

GAHC010192832022



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

Case No. : WP(C)/6364/2022

ABDUS SATTER AHMED
S/O- FORKAN ALI,
R/O- VILL. AND P.O- NOWAGAON,
P.S.- MANIKPUR,
DIST.- BONGAIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
THROUGH THE CHAIRMAN AND SECRETARY TO THE GOVT. OF ASSAM,
HEALTH AND FAMILY WELFARE DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER OF FOOD
SAFETY AND DRUG ADMINISTRATION
HEALTH AND FAMILY WELFARE DEPARTMENT

DISPUR
GUWAHATI- 781006.

3:THE MEDICAL AND HEALTH RECRUITMENT BOARD
ASSAM
REPRESENTED BY ITS CHAIRMAN

SAIKIA COMMERCIAL COMPLEX

CHRISTIAN BASTI
G.S. ROAD

GUWAHATI- 781005.

4:THE SECRETARY INCHARGE

THE MEDICAL AND HEALTH RECRUITMENT BOARD
ASSAM
SAIKIA COMMERCIAL COMPLEX

CHRISTIAN BASTI
G.S. ROAD

GUWAHATI- 781005.

5:SMTI RATNA JYOTI DAS
(ROLL NO. 23008)
D/O- UMA KANTA DAS

C/O- CHAIRMAN

THE MEDICAL AND HEALTH RECRUITMENT BOARD
ASSAM
SAIKIA COMMERCIAL COMPLEX

CHRISTIAN BASTI
G.S. ROAD

GUWAHATI- 781005

Advocate for the Petitioner : MR A K AZAD

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

17.10.2023

Heard Shri A.K. Azad, learned counsel for the petitioner. Also heard Ms. D. Borah, learned Standing Counsel, Health & Family Welfare Department whereas Shri D.K. Das, learned counsel has appeared for the respondent no. 5.

The petitioner has put to challenge the selection and appointment of the respondent no. 5 as Inspector of Drugs under the Commissioner of Food, Safety

and Drugs Administration, Health and Family Welfare Department of the Government of Assam. An advertisement was issued on 20.11.2019 for 16 numbers of posts which were subsequently enhanced to 22 numbers and one post was reserved for orthopaedically handicapped candidate with at least one arm and one leg. The petitioner who was one of the aspirant claims that his disability was to the extent of 50% whereas the respondent no. 5 who is the selected candidate suffers from the disability of a lesser percent. The petitioner also claims to have fared well in the interview and has accordingly challenged the selection and appointment of the respondent no. 5 and has also prayed for a direction for consideration of his case for appointment.

Shri Azad, the learned counsel for the petitioner has submitted that he had approached this Court earlier by filing WP(C)/4945/2022 which was disposed of vide order dated 03.08.2022 with a direction for consideration of the representation of the petitioner. Though it is the case of the petitioner that there was no consideration, such submissions have been denied by the official respondents.

The learned counsel for the petitioner has contended that though the marks obtained by the respondent no. 5 is more than the petitioner, she cannot be given the benefit of appointment as that percent of disability of the petitioner is more. He has further submitted that there was another candidate in between and since there was some defect in the disability certificate, he has not made any challenge and therefore the petitioner would not be precluded from making the present challenge.

Shri Azad, the learned counsel accordingly submits that the writ petition be allowed.

Per contra, Ms. Borah, the learned Standing Counsel for the Department has submitted that the reservation for orthopaedically handicapped for one post will not mean that there would be no competition amongst the candidates falling in the said category and the percentage of disability would not be crucial as it is only an eligibility criteria to fall within that category. She further submits that the petitioner has not raised any serious issues on the allotment of marks in the written test as well as *viva voce* and the difference of marks is also a major one.

Shri D.K. Das, learned counsel for the respondent no. 5 while endorsing the submissions of Ms. Borah, the learned Standing Counsel also submits that the ground of challenge are imaginary and not legally tenable as the respondent no. 5 was adjudged to be the candidate against serial no. 1 in the merit list in the category of the orthopaedically handicapped. He has further informed this Court that in the meantime, the said respondent no. 5 has left the job and has joined in another post.

The rival contentions advanced have been duly considered.

The advertisement dated 20.11.2019 stipulates that one post would be reserved for OH with at least one arm and one leg. The projection made by the petitioner that the percentage of disability of the petitioner is more than that of the respondent no. 5 would not be legally tenable as it is only the eligibility which is to be determined and out of the eligible candidates, the best has to be chosen in terms of their performance in the selection procedure. The said advertisement in Serial No. 8 also lays down the process of recruitment which consists of two steps; i. Written examination, ii. Viva Voce/ interview.

The assessment sheet annexed by the respondent no. 4 in the affidavit-in-

opposition filed on 05.01.2023 would reveal that while the respondent no. 5 had secured 57.13 marks, the petitioner had secured 39.20 marks. This Court has also noticed that there is no serious dispute with the markings given to the respective candidates.

Shri Azad, the learned counsel has also tried to make a submission that the certificate of disability of the respondent no. 5 cannot be taken into consideration as the same is in the form of a report and was also asked for at a time which would show that the said respondent no. 5 was sought to be favoured. However, a perusal of the said document would show that the same is not only a certificate but is duly issued by the Board meant for such assessment of disability.

In any event, the further development of the respondent no.5 having left the job has actually made the present challenge infructuous as no effective relief can be granted to the petitioner even assuming a case was able to be made out.

Under those facts and circumstances, this writ petition stands dismissed.

JUDGE

Comparing Assistant