

GAHC010227992023



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

Case No. : WA/406/2023

DEBENDRA NATH
S/O LATE JOGESH NATH, R/O VILL-LUTAPARA, P.O.-HELAGARI, P.S.-
SAPATGRAM, DIST-DHUBRI, ASSAM, PIN-783345.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER SECRETARY TO THE GOVT. OF
ASSAM, HOME AND POLITICAL DEPARTMENT, DISPUR, GUWAHATI-
781006

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPARTMENT
DISPUR
GUWAHATI-06

3:THE CHAIRMAN
STATE LEVEL POLICE RECRUITMENT BOARD
REHABARI
GUWAHATI-08

4:THE DEPUTY COMMISSIONER
DHUBRI
P.O. AND DIST- DHUBRI
ASSAM

5:THE STATE LEVEL RECRUITMENT COMMISSION FOR GRADE-IV POSTS
ASSAM ADMINISTRATIVE STAFF COLLEGE
JAWAHAR NAGAR
KHANAPARA
GUWAHATI-22

6:THE DIRECTOR GENERAL OF POLICE
ASSAM

ULUBARI
GUWAHATI-

Advocate for the Petitioner : MD B ISLAM

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 06-11-2023

[Kardak Ete, J]

Heard Mr. B. Islam, learned Counsel representing the appellant/writ petitioner. Also heard Ms. M.D. Borah, learned Government Advocate, Assam representing the respondents.

2. This intra-Court writ appeal is preferred by the appellant against the order dated 13.09.2023 passed by the learned Single Judge in WP(C) No.5245/2023, by which the writ petition filed by the appellant/writ petitioner has been dismissed being devoid of merit as no grounds have been taken on any discrepancy in the written test or oral interview.

3. The case as projected by the appellant/writ petitioner is that he belongs to the Other Backward Class (OBC) category and a son of martyr, whose father died in the year 1983 during the Assam Movement. The appellant/writ petitioner claims that he being the son of martyr, is entitled for appointment in any Government service in the State of Assam, in terms of the Assam Public Services (Preferential Appointment) Rules, 1999 (hereinafter referred to as 'the APS(PA) Rules, 1999').

4. The appellant/writ petitioner, on the basis of the certificate issued by the competent authority, prayed for appointment in Grade-IV post, by way of preferential appointment in terms of the provisions of the APS(PA) Rules, 1999. On not being acceded to by the respondent authority of such prayer, he filed a Writ Petition being WP(C) No.3479/2022 for a direction to the respondent authorities to appoint the appellant/writ petitioner by giving preferential appointment. The Writ Petition was disposed of on 10.08.2022 with a direction to consider the claim of the petitioner in terms of the APS(PA) Rules, 1999, as and when the Government undertakes recruitment process.

5. An advertisement dated 21.01.2023 was issued by the Chairman, State Level Police Recruitment Board, Assam inviting applications for filling up of various posts namely: cook, water carrier, dhubi, barber, pump operator, electrician, plumber, peon, dak runner and jugali. Pursuant to the said advertisement, the appellant/writ petitioner applied for the said posts on 05.02.2023. The appellant/writ petitioner claims that he had passed the physical standard test and was also held to be medically fit, however, he has not been selected. The appellant/writ petitioner further claims that having passed the physical standard test and being medically fit and having appeared in the interview, he ought to have been selected and appointed in terms of the APS(PA) Rules, 1999. Having not been selected, the appellant/writ petitioner has approached this Court by filing the present writ petition being WP(C) No.5245/2023 and the same has been dismissed by the learned Single Judge vide impugned order dated 13.09.2023. Hence, the present writ appeal.

6. Mr. B. Islam, learned Counsel for the appellant/writ petitioner submits that the learned Single Judge has failed to consider the fact that the petitioner having been passed in the physical standard test and also being medically fit

and having appeared in the interview, the appellant/writ petitioner could not have been rejected as the APS(PA) Rules, 1999 provides for preferential appointment to the next of kin of the martyr. The appellant/writ petitioner is entitled to be appointed as the respondent authorities have appointed similar candidates in different recruitment process conducted from time to time. He submits that the learned Single Judge has failed to consider the fact that the appellant has been deprived of his right of preferential appointment under the APS(PA) Rules, 1999.

7. Mr. B. Islam, learned Counsel submits that since the APS(PA) Rules, 1999 provides for preferential appointment, there is no question of challenging the written test or oral interview in as much as the appellant/writ petitioner having been qualified in physical standard test and also being medically fit, the appellant/writ petitioner ought to have been selected and appointed by following the provisions of the APS(PA) Rules, 1999. Therefore, the learned Single Judge has erred in holding that no grounds have been taken on any discrepancy in the written test or in the oral interview.

8. Per contra, Ms. M.D. Borah, learned Government Advocate, Assam representing the State respondents has submitted that no grounds whatsoever have been taken in the writ petition challenging non-selection of the appellant/writ petitioner for preferential appointment. The learned Government Advocate submits that apart from the physical standard test and medical fitness criteria, selection was done amongst the eligible candidates on the basis of their merits which are assessed by means of written test as well as interview. She further submits that the appellant/writ petitioner having been knowingly participated in the selection process, on being unsuccessful, he could not turn around and challenge the same without their being any pleading of any

illegality. In fact, there are no grounds at all except for a prayer for appointment by providing preferential appointment in terms of the APS(PA) Rules, 1999.

9. We have considered the submissions advanced by the learned counsel for the parties. We have also perused the materials available on record.

10. Vide advertisement dated 21.01.2023, the Chairman, State Level Police Recruitment Board, Assam invited applications from the eligible candidates for filling up 110 numbers of various posts, namely- cook, water carrier, dhubi, barber, pump operator, electrician, plumber, peon, dak runner and jugali. Pursuant to the said advertisement, the appellant/writ petitioner had applied and he claims to have qualified in the physical standard test and was also found to be medically fit. Thereafter, the appellant/writ petitioner appeared in the next stage of recruitment process. The appellant/writ petitioner was not selected on being not qualified, as the selection was done amongst the eligible candidates on the basis of their merits.

11. On perusal of the advertisement dated 21.01.2023, we noticed that provision for preferential appointment has not been provided in the advertisement. The appellant/writ petitioner has not challenged such omission of not providing preference for appointment in the said advertisement in terms of the APS(PA) Rules, 1999.

12. The Assam Public Services (Preferential Appointment) Rules, 1999 regulates appointment in public services under the Government of Assam of the next of kin of persons who sacrificed their lives or who have rendered physically disabled permanently by bullet injury or otherwise, while participating in the Assam Movement on the problem of foreigners. Rule 4(1) of the Assam Public Services (Preferential Appointment) Rules, 1999 provides as follows:-

“4. Preference for appointment- (1) *Subject to the provisions of these rule wherever any recruitment to services and posts referred to in Rule 3 is made, one affected candidate who is otherwise eligible under the normal rules shall, ceteris paribus be given preference in making appointment:*

Provided that such preference shall be subject to reservation in favour of candidates who are member of the Scheduled Castes, Scheduled Tribes (Plain & Hills), Other Backward Classes (including More Other Backward Classes), Ex-Servicemen and physically handicapped persons:

Provided further that appointment of any affected candidate who is also a candidate of the category mentioned in the preceeding proviso shall be set of against the percentage reserved for the members of that particular category.

Explanation:- *For the purposes of this Rule the expression “who is otherwise eligible under the normal Rules” shall mean an affected candidate whose name is included within the range of 3 (three) times of the number of vacancies in the result sheet of the candidates arranged in order of merit”.*

13. On bare reading of the provision of Rule 4(1), we find that the said provision clearly provides that wherever any recruitment to services and posts is made, one affected candidate who is otherwise eligible under the normal rules shall, other things being equal, be given preference in making appointment and by an explanation the expression, “who is otherwise eligible under the normal Rules” made it clear that it shall mean an affected candidate whose name is included within the range of 3 (three) times of the number of vacancies in the result sheet of the candidates arranged in order of merit.

14. In our considered view, preferential appointment does not imply that irrespective of merit of the candidates, next of kin of the persons who sacrificed their lives or who have rendered physically disabled permanently by bullet injury or otherwise, while participating in the Assam Movement, have to be given appointment. It would only mean that if the merits of the candidates being equal, preference would be given to the next of kin of such persons. Under the

extant Rules preference in the context of competitive scheme of selection would only mean that other things being qualitatively and quantitatively equal, those next of kin of the martyrs have to be preferred and it cannot be enforced as a rule of complete precedence.

15. The only claim of the appellant/writ petitioner is that he had passed the physical standard test and was held to be medically fit and he appeared in the interview and therefore, he ought to have been selected in terms of the APS(PA) Rules, 1999, which we are unable to accept.

16. We are also of the view that even if the provisions of the APS(PA) Rules, 1999 regarding preferential appointment is to be followed sans the prescription of preferential appointment in the advertisement dated 21.01.2023, the candidate has to be qualified in the selection process whose name to be included within the range of 3 (three) times of the number of vacancies arranged in order of merit and only on such inclusion and other things being equal, appointment would be preferred. The appellant/writ petitioner has failed to demonstrate that his name has been included in the select list and other things being equal, he ought to have been selected and appointed by operation of the provisions of the APS(PA) Rules, 1999. Besides above we find that no challenge has been laid for non-prescription of preferential appointment in the advertisement dated 21.01.2023 in terms of the APS(PA) Rules, 1999 nor any specific challenge for non-compliance of the provision of Rule 4(1) of the APS(PA) Rules, 1999 has been laid. Thus, we are constrained to hold that there is no ground to interfere with the selection process conducted pursuant to the advertisement dated 21.01.2023.

17. In view of the above discussion and conclusion, we find no infirmity in the impugned order dated 13.09.2023 passed by the learned Single Judge in

WP(C) No.5245/2023.

18. Consequently, the Writ Appeal stands dismissed. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant