

GAHC010220102022



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

Case No. : WA No.108 of 2023

1: KAUSHIK DAS AND ANR.
S/O PONARAM DAS, RESIDENT OF VILLAGE CHAGALU CHUBURI,
PO BIHAGURI, DIST SONITPUR, ASSAM

2: SIMANTA NATH
S/O PONA RAM NATH RESIDENT OF KATAKI CHUBURI
PO PITHAKHOWA DIST SONITPUR ASSAM

VERSUS

1: THE STATE OF ASSAM AND 9 ORS. REPRESENTED BY THE
COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, HEALTH
AND FAMILY WELFARE DEPARTMENT, DISPUR, GUWAHATI 781006

2: THE DIRECTOR HEALTH SERVICE
HENGRABARI GUWAHATI- 05

3: THE DIRECTOR OF MEDICAL EDUCATION ASSAM SIXMILE
KHANAPARA GUWAHATI KAMRUP(M) ASSAM GUWAHATI- 781006

4: THE PRINCIPAL CUM CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL TEZPUR ASSAM PIN- 784153

5: MRIDUL HAZARIKA
S/O MR. JOGEN HAZARIKA VILL NO. 2 PITHAGURI P.O- PITHAGURI
P.S- BIHPURIA DIST- LAKHIMPUR ASSAM PIN- 784163

6: BHUPEN DAS
S/O- MR. DULAL DAS VILL- NAHARATI P.O- BAHGORAH
P.S- BIHPURIA DIST- LAKHIMPUR ASSAM PIN- 784161

7: MRINAL MEDHI
S/O- LATE NARAYAN MEDHI R/O- KUNDILNAGAR BASISTHA CHARIALI
P.O- BASISTHA DIST- KAMRUP(M) ASSAM GUWAHATI- 29

8:MRIDUL KUMAR BORAH
S/O- LATE KHETESWAR BORAH VILL- RAJKHOWA GAON
P.O- AZAD P.S- PANIGAON DIST- LAKHIMPUR ASSAM PIN- 787031

9:NASIOR RAHMAN
S/O- MD. ASHOK ALI VILL- MOURIPAM P.O- MANDIA
P.S- BARBHAG DIST- BARPETA ASSAM PIN- 781308

10:ZAKIR HUSSAIN
S/O- LATE NURUL ISLAM VILL- GHILAZARI
P.O- GHILAZARI P.S- HOWLY DIST- BARPETA ASSAM PIN- 78131

For the Appellant(s) : Mr. S. Borthakur, Advocate.

For the Respondent(s) : None.

– B E F O R E –
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

19.09.2023

[Sandeep Mehta, CJ]

The instant intra-Court writ appeal is directed against the judgment and final order dated 27.09.2022 passed by the learned Single Judge in WP(C) No.6279/2018, whereby the writ petition preferred by the writ petitioners (respondent Nos.5 to 10 herein) laying a challenge to the appointment of the private respondents in the writ petition as Laboratory Technicians under the establishment of Tezpur Medical College & Hospital, Tezpur in furtherance of an advertisement dated 19.02.2011, was accepted and the appointment of some of the respondents in the writ petitions as Laboratory Technicians was interfered with and reversed.

The writ petition aforesaid was filed on the ground that the private respondents being the selected candidates had not acquired the required qualification for the posts by the last date of submission of the application forms by them.

After receiving the pleadings of the parties and hearing the arguments

advanced by the learned counsel representing the parties, the learned Single Judge held that the material available on record disclosed that the said respondent No.5 (the appellant No.1 herein) had appeared in the qualifying examination in the month of August, 2012. The certificate of the respondent No.6, i.e. appellant No.2, disclosed that the qualifying examination was held in the month of July, 2011 and neither the mark-sheets nor the certificates bore any date. Both the appellants herein (respondent Nos.5 & 6) acquired the qualification from a private institution, namely, Institute of Medical Technology Research, Tamil Nadu, which was not recognized by the State of Assam. Holding so, the learned Single Judge proceeded to partly accept the writ petition and set aside the selection of the respondent Nos.5 & 6, i.e. the appellants herein, to the posts as being illegal and *dehors* the rules.

The appellants being the respondent Nos.5 & 6 in the writ petition are in appeal for assailing the judgment and final order dated 27.09.2022 passed by the learned Single Judge.

We have heard and considered the submissions advanced by Mr. S. Borthakur, learned counsel representing the appellants and have gone through the impugned judgment and the record.

After giving thoughtful consideration to the submissions advanced by the appellants' counsel and going through the pleadings and the material available on record, it is not in dispute that the appellants appeared in the qualifying examination well after the last date of submission of the application forms. Thus they were not qualified for the posts when they applied for the same even if the aspect of recognition of the institution is ignored.

Mr. Borthakur also drew the Court's attention to the aspect of delay occasioned in filing of the writ petition. On going through the material placed on

record, we find that the private respondents/writ petitioners were making fervent efforts to collect the information regarding the illegalities in the selection process. However, their efforts were being blocked/not responded by the authorities, whereupon they came to institute the writ petition aforestated. Hence, the contention regarding the delay in filing of the writ petition advanced by Mr. Borthakur is devoid of merit.

The contention of Mr. Borthakur that the appellants had served in their respective posts for a significant period of time and thus, the learned Writ Court should not have interfered with in their selection, also does not merit consideration because law is well settled by a catena of judgments of Hon'ble Supreme Court that if the appointment of a person in a Government service is made illegally/*dehors* the Rules without such person having the requisite qualification, his service cannot be saved irrespective of the fact that such person/persons have been serving for a considerable period. Reference in this regard may be had to the judgment of Hon'ble Supreme Court in the case of ***Alka Ojha -Vs- Rajasthan Public Service Commission & Anr.***, reported in ***AIR 2011 SC 3547***.

As a consequence of the discussion made hereinabove, we find no infirmity or illegality in the impugned judgment warranting interference in exercise of the intra-Court writ appeal jurisdiction of this Court. Accordingly, the writ appeal fails and is dismissed as being devoid of merit.

JUDGE

CHIEF JUSTICE