

GAHC010192322017



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

Case No. : WP(C)/279/2017

RASHITA RABHA
W/O. SRI SAMBHU CHARAN RABHA, R/O. RAILWAY QUARTER NO.
N/102/B-II, WEST COLONY, P.O. NEW BANGAIGAON, DIST. BONGAIGAON,
ASSAM, PIN-783381.

VERSUS

THE STATE OF ASSAM and 2 ORS.
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, SECONDARY
EDUCATION DEPTT., DISPUR, GHY.-06.

2:DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GHY.-19.

3:INSPECTOR OF SCHOOLS

BONGAIGAON DIST. CIRCLE
P.O. BONGAIGAON
DIST. BONGAIGAON
ASSAM
PIN-783381

Advocate for the Petitioner : MR.A K DEKA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 21.04.2023

Heard Mr. K.M. Haloi, learned counsel for the petitioner. Also heard Mr. R. Mazumdar, learned standing counsel for the Secondary Education Department.

2. The case of the petitioner is that pursuant to advertisement published by the Director of Secondary Education, Assam (respondent no.2), the petitioner had participated in the recruitment process for the post of Assistant Teacher (Arts) against the backlog vacancies for ST(P) category. The advertisement was published in the year 2005 and the petitioner appeared before the interview board on 10.02.2006. A select list was published on 03.06.2006. In the said select list dated 03.06.2006, the name of the petitioner appeared at Sl. No.3. However, a subsequent select list was published on 08.05.2007, wherein the name of the petitioner was brought down at Sl. No.4. The respondent authorities had appointed persons at Sl. No.1, 2, and 3 out of the select list. However, one selected, namely, Bijay Boro did not join service at Bongaigaon Bidyapeeth High School. It is stated that although the petitioner has been approaching the respondent authorities to appoint her in the said post, the case of the petitioner was not considered. It is submitted by the learned counsel for the petitioner that one Mrs. Matoo Das of Dhemaji District, who was similar situated as the petitioner, was appointed as an Assistant Teacher (Arts) and posted at Arunoday High School, Matikhola under Dhemaji District and that her recommendation was made by the Inspector of Schools by letter dated 26.12.2008 and the appointment order was issued by the respondent no.2 by

an order dated 30.09.2010. Hence, it is submitted that the stand taken by the respondent in their affidavit-in-opposition that the select list has lost validity after one year has no legs to stand because in the case of a similarly situated person, her appointment was made after four years from the preparation of the select list. Accordingly, the petitioner has approached this Court by filing this writ petition under Article 226 of the Constitution of India by praying for a direction upon the respondent authorities to appoint the petitioner as Assistant Teacher (Arts) in secondary school against vacancy reserved for ST(P) category.

3. Per contra, the learned standing counsel for the Secondary Education Department has opposed the prayer made in this writ petition on two counts. Firstly, it is submitted that the present challenged has been made in the year 2017 in respect of a recruitment process, which was initiated in the year 2005 and the final appointment was made in the year 2007. Accordingly, it is submitted that the petitioner is not entitled to any relief on the ground of delay and laches. Secondly, it is submitted that the select list remains valid for a year and therefore, once the validity of the list has expired, notwithstanding that any other appointments might have been made from the expired select list, yet it would not entitle the petitioner to be appointed as an Assistant Teacher after a gap of 16 years from the date of publication of the select list. It is further submitted in the said context that as three persons were already offered appointment, the validity of the select list comes to an end and merely because the name of the petitioner is in the merit list, he would not become entitled to be appointed.

4. There is nothing in this writ petition to demonstrate that the validity of the select list was extended as on 11.11.2017 when the present writ petition was filed. In this regard, the learned standing counsel for the Secondary

Education Department has referred to the provision of Rule 8 (f) of the Assam Secondary Education (Provincialisation) Service Rules, 2003 as it stood then. It is submitted that as per Rule 8 (f) of the erstwhile rules, which stood before its substitution by the Assam Secondary Education (Provincialized) Service (Amendment) Rules, 2012, it was provided that the validity of the select list shall not exceed beyond one year from the date of publication.

5. In view of the provisions of Rule 8(f) of 2003 Rules as it stood as on 10.07.2012, the said 2003 Rules did not permit extension of the select list beyond the period of one year from the date of publication.

6. Under such circumstances, the Court is of the considered opinion that the principle of negative equality would dissuade the Court from passing any order which would extend the validity of the select list beyond one year from the date of publication notwithstanding the projection made by the learned counsel for the petitioner that one similarly situated candidate, namely, Smti. Matoo Das was the beneficiary of selection and appointment pursuant to order passed by the Secondary Education Department vide letter dated 21.09.2010 followed by office order dated 30.09.2010. In this regard, reference may be made to the decision of the Supreme Court of India in the case of *Chebrolu Leela Prasad Rao Vs. State of AP, (2021) 11 SCC 401*, wherein a three Judge Bench of the Supreme Court of India had held to the effect that the concept of equality enshrined in Article 14 of the Constitution of India is a positive concept and it is not a concept of negative equality and it cannot be used to perpetuate an illegality. Therefore, the Court is of the considered opinion that the *doctrine of equity* would not be attracted in this case where the benefit was conferred to a person by overlooking the provision of erstwhile Rule 8(f) of the Assam Secondary Education (Provincialisation) Service Rules, 2003 as it stood as on

10.07.2012.

7. Therefore, the Court does not find the petitioner to be entitled to any relief in this writ petition.

8. Accordingly, the writ petition stands dismissed.

JUDGE

Comparing Assistant