

GAHC010258702018



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

Case No. : WP(C)/8186/2018

SANKAR DAS
S/O- LT SHIVASARAN DAS, R/O- 2 NO. DAKUAPARA, P.O. BOKO, DIST-
KAMRUP, ASSAM, M.NO. 9706351808

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY., EDUCATION (HIGHER) DEPTT.,
SACHIVALAYA, DISPUR, GHY-6, KAMRUP (M), ASSAM

2:THE DIRECTOR
HIGHER EDUCATION
ASSAM
KAHILIPARA
GHY-19
DIST- KAMRUP (M)
ASSAM

3:THE PRINCIPAL
J.N.COLLEGE
BOKO
DIST- KAMRUP
ASSAM
PIN- 781123

4:THE COMMISSIONER AND SECREATARY
FINANCE DEPARTMENT
GOVERNMENT OF ASSA

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : SC, EDU

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

10.05.2023

Heard Mr. A. Deka, learned counsel for the petitioner. Also heard Mr. S. Das, learned Standing Counsel for the Higher Education Department appearing for the respondent nos. 1 & 2, Mr. B. Das, learned counsel appearing for the respondent no. 3 and Mr. A. Chaliha, learned Standing Counsel for the Finance Department (respondent no. 4).

2. By filing this application under Article 226 of the Constitution of India, the petitioner has prayed for a direction to the Director of the Higher Education, Assam (respondent no. 2) to grant approval for the appointment of the petitioner on his selection for the post of Grade-IV, as approved and confirmed by the governing body of the J.N. College, Boko, vide Resolution No. 3.1 taken in its meeting held on 15.11.2014. The basic facts which are not disputed is that the petitioner was appointed as a contractual Grade IV staff in the said J.N. College, Boko. The said post was advertised for being filled up on 15.09.2014 and as per the advertisement, one post was reserved for OBC/MOBC candidate. The petitioner who is an OBC candidate was selected for appointment.

3. The Resolution taken by the governing body along with a proposal for approval of the appointment of the petitioner was sent to the competent authorities of the Higher Education Department on 19.11.2014 which was

followed by several reminder dated 26.08.2016, 15.11.2016, 15.05.2017, the approval was not received. The petitioner projects that out of the said advertisement, the appointment of one Dharmaraj Rabha was approved on 24.08.2015. It is submitted that although the petitioner is working in the said College, he has not received his salary from the date of appointment till his dismissal from service w.e.f. 21.09.2018 by virtue of a letter dated 20.09.2018 issued by the Principal, J.N. College, Boko. It is submitted that while removing the petitioner from service, no proceedings were drawn up and the petitioner was removed from service without giving him an opportunity of being heard.

4. The learned Standing Counsel for the Higher Education Department has referred to the affidavit-in-opposition filed by the Director of Higher Education and it is submitted that at the time of appointing the writ petitioner, prior approval from the Finance (SIU) Department was not obtained which is pre-requisite before approval is granted by the Higher Education Department. The learned Standing Counsel for the Finance Department has submitted that it is the policy of the State that the first salary is released by the Finance (SIU) Department so that record of lawful appointments made by the State is maintained.

5. It is submitted that only after the first disbursement of salary is made by the Finance (SIU) Department, the concerned Treasury would release any other payment to be made to the employee. It is submitted that there is nothing on record to show that the Finance (SIU) Department of the State was apprised of such appointment or any request or any proposal for approval was pending before the Finance (SIU) Department.

6. Having regard to the submission made by the learned Standing Counsel for the Finance Department, this Court is of the considered opinion that it would be appropriate to direct the Director, Higher Education Department to take note of the request made by the Principal of the J.N. college, Boko regarding approval of the appointment of the petitioner pursuant to advertisement. The Director of Higher Education, Assam shall also take note of permission for advertisement granted vide letter under Memo No. G(B)AC/Per/140/2011/33 dated 16.08.2012 in respect of Grade IV post reserved for OBC / MOBC and move the competent authorities in the Finance (SIU) Department for granting an approval.

7. It is provided that the Director of Higher Education Assam, shall, within 21 days from the date of receipt of a certified copy of the order, take necessary inter-Departmental steps to verify the appointment of the petitioner and within a period of one week thereafter, move the Finance (SIU) Department for approval. It is also provided that in the event, any inter departmental clarification is required, it would be appropriate that the competent authorities in the Higher Education Department and Finance (SIU) Department and or any other Department who are required to be consulted, shall have a joint meeting through its nominated representatives so as to enable them to take a decision on the request made by the Principal J.N. College Boko to approve the appointment of the petitioner, namely, Sankar Das in Grade IV post of J.N. College, Boko, reserved for OBC/ MOBC candidate. The issue relating to the approval or otherwise of appointment of the petitioner would be decided and communicated to the petitioner as well as the Principal, J.N. College, Boko within an outer period of three months from the date of receipt of certified copy

of the order by the Director of Higher Education Assam (respondent no. 2). Liberty is granted to the respondent authorities to apply for extension of time, if necessary, by showing cause before this Court.

8. In the meanwhile, the learned Standing Counsel for the Higher Education Department, Finance Department as well as counsel for the College shall send a downloaded copy of this order to the concerned authorities as an advance information.

9. This writ petition stands disposed of with aforesaid observations.

JUDGE

Comparing Assistant