

GAHC010129942022



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

Case No. : WP(C)/4451/2022

KESHAB BAISHYA
S/O. SRI LAL MOHAN BAISHYA, VILL. SANPARA PARBAT, BONGSHAR,
MOUZA- PUB BONGSHAR, P.O. BONGSHAR, P.S. SUALKUCHI, DIST.
KAMRUP (R), ASSAM, PIN-781103.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, REVENUE AND
DISASTER MANAGEMENT DEPTT., ASSAM SECRETARIAT, DISPUR,
GUWAHATI-06.

2:THE COMMISSIONER

LOWER ASSAM DIVISION
PANBAZAR
GUWAHATI01
ASSAM.

3:THE SELECTION BOARD FOR SELECTION OF GAON PRADHAN UNDER
KAMRUP DISTRICT

REP. BY ITS CHAIRMAN AT KAMRUP
AMINGAON
ASSAM.

4:THE DEPUTY COMMISSIONER

KAMRUP
DIST. KAMRUP (R)
AMINGAON
ASSAM.

5:THE ADDL. DEPUTY COMMISSIONER

KAMRUP
DIST. KAMRUP (R)
AMINGAON
ASSAM.

6:THE CIRCLE OFFICER

HAJO REVENUE CIRCLE
DIST. KAMRUP (R)
ASSAM.

7:THE MOUZADAR

PUB BONGSHAR MOUZA
SUWALKUCHI
P.O. BONGSHAR
DIST. KAMRUP (R)
ASSAM
PIN-781103.

8:KANDARPA BAISHYA
S/O. LT. BANTI RAM BAISHYA
VILL. NIZ BONGSHAR
BONGSHAR
MOUZA PUB NONGSHAR
P.O. BONGSHAR
P.S. SUALKUCHI
DIST. KAMRUP (R)
ASSAM
PIN-781103

Advocate for the Petitioner : MR. S K ROY

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Date of hearing : 19.09.2023.

Date of judgment : 26.09.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. S.K. Roy, learned counsel for the petitioner. Also heard Ms. M. Bhattacharjee, learned Government Advocate for the respondent Nos. 2 to 7, Mr. S. Dutta, learned counsel for respondent No. 1 and Mr. D. Borah, learned counsel for respondent No. 8.

2. The selection of the respondent No. 8 as Gaon Pradhan vide the impugned Notice dated 25.05.2022 is challenged in this writ petition on four grounds. Firstly, on the ground that the respondent No. 8 was not a resident of the concerned village i.e. Sanpara Parbat, which is one of the eligibility criteria required of a candidate. Secondly, that the respondent No. 8 was a member of a Political Party at the time of his selection as the Gaon Pradhan. Thirdly, the petitioner, who was the son of the retired Gaon Pradhan of Sanpara Parbat should have been awarded marks out of 10 marks allotted for members of the family of the Gaon Pradhan in terms of Clause G of the Advertisement dated 01.12.2021, which had not been done. Fourthly, preference was to be given to the family member of a Gaon Pradhan and the view given by the Mouzadar considered, which was not done.

3. The brief facts of the case is that the petitioner and the respondent No. 8 took part in the selection process for appointment to the post of Gaon Pradhan, in respect of the village Sanpara Parbat, pursuant to an Advertisement dated 01.12.2021. The terms and conditions in the Advertisement dated 01.12.2021 stipulated that a candidate should be a permanent resident of the area in which they sought appointment to the post of Gaon Pradhan. Preference should be given to the family members of the Gaon Pradhan and views of the Mouzadar should also be taken into consideration. Further, a candidate was not to be a member of any Political Party and

marks were to be allotted to the family of the Gaon Pradhan.

4. The petitioner's counsel submits that the respondent No. 8 was a member of the Bharatiya Jayanta Party (BJP) and a member of 4 No. Constituency under 87 No. Bongshar Gaon Panchayat, as the respondent No. 8 had been elected as a member of the said Gaon Panchayat on a BJP ticket. Further, the petitioner was not given any marks out of the 10 marks allotted for members of the family of a Gaon Pradhan. Preference was also to be given to the family of the Gaon Pradhan and the views of the Mouzadar which had been taken vide letter dated 21.12.2021, should have been considered. Further, the respondent No. 8 not being a resident of Sanpara Parbat village, the selection of the respondent No. 8 as Gaon Pradhan of Sanpara Parbat was illegal and in violation of the terms and conditions laid down in the Advertisement dated 01.12.2021. Thus, the said selection of the respondent No. 8 as Gaon Pradhan, made in terms of the impugned Notice dated 25.05.2022, issued by the Office of the Deputy Commissioner, Kamrup, Amingaon, should be set aside.

5. Mr. S. Dutta, learned Standing Counsel, Revenue (respondent No. 1) submits that a challenge can be made against the selection of the respondent No. 8 as Gaon Pradhan by the Deputy Commissioner, by filing an appeal before the office of the Commissioner Secretary/Principal Secretary of the General Administration Department in terms of the Amended Executive Instruction No. 162-C of the Assam Land Revenue Regulation, 1886 (Amendment), 2018 (*herein referred to as the Amended Regulation, 2018*) and the Notification No. 304149/1 dated 17.07.2023 issued by the Principal Secretary to the Government of Assam, General Administration Department. He also submits that the preference to be given to family members of the Gaon Pradhan in terms of the Advertisement dated 01.12.2021 can only be done, if the marks obtained by two candidates were equal. As the petitioner had obtained less marks than the respondent No. 8, the preference clause could not be applied in the case of the petitioner. He also submits that though the amended Executive Instructions No. 162-C

provides for filing an appeal against the appointment of a Gaon Pradhan and does not mention the word 'Appointment', the word 'Selection' and 'Appointment' are interchangeable in terms of Executive Instructions No. 162-B, as held by the Division Bench of this Court in its Order dated 30.07.2022 passed in WA No. 227/2022, "*Amiya Kumar Kalita & 7 Ors Vs. State of Assam & 3 Ors*". As such, the selection of the respondent No. 8 should be challenged in appeal. The counsel for the respondent No. 1 thus prays that the writ petition should be dismissed, as the petitioner has an alternative remedy available, by filing an appeal under the Amended Executive Instruction No. 162-C. In support of his submission that when an efficacious alternative remedy is available, the same should be resorted to, he has relied upon the Judgment of the Apex Court in the case of *Commissioner of Income Tax & Others Vs. Chhabil Dass Agarwal, (2014) 1 SCC 603*.

6. Ms. M. Bhattacharjee, the learned Government Advocate for the respondent Nos. 2 to 7 submits that as there is an alternative remedy available to the petitioner, the petitioner would have to exercise the alternative remedy, by invoking the amended Executive Instruction No. 162-C. She submits that the letter written by the Circle Officer, Hajo Revenue Circle, Hajo to the Deputy Commissioner shows that the respondent No. 8 had resigned from the Political Party, BJP.

7. Mr. D. Borah, the learned counsel for the respondent No. 8 submits that it appears that the petitioner has already availed the alternative remedy, by invoking the amended Executive Instruction No. 162-C, as can be seen from the Order dated 05.04.2023 passed by the Commissioner, Lower Assam Division, Guwahati in Case No. R.R of 22/2022. The said Order dated 05.04.2023 passed by the Commissioner shows that the appeal of the petitioner has been dropped and as the same is not challenged, the present writ petition should be dismissed, as the petitioner cannot agitate a decided issue again in a different forum. He also submits that as per the letter dated 29.12.2021 issued by the Mouzadar, Gaon Pub-Bongshar Mouza, the respondent No. 8

has been certified to be a permanent resident of Sanpara Parbat village. He also submits that as per the letter dated 29.11.2021 issued by the President 87 No., Bangshar Gaon Panchayat, the respondent No. 8 had submitted an application on 29.11.2021 seeking resignation from his membership from Ward No. 4 of 87 No. Bangshar Gaon Panchayat. He thus submits that the petitioner being a resident of Sanpara Parbat and having resigned from his membership of the Gaon Panchayat, the respondent No. 8 could not be said to be a member of any Political Party.

8. At this stage, the learned counsel for the petitioner has quickly clarified that no appeal was filed by the petitioner before the Divisional Commissioner and Case No. R.R. of 22/2022 is in relation to the covering letter submitted by the petitioner to the authorities, communicating the stay order dated 29.06.2022 passed by this Court, staying the operation of the impugned Notice dated 25.05.2022, in so far as the respondent No. 8 was selected as the Gaon Pradhan.

9. I have heard the learned counsels for the parties.

10. The eligibility criteria for a candidate to be considered for the post of Gaon Pradhan, in terms of Clause C (3) of the Advertisement dated 01.12.2021 provides amongst others, that a candidate should be a citizen of India and a permanent resident of the area in respect of which he/she seeks appointment. Preference should also be given to the family members of the Gaon Pradhan and views of the Mouzadar should be taken into consideration. Also a candidate should not be a member of any Political Party.

11. Clause G of the Advertisement dated 01.12.2021 provides the allotment of marks to be given for viva voce interview. Out of the total marks of 100, 10 marks had been allotted to be given to the Gaon Pradhan family member/ view of the Mouzadar.

Clause G of the Advertisement dated 01.12.2021 provides as follows:-

“G. The allotment of marks for viva voce interview:

Sl. No.	Criteria	Total Marks
1	Personality (Ability to inspire people)	10
2	Physical Fitness	5
3	Leadership, Attitude & Skill	10
4	Gaon Pradhan family member/Mouzadar view	10
5	General Knowledge	15
	Total	50

12. A perusal of the Final Evaluation Sheet of the candidates for selecting the Gaon Pradhan for Sanpara Parbat village shows that the petitioner secured 27.33 marks and the respondent No. 8 secured 30 marks. There is nothing reflected in the final Evaluation Sheet, which is annexed as Annexure-1 to the additional affidavit filed by the petitioner, showing that any marks had been allotted to the petitioner for being a member of the family of the Gaon Pradhan or in terms of the view of the Mouzadar. The relevant portion of the Final Evaluation Sheet is reproduced below as follows:-

[illegible]

1	HAJO	KESHAB CHANDRA BAISHYA	920504	SANPARA PARBAT	20	22	25	67	22.33	5	27.33	
2	HAJO	KANDARPA BAISHYA	922426	SANPARA PARBAT	24	28	26	78	26	4	30	SELECTED

13. The letter relied upon by the petitioner to prove that the respondent No. 8 had not resigned from the membership of the BJP is the letter dated 25.05.2022 issued by the President of 87 No., Bangshar Gaon Panchayat and addressed to the Block Development Officer. The said letter reads as follows:-

“With due respect, I would like to inform that Shri Kandarpa Baishya, a member of 4 No. Constituency under 87 No. Bongshar Panchayat, submitted a letter to our Panchayat on 22/04/2022 seeking resignation from his post of membership. On behalf of the Panchayat, we forward the letter for necessary action to you for information. The Block Development Officer will take the necessary step in this regard.

Therefore, it is the humble request before you.”

14. The respondent No. 8, on the other hand, has relied upon the letter dated 29.11.2021 issued by the President of 87 No., Bangshar Gaon Panchayat to the Block Development Officer, Suwalkuchi, in support of his submission that the respondent No. 8 had resigned from the membership of the BJP. The letter dated 29.11.2021 is reproduced herein below as follows:-

“To,

Date-29.11.2021

The Block Development Officer, Suwalkuchi.

Madam,

Most respectfully I beg to state you that Sri Kandarpa Baishya, Member of Ward No.4 of No.87 Bangshar Gaon Panchayat submitted his application on 29.11.2021 seeking resignation from his membership. We are hereby forwarding his application to your good self for taking necessary action. We request you to take necessary action on it. It is the humble request before your good self.”

15. The counsel for the respondent No. 5 has relied upon the letter dated 26.08.2022 issued by the Circle Officer, Hajo Revenue Circle, Kamrup, which is addressed to the Deputy Commissioner, in support of his submission that the respondent No. 8 had resigned from the Political Party. The said letter states as follows:-

“To,

The Deputy Commissioner, Kamrup, (Amingaon).

*Sub : Regarding submission of enquiry Report of Gaonburah.
Your letter No.KRM.28/2022/18/250 dated 4.6.2022..*

Sir,

With reference to the subject cited above, I would like to inform you that in terms of letter No.HRC.2022/1276 dated 21.07.2022, report alongwith the said report, a letter of the SDB/GC/13/2020-21/918 dated 7.12.2021 addressed by the CEO, Kamrup Zila Parishad by the said member seeking resignation is also enclosed. Also enclosed letter dated 29.11.2021 of 87 No. Bongsor Gaon Panchayat President addressed to the Suwalikuchi Block Development Officer with regard to the resignation of Shri Kandarpa Baishya. This report is forwarded on the basis of report submitted by lat Mandal for your necessary action.”

16. On a perusal of the above letters referred to in the foregoing paragraphs, it is seen that the said letters are only in relation to the resignation of the respondent No. 8 from being a member of 87 No., Bangshar Gaon Panchayat. The respondent No. 8, who has been elected on a BJP ticket, as a BJP candidate, for the post of member of the Gaon Panchayat, has not shown any letter issued by him or any Political Party functionary or office bearer of the party he belongs to, showing that he had resigned from the Political Party (BJP). As can be seen from the documents in the pleadings, the selection and appointment of the respondent No. 8 as Gaon Pradhan for Sanpara Parbat village had been made, in the impugned select list/notice dated 25.05.2022. As such, it is quite clear that the respondent No. 8 was a member of a Political Party at

the time of his selection as Gaon Pradhan of Sanpara Parbat village.

17. With regard to question whether the respondent No. 8 was a resident of Sanpara Parbat village, this Court is of the view that the same is a disputed question of fact, as the respondent No. 8 has relied upon letter dated 29.12.2021 issued by the Mouzadar of Pub Bongshar Mouza, Sualkuchi stating that the respondent No. 8 was a permanent resident of Sanpara Parbat village, while the petitioner has relied upon another letter stating otherwise.

18. The Final Evaluation Sheet shows that no marks were allotted to the petitioner for being a member of the family of the Gaon Pradhan, though he was the son of the earlier Gaon Pradhan. No marks were allotted to the petitioner in terms of the view of the Mouzadar, though the Mouzadar had issued a Certificate dated 21.12.2021, stating that the petitioner had a good moral character, besides having experience of duties and responsibilities of a Gaon Pradhan.

19. To sum it up, the questions raised in this writ petition are decided as follows. The question whether the respondent No. 8 is a resident of Sanpara Parbat village is a disputed question of fact, which cannot be decided in this writ petition, in view of the different documents taking contrasting stands in respect of the said issue. The petitioner being the son of an earlier Gaon Pradhan and as the view of the Mouzadar had been taken, as reflected in the Mouzadar letter dated 21.12.2021, the State respondents were bound to consider giving some marks to the petitioner, out of the 10 marks allotted in terms of Clause-G of the Advertisement dated 01.12.2021 at the time of interview. With regard to the Clause in the advertisement which says that preference would be given to a member of the family of the Gaon Pradhan, this Court is also of the view that the question of preference can only be applied when there are

two or more successful candidates having the same marks. However, in this case, the petitioner secured lesser marks than the respondent No. 8. Further, this Court in the case of *Karim Ali Vs. State of Assam & Others, 2020 4 GLT 1058* has held that the concept of giving preference to one candidate over the other comes into play, only when the marks obtained by two candidates are equal. If the marks obtained by the two candidates are unequal, there is no requirement of giving preference to one candidate over the other. With regard to the question whether the respondent No. 8 belonged to a Political Party at the time of his selection as a Gaon Pradhan, we would have to go into the affidavit submitted by the respondent No. 8. In this affidavit, the respondent No. 8 has stated that though he had been elected as a member of 87 No., Bangshar Gaon Panchayat and won the election from Ward No. 4 of the said Panchayat, he offered his resignation on 29.11.2021 to the President and the Secretary of 87 No., Bangshar Gaon Panchayat. The same was forwarded to the BDO who submitted to the Executive Officer, Kamrup Zila Parishad for necessary action. The respondent No. 8 has thus resigned from the post of member of Ward No. 4 of 87 No., Bangshar Gaon Panchayat. However, there is nothing to show that the respondent No. 8 had resigned from the BJP Political Party at the time of his selection as Gaon Pradhan or afterwards.

As can be seen from the earlier paragraphs, the letter written by the respondent No. 8 only shows that he had resigned from the Gaon Pradhan and there is no document produced by the respondent No. 8 showing that he had resigned from the membership of the Political Party. As such, it cannot be said that the respondent No. 8 was not a member of the Political Party at the time of his selection as Gaon Panchayat.

20. The above being said, the question now pertains to whether the petitioner would have to file an appeal against the selection of the respondent No. 8 as a Gaon Pradhan, in terms of the Amended Executive Instructions No. 162-C and the Notification dated 17.07.2023 passed by the General Administration Department,

Government of Assam.

21. The Amended Executive Instructions No. 162-C states as follows:-

“162-C. An Appeal against the order of appointment, suspension and dismissal of a Gaonbura by the Deputy Commissioner/Principal Secretaries of Autonomous Council areas shall lie to the Divisional Commissioner within a period of 60(sixty) days from the date on which the appellant receives a copy of the order.”

22. The Notification dated 17.07.2023 issued by the General Administration Department, Government of Assam states as follows:-

“NOTIFICATION

Dated Dispur the 17th July, 2023.

E file No. 304149/1:-For administrative convenience and in the interest of public service and in order to bring administration closer to the people by providing adequate power and authority to the Deputy Commissioner of the District and in the interest of public service, the Governor of Assam is pleased to abolish the offices of Divisional Commissioners in the State with immediate effect.

The assets of the existing Divisional Commissioners’ establishment and the employees will come under the establishment of the district in which the headquarter of the Divisional Commissioner is at present located.

The statutory powers and administrative powers as exercised by Divisional Commissioner at present will henceforth be exercised by the Commissioner & Secretary/Principal Secretary of General Administration Department.

(Avinash Joshi, IAS)

*Principal Secretary to the Govt. of Assam,
General Administration Department.”*

23. A perusal of the Amended Executive Instruction No. 162-C shows that the appointment, suspension and dismissal of the Gaon Pradhan by the Deputy Commissioner can be challenged in an appeal, by filing an appeal before the concerned Divisional Commissioner. However, vide Notification dated 17.07.2023, the

office of the Divisional Commissioner in the State of Assam has been abolished and all the statutory and administrative powers exercised by Divisional Commissioner are now to be exercised by the Commissioner & Secretary/Principal Secretary of the General Administration Department.

24. In the case of *Amiya Kumar Kalita & 7 Others Vs. State of Assam & 3 Others*, WA No. 227/2022, the Division Bench of this Court has held that the words "selection" and "appointment" are interchangeable and the provision of Section 162-C can be applied in case of a challenge made to the selection of a Gaon Pradhan by the Selection Committee. However, on perusing the judgment passed by the Division Bench in WA No. 227/2022, this Court finds that the decision of the Division Bench had been made on the basis of the unamended Executive Instruction No. 162-B & C. The unamended Executive Instruction No. 162-B provides that an appeal against the order of appointment, suspension and dismissal of Gaon Pradhan by the Sub-Divisional Officer shall lie before the Deputy Commissioner. The unamended Executive Instruction No. 162-C provides that a second appeal from the order of the Deputy Commissioner shall lie to the Commissioner of Division. Thus, the Division Bench had held that the words "selection" and "appointment" were interchangeable, while considering the unamended Executive Instruction No. 162-B & C. It had not considered the amended Executive Instruction No. 162-C. Thus, the Division Bench, in WA No. 227/2022, has held that an appeal would lie against the "selection" of the Gaon Pradhan under the unamended Executive Instruction, though the issue raised was that selection of a Gaon Pradhan could not be challenged in appeal under the amended Executive Instruction 162-C. In any event, in view of the Notification dated 17.07.2023, the appeal would have to be filed before the Commissioner & Secretary/Principal Secretary of the General Administration Department.

25. In the case of *Commissioner of Income Tax & Others Vs. Chhabil Dass Agarwal*, (2014) 1 SCC 603, the Supreme Court has held that when a statutory forum is created by law for redressal of grievances and where an effective alternative remedy is available, though the Supreme Court has recognized some exceptions to the rule of alternative remedy, i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure or violation of the principles of natural justice, or has resorted to invoke the provisions which are repealed, a writ petition should not be entertained ignoring the statutory dispensation.

26. In the case of *M/s Godrej Sara Lee Limited Vs. Excise and Taxation Officer-cum-Assessing Authority & Others*, AIR 2023 SC 781, the Supreme Court has held that when the controversy is purely a legal one and it does not involve disputed questions of fact, but only questions of law, then it should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy being available.

27. In the case of *Harbanslal Sahnia & Another Vs. Indian Oil Corporation Limited & Others*, (2003) 2 SCC 107, the Supreme Court has held that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of alternative remedy, the Court may still exercise its jurisdiction in at least three contingencies, which were also reflected in the judgment of the Supreme Court in the case of *Commissioner of Income Tax & Others(Supra)*.

28. Though the petitioner should have been told to avail the alternative remedy available, keeping in view the judgments of the Supreme Court, affidavits have been filed by all the parties during the pendency of the case. Though the controversy is

basically on facts, the same can be decided on the basis of the affidavits given by the parties. If the factual controversies were complex would have required the recording of evidence, this Court would have directed the petitioner to have availed the alternative remedy available, by filing an appeal. However, as the documents on record clearly shows two out of the four raised issues, which goes to the core of the case can be decided, the writ petition is being decided.

29. The documents show that the respondent No. 8 had not resigned from the Political Party he belonged to, at the time of his selection as a Gaon Pradhan, he having only resigned from the membership of the Gaon Panchayat. As such, the respondent No. 8 was ineligible to be considered for selection and appointment to the post of Gaon Pradhan. Further, the petitioner being the son of the earlier Gaon Pradhan and the Mouzadar having given his view, it was incumbent on the State respondents to have considered giving marks to the petitioner at the time of interview, in terms of Clause G of the Advertisement dated 01.12.2021. As the petitioner and respondent No. 8 were the only two candidates in the fray, for selection and appointment to the post of Gaon Pradhan of Sanpara Parbat village and as the respondent No. 8 is found to be ineligible to have participated in the selection process, the selection of respondent No. 8 as Gaon Pradhan of Sanpara Parbat village, vide the impugned Notice dated 25.05.2022 being unsustainable is hereby set aside.

30. The respondent No. 4 is directed to issue necessary order/s for selection and appointment of the petitioner as Gaon Pradhan of the Sanpara Parbat village.

31. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant