

GAHC010185702023



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

Case No. : WP(C)/4809/2023

SOURAV SAHA
S/O- SWAPAN SAHA, PERMANENT RESIDENT OF VILL.- MAJHERDABRI,
P.O. BARUIPARA, DIST. ALIPURDUAR, PIN- 736207, WEST BENGAL.

VERSUS

1: THE STATE OF ASSAM AND 4 ORS. REPRESENTED BY THE SECRETARY
TO THE GOVERNMENT OF ASSAM, EDUCATION (HIGHER) DEPARTMENT,
DISPUR, GUWAHATI-781006.

2:THE DIRECTOR OF HIGHER EDUCATION ASSAM KAHILIPARA
GUWAHATI-781019 PUB-KAMRUP COLLEGE REPRESENTED BY THE
PRINCIPAL P.O. BAIHATA CHARIALI
DIST. KAMRUP PIN- 781381.

3:PUB-KAMRUP COLLEGE REPRESENTED BY ITS PRINCIPAL
P.O. BAIHATA CHARIALI DIST. KAMRUP PIN- 781381.

4:THE SELECTION COMMITTEE CONSTITUTED FOR CONDUCTING
DIRECT RECRUITMENT TO THE POST OF ASSISTANT PROFESSOR IN THE
DEPARTMENT OF GEOGRAPHY REPRESENTED BY THE PRINCIPAL
PUB-KAMRUP COLLEGE P.O. BAIHATA CHARIALI DIST. KAMRUP PIN-
781381.

5:THE GOVERNING BODY REPRESENTED BY THE PRESIDENT PUB
KAMRUP COLLEGE P.O. BAIHATA CHARIALI DIST. KAMRUP PIN- 781381

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : SC, HIGHER EDU

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 18-12-2023

Heard Mr. M. Sarma, learned counsel for the petitioner. Also heard Mr. S. Das, learned standing counsel, Education (Higher) Department, representing the respondent Nos.1 & 2.

In view of the nature of order that is to be passed in the present proceeding, notice upon the respondent Nos.3, 4 & 5 is not deemed necessary.

The petitioner, by way of instituting the present proceeding, has raised a grievance with regard to non-consideration of his case for recruitment against the post of Assistant Professor of Geography in Pub-Kamrup College, Baihata Chariali on the ground that he is a resident outside the State of Assam.

The petitioner, in pursuance to an advertisement dated 16.06.2023, had submitted his applications for being considered against the post of Assistant Professor in Geography in the said College. The petitioner was thereafter, issued with a communication dated 31.07.2023 directing him to appear for an interview on 10.08.2023 at 9:30 AM in the College premises. The petitioner accordingly appeared in the said selection process, however, he was informed by the Selection Committee that his case would not be considered on merits in view of a communication dated 10.02.2022 issued by the Director of Higher Education, Assam, wherein it was held that persons outside the State of Assam shall not be considered for recruitment to the posts of Assistant Professors in various provincialised Colleges of the State.

The said communication dated 10.02.2022 along with another communication dated 01.02.2022 was the subject matter of challenge before this Court in WP(C) No.1262/2022, wherein this Court vide order dated 21.02.2023, upon considering the matters and finding the said orders to have been issued in

violation of the provisions of Article 16 of the Constitution of India, proceeded to quash the said communications. Relevant portion of the said order dated 21.02.2023 is quoted herein below:-

“30. Considering the entire aspect of the matter and after hearing the learned counsels for the parties, it is found that the decision of the State Government in the Higher Education Department communicated vide letter No.AHE.429/2021/Pt/3 dated 01.02.2022 being in violation of the provisions of the Article 16 of the Constitution of India, is not tenable in law.

31. Accordingly, the said decision of the State Government in the Higher Education Department communicated vide letter No.AHE.429/2021/Pt/3 dated 01.02.2022 being illegal, is hereby set aside and quashed.

32. Consequently, the communication dated 10.02.2022 of the Director of Higher Education, Assam informing the Principals of all the provincialised colleges of Assam about the said decision of the State Government in the Higher Education Department also being not tenable in law, is hereby set aside and quashed.”

The present petitioner had also approached this Court by way of filing a writ petition being WP(C) No.2618/2022 assailing the same very communications dated 01.02.2022 and 10.02.2022. This Court, vide order dated 03.08.2023, in view of the order passed in WP(C) No.1262/2022 was pleased to hold that the orders impugned having already been quashed on the ground of the same being in violation of Article 16 of the Constitution of India, nothing survived for adjudication in the said writ petition. Accordingly, the said writ petition was closed.

The petitioner was again, in the recruitment process held in pursuance to the advertisement dated 16.06.2023, informed about his ineligibility to participate therein on the ground of he being a resident outside the State. As submitted at the bar, the selection process as initiated pursuant to the advertisement dated 16.06.2023 was completed and on conclusion of the same, a select list was published on 05.12.2023 by the Director of Higher Education, Assam. However, vide a Corrigendum dated 07.12.2023, the Director of Higher Education, Assam has

withdrawn the said select list.

In view of the said developments as well as the orders passed by this Court vide order dated 21.02.2023 [in WP(C) No.1262/2022] and 03.08.2023 [in WP(C) No.2618/2022], the present writ petition is disposed of directing the respondent authorities, more particularly, the respondent Nos.2, 3, 4 & 5, to hold a fresh selection process amongst the persons applying in pursuance to the advertisement dated 16.06.2023. In the fresh selection process, the case of the petitioner as well as the other participating candidates shall be considered on merits following the guidelines of the Government in the Higher Education Department as well as any other applicable Regulations, Guidelines, etc., and take the process to its logical conclusion. The process be concluded in terms of the provisions of the Assam College Employees (Provincialisation) Rules, 2010. It is reiterated that the case of the petitioner be not rejected again taking recourse to the communications dated 01.02.2022 and 10.02.2022 and his case be given its due consideration on merit. The College Authorities shall now fix a date for the selection and intimate the same to all the candidates, including the petitioner, who had applied for the post in question in pursuance to the advertisement dated 16.06.2023.

With the above observations and directions, the writ petition stands disposed of. There shall be no order as to cost.

JUDGE

Comparing Assistant