

GAHC010141232022



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

Case No. : I.A.(Civil)/2044/2022

THE PRINCIPAL, SILAPATHAR COLLEGE
SILAPATHAR COLLEGE, SILAPATHAR, DIST.- DHEMAJI, ASSAM.

VERSUS

SMTI DIPIKA BARUAH AND 3 ORS.
W/O- BIREN BORAH, R/O- CHANDMARI, WARD NO. 14, P.O. KHELMATI,
DISTRICT- LAKHIMPUR, PIN- 787031.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT
OF ASSAM
EDUCATION (HIGHER) DEPARTMENT
DISPUR, GUWAHATI-781006.

3:THE DIRECTOR
EDUCATION (HIGHER) DEPARTMENT
GOVERNMENT OF ASSAM
KAHILIPARA, GUWAHATI-781019.

4:DR. BROJEN SARMA
ASSISTANT PROFESSOR
GOVERNMENT MODEL COLLEGE
DEITHOR, KARBI ANGLONG- PIN-782470

Advocate for the Petitioner : MR J PAYENG
Advocate for the Respondent : SC, EDU

Linked Case : WP(C)/7061/2021

DIPIKA BARUAH
W/O- BIREN BORAH
R/O- CHANDMARI
WARD NO. 14, P.O. KHELMATI
DIST.- LAKHIMPUR, PIN- 787031.

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REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
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2:THE DIRECTOR
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KAHILIPARA
GUWAHATI-781022.

3:THE PRINCIPAL
SILAPATHAR COLLEGE
SILAPATHAR
DIST.- DHEMAJI
ASSAM

4:DR. BROJEN SARMA
ASSISTANT PROFESSOR
GOVERNMENT MODEL COLLEGE
DEITHOR
KARBI ANGLONG-782470.

Advocate for : MR. K N CHOUDHURY
Advocate for : SC, EDU appearing for THE STATE OF ASSAM AND 3 ORS

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

27-02-2023

Heard Mr. K.N. Choudhury, learned senior counsel, assisted by Mr. R.M. Deka, learned counsel for the writ petitioner. Also heard Mr. K. Gogoi, learned standing counsel, Higher Education Department, for respondent Nos. 1 and 2, Mr. J. Payeng, learned counsel for respondent No. 3 and Mr. S.N. Krishnatraya, learned counsel for the respondent No. 4.

The Principal of Silapathar College, Silapathar, issued an advertisement calling for

applications to fill up the post of Assistant Professor in different Departments including Assamese in the College. The petitioner and the respondent No. 4 being eligible, applied for the post of Assistant Professor, Assamese (UR). Thereafter, the Selection Committee in its meeting held on 07-10-2020 for selection of candidate for the post of Assistant Professor in the Department of Assamese (UR), selected and recommended the case of one Smti Bidisha Buragohain to the said post. However, an issue arose with regard to one journal of Bidisha Buragohain and an Enquiry Committee was constituted by the Governing body of Silapathar College to enquire into the matter. The Enquiry Committee, vide its report dated 07-11-2020, came to the finding that the disputed journal of Smt. Bidisha Buragohain was not covered in the Web of Science Journals till the date of interview, i.e., 07-10-2020.

In terms of the report of the Enquiry Committee, the Government Body of Silapathar College, Silapathar resolved to cancel the recommendation of the Selection Committee for approval of appointment to the post of Assistant Professor in the Department of Assamese (UR) in the interview held on 07-10-2020. Further the Governing Body authorized the Principal to re-advertise the said post with immediate effect. Accordingly, the Principal, Silapathar College, Silapathar re-advertised the post of Assistant Professor of Assamese (UR) on 05-12-2020.

Being aggrieved with the advertisement dated 05-12-2020, the petitioner approached this Court by filing WP(C) No. 5663/2020, which was disposed of by order dated 08-04-2021 with the following observations and directions:-

“For the reasons above, we find the resolution No. 4 dated 03.12.2020 of the Governing Body of Silapathar College to be unsustainable in law. Accordingly, the same is set aside. The matter stands remanded back to the authorities of the Silapathar College to bring the process of selection for the post of Assistant Professor, Assamese pursuant to the advertisement dated 11.08.2020 to its logical end. Consequently, if there is any further re-advertisement, the same also stands set aside.”

Consequent to the order dated 08-04-2021, passed by this Court in WP(C) No. 5663/2020, the Selection Committee of the College recommended the case of the respondent No. 4 for appointment to the post of Assistant Professor of Assamese (UR). Being aggrieved with the recommendation of the respondent No. 4, the petitioner is before this Court challenging the recommendation of the respondent No. 4 on the ground that the selection procedure for the post of Assistant Professor of Assamese (UR) is vitiated inasmuch as the Guidelines for selection of Assistant Professor/Librarian in provincialised colleges of Assam envisaged in the Office Memorandum dated 08-11-2018, issued by the Secretary to the Government of Assam, Higher Education Department, has been violated.

Another ground taken by the petitioner is that the Office Memorandum dated 25-06-2016, issued by the Commissioner and Secretary to the Government of Assam, Higher Education Department is also violated by the respondent No. 4, which provides that after selection of any State Government job w.e.f. 01-08-2016, employees are not allowed to apply for any other State level Government job in same position up to maximum period of 3 years. If unknowingly any State Govt. employees do so his candidature will be cancelled from both part.

It is the case of the petitioner that the respondent No. 4 has been appointed as Assistant Professor in the Department of Assamese at Government Model College, Deithor in the District of Karbi Anglong on 20-12-2020, as such the respondent No. 4 is debarred from applying for the post of Assistant Professor in the Department of Assamese (UR) in Silapathar College, Silapathar in view of the Office Memorandum dated 25-06-2016.

After perusal of the materials available on record, it appears that the Director, Higher Education is yet to take a final decision in the matter and, therefore, this Court is not inclined to entertain this writ petition at this stage.

However, the petitioner is directed to file a detailed representation before the Director of Higher Education, Assam taking all the grounds and also enclosing a copy of the writ petition and the affidavit-in-opposition filed in I.A.(Civil) No. 2044 of 2022 along with the annexures appended thereto.

On receipt of the representation, the Director of Higher Education, Assam, shall hear the petitioner in person as well as the respondent No. 3, Principal, Silapathar College, Silapathar and the respondent No. 4, Dr. Brojen Sarma, and, thereafter, pass final order for appointment of Assistant Professor in the Department of Assamese (UR) in Silapathar College, Silapathar, by taking into consideration the Office Memorandum dated 08-12-2018 as well as the Office Memorandum dated 25-06-2016 within a period of four weeks from the date of receipt of the representation. Till the representation is disposed of and final order is passed, the interim order passed in this case shall continue.

The writ petition as well as the connected interlocutory application stand disposed of accordingly.

JUDGE

Comparing Assistant