

GAHC010122532022



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

Case No. : WP(C)/4205/2022

BHABANANDA PATHAK
S/O- LATE SADANANDA PATHAK,
R/O- MILAN PATH, KALAHAPAR, GUWAHATI,
DIST- KAMRUP (M), PIN-781016, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE PRINCIPAL SECRETARY, GOVERNMENT OF ASSAM, POWER
(ELECTRICITY) DEPARTMENT , DISPUR GUWAHATI-06

2:THE COMMISSIONER AND SECRETARY
GOVERNMENT OF ASSAM
POWER (ELECTRICITY) DEPARTMENT
DISPUR GUWAHATI-06

3:THE JOINT SECRETARY

GOVERNMENT OF ASSAM
POWER (ELECTRICITY) DEPARTMENT
DISPUR GUWAHATI-06

4:THE CHIEF ELECTRICAL INSPECTOR
CUM ADVISER
ASSAM
HOUSEFED COMPLEX
DISPUR
LAST GATE
GUWAHATI-06

5:RASHMI PHUKAN
ELECTRICAL INSPECTOR

(SR. GRADE)
OFFICE OF THE CHIEF ELECTRICAL INSPECTOR CUM ADVISER ASSAM
HOUSEFED COMPLEX
DISPUR
LAST GATE
GUWAHATI-0

Advocate for the Petitioner : MR D R GOGOI

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 16/03/2023

Heard Mr. D.R. Gogoi, learned counsel appearing for the writ petitioner. Also heard Mr. J.K. Goswami, learned Government Advocate, Assam appearing for the respondent nos. 1 to 4 and Mr. R.J. Das, learned counsel for the respondent no. 5.

The controversy involved in this writ petition is pertaining to the appointment of the respondent no. 5 as the Member-Secretary of the Electrical Licensing Board (ELB). According to the petitioner, he is 17 years senior in service as compared to the respondent no. 5 and is also due for retirement in the month of August, 2023. Although, the petitioner was earlier appointed as the Member-Secretary of the board, yet, on this occasion, his candidature was ignored by the authorities merely on the ground that he did not possess a Bachelor Degree. It is contended that the respondent no. 5 was appointed as the Member Secretary although she also did not meet the requirement of the Rules.

Taking note of the submission made by learned counsel for the parties, this Court had passed the following order on 28/02/2023:-

“28-02-2023

Heard Mr. D.R. Gogoi, learned counsel for the petitioner. I have also heard Mr. D. Bora, learned Govt. Advocate, Assam appearing for the respondent Nos. 1 to 4 and Mr. R.J. Das, learned counsel for the respondent No. 5.

The controversy involved in this writ petition centres around appointment of the respondent No. 5 as the Member Secretary of the Electrical Licensing Board (ELB). It is the undisputed position of fact that the writ petitioner is about 17 years senior in service as compared to the respondent No. 5 and he was also earlier appointed as the Member Secretary of the ELB on as many as two occasions. However, this time the petitioner had been ignored merely on the ground that he did not possess a Bachelor of Engineering (BE) degree as per requirement of Rule 4 of the Indian Electricity Rules, 1956.

According to Mr. Gogoi the respondents had earlier made a departure from such policy of having a BE degree. Considering the long years of service rendered by the petitioner and in view of the fact that he is due for retirement in the month of August, 2023, the petitioner deserves to be appointed as the Member Secretary so as to enable him to retire from service with a sense of honour and fulfillment.

Mr. Bora, learned Govt. Advocate, Assam submits that the only reason why the petitioner was ignored is on account of the fact that he is a diploma holder. Similar is the stand of Mr. R.J. Das, learned counsel for the respondent No. 5.

It is no doubt correct that as per the rules, the person to be appointed as Inspector must possess a degree in Electrical Engineering or its equivalent from a recognized university. A Member Secretary of the Board can only be appointed from amongst the Senior Electrical Inspector posted at the headquarters of the inspectorate. However, the fact remains that even the respondent No. 5 does not meet the requirement of the rules for the simple reason that she is not posted at the headquarters nor is she holding the post of Senior Electrical Inspector. A question, therefore, would naturally arise as to why the rules were tweaked to accommodate the respondent No. 5 and not the petitioner herein who is senior and therefore, more experienced than the respondent No. 5. It is in the aforesaid backdrop that this Court would have to examine whether it is a case of discriminatory treatment having been meted out by the authorities to the writ petitioner by applying the rules differentially or not.

The matter can be resolved by issuing a appropriate writ of this Court. However, since Mr. Bora has prayed for time till 16-03-2023 to seek instruction and apprise this Court as to whether the grievance of the petitioner can be redressed even at this stage, I am inclined to

grant some time to the learned Govt. Advocate, Assam.

Let this matter be listed again on 16-03-2023, as fixed item.

A copy of this order be furnished to Mr. Bora, during the course of the day.

On the request of the learned counsel for the respondents, let this writ petition be listed again along with W.P.(C) No. 769/2022.”

Today, when the matter is called up, Mr. Goswami, learned Government Advocate submits that he has received instruction from the Chief Electrical Inspector-cum-Advisor but he is not the authorized person to appoint Member-Secretary of the ELB. According to Mr. Goswami, instructions from the Government is still awaited.

It is not in dispute that the petitioner was not appointed as the Member-Secretary of the Board on account of the fact that he did not possess a Bachelors Degree. However, what is to be note herein is that the petitioner was initially recruited by relaxing the qualification norms invoking the proviso to Rule 4 of the Indian Electricity Rules, 1956. It is also not in dispute that the petitioner was earlier allowed to function as the Member-Secretary of the Board. It is apparent that the Rules have been relaxed to accommodate the respondent no. 5. However, nothing has been brought to the notice of this Court to show as to why, the Rules could not have been relaxed *qua* the petitioner as well for appointing him as the Member-Secretary of the Board.

It has also been brought to the notice of this Court that the petitioner had been earlier allowed to function as the Member Secretary of the ELB and another person, viz. Sri Ajit Gogoi, who also did not possess a Bachelor Degree in Engineering, was also allowed to function as the Member-Secretary of the Board.

Considering that the State Government is yet to come up with a response to the allegations made in the writ petition and in view of the fact that the petitioner is due for retirement in the month of August, 2023, I am of the view that scale of justice will hang in balance if the departmental

authorities are directed to review the appointment of the respondent no. 5 as the Member-Secretary of the ELB and thereafter, pass a fresh order, as per the guidelines provided by this Court, after considering the case of the writ petitioner as well.

This matter is, therefore, being remanded back to the respondent no.1 to carry out a review of the appointment of the respondent no. 5 as Member Secretary, ELB. If it is found that the appointment of the respondent no. 5 is also in relaxation of the Rules and that the petitioner was earlier appointed/allowed to function as the Member-Secretary of the ELB, then in that event, the respondent no.1 shall consider the candidature of the petitioner as well along with the respondent no. 5 and pass a fresh order appointing the Member-Secretary of the Board by bestowing equitable consideration to the candidature of both the departmental candidates.

In doing so, the respondent no. 1 shall bear in mind the fact that the petitioner is due for retirement in the month of August, 2023 and he is more than 17 years senior to the respondent no. 5.

The exercise, as directed herein above, be carried out and completed as expeditiously as possible but not later than 6 (six) weeks from the date of receipt of a certified copy of this order.

The petitioner to furnish a certified copy of this order to the respondent no. 1 for necessary compliance.

With the above observation, the writ petition stands disposed of.

JUDGE

sukhamay

Comparing Assistant