

GAHC010194622022



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

Case No. : WP(C)/6333/2022

DHANASHREE KALITA
D/O JOY CHARAN KALITA, R/O VILL-BARJAR, P.O.-BARAMA, DIST-
NALABRI (ASSAM), PIN-781346

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, HIGHER EDUCATION DEPARTMENT, DISPUR,
GUWAHATI-6

2:DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:DIRECTOR OF EDUCATION
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
PIN-

4:PRINCIPAL AND SECRETARY
BARAMA COLLEGE
BARAMA
DIST-BAKSA (BTR)
ASSAM
PIN-781346

5:SELECTION COMMITTEE CONSTITUTED BY THE BARAMA COLLEGE

FOR INTERVIEW HELD ON 6-6-22 FOR SELECTION OF ASSISTANT
PROFESSOR OF ASSAMESE (ROSTER POINT NO-40) IN BARAMA COLLEGE
REPRESENTED BY ITS PRINCIPAL
BARAMA COLLEGE
BAKSA-781346

6:DR. MADHAB SUTRADHAR
R/O VILL- SALBARI
DIST- BAKSA
PIN-73442

Advocate for the Petitioner : MR D MAHANTA
Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 13-12-2023

JUDGMENT & ORDER (ORAL)

Heard Mr. TJ Mahanta, learned senior counsel for the petitioner, Mr. M Sarma, learned counsel for the college authorities in the Barama College, Mr. P Bharadwaj, learned counsel for the respondent No. 6 Dr. Madhab Sutradhar, who is stated to be selected in the selection process, Mr. B Choudhury, learned counsel for the authorities in the Education Department of the BTC and Mr. D Upamanyu, learned counsel for the respondents in the Higher Education Department, Government of Assam.

2. The petitioner Dhanashree Kalita and the respondent No. 6 Dr. Madhab Sutradhar both participated in a selection process for the post of Assistant Professor in Assamese in the Barama College as per the advertisement dated 07.11.2022. The advertisement provides that the required qualification would be as provided in the Office Memorandum No. AHE.239/2021/68 dated 24.01.2022. The Office Memorandum dated 24.01.2022, amongst others, provides the educational qualification as extracted:-

“Qualification for Direct Recruitment of Assistant Professor (Reference Clause 3.0.0/4.0.0/4.40/4.4.1 of the UGC Regulations 30th June 2010).

(i) Good Academic record as defined by the concerned University with at least 55% marks or an equivalent grade in a point scale at the Master Degree level in a relevant subject from an Indian University or an equivalent degree from an accredited foreign University.

(ii) Besides, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/NET.

(iii) Notwithstanding, anything contained in sub-clause (i) and (ii) to the clause 4.40.1, of the UGC Regulations 30th June, 2010 candidates who have a Ph.D Degree in accordance with the University Grant Commission (Minimum standards and procedure for award of Ph.D Degree Regulation, 2009) shall be exempted from the requirement of the minimum eligibility condition of NET/ SLET/SET.

(iv) NET/SLET/SET shall also not be required for such Master programmes in disciplines for which NET/SLET/SET is not conducted.

(v) A relaxation of 5% may be provided at the graduate and Masters level for the Scheduled caste/ Scheduled Tribe/ Differently-abled (Physically and visually differently- abled) categories for the purpose of eligibility. The 5% relaxation will not include any grace(clause-3.4.1)

(vi) The period of time taken by Candidates to acquire M.Phil and/ or Ph.D Degree shall not be considered as Teaching/ research experience for appointment to the positions (clause-3.9.0).”

3. A reading of the prescribed qualification makes it discernible that nowhere it is provided that if any of the candidates have Ph.D degree over and above the other qualification, such candidate would be preferred and selected over all other candidates even if the other candidates in the selection otherwise gets more marks than the candidate having Ph.D. But, however, as per the consolidated statement of presentation and interaction under the signature of the Members of the selection committee, it had been provided that Dr. Madhab Sudradhar had been selected and recommended for appointment as Assistant Professor in the Department of Assamese and that he is a qualified Ph.D degree

holder and the college needs a Ph.D degree holder candidate.

4. Upon perusal of the consolidated statement of the marks obtained by the respective candidates, it is noticed that Dr. Madhab Sutradhar had obtained a total of 55 marks, whereas the petitioner Dhanashree Kalita had secured the average of 67 marks. Admittedly, as per the other crieterias of selection, it is Dhanashree Kalita, who had secured more marks than Dr. Madhab Sutradhar. But, the selection committee deemed it appropriate to recommend Dr. Madhab Sutradhar inasmuch as, over and above the other qualifications, he also has the qualification of Ph.D degree.

5. The reasoning given in the consolidated statement as to why Dr. Madhab Sutradhar has been selected and recommended although he had secured less marks than the other candidates is that he has the Ph.D degree and the college needs a Ph.D degree holder candidate for appointment. When the reasoning is examined as per the provision in the advertisement and the Office Memorandum dated 24.01.2022, it is noticed that neither the advertisement nor the prescribed qualification provides for any provision where a Ph.D degree holder would be preferred and recommended for appointment over all other candidates even if such candidates in the comparative selection obtained less marks than the others.

6. The reasoning that the college needs a Ph.D degree holder also cannot have any relevance to select and recommend a Ph.D degree holder merely because he has a Ph.D degree, inasmuch as, if it was the need of the employer college to have only Ph.D degree holder as an Assistant Professor, the same should have been specifically provided in the advertisement and the selection ought to have been only amongst the Ph.D degree holders to the exclusion of others, which again would have been subjected to a scrutiny whether such a

condition can be imposed by the employer over and above the prescribed qualification by the authorities.

7. In view of the above, we are interfering in this writ petition to the limited extent that as the matter is presently pending before the Secretary to the BTC in the Education Department, the Secretary while carrying forward the process of approval, shall take note that when the advertisement and the terms of the selection did not provide for any special treatment to be given to a Ph.D degree holder, the college selection authorities cannot recommend and select a person merely because the person is a Ph.D degree holder, more so, in a situation when the said candidate appears to have obtained less marks amongst the candidates who had participated in the selection process.

8. We are not expressing any view on the other aspects of the selection and it is for the Secretary to take his own decision on the same. But, however, the special preference over the others given to the Ph.D degree holder candidate should not be made a basis in any such decision. All consequential recommendation or approvals that may have been given by any authority shall have no effect and the Secretary shall take his own decision as indicated above. The Secretary shall do the needful within a period of one month from the date of receipt of a certified copy of this order.

With the above clarification, the writ petition stands disposed of.

JUDGE

Comparing Assistant