

GAHC010131372022



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

Case No. : WA/52/2023

KAPIL CHANDRA DAS AND 7 ORS.
S/O- SRI AMAL CHANDRA DAS, R/O- VILL. MORNOI, P.O. AND P.S.
MORNOI, DIST.- GOALPARA, PIN- 783101, ASSAM.

2: TAPAN CHANDRA SAIKIA
S/O- KESHAB CHANDRA SAIKIA
R/O- BIDYATUP
MAHDHABDEV PATH
P.O. MADHUPUR
P.S.- SADAR
DIST. NAGAON
PIN- 782003
ASSAM.

3: JAPUNGSAR BRAHMA
S/O- SATYENDRA BRAHMA
R/O- DUMARIGURI
P.S. DOTMA
SUB-DIVN.- GOSSAIGAON
DIST.- KOKRAJHAR
PIN- 783347
ASSAM.

4: RAHUL ROY
S/O- LT. PARESH CHANDRA ROY
R/O- VILL. MOKORAPARA
P.O.- K/BHOTAGAON
DIST.- KOKRAJHAR
PIN- 783370
ASSAM.

5: JAKIR HUSSAIN LASKAR
S/O- LT. LACHAN UDDIN LASKAR
R/O- VILL. NIMAICHANDPUR

P.S. LALA
DIST.- HAILAKANDI
PIN- 788168
ASSAM.

6: SAHAB UDDIN CHOUDHURY
S/O- MUHI UDDIN CHOUDHURY
R/O- VILL. GOBINDAPUR
EAST PT. II
P.O. GOBINDAPUR EAST
P.S.- SILCHAR
DIST.- CACHAR
PIN- 788101
ASSAM.

7: JAHIRUL ISLAM
S/O- JOYNAL HOQUE
R/O- VILL. AND P.O. FULKUMARI
P.S. GAURIPUR
DIST.- DHUBRI
ASSAM.

8: THIRJOILIAN HRANGKHOL
S/O- ROITHANGHTHOI HRANGKHOL
R/O- VILL. ZION
P.O. HALFLONG
P.S. AND DIST.- DIMA HASAO
ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HEALTH AND
F.W., DISPUR, GHY.-06.

2: THE DIRECTOR OF HEALTH SERVICE
ASSAM
HENGRABARI
GHY.-36.

3: THE MISSION DIRECTOR
N.H.M.
ASSAM
CHRISTIAN BASTI
GUWAHATI- 5.

4: THE COMM. AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.

DISPUR
GHY.-06.

5:BARNENDU KUMAR PATHAK
S/O- PRAFULLA KR. RAY
R/O- BHUMKATARI
P.O.- SRIJANGRAM
P.S. ABHAYAPURI
DIST. BONGAIGAON
PIN- 783384
ASSAM.

6:BEDANTA BARUAH
S/O- BHOLA BARUAH
R/O- BALIJAN
P.O. BALIJAN
P.S. GOHPUR
DIST.- SONITPUR
PIN- 784172
ASSAM.

7:RUPOJOY REANG
S/O- LT. MOTRORAM REANG
R/O- NUNAI F.V. KUNDANALA
P.O. KACHARITHAL
P.S. LALA
DIST.- HAILAKANDI
PIN- 788163
ASSAM.

8:MEHMUD BRAHMA
S/O- KRISHNA KANTA BRAHMA
R/O AMBARI BELGURI
P.O. AND P.S. MUSHALPUR
DIST.- BAKSA
PIN- 781372
ASSAM

For appellant(s) : Ms. A. Talukdar, Advocate

For respondent(s) : Mr. B. Gogoi, SC, Health

– BEFORE –

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

24.02.2023

This writ appeal is directed against the order dated 26.05.2022 passed by the learned Single Judge in WP(C) 603/2020. The appellants participated in the selection process pursuant to an advertisement issued by the respondent department for appointment to the post of Surveillance Worker (SW). The claim of the appellants/writ petitioners is that they had earlier rendered services as Multi-Purpose Workers (MPW) on contractual basis. In the selection process, in which they had participated, the marks obtained by the appellants/writ petitioners were found to be lower than the marks obtained by the selected candidates. Accordingly, the appellants/writ petitioners could not secure appointment through the said selection process. Being aggrieved, the writ petition was preferred.

2. The writ petition preferred by the appellants/writ petitioners was dismissed by the learned Single Judge by the impugned order with the following observations:

“9. In the present case in hand, the respondent authorities have demonstrated that the last selected candidate had scored 63.5 marks, whereas, the marks scored by the petitioners were way below the marks obtained by the last selected candidate. Thus, the absence of the names of the petitioners in the final select list cannot be said to be illegal.

10. The Court is also inclined to take note of the employment advertisement dated 05.02.2019, wherein it is prescribed at Sl. no.2 of the “selection process” that on the performance at HSSLC, maximum of 30 marks depending upon marks obtained in the 10+2/HSSLC or equivalent examination was provided for and that for previous similar experience, maximum of 40 marks at the rate of 8 marks for every year of service rendered with similar health experience was also provided for. Therefore, it appears that such clause contained in the employment advertisement dated 05.02.2019, was to give weightage to the MPWs. Moreover, as per the stand taken by the respondent authorities in their affidavit-in-opposition, 337 MPWs had been selected out of 373 MPWs, who had participated in the selection process. Therefore, only 63 persons outside the MPWs were selected out of 400 posts of Surveillance Workers, less 8(eight)

persons who have not joined.

11. Notwithstanding that the petitioners were rendering service as MPWs since the year 2014, as they had secured marks way below the marks obtained by the last selected candidate, no case has been made out by the petitioners for interference with the provisional final select list.

12. Accordingly, this writ petition fails and the same is dismissed.”

3. Being aggrieved, the present writ appeal has been preferred on the following grounds:-

“(i) For that the learned Single Judge failed to appreciate the fact that the appellants/writ petitioners are appointed in the year 2013 and since then they had been rendering their dutiful services and considering the indispensable need of the MPWs, support has been extended by the Govt. of India, Ministry of Health and Family Welfare National Health Mission vide O.M. dated 23.06.2014 for continuation of contractual MPW(M) engaged under the NHM and accordingly directed the State Govt. to create requisite number of post of MPW(M) if such services are required beyond 30.09.2014 and fill them on regular basis. Consequently, the State Govt. had opted for a decision to create post for regularisation of the services of the MPWs who are working on contractual basis. However, such aspect of the matter was not considered by the learned Single Judge.

(ii) For that the learned Single Judge committed manifest error in stating that the appellants had crossed the upper age limit of 44 years as on 01.01.2019. It is pertinent to mention herein that the appellants were not parties to the said proceeding as enunciated in WP(C) No. 6256/2019 and they did not cross the upper age limit as has been stated by the learned Single Judge. However, the candidates who crossed the upper age limit are being appointed by condoning their age. The order dated 05.02.2019 was put into the record of the said writ proceeding to reveal the instruction placed by the counsel for the Deptt. Stating that pursuant to the advertisement dated 05.02.2019, 19,889 applications have been received out of which 373 contractual employees are working earlier. The present appellants are amongst those 373 candidates and as such they cannot be deprived from the getting the benefit of employment having worked as MPWs on contractual basis.

(iii) For that the learned Single Judge committed manifest error by holding that the final select list was not vitiated due to inclusion of 11 candidates, more than the maximum of 800 candidates in terms of the employment advertisement dated 05.02.2019 which mentioned the ratio of candidates to be called as 1:2. It is pertinent to mention herein that the conditions stipulated in the advertisement has to be followed strictly as per the established law of recruitment towards conducting the selection process which aspect of the matter was not considered by the learned Single Judge. Hence, the impugned order dated 26.05.2022 is liable to be set aside and quashed.

(iv) For that the learned Single Judge failed to appreciate that all the appellants herein were engaged earlier by following the due process of selection pursuant to advertisement issued by the appointing authority under a centrally sponsored scheme and after discontinued of the said scheme, the Government of India had directed the respective state to create requisite numbers of post of MPW(M) if services of such workers are required beyond 30.09.2014 and to fill-up the said post on regular basis. Accordingly, the Government of Assam, Health and Family Welfare Department decided to create 400 numbers of post of SWs with the sole purpose to accommodate the person who has been working earlier as MPWs and all the appellants herein were working as MPWs and hence all of them are entitled to be appointed as SWs. Therefore, the impugned order dated 26.05.2022 is liable to be set aside the quashed.

(v) For that the learned Single Judge failed to appreciate that the appellants herein have gained experience in the similar nature of job of Surveillance workers while working as MPWs and their names were figured in the zone of consideration in the short list within 800 numbers i.e. with the ration of 1:2 but has been dropped from final select list although the names of the candidates who were not in the zone of consideration i.e. not figured their names within 800 short listed candidate were appointed. Therefore, the impugned order dated 26.05.2022 is liable to be set aside and quashed.

(vi) For that the learned Single Judge committed manifest error by dismissing the writ petition holding that the appellants who were rendering services as MPWs since the year 2014 but secured marks below the mark obtained by the last selected candidate in the selection process.”

4. Before this Court the submissions urged before the learned Single Judge have been reiterated. However, the appellants have not been able to demonstrate as to how the order of the learned Single Judge requires interference by this Court on the grounds urged in the present appeal. The appellants have attempted to project that in view of their past services they ought to have been regularised as Surveillance Workers in terms of the policy of the Government. However, from a perusal of the pleadings in the writ petition it appears that there was no specific prayer for regularisation of their services. The prayers in the writ petition were for issuance of Mandamus to select and appoint the petitioners to the post of Surveillance Worker and to set aside the impugned select list pursuant to the selection process initiated by the State.

5. Upon hearing the learned counsel for the appellants, we find that the conclusions reached by the learned Single Judge do not merit any interference. The

learned Single Judge had taken into account all the relevant facts and circumstances and has dismissed the writ petition on the ground that in the selection process the selected candidates secured higher marks than the appellants/writ petitioners and, therefore, in absence of any specific averments referring to any illegalities being resorted to during the selection process, the selection process could not be held to be illegal.

6. We concur with the views taken by the learned Single Judge. We find no merit in the writ appeal. The writ appeal is therefore dismissed. Order of the learned Single Judge is upheld.

JUDGE

CHIEF JUSTICE

Comparing Assistant