

GAHC010249082018



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

Case No. : WP(C)/7720/2018

ARIF UDDIN
S/O MD. ALAL UDDIN
R/O VILL- MOHKHULI, P.O. MOHKHULI
P.S. NAGAON SADAR
DIST. NAGAON, ASSAM.

VERSUS

THE GOVERNMENT OF ASSAM AND 4 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, EDUCATION
(SECONDARY) DEPARTMENT, DISPUR, GUWAHATI- 06.

2:THE DIRECTOR OF SECONDARY EDUCATION DEPARTMENT

KAHILIPARA
GUWAHATI-19
ASSAM.

3:THE INSPECTOR OF SCHOOLS

NAGAON DISTRICT CIRCLE

DIST. NAGAON
ASSAM
PIN - 782001.

4:THE HEADMASTER
MOHKHULI SWAHID ANIL BORA MEMORIAL HIGH SCHOOL
P.O. MOHKHULI
P.S. NAGAON SADAR

DIST. NAGAON

ASSAM
PIN - 782001.

5:THE SCHOOL SELECTION COMMITTEE

REP. BY ITS MEMBER SECRETARY OF SCHOOL SELECTION COMMITTEE
OF MOHKHULI SWAHID ANIL BORA MEMORIAL HIGH SCHOOL
P.O.MOHKHULI
P.S. NAGAON SADAR

DIST. NAGAON
ASSAM- 782001

Advocate for the Petitioner : MR. P SAIKIA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 26-09-2023

Heard Mr. B. Gogoi, learned counsel for the petitioner and Mr. B. Kaushik, learned counsel for the respondents No. 1 to 3, being the authorities in the Secondary Education Department. Although the learned counsel Mr. B. Chanda appears for the respondents No. 4 and 5, but at the time of the matter being heard none appears.

2. The writ petitioner Arif Uddin participated in a selection process pursuant to an advertisement dated 10.12.2015 of the Headmaster of Moukhuli Swahid Anil Bora Memorial High School. The selection was made by the selection committee dated 17.12.2015 and the result sheet of the interview was prepared by the selection committee on 31.01.2016 and the SMDC in its resolution dated 08.03.2016 had approved the selection which was in favour of the writ petitioner Arif Uddin. Some of the unsuccessful candidates lodged a complaint

dated 20.06.2016 that there were some procedural irregularities in the selection that was made. The unsuccessful candidates instituted WP(C) No. 4219/2016 and on the other hand, on the basis of the selection that had been approved in the favour of the writ petitioner, the writ petitioner instituted WP(C) No. 4896/2016 seeking a direction that he be appointed. The writ petition WP(C) No. 4219/2016 was dismissed by the order dated 07.03.2018 by allowing the petitioners therein to submit a representation before the authorities. In view of the order dated 07.03.2018 in WP(C) No. 4219/2016, the writ petition by the writ petitioner Arif Uddin being WP(C) No. 4896/2016 was dismissed on being infructuous.

3. The result of the liberty granted to the petitioners in WP(C) No. 4219/2016 to file a representation resulted in the order dated 14.06.2018 of the Inspector of Schools, Nagaon. The Inspector of Schools in its order dated 14.06.2018 arrived at a conclusion that the evaluation by the selection committee in respect of some of the answer scripts was done in a casual manner and certain marks in some of the answer scripts were left to be later on added by the examiner. In the circumstance, the Inspector of Schools formed a view that the approval of the appointment of the writ petitioner Arif Uddin cannot be acted upon. Being aggrieved, the present writ petition WP(C) No. 7720/2018 has been instituted.

4. While hearing the matter on 08.12.2020, it was taken note of that on one hand the order of the Inspector of Schools dated 14.06.2018 provided that the selection was made in a casual manner whereas while the matter was being heard, a communication dated 19.02.2020 of the subsequent Inspector of Schools addressed to the Director of Secondary Education Department, Assam was made available before the Court which provided that the selection process adopted was as per rules and guidelines. In the circumstance, as because two

contrary views were expressed by two Inspectors of Schools, we required the later Inspector of Schools namely, Sri Probin Ch. Sarma to file a personal affidavit explaining his stand as to why he stated in the communication dated 19.02.2020 that the selection process was done as per rules.

5. Consequent thereof, an affidavit dated 03.09.2021 had been filed by Sri Probin Ch. Sarma, the relevant portion of which is extracted as below:

“9. That the answering deponent begs to state that as per Hon’ble High Court’s direction dated 07.03.2018 as well as on the basis of representation submitted by Arif Uddin, the then Inspector of Schools, Nagaon passed the order dated 14.06.2018 vide letter Memo No. IS/NDC/APP/WP(C)4219/2016/3891, whereby selection/approval of the petitioner was rejected on the ground that scrutiny was conducted by the Headmaster in a casual manner and without informing the Selection Committee. The said order of the Inspector of Schools, Nagaon has been put to challenge in the connected writ petition.

10. That the answering deponent after going through the letter dated 5.1.2019 issued by the office of the Director of Secondary Education, Assam, he verified the entire hearing records of the case and found that the earlier Inspector of Schools, Nagaon inquired the matter by conducting personal hearing in his office Chamber on 2 (two) dates i.e. 12.07.2018 and 14.07.2018. The earlier Inspector of Schools, Nagaon heard all the members of the School Selection Committee along with the supervisor of the interview Board. Statements were recorded from all concern. The undersigned found that all the members of the Selection Committee more or less supported the selection of Arif Uddin and declared that the interview was conducted in a strict manner. The Inspector of Schools, Nagaon heard the Headmaster of the School, examiners, supervisor, President, Vice President and Members of the Selection Committee etc. and all the members gave statement to the effect that there was no any irregularity in the interview process”.

6. A reading of the provisions in paragraphs 9 and 10 of the affidavit dated 03.09.2021 makes it discernible that according to the later Inspector of Schools, the earlier Inspector of Schools had rejected the selection of the petitioner in a casual manner without informing the selection committee and further that the earlier Inspector of Schools, Nagaon had heard all the members of the school selection committee along with the supervisor of the interview board and found

that all the members of the selection committee, more or less, supported the selection of the writ petitioner and declared that the interview was conducted in a strict manner.

7. Mr. B. Kaushik, learned counsel for the respondents in the Secondary Education Department on the other hand, refers to the order dated 14.06.2018 of the earlier Inspector of Schools to justify that the selection was not done in a proper manner. The contents of the order dated 14.06.2018 which is under challenge in the writ petition, without any further material support cannot be accepted to be the basis that the selection was not done in a proper manner. However, Mr. B. Kaushik, learned counsel for the respondents in the Secondary Education Department also refers to the statement of the Headmaster of Moukhuli Swahid Anil Bora Memorial High School which was taken on 14.07.2016 to justify that even the Headmaster had formed a view that the selection was not done in a proper manner. The statement of the Headmaster relied upon by Mr. B. Kaushik is extracted as below:

“Statement

Witten examination for the post of LDA of Mohkhuli Swahid Anil Bora Memorial High School was held in presence of the Selection Committee and Supervisor as per the rules and departmental guidelines. Some mistakes were notice in the evaluation process even though the answer scripts were thoroughly examined by the examiner. I have to correct those during the time of scrutiny.

For example, answer script of Roll No. 29, 5 marks were left out to add in English subject and during scrutiny it was detected and accordingly corrected. The same was happen in Mathematics subject wherein marks were properly putted in the answer scripts but 7 marks have not been added in top page. Therefore, the concerned examiner was directed to add the said marks in present of supervision and accordingly same have been added by the examiner. On the other hand, in G.K. paper one question in last page was skipped by the examiner. Therefore, I mark added in G.K. subject against that answer.

On the other hand in Roll No. 32, 1 mark was deducted due to awarding mark against a wrong answer. 2 marks in English and 2 marks

in Assamese subject were deducted and corrected in presence of Supervisor. In Roll No. 30, 3 marks were left out in total calculation in Mathematics subject and same has been awarded and corrected. Again 2 marks were added in English subject and being a Headmaster after proper scrutiny in G.K. portion marks were awarded against two questions which were not evaluated."

8. A reading of the statement of the Headmaster makes it discernible that in the selection process in respect of one candidate bearing Roll No. 29, 5 marks were not added in the English subject and accordingly it stood corrected upon being detected. The identity of the candidate bearing Roll No. 29 is not revealed in any manner as to who was that candidate and there is no material to show that it was the writ petitioner who was given undue marks without being justified. In respect of another answer script in the Mathematics subject, 7 marks across the board were not added in the top page and the examiner had done necessary correction which again shows that the benefit was given to all the candidates and not confined to the writ petitioner. In the G.K. paper, the examiner had not examined one of the questions in the last page and therefore the marks for the G.K. paper were also added.

9. The statement of the Headmaster does not make it discernible that any undue benefit was given to the writ petitioner to support his selection whereas certain corrections as deemed appropriate were being incorporated. If the corrections that were made did not favour the petitioner or any other particular candidate in any manner, but it was done across the board to make a correct evaluation, the stand of the Inspector of Schools in the impugned order dated 14.06.2018 that the selection itself has to be rejected because some answer scripts were later on evaluated and added by the examiner cannot be acceptable. The later Inspector of Schools Sri Probin Ch. Sarma is categorical and candid enough that he had undertaken a complete review of the selection including hearing all the members of the selection committee of their view and

the members of the selection committee were unanimous that the writ petitioner Arif Uddin was the selected candidate.

10. If the writ petitioner Arif Uddin was the selected candidate in the selection process and certain corrections were incorporated by the authorities and the materials on record do not show that the corrections meted any undue favour to the writ petitioner for his selection, we are of the view that it would be arbitrary and inappropriate to deny the writ petitioner the benefit of the selection which he had earned through the selection process.

11. Accordingly, the impugned order dated 14.06.2018 is set aside and the respondents in the Secondary Education Department are directed to bring the selection of the writ petitioner Arif Uddin to its logical consequence by issuing necessary appointment order, if otherwise he is entitled and fit for the purpose.

Writ petition stands allowed as indicated above.

JUDGE

Comparing Assistant