

GAHC010148642020



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

Case No. : WP(C)/4426/2020

SANCHAYITA KHAKHOLARY
D/O SRI MANOJ KUMAR KHAKHOLARY, LAKSHMI VILL, W/NO.14, NEAR
BONGAIGAON COLLEGE, DOLAIGAON, PIN-783380, DIST- BONGAIGAON,
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
HIGHER EDUCATION DEPTT., DISPUR, GHY-6

2:THE DIRECTOR OF HIGHER EDUCATION
KAHILIPARA
GHY-19

3:THE COTTON UNIVERSITY
REP. BY THE PRESIDENT OF THE GOVERNING BODY/EXECUTIVE
COUNCIL
GUWAHATI-01
DIST- KAMRUP
ASSAM

4:THE VICE CHANCELLOR
COTTON UNIVERSITY
GUWAHATI-78100

Advocate for the Petitioner : MR. A SARMA

Advocate for the Respondent : SC, ED

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

16/03/2023

Heard Mr. K Kalita, learned counsel for the petitioner. Also heard Mr. A R Tahbildar, learned Standing counsel, Higher Education Department for the respondent Nos. 1 & 2 and Mr. P D Nair, learned Standing counsel, Cotton University for the respondent Nos. 3 & 4.

The respondent Cotton University on 19.06.2019 issued an advertisement inviting applications from eligible Indian citizens for various teaching positions in the said University including 2 (two) posts of Assistant Professor of History, 1 (one) for unreserved category with the specialization of Ancient Indian History and the other reserved for Schedule Tribe (Plains) with the specialization of Medieval Indian History.

Petitioner belonging to Schedule Tribe (Plains) category having the requisite eligibility applied for the post of Assistant Professor in History reserved for Schedule Tribe (Plains) category with the specialization of Medieval Indian History.

The respondent Cotton University on 07.02.2020 published the list of candidates shortlisted for the posts of Assistant Professor in History. As her name was enlisted in the said list of shortlisted candidates, she was called for the interview on 27.02.2020 and pursuant to the same, the petitioner appeared before the interview board on 27.02.2020 constituted by the respondent Cotton University.

As her name did not figure in the select list, the petitioner on 05.03.2020 submitted an application through RTI to get the information from the said University to know the reason for not recruiting any candidate from ST(P) category for the post of Assistant Professor in the Department of History and to provide the marks obtained by her in the said interview as well as the marks obtained by the other shortlisted ST(P) category candidates for the said post of Assistant Professor of History and other details.

The respondent Cotton University by a communication dated 05.06.2020 informed the petitioner that no candidate was recommended by the Interview Board for the post of Assistant Professor in the Department of History in Cotton University under the category of ST(P) for which interview was held on 27.02.2020 and that she obtained a total of 51.12 marks during the selection,

whereas the other 3 candidates obtained 37.4, 44.1 and 49.6 marks respectively during their selection.

Being aggrieved with the same, the petitioner on 25.06.2020 preferred a writ petition being WP(C) No. 2797/2020 for not selecting her to the post of Assistant Professor in the Department of History reserved for ST(P) category in Cotton University as advertised on 19.06.2019 for which interview was held on 27.02.2020 and the same is still pending for adjudication.

During the pendency of said WP(C) No. 2797/2020, the respondent Cotton University issued a fresh advertisement on 05.10.2020/06.10.2020 for filling up of various posts of teaching staff in the said University including 1 (one) post of Assistant Professor of History reserved for ST(P) backlog category.

Being aggrieved with the said advertisement dated 05.10.2020/06.10.2020, the petitioner filed this writ petition on 14.10.2020 praying amongst others to set aside and quash the said advertisement dated 06.10.2020 issued by the respondent Cotton University in so far as inclusion of the post of Assistant Professor of History reserved for ST(P) backlog category and to direct the respondent authorities to rescind and forbear from proceeding with the selection process for filling up the post of Assistant Professor of History.

The Court while issuing notice to the respondents on 21.10.2020 issued an interim order not to fill up the post of Assistant Professor of History reserved for ST(P) as advertised on 05.10.2020/06.10.2020 which is still in force.

The respondents Cotton University has filed its affidavit in the matter on 15.02.2023 clarifying its stand that as no suitable candidate was found for appointment to the said post of Assistant Professor under ST(P) category advertised on 19.06.2019 for which the interview was held on 27.02.2020, the said University issued the fresh advertisement on 05.10.2020/06.10.2020 to fill up the backlog vacancy for the post of Assistant Professor of History under the reserved category of ST(P). The respondent University also clarified that there was no prohibition on the issuance of the said advertisement.

From the order-sheets of WP(C) No. 2797/2020 preferred by the petitioner, it is seen that there was no such order restraining the respondent Cotton University from issuing fresh advertisement to fill up the post of Assistant Professor of History by any other category of candidates including ST (P).

The only contention of the petitioner herein is that though she scored highest marks in the interview held on 27.02.2020 for the post of Assistant Professor of History in Cotton University with the specialization of Medieval Indian History as advertised on 19.06.2019, she was not selected for the said post and on her queries made through RTI, the Cotton University replied that none of them was found suitable. As such, the petitioner alleged that such action on the part of the respondent University is completely highhanded and bad in law.

It is not the case of the petitioner that the selection committee constituted for the selection to the post of Assistant Professor of History reserved for ST(P) with the specialization of Medieval Indian History was not duly constituted or not constituted in accordance with law.

It is the concerned selection committee, who did not find any shortlisted candidates as suitable to be an Assistant Professor of History under ST(P) category in said Cotton University with the specialization of Medieval Indian History.

It is well settled that a Court in exercise of the power under Article 226 of the Constitution of India does not sit as an appellate forum to interfere with any such process of selection made by a selection committee consisting of domain experts unless it is established that constitution of said selection committee is bad in law and such decision of the selection committee is mala fide or arbitrary.

Mr. Nair, learned Standing counsel, Cotton University placed reliance on the judgments of the Hon'ble Apex Court in the cases of (1990) 1 SCC 305, (1992) Suppl. 2 SCC 481, (1997) 3 SCC 124, (2006) 3 SCC 330 and (2012) 1 SCC 157.

Mr. Nair, learned Standing counsel, Cotton University submitted that if a suitable candidate is not found by the selection committee, the said committee is not bound to recommend any candidate for appointment and that the employer is not bound to fill up the vacant post.

It is found that the selection committee with regard to the post of Assistant Professor reserved for ST(P) with the specialization of Medieval Indian History advertised on 19.06.2019 for which interview was held on 27.02.2020 did not find any such shortlisted candidate belonging to ST(P) category suitable for the said post.

Though, the petitioner claimed that during the interview held on 27.02.2020, she was asked irrelevant questions by the selection committee, but she did not lodge any such complaint before the authority concerned immediately after the said interview held on 27.02.2020 rather she made such

allegation while filing this writ petition, after the results were declared.

After hearing the learned counsels for the parties and considering the entire aspects of the matter, the Court comes to the conclusion that this writ petition is devoid of any merit and accordingly, stands dismissed.

The interim order passed earlier on 21.10.2020 "not to fill up the backlog vacancy of Assistant Professor of History reserved for ST(P) category advertised on 05.10.2020/06.10.2020 issued by the respondent Cotton University" accordingly stands vacated.

JUDGE

Comparing Assistant