

GAHC010191322023



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

Case No. : WP(C)/4951/2023

TASHA BAIBHAVI
DAUGHTER OF SRI DHANESHWAR TASHA,
RESIDENT OF PUB KETEKIBARI,
NEAR KETEKESWAR TEMPLE,
TEZPUR, DISTRICT- SONITPUR,
ASSAM, PIN- 784001.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
DEPARTMENT OF WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES,
DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF WELFARE OF PLAIN TRIBES AND BAC
DISPUR
ASSAM
PIN- 781006.

3:THE UNION OF INDIA
DEPARTMENT OF PERSONNEL AND TRAINING

MINISTRY OF PERSONNEL
PUBLIC GRIEVANCES AND PENSIONS

GOVERNMENT OF INDIA

NORTH BLOCK
NEW DELHI- 110001

REPRESENTED BY THE DIRECTOR.

4:THE DEPUTY COMMISSIONER
DISTRICT- SONITPUR
ASSAM
PIN- 784001.

5:THE CIRCLE OFFICER
TEZPUR REVENUE CIRCLE
TEZPUR
ASSAM
PIN 784001.

6:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
SIX MILE
KHANAPARA

GUWAHATI- 781022

Advocate for the Petitioner : MR. A K BARUAH

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

O R D E R

29.09.2023

Heard Mr. AK Boruah, learned counsel for the petitioner, Mr. RKD Choudhury, learned Deputy SGI for the respondents in the Union of India, Mr. P Saikia, learned Junior Government Advocate for the Deputy Commissioner, Sonitpur and Mr. B Gogoi, learned counsel for the respondents in the Health and Family Welfare Department including the Medical Education Department of the Government of Assam.

2. The petitioner Ms. Tasha Baibhavi had offered her candidature for a seat in

the first year MBBS course for the year 2023 in the State of Assam under the OBC Category where there is a requirement of obtaining a non-creamy layer certificate. The Deputy Commissioner, Sonitpur had issued an OBC (NCL) certificate on 05.07.2023 (Annexure-K page 72 of the writ petition). But, later on, the Deputy Commissioner, Sonitpur had cancelled the certificate on 21.08.2023 on the ground that as per the office letter No. 36033/1/2013-Estt (Res) dated 13.09.2017, the upper limit of the annual income to be eligible for non-creamy layer certificate is Rs. 8, 00, 000/- per annum, whereas parents of the candidate had a total annual income of Rs. 20,10,279/-. As the annual income of the parents of the candidate exceeded Rs. 8, 00, 000/- per annum, therefore, according to the Deputy Commissioner the petitioner is not entitled to a non-creamy layer certificate. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, Mr. RKD Choudhury, Deputy SGI for the respondents in the Union of India through the Secretary to the Government of India in the Personal Public Grievance and Pension Department had stated that under the prevailing procedure, the employees under the Central Government or State Government are categorized into different categories. It is stated that if the parents are employees of the Central Government or State Government in category-I, the children of such persons will not be entitled to a non-creamy layer certificate. On the other hand, if both the parents are in a category-II service, in such event also, they are not entitled to a non-creamy layer certificate. But if one parent is in service of category-II and the other parent is working in category-III service, in such event, their children would be entitled to a non-creamy layer certificate. Further, if the parents or any of the parents are in the category-III employment, in such event also, the children would be entitled to a non-creamy layer certificate.

4. The learned Deputy SGI for the Union of India after verification of the particulars of the petitioner had stated that the mother of the candidate is working as PRT Teacher in Kendriya Vidyalaya, Tezpur which is a category-II post and the father of the petitioner is working as Junior Engineer, Inland Water Transport, which is a category-III post.

5. Accordingly, as the petitioner's mother is working in category-II post and her father is working in a category-III post, therefore, under the provision as indicated above, the petitioner would be entitled to an OBC non-creamy layer certificate.

6. In view of the above, the order dated 21.08.2023 of the Deputy Commissioner, Sonitpur by which the OBC Non-creamy layer certificate of the petitioner was cancelled is set aside and accordingly, the earlier certificate issued by the Deputy Commissioner, Sonitpur dated 05.07.2023 is declared to be a valid certificate.

7. The petitioner is also directed to immediately approach the Director of Medical Education for doing the necessary formalities. The Director of Medical Education to take note that there is already a declaration by the Court as regards the entitlement of the petitioner for a non-creamy layer certificate.

The writ petition is disposed of accordingly. The interim order dated 28.03.2023 shall merge with this order.

As the writ petitioner had already been admitted to the first year MBBS course under the OBC category on the basis of our earlier interim order dated 28.08.2023, the admission meted to the petitioner be made final.

Let a copy of this order be furnished to Mr. B Gogoi, learned counsel for the respondents in the Health and Family Welfare Department as well as Director of

Medical Education and Mr. P Saikia, learned Junior Government Advocate for the Deputy Commissioner, Sonitpur for doing the needful.

JUDGE

Comparing Assistant