

GAHC010121252019



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

Case No. : WA/169/2019

ABIDA KHATUN
W/O- SAIDUR RAHMAN, D/O- MUNTAZ ALI, R/O- VILL. AND P.O.
KAYAKUCHI, DIST.- BARPETA, ASSAM, PIN- 781352.

VERSUS

MD. ABDUL AWAL AND 4 ORS
S/O- WAHAB ALI AHMED, R/O- KURIHA, P.O. KAYAKUCHI, P.S. AND DIST.-
BARPETA, ASSAM, PIN- 781352.

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT
OF ASSAM
EDUCATION (SECONDARY) DEPARTMENT
DISPUR
GUWAHATI- 6.

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

4:THE PRESIDENT SELECTION BOARD
FOR SELECTION OF ONE NO. OF VACANT POST OF JUNIOR ASSTT. LDA AT
THA KAYAKUCHI KURIHA SENIOR MADRASSA
KURIHA
P.O. KAYAKUCHI
DIST.- BARPETA
ASSAM
PIN- 781352.

5:THE SUPERINTENDENT CUM MEMBER SECRETARY
KAYAKUCHI KURIHA SENIOR MADRASSA
KURIHA
P.O. KAYAKUCHI
DIST.- BARPETA
ASSAM
PIN- 781352

For the appellant : Mr. R.P. Kakati, Senior Advocate
Assisted by Mr. M.U. Mondal, Advocate
For the respondents : Mr. Alhajj Inam Uddin,
Advocate for respondent No.1
Mr. R. Mazumdar,
Standing Counsel, Secondary Education

– B E F O R E –

HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

04-08-2023

S. Mehta, C.J.

Heard Mr. R.P. Kakati, learned senior counsel assisted by Mr. M.U. Mondal, learned counsel representing the appellant. Also heard Mr. Alhaji Inam Uddin, learned counsel representing respondent No.1 and Mr. R. Mazumdar, learned Standing Counsel, Secondary Education Department.

Perused the material available on record.

The instant intra-Court writ appeal is directed against the judgment and final order dated 02.05.2019 passed by the learned Single Judge in WP(C)

1698/2016 preferred by the respondent No.1 herein, whereby the learned Single Judge interfered in the selection and appointment of the respondent No.5 (appellant herein) on the post of Junior Assistant/LDA in Kayakuchi Kuriha Senior Madrassa in the district of Barpeta, pursuant to the advertisement issued in December, 2015 finding the same to be bad in the eyes of law and hence, unsustainable.

The writ petition was allowed with the following observations and directions:-

“Consequently, the government approval under No.ASE.308/2015/135 dated 11.09.2015 as well as the Order No. DME/491/Apptt./2010/Pt-I/148 dated 29.02.2016 of the then Director of Madrassa Education, Assam, appointing the respondent No. 5, Abida Khatun, to the post of Junior Assistant/LDA in Kayakuchi Kuriha Senior Madrassa in the district of Barpeta is hereby set aside and quashed.

The respondents in the Secondary Education Department, by issuing a fresh advertisement, shall fill up the post of LDA in said Kayakuchi Kuriha Senior Madrassa in the district of Barpeta in accordance with law and by following the provisions of the Assam Madrassa Education (Provincialization) Act, 1995 as well as the Guidelines/Circulars of the State Government in that regard and in terms of the direction of this Court passed earlier to such post.

Needless to say that the applications of both the petitioner as well as of the respondent No. 5 shall be considered by condoning their overage under the Rule/provisions of the State in force, if they participate in such selection process, after issuing the fresh advertisement.”

Mr. R.P. Kakati, learned senior counsel representing the appellant vehemently and fervently tried to contend that the selection and appointment of the appellant herein for the post of LDA was made after following due process of law.

However, Mr. R. Mazumdar, learned Standing Counsel, Secondary Education and Mr. Alhajj Inam Uddin, learned counsel representing the respondent No.1/writ petitioner vehemently and fervently opposed the

submission advanced by the learned senior counsel for the appellant. They urged that the selection process was vitiated because the panel lists of the Selection Board as placed on record of the writ petition disclosed there were grave irregularities in the two lists. The select list wherein the name of the appellant (respondent No.5) figured at first position, did not contain the signatures of the President and Superintendent-cum-Member Secretary of the Selection Board but in spite thereof, such list was acted upon by the respondents in the Directorate of Madrasa Education.

Upon this apparent illegality being pointed out from the record, learned counsel for the appellant was not in a position to dispute the fact that the selection process was indeed vitiated because the selection committee was not constituted as per the prevalent Rules and regulations.

In this background, we have no hesitation in concluding that the learned Single Judge was perfectly justified while interfering in the impugned selection process and the appointment of the respondent No.5 (appellant herein) to the post of Junior Assistant/LDA in Kayakuchi Kuriha Senior Madrasa in the district of Barpeta and in further directing that fresh advertisement be issued to fill up the said post.

However, keeping in view of the fact that the appellant (respondent No.5) continues to work as the LDA in pursuance of the interim protection granted by this Court on 26.06.2019, in order to balance the equities, it is hereby directed that until and unless the fresh selection process, as directed by the learned Single Judge, is concluded, the appellant shall continue to work on the post of LDA in the Kayakuchi Kuriha Senior Madrasa.

The appellant as well as the respondent No.1 (writ petitioner) may apply

in the fresh selection process and their applications shall be considered by relaxing their age under the Rules applicable.

The appeal is allowed in these terms.

JUDGE

CHIEF JUSTICE

Comparing Assistant