

GAHC010219772023



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

Case No. : WP(C)/5730/2023

SMT. SIMA RANI DAS
W/O SRI ASHISH KUMAR DEY, PERMANENT ADDRESS-R/O DHEKIAJULI
TOWN, P.O.-SONITPUR, P.S.-DHEKIAJULI, DIST- SONITPUR, ASSAM, PIN-
784001, PRESENT ADDRESS - C/O GOVT MIDDLE SCHOOL, TIPPI, P.O.-
BHALUKPUNG, P.S.-BHALUKPUNG, DIST-WEST KAMENG, ARUNACHAL
PRADESH, PIN-790114

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT OF INDIA, PERSONNEL,
PUBLIC GRIEVANCES AND PENSIONS, DEPARTMENT OF PERSONNEL AND
TRAINING, NORTH BLOCK, NEW DELHI

2:THE NATIONAL COMMISSION FOR BACKWARD CLASSES
MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT
REPRESENTED BY ITS CHAIRMAN
GOVT. OF INDIA
TRIKOOT-1
BIKAJI CAMA PLACE
NEW DELHI-110066

3:THE DISTRICT COMMISSIONER
SONITPUR DISTRICT
ASSAM

4:THE UNION OF INDIA
DIRECTORATE OF HEALTH SERVICE
MINISTRY OF HEALTH AND FAMILY WELFARE
NIRMAN BHAVAN
NEW DELHI-110011

5:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR
GUWAHATI-6

6:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
THE DIRECTORATE OF MEDICAL EDUCATION
GUWAHATI-781022
ASSA

Advocate for the Petitioner : MR. A K PURKAYASTHA

Advocate for the Respondent : DY.S.G.I.

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

O R D E R

29.09.2023

Heard Ms. SB Choudhury, learned counsel for the petitioner, Mr. K Gogoi, learned CGC for the respondents in the Union of India, Mr. P Saikia, learned Junior Government Advocate for the Deputy Commissioner, Sonitpur and Mr. B Gogoi, learned counsel for the respondents in the Health and Family Welfare Department including the Medical Education Department of the Government of Assam.

2. The daughter of the petitioner Shayona Kashyap had offered her candidature for a seat in the first year MBBS course for the year 2023 in the State of Assam under the OBC Category where there is a requirement of obtaining a non-creamy layer certificate. As the Deputy Commissioner, Sonitpur was not issuing the non-creamy layer certificate, the petitioner instituted WP(C) No. 4510/2023, wherein the order dated 30.08.2023 was passed. Consequent thereof, the Deputy Commissioner, Sonitpur had passed the order dated

18.09.2023, which in fact, is signed by another person namely Gaya Prasad Agarwal, ACS whereby the application of the daughter of the petitioner for non-creamy layer certificate was rejected on the ground that as per the office letter No. 36033/1/2013-Estt (Res) dated 13.09.2017, the upper limit of the annual income to be eligible for non-creamy layer certificate is Rs. 8, 00, 000/- per annum, whereas parents of the candidate had an annual income of Rs. 11, 11, 770/-. As the annual income of the parents of the candidate exceeded Rs. 8, 00, 000/- per annum, therefore, according to the Deputy Commissioner the application for non-creamy layer certificate was rejected. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, Mr. K Gogoi, learned CGC for the respondents in the Union of India through the Secretary to the Government of India in the Personal Public Grievance and Pension Department had stated that under the prevailing procedure, the employees under the Central Government or State Government are categorized into different categories. It is stated that if the parents are employees of the Central Government or State Government in category-I, the children of such persons will not be entitled to a non-creamy layer certificate. On the other hand, if both the parents are in a category-II service, in such event also, they are not entitled to a non-creamy layer certificate. But if one parent is in service of category-II and the other parent is working in category-III service, in such event, their children would be entitled to a non-creamy layer certificate. Further, if the parents or any of the parents are in the category-III employment, in such event, the children would be entitled to a non-creamy layer certificate.

4. The learned CGC for the Union of India after verification of the particulars of the petitioner had stated that the mother of the candidate is the only working

parent in the family and she is working in a category-III post being an Assistant Teacher in a Primary School.

5. Accordingly, as the petitioner is the only working parent and she is working in a category-III post, therefore, under the provision as indicated above, the daughter of the petitioner would be entitled to a non-creamy layer certificate.

6. In view of the above, the rejection of the application of the daughter of the petitioner for non-creamy layer certificate by the order dated 18.09.2023 is set aside and the matter is remanded back to the Deputy Commissioner, Sonitpur to issue an appropriate non-creamy layer certificate to the candidate namely Shayona Kashyap by taking note that only one of the parents is a working parent and she is working in the category-III post and therefore under the law is entitled to a non-creamy layer certificate. The certificate be issued in course of the day itself inasmuch as, it is a matter of admission to a medical college where the last date of admission would be 30.09.2023 i.e. tomorrow.

7. The daughter of the petitioner is also directed to immediately approach the Director of Medical Education for doing the necessary formalities. The Director of Medical Education to take note that there is already a declaration by the Court as regards the entitlement of the daughter of the petitioner for a non-creamy layer certificate and therefore even if there is a delay on the part of the Deputy Commissioner, Sonitpur to issue the certificate, the same shall not be a reason not to give admission to the daughter of the petitioner provided she is entitled on merit in all other respect.

The writ petition is disposed of accordingly.

Let a copy of this order be furnished to Mr. B Gogoi, learned counsel for the respondents in the Health and Family Welfare Department as well as Director of

Medical Education and Mr. P Saikia, learned Junior Government Advocate for the Deputy Commissioner, Sonitpur for doing the needful.

JUDGE

Comparing Assistant