

GAHC010237212015



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

Case No. : WP(C)/454/2015

SRI SUSANTA BORAH and 13 ORS
S/O SRI PRAHAT CH. BORA R/O BAHEK GAON P.O. POKAMURA P.S.
PULIBOR DIST. JORHAT, ASSAM.

2: SRI DEBAPRASANNA BORA
S/O LT. JOYGESWAR BORA R/O BORMOINAPORIA P.O. BORKHELIA DIST.
JORHAT
ASSAM.

3: SMTI. NANIMAI KHOUND BORA
W/O SRI MOHENDRA BORA R/O MUDAIBILL P.O. MUDAIBILL DIST.
JORHAT
ASSAM.

4: SRI DIGANTA BORA
S/O SRI TARUN BORA R/O RRL P.O. PORBOTIA DIST. JORHAT
ASSAM.

5: SRI DINA NATH KALITA
S/O SRI KONPAI KALITA R/O TEOK RAJABARI KUMAR GAON P.O. TEOK
RAJABARI DIST. JORHAT
ASSAM.

6: SRI LALIT CH. BORAH
S/O LT. BHUGESWAR BORA R/O KHANGIA GOAN P.O. TEKELA DIST.
JORHAT
ASSAM.

7: SRI PARAG SAIKIA
S/O SRI DIMBESWAR SAIKIA R/O BHOGAMUKH DULAKHARIA P.O.
BHONGAMUKH DIST. JORHAT
ASSAM.

8: SRI LABA GOWALA

S/O SRI BOGAI GOWALA R/O RANGAJAN NO. 4 MORNGI P.O. GOLAGHAT
DIST. GOLAGHAT
ASSAM.

9: SRI KRISHNA KAMAL DUTTA
S/O R/O ABHOYOURIA PO. BHAKATIDUAR DIST. JORHAT
ASSAM.

10: SRI NABIN KR. LIMBO
S/O SRI JONG BAHADUR LIMBOO R/O BORMURIA MIRI PATHAR P.O.
SAIKHUWAGHAT DIST. TINSUKIA
ASSAM.

11: SRI DEVARAJ CHETRI
S/O SRI BHAWANI CHETRI R/O BORMURIA P.O. SAIKHUWAGHAT DIST.
TINSUKIA
ASSAM.

12: SRI KUMAR SINGH CHETRI
S/O SRI NOR BAHADUR CHETRI R/O KHONIBARI P.O. BURABURI
SADIYA DIST. TINSUKIA
ASSAM.

13: SRI PRADIP TAMULI
S/O SRI GUNIN TAMULI R/O GOMARIGURI P.O. GOMARIGURI DIST.
JORHAT
ASSAM.

14: SRI HEMANTA SAIKIA
S/O SRI MAKHAN SAIKIA R/O SOLOGURI MAJGAON P.O. MADHAPUR
TAJGAON P.O. MADHAPUR TITABOR DIST. JORHAT
ASSAM

VERSUS

THE STATE OF ASSAM and 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE MISSION DIRECTOR

AXOM SARBA SIKSHA ABHIJAN

ASSAM
KAHILIPARA
GUWAHATI-19

Advocate for the Petitioner : MR.P J SAIKIA

Advocate for the Respondent : MR.S SARMA

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

20.01.2023

Heard Mr. P. J. Saikia, learned counsel for the petitioners. Also heard Mr. B. Gogoi, learned Standing Counsel for the Sarba Siksha Abhiyan, Assam representing the respondent No. 3 and Mr. N. J. Khataniar, learned Standing Counsel for the Elementary Education Department, Assam representing the respondent No. 1.

2. The petitioners are TET qualified candidates who took part in a selection process pursuant to an advertisement dated 21.09.2013, issued by the respondent No. 3, i.e. Mission Director, Sarba Siksha Abhiyan, Assam. The advertisement stipulates that the candidates are to give their 3 (three) numbers of preferred district where the candidates wants to render their service and such selection of district is made mandatory and without such information, the form was liable to be rejected.
3. The petitioners participated in the selection process and opted their preferred districts to be Cachar, Karimganj and Hailakandi. The petitioners belongs to Assamese medium.

4. The respondent authorities thereafter, published a provisional select list wherein the present petitioners got their names selected in respect of Karimganj district. Thereafter, the respondent authorities by a public notice dated 30.11.2013, intimated all the candidates that those candidates not belonging to Bengali/Hmar/Hindi/Manipuri medium and applied for the post of Assistant Teacher under SSA against advertisement dated 21.09.2013 in Cachar, Karimganj and Hailakandi districts, due to non availability of post in these districts is to submit their final preference of districts and such option was to be availed online from 3rd December to 6th December, 2013. However, the petitioners did not opted and change their preferred district pursuant to public notice dated 30.11.2013.
5. In the aforesaid backdrop, the petitioners could not be appointed against any post though they were provisionally selected.
6. Mr. Saikia, learned counsel for the petitioners while admitting that the petitioners failed to upload their preferences or adhere to timeline fixed by the public notice dated 30.11.2013, submits that as clause 23 of the advertisement provides that the SSA is having a right to appoint persons in those districts other than preferred districts, therefore, their cases may fairly be considered.
7. Per contra, Mr. B. Gogoi, learned Standing Counsel for the SSA, Assam, submits that the SSA has already been fair to the petitioners and similarly situated candidates and accordingly issued the public notice dated 13.11.2013 to enable those persons to change their preference. However, the present petitioners have failed to do so and for their failure, the SSA,

cannot be blamed and in the meantime, those posts were filled up.

8. Mr. Gogoi, learned Standing Counsel, further contends that in terms of the advertisement dated 21.09.2013, posts were contractual and at this point of time, it will not be possible to re-consider their cases inasmuch as the petitioners are having no vested and concluded right to get considered their names for appointment at this stage as they themselves have failed to adhere to the conditions required for selection and appointments.
9. This Court has given anxious consideration to the submissions made by the learned counsel for the parties.
10. The undisputed fact is that the petitioners were aware of the publication of notice dated 30.11.2013, however, admittedly they had failed to comply with such notice by giving their options/preference within stipulated time. The SSA through notice dated 30.11.2013, had clearly notified that there are no vacancies for candidates not belonging to Bengali/Hmar/Hindi/Manipuri medium in the district of Cachar, Karimganj and Hailakandi and therefore, those candidates who do not belong to the aforesaid categories/medium, were to change their preferred district. As the petitioners has not done the same within the stipulated period, which is part of the selection process and the advertisement itself specifically stipulates that giving preference is a must, the present petitioners cannot claim any vested and concluded right for their non appointment.
11. The Clause 23 of the advertisement dated 21.09.2013 also stipulates that those candidates who could not get selected in any of the three preferred district in order of merit, the SSA, Assam can appoint candidates in any of

the remaining 18 districts. It is the considered opinion of this Court that under such power, the SSA had issued the public notice dated 30.11.2013 inasmuch the present petitioners could not get selected against those three districts. However, a fresh option was given to them so that they can be accommodated in any other 18 districts. However, the petitioners had failed to exercise their right within a stipulated period.

12. Therefore, this Court is of the considered opinion that no writ of mandamus can be issued for their appointment in the given facts and circumstances of the present case.
13. Accordingly, the present writ petition is dismissed.

JUDGE

Comparing Assistant