

GAHC010252202022



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

Case No. : WP(C)/6553/2022

PRAPHULLA SONOWAL
S/O SRI PHATIK SONOWAL R/O WARD NO. 2 SILAGAON
P.O. AND P.S. SILAPATHAR PIN-787059 DIST. DHEMAJI
ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
EDUCATION HIGHER DISPUR GUWAHATI-6

2:THE DIRECTOR OF HIGHER EDUCATION
KAHILIPARA GUWAHATI-19

3:THE PRINCIPAL CUM SECRETARY
SILAPATHAR COLLEGE SILAPATHAR P.O. SILAPATHAR DIST. DHEMAJI
PIN-787059 ASSAM

4:THE GOVERNING BODY OF SILAPATHAR COLLEGE
SILAPATHAR
REP. BY ITS PRESIDENT P.O. SILAPATHAR DIST. DHEMAJI
PIN-787059 ASSAM

5:THE SELECTION COMMITTEE
FOR THE POST OF GRADE III AND GRADE IV SILAPATHAR COLLEGE
REP. BY ITS CHAIRMAN P.O. SILAPATHAR DIST. DHEMAJI
PIN-787059 ASSAM

6:LAKHI NATH PEGU
PRINCIPAL SILAPATHAR COLLEGE SILAPATHAR P.O. SILAPATHAR DIST.
DHEMAJI
PIN-787059 ASSAM

7:KANGKAN POLO PEGU
SILAPATHAR P.O. SILAPATHAR DIST. DHEMAJI
PIN-787059 ASSAM

8:SEVIKA DEORI
SILAPATHAR COLLEGE SILAPATHAR P.O. SILAPATHAR DIST. DHEMAJI
PIN-787059 ASSAM

Advocate for : MR. B D GOSWAMI
Advocate for : SC
HIGHER EDU appearing for THE STATE OF ASSAM AND 7 ORS

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

20-04-2023

Heard Mr. B. D. Goswami, learned counsel for the petitioner and Mr. A. R. Tahabildar, learned Standing Counsel, Higher Education Department for the respondent Nos. 1 and 2. Also heard Mr. J. Payeng, learned counsel for the respondent Nos. 3 to 6 as well as Mr. S. Das, learned counsel appearing on behalf of Mr. R. Sarma, learned counsel for the respondent Nos. 7 and 8.

2. After obtaining approval from the Director of Higher Education, Assam on 25.04.2022, the Principal of Silapather College, Silapather on 26.05.2022 issued an advertisement inviting applications for various vacant sanctioned posts, amongst others, 4 (four) posts of Grade-III (Junior Assistant/Library Assistant), out of which, one post was reserved for Persons with Disability (PwD) under un-reserved category at Roster Point No.1; one post for un-reserved category at Roster Point No.4; one post for OBC/MOBC category at Roster Point No.6 and one post for Schedule Tribe (ST)

(Plains) category at Roster Point No.5, specifying the educational qualification for the said posts, prescribing the maximum age for un-reserved category as well as in all the reserved categories etc., with further observation that such applications had to reach the office of the Principal of Silapather College, Silapather within 15 days from the date of the said advertisement.

3. The petitioner having the requisite eligibility belonging to ST(P) category applied for the post of Grade-III (Junior Assistant/Library Assistant) as advertised by the Principal of Silapather College, Silapather on 26.05.2022. Finding his application in proper form, the authorities of the said College on 11.07.2022 issued him the call letter directing him to appear in the written test of 60 marks within the duration of 1 hours 30 minutes at the premises of the said College on 22.07.2022 that was scheduled at 11:30 am for the post of Junior Assistant/Library Assistant for ST (P) categories.

4. Pursuant to the same, the petitioner appeared in the written test and fared well. On being qualified in the written test, he was asked to appear in the Computer Typing Test scheduled on 29.07.2022 at the premises of the said College and in the said Typing Test the petitioner secured 12.6% marks. But the petitioner is aggrieved as the respondent authorities of said College, disregarding his better claim, selected the respondent Nos. 7 and 8 for the posts of Grade-III (Junior Assistant/Library Assistant) against the post of Schedule Tribe (Plains) category at Roster Point No.5 and the post for the un-reserved category at Roster Point No.4, respectively, though the respondent No. 8 belongs to Schedule Tribe (Plains) category.

5. The petitioner came to know that the respondent Nos. 7 and 8 were working in the said College for few years and that the respondent No.7 is the grandson of the elder brother of the respondent No.6 i.e., the Principal of the said College and where the respondent No.6 personally engaged the respondent No.7 as his office help, it is contended that there is all possibility of bias regarding the selection of the respondent

No.7

6. With regard to the respondent No.8, the petitioner submitted that though she belongs to ST(P) category, the College authorities have selected her under General category in the Grade-III post as advertised on 26.05.2022 as she is a close associate of the Principal of the College, i.e., respondent No.6, who is the house help and office help of said respondent No.6.

7. It is stated by the petitioner that the respondent No.6 being the Principal-cum-Member Secretary of the Governing Body of the said College was a member of the Selection Committee for selection to the post of Grade-III (Junior Assistant/Library Assistant).

8. Considering all these, the petitioner has filed this writ petition on 27.03.2022 praying amongst others for setting aside the selection process initiated pursuant to the advertisement dated 26.05.2022 with regard to Grade-III post in said Silapather College, alleging that the selection of the respondent Nos. 7 and 8 to the post of Grade-III (Junior Assistant/Library Assistant) as advertised on 26.05.2022, being biased, should be set aside and quashed.

9. The petitioner also placed before the Court that the authorities of said Silapather College have already approved the selection of the respondent Nos. 7 and 8 for the post of Grade-III reserved for ST(P) category and un-reserved category, respectively, as advertised on 26.05.2022 and already submitted its recommendation before the Director of Higher Education, Assam for necessary approval and issuance of appointment order to those two respondents by the said authority.

10. The Court after hearing the petitioner and the learned counsel for the Director of Higher Education Department by order dated 30.09.2022, while issuing notice to the respondents, in the interim observed that the authorities concerned shall not finalise the appointment of two Grade-III posts meant for un-reserved and ST(P) category in said Silapather College and the said interim order is still in force.

11. The Principal of the College by submitting the details have filed an application being I.A.(C) No.3687/2022 for modification/alteration/ vacation of the said order dated 30.09.2022 passed in the present proceeding stating that during the selection process the respondent Nos. 7 and 8 secured higher marks and as such, selected for the respective posts.

12. The Principal of the Silapather College, respondent No.6 in his said I.A.(C) No. 3687/2022 categorically denied the allegation of his relation with the respondent No.7 submitting that respondent No.7 is no way related to him. It is also submitted by the respondent No.6 that the allegation of the petitioner that the respondent No.8 is a house help-cum-office help of the Principal of the College is not at all correct and it's a false allegation and that the respondent No.8 was appointed as computer instructor on contractual basis in the said college during the tenure of earlier Principal of the College, namely, Devi Ram Pegu and as such, no way related to the him as alleged by the petitioner.

13. It is to be noted herein that said Silapather College is a provincialised College of the State, provincialised w.e.f. 01.12.2005 under the provisions of the Assam College Employees (Provincialisation) Act, 2005.

14. The Assam College Employees (Provincialisation) Rules, 2010 being framed under Section 12 (1) of the said 2005 Act, has a statutory force. Rules 5 of said 2010 Rules relates to method of recruitment, where at Rule 5 (2) provides that in respect of Grade III and Grade IV posts the list candidates shall be collected from the local employment exchange/Advertisement in newspaper.

15. Rule 5 (5) stipulates that the post of LDA/Library Assistant/Laboratory Assistant in such Colleges required to be filled up by way of direct recruitment from the Laboratory Bearer/Library Bearer/Grade-IV having qualification as prescribed in the ratio of 75:25.

16. Rule 5 (7) provides that in all these cases, the Governing Body shall conduct the

selection process and recommend to the Director, who shall issue orders of appointment.

17. Rule 7 of said 2010 Rules relates to direct recruitment and stipulates as follows:--

7. Direct Recruitment-

(a) All appointment either by direct recruitment or by promotion shall be made by the Director on the basis of recommendations of the Governing Body based on the recommendations of the Selection Committee/Departmental Promotion Committee duly constituted;

(b) The Director shall communicate his orders within thirty days;

(c) The Selection Committee may hold such test of interview for all posts as may be considered necessary. For posts for which UGC has prescribed norms, no candidate shall be recruited without having the required norms;

(d) All fresh appointments shall be made on receipt of police verification report;

18. The right to claim for appointment as advertised on 26.05.2022 of the petitioner shall accrue only when the Director of Higher Education, Assam approves any appointment to the post as advertised in which proceeding the petitioner had participated.

19. As per 2010 Rules selection and recommendation of the respondent Nos. 7 and 8 to the post of Grade-III reserved for ST(P) category and un-reserved category, respectively, will accrue only when the Director of Higher Education, Assam gives its approval and issues appointment orders in their favour.

20. It is well settled that the issuance of appointment order by the Director of Higher Education, Assam against a vacant sanctioned post in a provincialised College, i.e., a public post, in terms of the said 2010 Rules is not an anti formality, as before passing any such order of approval and appointment, the Director of Higher Education, Assam is required to scrutinize the records of selection and only after being satisfied the said authority is required to issue the consequent appointment orders.

21. For the reasons above and considering the provisions of Rules 5 and 7 of the Assam College Employees (Provincialisation) Rules, 2010 as discussed above, the Court is of the view that the claim of the petitioner against the selection and appointment of the respondent Nos. 7 and 8 as Grade-III (Junior Assistant/Library Assistant) as advertised on 26.05.2022, against the posts reserved for ST(P) category and un-reserved category, respectively, is premature one, since the Director of Higher Education, Assam respondent No. 6 is yet to give its approval and issue appointment orders in favour of those two respondents against Grade-III (Junior Assistant/Library Assistant) advertised on 26.05.2022 in said Silapather College.

22. Accordingly, this writ petition being a prematured one, the Court is in exercise of its power conferred under Article 226 of the Constitution of India is not inclined to entertain this writ petition as the matter is yet to reach the finality being pending before the Director of Higher Education, Assam.

23. Accordingly, the claim of the petitioner made in this writ petition for the reasons above stands rejected.

24. However, the petitioner, if so advised may submit a representation annexing a certified copy of this order including his address, Phone/Mobile No. and E-mail id etc., before the Director of Higher Education, Assam raising his grievances regarding selection of the respondent Nos. 7 and 8 by the authorities of Silapather College, in terms of the advertisement dated 26.05.2022, noted above, forthwith, on or before fifteen days from today.

25. In the event of filing any such representation by the petitioner before the Director of Higher Education, Assam, on or before fifteen days from today, the said authority shall consider the said representation of the petitioner and shall dispose it of in accordance with law, before considering any such approval of the recommendation of the authorities of said Silapather College, Silapather with regard to his approval and appointment of the respondent Nos. 7 and 8 against Grade-III (Junior

Assistant/Library Assistant) against the posts reserved for ST(P) category and un-reserved category, respectively in the said College as advertised on 26.05.2022, intimating the petitioner about the outcome of his said representation.

26. In view of the above, the interim order passed earlier in this proceeding on 30.09.2022 stands merged with this order.

27. With the above observation and direction, this writ petition stands dispose of.

JUDGE

Comparing Assistant