

GAHC010239372022



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

Case No. : WP(C)/7694/2022

JAHNABI GOGOI
D/O. SRI SOMESWAR GOGOI, PRESENTLY RESIDING AT UTTARAYAN
VILLE, KAHILIPARA, GUWAHATI-781019, ASSAM. PERMANENT RESIDENT
OF MEGHDROOT PAPER AGENCY (IN FRONT OF DAILY MARKET) P.O.
NAMRUP, DIST. DIBRUGARH, ASSAM, PIN-786623.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE SECRETARY, GOVT. OF ASSAM, EDUCATION DEPT., DISPUR,
GUWAHATI-781005, ASSAM.

2:DIRECTOR OF HIGHER EDUCATION

GOVT. OF ASSAM
KAHILIPARA
GUWAHATI-781019
ASSAM.

3:PRINCIPAL

ARYA VIDYAPEETH COLLEGE
GUWAHATI-781016
DIST. KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR. A K RAY

Advocate for the Respondent : SC, HIGHER EDU

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

01.02.2023

Heard Mr. A K Ray, learned counsel for the petitioner and Mr. S Bhuyan, learned Standing counsel, Higher Education Department, Assam for the respondent Nos. 1 & 2.

Petitioner belonging to Other Backward Class (OBC) community obtained M.Sc. degree in Botany in the year 2016; passed State Level Eligibility Test, Assam in the year 2017; National Eligibility Test (NET) in the year 2018 and also enrolled herself for Doctorate of Philosophy in Science (Biological Science) under the CSIR- National Botanical Research Institute (CSIR- NBRI), Lucknow.

Pursuant to an Advertisement dated 16.02.2022 issued by the Principal of Arya Vidyapeeth College (Autonomous), Guwahati published in Assam Tribune, she applied for the post of Assistant Professor in Botany Department.

Finding her application form as proper and having the requisite eligibility, she was called for the said selection and to appear before the concerned selection board on 21.04.2022 along with other eligible candidates.

As she was duly selected by the concerned selection committee of said Arya Vidyapeeth College, Guwahati for the post of Assistant Professor of Botany pursuant to the said advertisement dated 16.02.2022, for which selection was held on 21.04.2022, the Principal of the said college submitted recommendation to the concerned selection committee as well as the approval of the governing body of the said college for appointment of the petitioner to the post of Assistant Professor of Botany as per Government Approval Roster Point No. 88 (reserved for OBC/MOBC) vice Mr. Dilip Chandra Sarma retired on 30.04.2017 on attaining the age of superannuation.

Petitioner submitted that she also applied for the post of Assistant Professor of Botany in J.B. College (Autonomous), Barpatra Ali, Jorhat and in the said selection after selecting her the Principal of J.B. College, Jorhat on being approved by the governing body of the said college on 28.03.2022 recommended her name to the

Director of Higher Education, Assam for her appointment as Assistant Professor of Botany in the said J.B. College, Jorhat.

As there was a telephonic call from the Office of the Directorate of Higher Education, Assam to select any one of those two colleges for her appointment, she on 02.09.2022 through e-mail informed the Directorate of Higher Education, Assam that she will join in Arya Vidyapeeth College, Guwahati, if the said Directorate is pleased to appoint her in that post.

Petitioner submitted that till date as she did not received any appointment order for the post of Assistant Professor of Botany in Arya Vidyapeeth College, Guwahati pursuant to the advertisement dated 16.02.2022, being aggrieved, she has preferred this writ petition on 28.11.2022 praying for a direction to the respondent authorities in the Higher Education Department of the State to appoint her as an Assistant Professor in the Department of Botany in Arya Vidyapeeth College, Guwahati, for which she has been duly selected.

During the deliberation of the matter, Mr. Bhuyan, Standing counsel, Higher Education Department placed a communication of the Director of Higher Education, Assam issued under No. DHE/CE/AC/N/S/117/2022/107 dated 06.01.2023, whereby it has been apprised that the Principal of Arya Vidyapeeth College, Guwahati submitted a proposal for appointment of Assistant Professor in the Department of Botany (Un-reserved) in favour of the petitioner, who was selected for the post as per Roster Point No. 88 (Reserved for OBC/MOBC) vide his letter No. AVC:Esstt./Apptt/2022/316 dated 05.05.2022.

The Director of Higher Education, Assam also apprised the Court that the said Principal of Arya Vidyapeeth College vide his letter No. AVC/Esstt/Court Case/2022/316 dated 14.12.2022 informed that there is a writ petition filed by Dr. Manjusha Dasgupta, which is presently pending for adjudication and since the matter is sub-judice, therefore the appointment to the post of Assistant Professor in the Department of Botany (Un-reserved) in favour of the petitioner has not been accorded subject to outcome of the same by the Hon'ble Court.

This writ petition was filed on 28.11.2022 and as on date, the Court have not issued notice to the respondents.

By order dated 02.12.2022, the respondents in the Higher Education Department, Assam were directed to apprise the court as to why the petitioner has not yet been appointed as an Assistant Professor of Botany in Arya Vidyapeeth College, Guwahati in terms of her selection with regard to the advertisement dated 16.02.2022 and the Director of Higher Education vide its communication dated 06.01.2023 apprised the Court that since the matter is sub-judice before the Court, the said authority has not accorded the appointment of the petitioner.

The Assam College Employees (Provincialisation) Rules, 2010 being framed under Section 12 (1) of the Assam College Employees (Provincialisation) Act, 2005 have a statutory force.

In pursuance of Rule 5 (2) of said 2010 Rules, the post of Lecturer in a provincialised college is required to be filled up by direct recruitment with prescribed qualifications through open advertisement in two leading dailies at least in two consecutive issues and further, Rule 7 of said 2010 Rules provides that the Governing body of the college shall conduct the selection process and shall make recommendation to the Director, who shall issue orders of appointment.

Rule 7 of said 2010 Rules provides as follows-

“Direct Recruitment.-

- (a) All appointment either by direct recruitment or by promotion shall be made by the Director on the basis of recommendations of the Governing Body based on the recommendations of the Selection Committee/ Departmental Promotion Committee duly constituted.*
- (b) The Director shall communicate his orders within thirty days;*
- (c) The Selection Committee may hold such test of interview for all posts as may be considered necessary. For posts for which*

UGC has prescribed norms, no candidate shall be recruited without having the required norms;

(d) All fresh appointments shall be made on receipt of police verification report."

Since the Court have not yet issued any notice in this writ petition and only asked the Director of Higher Education of the State to apprise the Court the reasons for non-appointment of the petitioner to the post of Assistant Professor of Botany in Arya Vidyapeeth College, Guwahati who has already been selected by the concerned selection committee and her selection was already recommended by the Governing Body of the said college pursuant to the advertisement dated 16.02.2022, it is now the Director of Higher Education, Assam to accord necessary approval and appointment to the petitioner, following the provisions of said statutory 2010 Rules, if there are no other impediments in issuing the same.

Otherwise the case of the petitioner at this stage is premature, since the petitioner have the right to challenge any such decision of the Director of Higher Education, Assam, if someone else is appointed disregarding her selection to the post of Assistant Professor of Botany in Arya Vidyapeeth College, Guwahati.

With the above observation, this writ petition stands disposed of.

Copy of the communication dated 06.01.2023 of the Director of Higher Education, Assam placed before the Court today by Mr. S Bhuyan, learned Standing counsel, Higher Education Department be kept as part of the record.

JUDGE

Comparing Assistant