

GAHC010243032023



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

Case No. : WP(C)/6992/2023

BIPUL CHANDRA TALUKDAR
S/O FATIK TALUKDAR R/O VILL. GOSAIKHAT P.O. KALITAKUCHI P.S HAJO
DIST. KAMRUP RURAL ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP BY THE SECRETARY TO THE GOVT OF ASSAM SECONDARY
EDUCATION DEPTT DISPUR GUWAHATI 6

2:THE SECRETARY
GOVT OF ASSAM MEDICAL AND RESEARCH DEPTT DISPUR GUWAHATI 6

3:THE SECRETARY
STATE LEVEL RECRUITMENT COMMISSION FOR GRADE IV POST ASSAM
ADMINISTRATIVE STAFF COLLGE JAWAHARNAGAR GUWAHAT 22

4:THE DIRECTOR
ELEMENTARY EDUCATION ASSAM KAHILIPARA GUWAHATI 19

5:THE DIRECTOR
MEDICAL EDUCATION ASSAM KHANAPARA GUWAHATI 22

6:THE PRINCIPAL CUM CHIEF SUPERINTENDENT
GAUHATI MEDICAL COLLEGE AND HOSPITAL BHANGAGARH GUWAHATI
32

7:THE PRINCIPAL SECRETARY
GOVT OF ASSAM PERSONNEL DEPTT DISPUR GUWAHATI

Advocate for the Petitioner : MR R S CHAUHAN

Advocate for the Respondent : SC, HEALTH

Linked Case : WP(C)/6897/2023

DULAL HAZARIKA AND 4 ORS
S/O- LATE DIGESHWAR HAZARIKA

R/O- TEKELA

P.O- TEKELA GAON
PULIBOR

DIST- JORHAT
ASSAM
PIN-785616

2: LILIMA SAHARIA
W/O- LATE MILAN SAHARIA

R/O- VILLAGE NO-1 BHUTIACHANG

P.O- PANERI
DIST- UDALGURI
ASSAM
PIN-784523

3: PHULUNG NARZARY
W/O- BHAGADATTA NARZARY

R/O- H.NO- 28
VILL- NORTH ROWMARI

P.O- KHAGRABARI
DHALIGAON
DIST- CHIRANG
ASSAM

PIN-783380

4: DIPANKAR SAIKIA
S/O- KAILASH SAIKIA

R/O- GORUAMARI.NO- 2
DOLAMURI GAON CHACHANI

NAHARKATIA

DIST- DIBRUGARH
ASSAM

PIN-786610

5: KUNDIL CHUTIA
S/O- KIRTI CHUTIA

R/O- DOOMOR DOLONG

MORANHAT
DIST- CHARAIDEO
ASSAM

PIN-785670
VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
ELEMENTARY EDUCATION DEPARTMENT DISPUR
GUWAHATI
ASSAM
PIN-781006

2:THE DIRECTOR
OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 19.
3:THE DIRECTOR OF MEDICAL EDUCATION

SIXMILE KHANAPARA
GUWAHATI
ASSAM
PIN-781022

4:THE STATE LEVEL COMMISSION FOR CLASS IV POSTS
REP. BY ITS SECRETARY
ASSAM ADMINISTRATIVE STAFF COLLEGE
JAWAHAR NAGAR
KHANAPARA
GUWAHATI
ASSAM
PIN-781022

Advocate for : MR S BORTHAKUR

Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 08.12.2023

Heard Mr. R.S. Chauhan, learned counsel for the petitioner in WP(C) No. 6992/2023 and Mr. S. Borthakur, learned counsel for the petitioners in WP(C) No. 6897/2023. Also heard Mr. S.M.T. Chistie, learned counsel for the respondents in the Secondary Education Department; Mr. B. Kaushik, learned counsel for the respondents in the Elementary Education Department; Mr. B. Gogoi, learned counsel for the respondents in the Health Department; Mr. B. Choudhury, learned counsel for the respondents in the State Level Recruitment Commission for Grade-IV post and Ms. D.D. Barman, learned Addl. Senior Government Advocate for the respondents in the Personnel Department.

2. In these writ petitions, an order dated 30.05.2023 of the Director of Elementary Education, Assam is assailed, the first paragraph of which is extracted as below:

“In pursuance of Govt. in Personnel Department, Assam reports, the appointment orders of the following candidates recommended by “the State Level Recruitment Commission for Class-III and Class-IV posts” in different categories of posts are hereby kept on hold till a final outcome is received regarding their credentials/status of disability. The candidates will be allowed to join in their respective places of posting only after clearance from the Govt. in Personnel Department, Assam.”

3. A reading of the afore-extracted paragraph of the order dated 30.05.2023 makes it discernible that the Government in the Personnel Department had put on hold the appointment orders of the candidates recommended by the State

Level Recruitment Commission for Class-III and Class-IV posts in different categories till the final outcome is received regarding their credentials/status as disabled candidates and that the candidates will be allowed to join their respective places of posting only after clearance from the Government in Personnel Department, Assam. The list in the order dated 30.05.2023 contains nine number of candidates for Grade-IV Office Peon (MTS) and twenty six number of candidates for Grade-IV School Chowkidar (MTS).

4. A reading of the first paragraph of the order dated 30.05.2023 makes it discernible that the departmental authorities are of the view that the candidates who were selected and recommended for appointment under the category of specially abled or disabled candidates are relying on certain medical documents which may not be acceptable to the authorities for depicting their required level of disability.

5. It is stated by Mr. B. Kaushik, learned counsel for the respondents in the Elementary Education Department; Mr. B. Choudhury, learned counsel for the respondents in the State Level Recruitment Commission for Grade-IV post and Ms. D.D. Barman, learned Addl. Senior Government Advocate for the respondents in the Personnel Department that the department had very bad experience on some earlier occasions when persons actually not having the required level of disability had procured certificates depicting such disability and availed Government jobs for themselves.

6. If the reason for keeping hold the recommendations is that earlier there was bad experience of the authorities that many candidates had acquired disability certificates through some unacceptable manner, it has to be understood that in respect of the recommendations also there is a general suspicion in the mind of the authorities that the present candidates may also be

relying upon certain disability certificates which would otherwise be unacceptable in facts as well as in law.

7. We have queried the learned counsel as to whether any tangible material was available before the authorities as on 30.05.2023 when the order keeping hold the recommendations for selection was passed, based upon which the decision may have been taken. It is candidly submitted that no tangible and recognizable materials were available to arrive at a conclusion that the candidates included in the list referred in the order dated 30.05.2023 had submitted any disability certificates, but it was a general perception that many of them may not have the level of disability as certified in their respective certificates.

8. Mr. B. Gogoi, learned counsel for the respondents in the Health Department on the other hand, submits that many of the candidates were later on subjected to a further medical scrutiny and the result thereof had also been produced before the Court which depicts some of them may not have a level of disability as certified in their respective certificates.

9. A subsequent existence of a fact through the results of the medical test that may have been conducted of the candidates cannot be substituted to have been a fact which existed as on 30.05.2023 when the order of putting hold the appointment orders was passed, although later on the suspicion in the mind of the authorities may have come to be a genuine concern through the subsequent materials that may be available. But again, it is not stated that all the nine numbers and twenty six numbers of candidates referred in the order dated 30.05.2023 were found to have a disability of a lesser level than depicted in the respective certificates. In other words, it would also mean that certain genuine candidates, who have the required level of disability, were also put on hold.

10. It is a situation which cannot be conceived by anybody that the disabled people do not struggle throughout their life including getting education, preparing for the examinations, getting themselves eligible for being appointed against the posts reserved for them. If upon being selected, the recommendation of a person is put on hold merely because there is a suspicion that some of the candidates may not be holding genuine disability certificates and as because of the same, even the genuine candidates are subject to a treatment of putting their recommendations and appointment orders on hold, it would be a further disgrace being imposed on such genuine candidates by the authorities who doubt their genuine credentials as on the day when the order was passed without there being any appropriate material.

11. For the reasons above, on principle, we are unable to sustain the order dated 30.05.2023 putting on hold the recommendations and appointment orders. However, we also provide that if the respondent authorities have any material against any of the candidates that the disability certificates relied upon by them are neither genuine nor valid or do not depict the correct level of disability and upon being subjected to further scrutiny, they are found to be not up to the required level of disability, appropriate actions under the law may be taken against the specific candidates, but not by means of a general order.

12. It is also no longer res-integra that when specific orders are passed or where specific instances do exist in respect of any identified person, action cannot be taken against them by resorting to a general order and the law requires that instead of taking action through a general order, specific individual orders be passed in respect of any person against whom there may be materials.

13. The respondents are directed to act accordingly.

14. It is stated that in the re-verification process, some of the petitioners did not appear. If it is so, it will be open to the respondents to take individual action against such person, as may be advised under the law.

15. Mr. R.S. Chauhan, learned counsel for the petitioner in WP(C) No. 6992/2023 tries to explain the non-appearance of the petitioner before the board that he was before the Court and accordingly, refers to an order dated 30.06.2023 in WP(C) No. 3503/2023 and other writ petition. The said order provides that without leave of the Court, the appointment orders issued to the petitioners therein shall not be withdrawn. The order does not in any manner reflect that the petitioner is not required to appear before the medical board. But it is noticed that in fact an appointment order dated 25.05.2023 was issued. In view of such confusion, the petitioner in WP(C) No. 6992/2023 namely, Sri Bipul Chandra Talukdar be allowed to appear before the medical board for its examination and his rights are to be determined as per the report of the medical examination.

Writ petition stands disposed of as indicated above.

JUDGE

Comparing Assistant