

GAHC010214922022



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

Case No. : WA/97/2023

PRATAP CHOWDHURY
S/O PARITOSH CHOWDHURY, RESIDENT OF COLLEGE NAGAR, DHUBRI,
PO BIDYAPARA, DIST DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS. F
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
DEPTT OF REVENUE AND DISASTER MANAGEMENT, DISPUR, GUWAHATI-
781006

2:THE DIRECTOR OF LAND RECORDS AND SURVEY

RUPNAGAR
GUWAHATI 781032

3:THE DEPUTY COMMISSIONER

DHUBRI
ASSAM
783301

4:NILIMA DAS

W/O BASUDEV KUNDER

RESIDENT OF POUND ROAD
WARD NO. 4
PO
PS AND DIST DHUBRI
ASSAM 78330

Advocate for the Petitioner : MR. A K PURKAYASTHA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

**Date : 10-04-2023
(S. Mehta, CJ)**

This instant intra-court appeal is directed against the order dated 09.09.2022 passed by the learned Single Bench in WP(C) No. 5401/2018, dismissing the writ petition filed by the appellant herein under Article 226 of the Constitution of India for assailing the order dated 26.07.2018, issued by the Deputy Commissioner, Dhubri, whereby the appellant herein was dislodged from the post of Misc. Mondal and the respondent no. 6 was appointed in his place pursuant to the advertisement dated 25.01.2016.

2. Mr. S. Nath, learned counsel representing the appellant vehemently and fervently urged that even after the respondent no. 6 was appointed as Misc. Mondal on the post which the appellant herein was holding, one more post of Misc. Mondal is lying vacant in the department and, thus, the appellant herein should have been considered for absorption against the said post on the basis of seniority. He urged that the appellant had been working as Misc. Mondal in the department for the last few years and, thus, his dislodgement from the post has caused him great hardship and has deprived him of the right to earn livelihood, which in violation of the principles enunciated in Article 21 of the Constitution of India. On these grounds, learned counsel for the appellant implored the court to accept the appeal; set aside the impugned order and direct the respondent authorities to appoint the appellant on the vacant post of Misc. Mondal.

3. Per contra, learned counsel representing the respondents urged that the appellant was wrongly appointed as Misc. Mondal/Lot Mondal pursuant to the advertisement dated 25.01.2016, because the selection process was undertaken by the respondents without

accounting for the mandatory quota of women reservation. Accordingly, respondent no. 6 approached this court by filing Writ Appeal No. 388/2016 wherein the Division Bench, vide order dated 02.01.2018 gave a direction to consider one out of the six vacancies notified vide advertisement dated 25.01.2016 to be earmarked for women candidates and, in this process, the last of the selected candidates under unreserved category would be liable to be dislodged. Pursuant to the said direction given by the Division Bench, the appellant herein, who had been appointed to the post of Misc. Mondal against the unreserved category of posts, was dislodged/removed from the post which was required to be reserved for women category.

4. The appellant filed a writ petition questioning the decision of the respondent authorities and raising arguments that the he being the senior-most amongst the Misc. Mondals should not have been dislodged and instead, the respondent nos. 4 and 5 in the writ petition should have given way for the reserved seat of woman candidate. However, a perusal of the impugned order would reveal that the appellant's counsel, while addressing the court on 30.03.2022 made a statement that the petitioner/appellant would not be claiming any relief against the respondent nos. 4 and 5 and, accordingly, their names were struck off from the array of parties. It is admitted that as the petitioner/appellant had secured lowest marks amongst the three unreserved category candidates.

5. We have given our thoughtful consideration to the submissions advanced at the bar and have gone through the materials available on record.

6. It is not disputed that the appellant herein stood lowest in merit amongst the three unreserved category candidates who were selected and appointed against the six posts notified vide advertisement dated 25.01.2016. The advertisement dated 25.01.2016 clearly stipulated that "*The reservation will be maintained as per provision*". The Division Bench, while accepting the plea of the respondent no. 6, by its order dated 02.01.2018 observed that by applying the 30% quota for women, one out of the six vacancies would fulfil the requirement of 30% reservation for women. Thus, as one out of the six posts advertised was required to be reserved for women candidates, the Division Bench passed the order dated 02.01.2018 in WA 388/2016 directing that one vacancy of the six notified

vacancies would be earmarked for women candidates and, as a corollary of this process, one out of the three unreserved category of posts would have to be considered as reserved for women candidates. The automatic consequence of the above direction would be that the candidate, who secured the lowest marks amongst the three unreserved category candidates, would be required to be dislodged for giving way to the highest scoring women candidate. This exercise was precisely undertaken by the respondent authorities in compliance of the order dated 02.01.2018 passed by the Division Bench in WA 388/2016. The said order having attained finality, the appellant has no right to claim appointment on the post of Mondal in connection with the selection process initiated vide advertisement dated 25.01.2016.

7. Regarding the contention of the appellant that he should have been offered appointment against other posts lying vacant with the department, the said contention is also untenable on the face of the record, because if at all any post/posts are lying vacant the same will have to be filled up by undertaking a regular selection process because public employment cannot be distributed as largesse.

8. In light of the above discussion, we are of the opinion that the impugned order dated 09.09.2022 passed by the learned Single Bench in WP(C) No. 5401/2018 does not suffer from any infirmity warranting interference. Hence, the writ appeal fails and is dismissed as being devoid of merits.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant