

GAHC010128052022



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

Case No. : WA/218/2022

KANAK CHANDRA PAUL AND 19 ORS.
S/O- KAMAL CHANDRA PAUL, R/O- VILL- NOWA PARA 01, P.O.-
NOWAPARA, P.S.- MANIKPUR, DIST- BONGAIGAON, ASSAM, PIN- 783392.

2: SURABHI HALOI
W/O- SRI GUNAJIT DAS
R/O- VILL- JARTALUK
P.O.- NICHALAMARI
DIST BAKSA
ASSAM
PIN- 781349.

3: JHARNA BARUAH
W/O- CHANDRA MONI SAIKIA
R/O- VILL.- MILONPUR SAIKIA CHUBURI
P.O.- DIPOTA
DIST- SONITPUR
ASSAM
PIN- 784150.

4: MAHIUDDIN AHMED
S/O- AFSAR ALI
R/O- VILL.- BAGHPARI
P.O. AND P.S.- MANGALDAI
DIST- DARRANG
ASSAM
PIN- 784125.

5: RUPALI NATH
S/O- SRI UTPAL NATH
R/O. VILL.- BASHBARI
P.O. NORTH BOITAMARI
P.S.- BONGAIGAON
DIST- BONGAIGAON

ASSAM
PIN- 783380.

6: AHAZUDDIN AHMED
S/O. MD. ASAD ALI
R/O. VILL.- BAGHPARI
P.O. AND P.S. MANGALDAI
DIST- DARRANG
ASSAM
PIN- 784125.

7: MADHUSMITA BARMAN
W/O- SRI HARISH BARMAN
R/O- VILL. KUMARIKATA
P.O.- DEHARKALAKUCHI
P.S.- MUKALMUA
DIST- NALBARI
ASSAM
PIN- 781310.

8: NOSIBUR ALI
S/O- MD. NABAB ALI
R/O-. VILL.- DESANG HALUWATING
P.O. DESANG GHAT
RAJMAI GRANT
DIST- SIBASAGAR
ASSAM
PIN- 785672.

9: SAMSUL ALAM
S/O- ABDUL RAHIM
R/O- VILL.- LALPANI PART-I
P.O. AND P.S. - JIRIGHAT
DIST. CACHAR
ASSAM
PIN- 788104.

10: HIRAK KUMAR SUTRADHAR
S/O- RADHA GOBINDA SUTRADHAR
R/O. VILL.- KAIMARI PT-IV
P.O. KAIMARI
P.S.- GOLAKGANJ
DIST.- DHUBRI
ASSAM
PIN- 783335.

11: BAHARUL ISLAM LASKAR
S/O- HAMID RAJA LASKAR

R/O- VILL. RONGPUR PART-2
P.O SAHABAD
P.S.- KATLICHERRA
DIST.- HAILAKANDI
ASSAM
PIN- 788163.

12: ROFIQUE UDDIN LASKAR
S/O- ABDUR RAHMAN LASKAR
R/O. VILL.- ADBULLAPUR PT-2
P.O. SARBANANDAPUR
P.S. LALA
DIST- HAILAKANDI
ASSAM
PIN- 788163.

13: JITENDRA ROY
S/O- RAJ KUMAR ROY
R/O. VILL.- SAGOLIA
P.S. GOLAKGANJ
DIST- DHUBRI
ASSAM
PIN- 783335.

14: NAMITA DAS
D/O- BINUD BIHARI DAS
R/O. VILL.- ULUKUCHI
P.O. NELLI
P.S.- JAGIROAD
DIST- MORIGAON
ASSAM
PIN- 782413.

15: RUPAK BEZ
S/O- GIRIDHAR BEZ
R/O- VILL. DHOBABALA
P.S. JENGRAIMUKH
SUB-DIV- MAJULI
DIST.- JORHAT
ASSAM
PIN- 785105.

16: MD. SAYED RUHULLAH HASSAN
S/O- SHAH ALOM
R/O- VILL. MAJGAON
P.O. MAJGAON
DIST- BAJALI
ASSAM PIN- 781313.

17: KAMALIKA ROY
W/O- SAMARJIT NARAYAN SINGHA
R/O- VILL. SINDURAI PT-2
P.S. AGOMANI
P.O. BELGURI
DIST.- DHUBRI
ASSAM PIN- 783334.

18: RAKIBUL ISLAM
S/O- DALA MIAH
R/O. VILL.- BHULUKABARI PATHER
P.O. JARABARI
P.S. BARPETA
DIST- BARPETA
ASSAM PIN- 781314.

19: NURTAZ HUSSAIN
S/O- SURHAB ALI
VILL. HOWLY TOWN
WARD NO. 1
P.O. AND P.S. HOWLY
DIST- BARPETA
ASSAM PIN- 781316.

20: SUNIA TAHMIM MALLIK
D/O- ABDUS SAMAD MALLIK
VILL. AZAD NAGAR NORTH BARPETA
P.O.- BARPETA
DIST. BARPETA
ASSAM PIN- 781301

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY, GOVT. OF
ASSAM, DEPARTMENT OF ELEMENTARY EDUCATION, DISPUR,
GUWAHATI-781006.

2:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM KAHILIPARA
GUWAHATI-781019.

3:THE UNION OF INDIA
REPRESENTED BY THE JOINT SECRETARY OF THE GOVERNMENT OF
SCHOOL EDUCATION AND LITERACY
MINISTRY OF HUMAN RESOURCES DEVELOPMENT

SHASTRI BHAWAN
NEW DELHI-110001.

4:CENTRAL BOARD OF SECONDARY EDUCATION
REPRESENTED BY ITS SECRETARY HAVING ITS OFFICE AT SIXA KENDRA
2
COMMUNITY CENTRE
PREET VILHAR DELHI- 110092.

5:THE NATIONAL COUNCIL OF TEACHER EDUCATION
(A STATUTORY BODY OF GOVERNMENT OF INDIA) HAVING ITS OFFICE
AT HANZ BHAWAN WING II BAHADUR SHAH ZAFAR MARG
NEW DELHI- 110002

For the appellants : Mr. U. Saikia,
Mr. S.D. Roy, Advocates

For the respondents : Mr. R. Mazumdar,
Standing Counsel, Education
Mrs. R. Borah,
Standing Counsel, CBSE

– B E F O R E –

HON'BLE THE CHIEF JUSTICE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

29-08-2023

S. Mehta, C.J.

Heard learned counsel appearing for the parties and perused the material placed on record.

The instant writ appeal is directed against the judgment and final order dated 17.06.2022 passed by the learned Single Bench whereby WP(C) 4006/2022 preferred by the appellants herein was rejected. The appellants had *inter alia* prayed in the said writ petition that they should be allowed to stake a claim for selection on 916 from 3941 posts of Assistant Teachers in Lower

Primary and Upper Primary schools advertised by the Directorate of Elementary Education, Assam on 11.09.2020, on the basis of their Central Teacher Eligibility Test (CTET) certificate.

The brief background of the matter needs a reference here.

The advertisement in question was issued without treating the eligibility of CTET qualified candidates in the process of selection and only the State TET qualified candidates were sought to be accommodated therein. 916 CTET passed candidates instituted litigation challenging the Advertisement dated 11.09.2020. The writ petitions were dismissed by the learned Single Judge vide common judgment and order dated 18.12.2020. Thereafter, 50 out of 916 writ petitioners, preferred writ appeal, being, WA 24/2021, which came to be disposed of by Division Bench of this Court vide order dated 03.02.2021 with the following observations and directions:-

“53. There can be no doubt about the fact that the ultimate beneficiary of this recruitment process would be the large number of children who may suffer if there is undue delay in appointment of teachers. We are also conscious of the fact that there are 3941 vacancies advertised by the department and the total number of writ petitioners who had approached this court is 916. We make it very clear that all these 916 candidates shall be considered against the existing 3941 vacancies. But even if their candidature is ultimately accepted, all the writ petitioners including the present appellants can at best fill up 916 vacancies and no further. Although, there are only 50 appellants before us who have assailed the impugned judgment and order dated 18.12.2020 passed by the learned Single Judge, yet, since the impugned judgment has been set aside and in order to avoid future litigations on the same issue, we deem it appropriate to grant similar relief to the appellants as the other writ petitioners who are not before us but are similarly situated.

54. *Considering the facts and circumstances of the case in its entirety and balancing the equities, we direct that the recruitment process initiated by the department on the basis of advertisement dated 11.09.2020 be now processed in 2021:GAU-AS:1742-DB -39- two phases. In the first phase, appointment orders for filling up 3025 out of 3941 vacancies may be issued from amongst State TET qualified candidates. The appointment orders in respect of the remaining 916 vacancies be issued to the eligible candidates in the second phase after considering the candidatures of the 916 writ petitioners which includes the present appellants, who are Central TET qualified candidates. It is, however, made clear that the appointment of the writ petitioners/appellants would be subject to the condition that appellants have the State TET qualification and other guidelines prescribed by NCTE and they fulfil all eligibility norms prescribed by the advertisement notice dated 11.09.2020, including necessary proficiency in the required language.”*

Post the decision of the writ appeal, Director of Elementary Education, Assam issued an Advertisement dated 04.05.2022 confining it to the 916 petitioners, who had instituted writ petitions in this Court challenging the original Advertisement dated 11.09.2020 issued by the Director of Elementary Education, Assam.

The claim of the writ petitioners/appellants herein is that as the CTET qualified candidates had been permitted to file fresh applications pursuant to the Advertisement dated 04.05.2022, the said field should also be thrown upon for all CTET certificate possessing candidates including the writ petitioners/appellants herein and the exercise could not have been confined only to the candidates, who had applied earlier on the basis of their CTET certificates and had also instituted litigation in this Court.

Mr. U. Saikia, learned counsel representing the appellants vehemently and

fervently urged that the restriction imposed in the Advertisement dated 11.09.2020 wherein CTET qualified candidates were not treated eligible for the posts and so also the condition imposed in the Advertisement dated 04.05.2022 post the decision of the WA 24/2021 wherein only the 916 writ petitioners (holding CTET certificates), who had approached this Court earlier, have been allowed to participate in the selection process, is arbitrary, illegal and violative of the principles enshrined in Articles 14 and 16 of the Constitution of India. Learned counsel representing the appellants thus urged that when a fresh advertisement has been issued by the authorities, all CTET qualified candidates have to be placed at par and the restriction in the advertisement, limiting the field of application to only the litigants, who approached this Court earlier, is absolutely unjustified and arbitrary and hence, the appellants herein too deserve liberty to apply in the fresh advertisement.

Per contra, Mr. R. Mazumdar, learned Standing Counsel for the Education department urged that the controversy involved in this writ appeal is squarely covered by the observations made and the directions given by the Division Bench of this Court in the case of ***Binod Karmakar and others vs. The State of Assam (WA 24/2021)*** wherein, while interfering in the Advertisement dated 11.09.2020, the Division Bench passed an equitable order permitting the 916 CTET qualified candidates, who had approached the Court by filing writ petitions, to stake a claim for appointment against 916 posts from the existing 3941 vacancies. He thus urged that as the relief in the said judgment which has attained finality was expressly confined to the writ petitioners, the appellants herein who never applied for selection in pursuance of the initial advertisement, cannot now be permitted to stake a fresh claim for appointment against 916 posts. He urged that the petitioners/appellants laid a highly belated

challenge to the condition incorporated in the Advertisement dated 11.09.2020 after the writ appeal referred to (supra) had been decided and thus the learned Single Bench was perfectly justified in denying the relief claimed for by such petitioners.

We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the impugned judgment and the material placed on record.

At the outset, we may note that the appellants herein did not file any application for appointment pursuant to the Advertisement dated 11.09.2020 presumably because they were not having the State TET certificate. Around 916 candidates having the CTET certificates tried their luck and filed their application forms on the basis of the CTET certificates but their applications were not entertained.

Being aggrieved by non-consideration of their applications, these 916 candidates preferred WP(C) No.3720/2020 and other analogous writ petitions in this Court which was rejected vide order dated 18.12.2020. 50 out of the 916 original writ petitioners, preferred writ appeal, being WA No.24/2021, which was disposed of with the directions reproduced (supra).

Manifestly thus, the litigants who had earlier approached the Court by filing writ petition, WP(C) No.3720/2020 and other analogous writ petitions, were vigilant in pursuing their cause with alacrity. Not only did they file applications on the basis of the CTET certificates held by them despite the rider contained in the advertisement dated 11.09.2020, but pursuant to the non-consideration of their applications, they approached this Court by instituting the aforesaid writ petition. Hence, by no stretch of imagination, can the appellants

herein claim parity with the candidates who had indulged in the earlier round of litigation.

As stated above, the writ appeal, WA No.24/2021 came to be allowed by Division Bench of this Court with the specific direction that the relief of consideration against the 916 posts would be restricted to the candidates who had approached the Court by filing WP(C) No.3720/2020 and other analogous writ petitions.

In this background, the appellants herein who neither staked a claim for appointment pursuant to the advertisement dated 11.09.2020 nor did they approach the Court by instituting writ petition, cannot be permitted to raise a highly belated challenge to the conditions contained in the Advertisement dated 11.09.2020. Since the relief in the earlier round of litigation was restricted to 916 writ petitioners, no other person can be allowed to step into reckoning for those posts.

The order dated 17.06.2022 passed by the learned Single Judge in WP(C) No.4006/2022 does not suffer from any infirmity warranting interference of this Court and hence, the writ appeal fails and is dismissed as being devoid of merit.

No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant