

GAHC010259992017



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

Case No. : WP(C)/564/2017

ZINNATARA ISLAM
W/O FIRDOUSH UL ZANNAT, R/O FLAT NO.51S2, PUB-SARANIA, BYE LANE
NO.6, H/NO.5, P.O. CHANDMARI, GHY-3, DIST- KAMRUP METRO, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
EDUCATION SECONDARY DEPTT., DISPUR, GHY-6

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE INSPECTOR OF SCHOOLS
NALBARI DISTRICT CIRCLE
DIST- NALBARI
ASSAM

4:THE CHAIRMAN
DISTRICT LEVEL APPROVAL COMMITTEE
NALBARI
DIST- NALBARI
ASSAM

5:THE PRINCIPAL I/C
CHAMATA H.S. SCHOOL
P.O. CHAMATA
DIST- NALBARI

ASSAM
PIN-78130

Advocate for the Petitioner : MS.S GOHAIN

Advocate for the Respondent :

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

ORDER

Date : 28.04.2023

Heard Mr. Y.S. Mannan, learned counsel for the petitioner. Also heard Mr. R. Mazumdar, learned standing counsel for the Secondary Education Department.

2. In brief, the case of the petitioner is that she is otherwise qualified for being selected and appointed as a subject teacher in Chemistry having Master Degree in Chemistry with B.Ed. degree and she has also successfully cleared the TET Examination held on 08.02.2014. Pursuant to notice dated 15.11.2014, issued by the Director of Secondary Education, Assam, the petitioner had offered her candidature for the post of subject teacher in Chemistry in Chamata Higher Secondary School, Nalbari. The name of the petitioner appeared at Sl. No.3 of the select list dated 14.09.2015. It is projected that the appointment of the person at Sl. No.1 of the panel/select list could not be made as there was anomaly in B.Ed. certificate. Therefore, although the name of the person at Sl. No.1 of the panel/select list was approved, the appointment could not be made and therefore, the person whose

name appeared in Sl. No.2 of the panel/select list was given the approval for appointment. However, the said person did not join the post of subject teacher in Chemistry. Therefore, as nothing was done with regard to the request of the petitioner for providing approval and appointment to the said post, the petitioner approached this Court by filing WP(C) 6565/2015. The said writ petition was disposed of by order dated 16.10.2015 with the following direction:

“Without expressing any opinion on the merit of the recommendation, this writ petition is disposed of directing the Director of Secondary Education, Assam to consider and take a decision on the letter of recommendation dated 19.09.2015 (Annexure-K) within a period of 3 (three) weeks from the date of receipt of the certified copy of this order as the validity of select list is going to expire on 30.11.2015.

The petitioner may obtain a certified copy of this order and produce the same before the Director of Secondary Education, Assam for his doing the needful in terms of the order.”

3. As the hereinbefore referred order dated 16.10.2015 was not complied with, the petitioner had approached this Court by filing Cont.Cas(C) no. 250/2016. It is projected that during the pendency of the contempt petition, direction was issued by the Director of Secondary Education, Assam (respondent no.2) to place the matter before the District Level Approval Committee and submit a report. Thereafter, by the impugned order dated 23.05.2016, the candidature of the petitioner was rejected by the respondent no.2 by holding that no approval report had been received from the Inspector of Schools, Nalbari District Circle till date and that the select/panel list had expired by lapse of 1 (one) year from the date of preparation of such panel/select list. Accordingly, the petitioner has filed this writ petition under Article 226 of the

Constitution of India to assail the impugned order dated 23.05.2016, passed by the Director of Secondary Education, Assam (respondent no.2).

4. The learned counsel for the petitioner has submitted that as the petitioner has approached this Court within the validity of the select/panel list, it is not open to the respondent authorities to reject the candidature of the petitioner on the ground that the validity of the select/panel list has expired. In this connection, the learned counsel for the petitioner has referred to the cases of (1) *K. Dhananjay Singh v. State of Manipur, 2011* (2) *GLT 510*, (2) *Md. Maidul Ihsam v. State of Assam, 2003* (3) *GLR 691*, and (3) *State of J&K & Ors. v. Sat Pal, (2013) 11 SCC 737*.

5. Per contra, the learned standing counsel for the Secondary Education Department has opposed the prayer made in this writ petition by extensively referring to the affidavit-in-opposition filed by the respondent no.2 on 04.05.2019. It is submitted that though the name of the petitioner was enlisted in the 3rd position in the select/panel list, but as her name was not recommended by the District Level Approval Committee at the relevant point of time, the petitioner could not be appointed as Post Graduate Teacher in Chemistry in Chamata H.S. School. By referring to the statement made in paragraph 7 of the affidavit-in-opposition filed by the respondent no.2, it was submitted that the approval accorded during 2013-14 for appointment of Post Graduate Teacher had already expired on 31.03.2016 and as the competent authority did not extend the validity of such select/panel list, the petitioner could not be appointed. It is submitted that although direction was issued by the respondent no.2 to the Inspector of Schools, Nalbari (respondent no.3) to place

the matter in the District Level Approval Committee for their recommendation and to submit a report, but as the approval and report of the Inspector of Schools was not received by the respondent no.2, no case is made out for appointment of the petitioner in the said post. It is submitted that the petitioner cannot get the benefit in this case and she would not be entitled to be offered appointment on the ground that the School Selection Committee of Chamata H.S. School had not followed any proper procedure in selection process for the post of subject teacher in Chemistry.

6. Considered the materials available on record as well as the submissions made by both sides.

7. The Court finds that the decision cited by the learned counsel for the petitioner makes it abundantly clear that as the petitioner had approached this Court during the validity of the select/panel list, it would not be open to the respondent authorities to take a plea that the validity of the said select list had expired.

8. Paragraph 26 of the case of *K. Dhananjay Singh (supra)* is extracted below:

“(26) This Court in Lourembam Ibemhal Devi Vs. State of Manipur: 2000 (3) GLT 545, Kh. Robindro and Ors. Vs. State of Assam and Ors., 2001 (2) GLT 26; Akoijam Dorendro Singh and Ors. Vs. State of Manipur and Ors., 2006 (Suppl.) 1 GLT 461 and also the Hon'ble Apex Court in State of U. P. Vs. Ram Swarup Saroj, (2000) 3 SCC 699 held that the claim of a candidate included in a panel cannot be defeated merely because the currency of the panel expired during the pendency of the litigations when there are vacancies available for making appointment. The Apex Court is of the similar view in Vijay Kumar Sharma and Ors. Vs. Chairman, School Service Commission and Ors., (2001) 4 SCC 289 that there cannot be denial of appointment

to the selected candidates merely on the ground that the currency of the penal list expired when the vacancies are still existing.....”

9. Paragraph 17 and 18 of the case of *Sat Pal (supra)* is extracted below:

“17. It gives us no pleasure to record that the State is not an adversary, and ought not have behaved in the manner it has chosen in the facts and circumstances of this case. In the first instance, it failed to even file a response before the High Court, to the writ petition preferred by the respondent Sat Pal. The matter could have been adjudicated on merits, had the High Court chosen to do so. In order to ensure that justice to the respondent was not delayed, the High Court considered it just and appropriate to direct the appointing authority to consider the claim of the respondent, consequent upon Trilok Nath having declined to join the post of Junior Engineer (Civil) Grade-II. Mainly because, the respondent Sat Pal had approached the High Court for relief, the appellants rejected his claim for wholly unreasonable grounds. Rather than focusing on the merits of the claim raised by respondent Sat Pal, the appellants chose to initiate proceedings which would deviate the legal process from the merits of the claim of respondent. Had we issued notice to respondent Sat Pal based on the technical pleas raised by the appellants, the respondent Sat Pal may not even have been in a position to defend himself before this Court. Litigation before this Court, is an expensive proposition. A poor scheduled caste candidate cannot be subjected to unnecessary harassment at the hands of the mighty State. It is for the aforesaid reasons, that the instant order is being passed, for doing complete justice in the instant cause.

18. In view of the factual and legal position discussed by us hereinabove, we are of the view, that in the facts and circumstances of this case, it would be just and appropriate to direct the appellants to appoint the respondent Sat Pal against the post of Junior Engineer (Civil) Grade-II. The aforesaid offer of appointment will relate back to the permissible date contemplated under the rules laying down conditions of service of the cadre to which the respondent Sat Pal will be appointed. Naturally, the respondent will be entitled to seniority immediately below those who were appointed from the same process of selection. Since Sat Pal has not discharged his duties, he would be entitled to wages only with effect from the date of the instant order.”

10. Therefore, in respect of the issue raised regarding the validity of the select/panel list, under the facts and circumstances of this case, the Court is inclined to hold that the provision of Clause 12 of Rule 8 of the Assam Secondary Education (Provincialisation) Service Rules, 2003 would not be

operative owing to the fact that during the validity of the select list, the petitioner had approached this Court by filing WP(C) 6565/2015 and this Court by order dated 16.10.2015 had disposed of the writ petition by directing the respondent no.2 to consider and take an appropriate decision on the recommendation of respondent no.3 conveyed by letter 19.09.2015 within a period of 3 (three) weeks. This was followed by filing of Cont.Cas(C) 250/2016 and when the candidature of the petitioner was rejected by the impugned order dated 23.05.2016, the petitioner has approached this Court by filing this writ petition on 30.01.2017.

11. Therefore, in view of the ratio laid down in the cases cited by the learned counsel for the petitioner, the Court is inclined to hold that the petitioner has approached the Court within the validity of the select list and therefore, the select list cannot be said to have been lapsed under the facts and circumstances of this case.

12. Insofar as the issue of non-availability of the approval by the District Level Approval Committee of Nalbari district is concerned, it is seen that this Court by order dated 16.10.2015, passed in WP(C) 6565/2015, had directed the respondent no.2, i.e. the Director of Secondary Education, Assam to consider and take a decision on the letter of recommendation dated 19.09.2015. Under such circumstances, it was the duty of the respondent no.2 to take a decision. If despite direction by the said authority to the subordinate officer, i.e. the Inspector of Schools, Nalbari District Circle (respondent no.3) to place the matter before the District Level Approval Committee, there was a disobedience to the said order, the respondent no.2 ought to have pursued the matter so as

to ensure that his orders/directions as contained vide Order No. GB-EST/DSE/CC/293/2015/14, dated 14.03.2016 are complied with. Being a superior officer to the Inspector of Schools, Nalbari District Circle, the respondent could have exercised the powers vested on him to ensure compliance of his order.

13. Therefore, if the Inspector of Schools, NDC, Nalbari has not complied with the directions contained in the order dated 14.03.2016 by the Director of Secondary Education, Assam, this was a clear case of willful and deliberate inaction on part of the respondent authorities to comply with the said order dated 14.03.2016, which is a clear cut case of non-compliance of the order of this Court dated 16.10.2015, passed in WP(C) 6565/2015. Therefore, the Court is of the considered opinion that had the respondent nos.2 and 3 not shirked to perform their duty on time, this litigation could have been avoided. Therefore, as the respondent authorities did not comply with the order of this Court dated 16.10.2015, passed in WP(C) 6565/2015, they cannot be allowed to take shelter of non-granting of approval by the District Level Approval Committee so as to deny justice to the petitioner.

14. Under the circumstances, the non-granting of approval by the District Level Approval Committee would not preclude the Court to hold that the petitioner, whose name appeared at Sl. No.3 of the select/panel list prepared on 14.09.2015, had an indivisible right to be offered approval by the District Level Approval Committee for appointment as subject teacher in Chemistry at Chamata H.S. School. The District Level Approval Committee cannot have an independent choice of not granting their approval to the candidature of the

petitioner during the validity of the select list save and except if they find that the petitioner was otherwise not qualified. Hence, the withholding of the approval by the District Level Approval Committee and rejection of the candidature of the petitioner by the respondent no.2 vide impugned order dated 23.05.2016 is deprecated and disapproved.

15. Accordingly, the Court is inclined to direct the respondent no.2, i.e. the Director of Secondary Education, Assam, to ensure that his Order No. GB-EST/DSE/CC/293/2015/14, dated 14.03.2016, is brought to its logical conclusion within a period of 1 (one) month from the date of service of certified copy of this order. In this regard, the Director of Secondary Education, Assam shall also issue a supplementary direction to the District Level Approval Committee not to reject the candidature of the petitioner on the ground that the select/panel list had expired and therefore, the appointment of the petitioner shall refer back to the select/panel list prepared on 14.09.2015.

16. Insofar as the ground taken by the learned standing counsel for the Secondary Education Department that the School Selection Committee of Chamata H.S. School have not followed any proper procedure in selection process for the post of subject teacher in Chemistry is concerned, the said ground does not appear to hold any water because such an objection was never raised when approvals were granted and offer of appointment was made in respect of the persons whose names appeared in Sl. No.1 and 2 of the said select/panel list. Therefore, the Court does not find any merit in the said stand taken by the respondent no.2 in paragraph 11 of their affidavit-in-opposition, and such contention is rejected.

17. In view of the discussions above, the writ petition stands allowed and the Court passes the following-

O R D E R

- a. The impugned Order No. GB-EST/DSE/CC/293/ 2015/24, dated 23.05.2016, issued by the Director of Secondary Education, Assam (respondent no.2) is set aside and quashed.
- b. As a consequence of setting aside the said impugned order dated 23.05.2016, it is provided that qua the petitioner, the select/panel list dated 14.09.2015 in respect of subject teacher in Chemistry of Chamata H.S. School stands revived/restored.
- c. The respondent no.2, i.e. the Director of Secondary Education, Assam shall issue a supplementary direction to ensure that its hereinbefore referred order dated 14.03.2016 would be brought to its logical conclusion within a period of 1 (one) month from the date of service of certified copy of this order before the Director of Secondary Education, Assam. The said authority shall also issue a supplementary direction to the Inspector of Schools, NDC, Nalbari as well as the District Level Approval Committee, Nalbari that in view of this order, the candidature of the petitioner should not be rejected on the ground that the validity of the list has lapsed in as much as the Court has restored the said select/panel list dated 14.03.2016 qua the petitioner.
- d. If the matter is not brought to its logical conclusion within an

outer period of 60 (sixty) day from the date of service of the certified copy of this order in the office of the respondent no.2, the Secondary Education Department represented by the Director of Secondary Education shall become liable to pay compensation to the petitioner at the rate of Rs.50,000/- per month or part thereof till this issue is brought to its logical conclusion. The State shall be at liberty to recover such money from the salary of the concerned official/staff who is found guilty of delay and laches.

18. As this order has been passed under the unique facts and circumstances of this case, the Court is inclined clarify that the restoration of the select list shall not be treated as a precedent for any future matter.

19. Parties are left to bear their own cost.

JUDGE

Comparing Assistant