Date of Hearing : 31.05.2023

Date of Judgement : 31.05.2023

JUDGMENT & ORDER (ORAL)

(A.D. Choudhury, J)

1. Heard Mr. B.C. Das, learned Senior counsel assisted by Mr. D.A. Kaiyum, learned counsel for the appellant. Also heard Mr. UK Nair, learned Senior counsel assisted by Mr. R. Islam,

learned counsel for the respondent No. 1 and Mr. N.J. Khataniar, learned standing counsel for the Education Department.

2. The present intra court appeal is directed against judgment and order dated 02.05.2023 passed by the learned Single Judge in WP(C) 540/2016, whereby the writ petition preferred by the respondent No. 1 was partly allowed by setting aside the select list dated 24.01.2016 prepared in connection with selection to the post of Junior Assistant/ LDA in Jaleswar Girls High School and a further direction was to the respondent selection Board to hold a fresh viva-voce test of candidates, whose names appeared in the final select list dated 24.01.2016. The learned Single also provided that while conducting the fresh viva-voce test, the selection committee shall not be influenced by any observation contained in the order.
3. The appellant was selected for the post with 44.5 marks, which includes 10 marks for oral interview and the respondent No. 1, who was the writ petitioner was placed at second position with 44 marks to his credit and 0 (Zero) in oral interview.
4. The writ petitioner/respondent No. 1, accordingly, assailed such selection process primarily on the ground that he scored highest mark in written test, in English Typing Test as well as in Computer Practical test, however, he has been granted no marks in the interview and has arbitrarily been deprived from getting selected only for the extraneous consideration to accommodate the respondent No. 1/appellant.
5. The respondent No. 4 in the writ petition i.e. the selection Board filed an affidavit through the Headmaster of the school and took a stand that the writ petitioner failed to give proper reply during the course of interaction and having failed to reply properly started to behave in very indecent manner and left the interview process in the midway and therefore, no marks

were given to him in oral interview. It was also a stand in the said affidavit that the selected candidate gave correct reply and considering the pros and cons, the respondent No. 6 in writ petition was selected.

6. The learned Single Judge after considering the materials before it and after perusal of the selection committee's report came to a conclusion that in the Final Merit List dated 24.01.2016, though the four members of the Selection Committee had put their signatures, but none of the said members made any remark regarding the alleged misbehaviour of the writ petitioner or that the petitioner did not answer their questions or that he had left the interview process midway. The learned Single Judge also came to a conclusion, in the aforesaid factual matrix that the stand has been taken only to bring an improvement by way an affidavit, which is not permitted under law. Accordingly, such stand of the selection board was discarded. The learned Single Judge finally held that there was no justification expressed for awarding 0 mark to the petitioner, who had otherwise fared better than the selected candidate. Accordingly, the writ petition was partly allowed as indicated hereinabove.
7. Assailing the impugned order, Mr. BC Das, learned Senior counsel argues that the selection Board is entitled to take note of the behaviour of the candidates at the time of interview and if it is found that the behaviour is such, so as to render him not suitable for holding the post for which the selection is to be made, the Board would be perfectly justified in rejecting him for appointment. Mr. Das further contends that a writ court in exercise of power under Article 226 of the Constitution of India may not substitute its own view over that of the members of the selection committee, who are experts in the field and who were personally present during the course of interview and in the event of such interference, a candidate who is found to be

unfit for selection for his behaviour, shall get selected and appointed. In support of such contention, Mr. Das, learned Senior counsel relies on the judgment of the Hon'ble Apex Court in the case of ***Hoshiar Singh Vs. State of Haryana and Ors*** reported in ***1993 Supp (4) SCC 377***.

8. Per contra, Mr. U. K. Nair, learned Senior counsel submits that from the final merit list itself, it is clear that without getting a single mark against oral interview the writ petitioner had scored 44 marks and the appellant/ selected candidate with full quota of 10 marks to his credit against oral interview got only 44.5 marks in total. It is also contended by the learned Senior counsel that from the record and material, there is nothing to suggest the alleged misbehaviour by the writ petitioner. Therefore, the learned Single Judge has rightly interfered with the selection and remanded the matter to the selection Board to have a fresh interview.
9. We have given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the material available on record including the impugned Final Merit List.
10. There is no quarrel to the settled proposition of law that it is within the exclusive domain of the interview Board to decide as to the number of marks to be assigned to a candidate and such determination cannot be a subject matter of challenge before a writ court, which does not sit as a court of appeal over the assessment made by such expert committee, so far as the candidates interviewed by them are concerned.
11. However, in the case in hand, it is not the case of the respondent that 0 mark had been awarded to the writ petitioner for his poor performance, rather it is the specific stand taken in the affidavit-in-opposition that he was given 0 mark for his misbehaviour towards the

members of the selection Board. In the considered opinion of this Court, such an extraordinary situation depicted to have been occurred, some reflection of the same would have been found/mentioned/recorded by any of the selection committee members inasmuch as there is a specific column "remark" in the final merit list against each of candidates, who participated in the selection process. In the present case, the undisputed fact also remains that the writ petitioner got highest mark in written test as well as in the typing test and computer test and scored only .5 marks lesser than the selected candidate, who was awarded maximum i.e. 10 marks in oral test. From the result sheet, we also find that all candidates other than the respondent No. 7 were awarded between 0 to 3 marks from the 10 fixed marks for interview.

12. In the aforesaid factual backdrop, it cannot be held that learned Single Judge has re-evaluated the marks given to the candidates by the selection Board and sat as appellate authority over the decision of the Board.
13. This court is of the considered opinion that though a reason was shown in the affidavit that 0 marks was awarded to the writ petitioner for the reason of his misbehaviour towards members of the selection Board, however, nothing was available on record of the selection process including in the final merit list indicating/suggesting such behaviour. Therefore, in such a peculiar factual backdrop, this Court cannot find any infirmity and / or illegality in the impugned judgment of the learned Single Judge inasmuch as all the candidates empanelled including the Appellant shall now get a fresh opportunity to face the interview Board.
14. In the case of **Hoshiar Singh** (supra), as reflected in para 13, the Hon'ble Apex Court did not enter into the issue whether the candidates in that case actually misbehaved with the

member of the selection Board as the said selection process was quashed for other grounds and the Hon'ble Apex court accordingly remanded back the matter to the interview Board for a fresh interview holding that it will be unfair to the candidates who were rejected by the Board on the ground of having misbehaved at the time of interview, if an opportunity is not granted to them to participate in the selection process. Similar course of Action has been adopted by the Learned Single Judge. Therefore, such decision rendered in ***Hoshiair Singh (supra)***, shall not render any help to the case of the appellant, in the peculiar factual backdrop.

15. In view of forgoing discussions and reasons, in the opinion of this Court, the present appeal lacks merits and accordingly, the same is dismissed. Parties to bear own cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant