

GAHC010208722016



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

Case No. : WP(C)/6956/2016

MD. JAKIR HUSSAIN
S/O AZMOL ALI VILL and P.O. GULCHARRA DIST. KARIMGANJ, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPARTMENT, DISPUR, GUWAHATI - 781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI - 781019
ASSAM.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

KARIMGANJ DISTRICT
P.O. KARIMGANJ- 788710
ASSAM.

4:THE DEPUTY INSPECTOR OF SCHOOLS

KARIMGANJ DISTRICT
P.O.KARIMGANJ- 788710
ASSAM.

5:THE HEAD MASTER-CUM- SECRETARY
GULCHARRA M.E. MADRASSA
VILL and P.O. GULCHARRA DIST. KARIMGANJ
ASSAM.

6:MD. SAHAB UDDIN
CHOUKIDAR S/O LT. TAYAB ALI GULCHARRA M.E. MADRASSA
VILL and P.O. GULCHARRA DIST. KARIMGANJ
ASSAM

Advocate for the Petitioner : MR.N DHAR

Advocate for the Respondent : MR.J M SULAIMANR-6

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

22.05.2023

Heard Shri TU Laskar, learned counsel for the petitioner. Also heard Shri B. Kaushik, learned Standing Counsel, Elementary Education Department as well as Shri FU Borbhuiya, learned counsel for the respondent no. 6.

2. Considering that this matter is pending since the year 2016 and has been specially listed today, this Court has taken up the same for final disposal.

3. The petitioner has put to challenge an order dated 29.12.2015 passed by the Director of Elementary Education by which the respondent no. 6 has been appointed to the post of Chowkidar (Grade-IV) in the Gulcharra M.E. Madrassa in the district of Karimganj. The petitioner alleges that the impugned appointment has been made in violation of the statute as the respondent no. 6 is over aged and was 52 years at the time of such appointment. The petitioner also alleges interpolation in the marks given in the selection by which the respondent no. 6 was favoured and prejudice was caused to the petitioner from a fair consideration. The petitioner also claims to have filed representation which was not taken into consideration.

4. Shri Laskar, learned counsel for the petitioner submits in support of the principal ground of challenge that the respondent no. 6 is over aged, he has placed reliance upon a document which has been annexed as Annexure-6. The said

document is Leaving / Transfer Certificate dated 12.06.2015 issued by the Principal of the Budhan Higher Secondary School pertaining to the respondent no. 6. In the said certificate, the date of birth of the respondent no. 6 has been stated to be 22.12.1964. The connected pleadings with regard to the said document is made in paragraph 7. This Court however has noted that the aforesaid averments made in paragraph 7 of the writ petition is verified and being true to the knowledge of the petitioner.

5. The Department in its affidavit filed on 03.04.2017 however has categorically denied that any anomalies or malpractice were done in the selection of the respondent no. 6. Shri Kaushik, learned Standing Counsel of the Department has referred to the averments made in paragraph 6 of the said affidavit-in-opposition in which it has been denied that the respondent no. 6 was over aged. Rather, it has been stated that the respondent no. 6 was within permissible age and the said factor was taken into consideration as per the Government Rules.

6. The respondent no. 6 represented by Shri FU Borbhuiya, learned counsel has also filed an affidavit-in-opposition today. On a specific query, the learned counsel for the petitioner has submitted that he would not like to file any rejoinder to this affidavit. In the said affidavit-in-opposition, the allegation of the respondent no. 6 being over aged has been categorically denied and in fact the authenticity and the veracity of the certificate annexed to the writ petition pertaining to the age of the respondent no. 6 has been categorically disputed.

7. Shri Borbhuiya, learned counsel has further submitted that the documents pertaining to the age of the respondent no. 6 has been annexed to the affidavit-in-opposition including the school certificate as per which the date of birth of the respondent no. 6 is 12.01.1977.

8. Upon hearing the learned counsel for the parties and on perusal of the records, this Court is confronted with the situation wherein there is a factual dispute on the

age of the respondent no. 6. Even ignoring the aspect of lack of proper verification in the affidavit with regard to the allegation concerning the age of the respondent no. 6, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot go into the aspect of resolving disputed question of fact. In any case, *prima facie* the allegation does not appear to be substantiated as all the documents annexed to the affidavit-in-opposition by the respondent no. 6 as well as the official version of the Department has categorically denied the allegation of the petitioner.

9. In view of the aforesaid facts and circumstances, this Court is of the opinion that the present may not be a fit case for interference and accordingly the same is dismissed. Liberty is however granted to the petitioner to approach the appropriate forum for redressal of his grievance, if so advised.

JUDGE

Comparing Assistant