

GAHC010202302023



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

Case No. : WP(C)/5370/2023

PANKAJ SARMA
SON OF LATE MADAN CHANDRA SHARMA,
RESIDENT OF BARJALAH,
POST OFFICE- TANGLA,
DISTRICT- UDALGURI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY ITS CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM,
DISPUR, GUWAHATI- 781006.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
SOCIAL WELFARE DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
SOCIAL WELFARE DEPARTMENT
DISPUR
GUWAHATI-781006.

4:THE DIRECTOR OF SOCIAL JUSTICE AND EMPOWERMENT
ASSAM
BELTOLA
NEAR LAKHIMANDIR
GUWAHATI- 781028.

5:THE SECRETARY TO THE GOVERNMENT OF ASSAM
DEPARTMENT OF EDUCATION (ELEMENTARY)
KAHILIPARA
GUWAHATI- 781019.

6:THE DIRECTOR
DEPARTMENT OF SCHOOL EDUCATION (ELEMENTARY)
KAHILIPARA
GUWAHATI- 781019

Advocate for the Petitioner : MR. R SARMA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 18-09-2023

1. Heard Mr. R Sarma, learned counsel for the petitioner. Also heard Mr. CKS Baruah, learned counsel appearing for the respondent Nos. 1 to 4 as well as Ms. S Konwar, learned counsel appearing for the respondent Nos. 5 and 6.
2. The petitioner, who is 49 years of age, has prayed for a direction to be issued to the respondent authorities to absorb the petitioner in a Grade-III or IV post in any Department, under the Government of Assam. The petitioner has relied upon the order dated 24.02.2016, passed in WP(C) No. 631/2016, to support his claim for absorption/appointment to any Grade-III or IV post under the Government of Assam.
3. The petitioner's counsel has also referred to one undated "District wise merit list of orthopedically handicapped candidates for Grade-III posts" showing the petitioner's name at Sl. No. 39, for filling up 15 numbers of M.E. Teachers posts under the DEEO's office, Kamrup.
4. The learned counsel for the State respondents, on the other hand,

submits that the "District wise merit list of orthopedically handicapped candidates for Grade-III posts" has apparently been made on the basis of a letter dated 06.06.2022 issued by one Sri. Bhabendra Baro, MCLA, No. 31. Khwirawbai (st) BTC Constituency. The same has not been made on the basis of any recruitment process initiated under any Act or Rules. He submits that the petitioner cannot be appointed or absorbed in any Government post unless the due procedure as per the law is followed.

5. I have heard the learned counsels for the parties.

6. The petitioner had been one of the petitioners in WP(C) No. 631/2016, wherein the petitioners therein had sought for a direction to be issued to the State respondents, to appoint them in vacancies relatable to the recruitment drive carried out in the year 2005-2006, in the light of the judgment of this Court dated 23.04.2015, passed in WP(C) Nos. 1424/2011 and 3994/2011. This Court dismissed WP(C) No. 631/2016, vide order dated 24.02.2016, by holding that the petition was clearly hit by delay and laches and could not be entertained. However, in para 6 of the said order dated 24.02.2016, this Court held that as and when a recruitment drive was carried out by the State, in terms of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (herein after referred to as the Act of 1995), it would be open for the petitioners to apply and participate in such selection.

7. As can be seen from the order dated 24.02.2016, passed in WP(C) No. 631/2016, liberty was given to the petitioner to participate in any selection process carried out by the State Government in terms of the aforesaid Act of 1995. The petitioner has not made any averment in the writ petition that any selection process has been initiated by the State Government under the Act of 1995 or under any Rules, which resulted in the undated "District wise merit list

of orthopedically handicapped candidates for Grade-III posts” having been issued. There is nothing to show as to what authority has issued the above “District wise merit list of orthopedically handicapped candidates for Grade-III posts” and as such, it cannot be said that the same has been made in terms of the Act of 1995. As the petitioner has failed to produce any advertisement or any document showing that any selection process has been initiated as per the Act of 1995 or under any Rule, no direction for appointment of the petitioner to any Grade-III or IV posts under the Government of Assam can be given. There being no merit in the writ petition, the same is dismissed.

JUDGE

Comparing Assistant