



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

W.A. No. 235/2017

Sri Homen Baro

S/O Lt. Rabi Ram Baro,
Vill: Chaibari No. 1, P.O.- Dhanbil,
P.S: Barbari, Dist: Baksa, BTC, Assam,
Roll No. D/53

..... Appellant

-Versus-

- 1. Shri Hemen Boro,**
S/O Shri Rameswar Baro,
Vill: Galibandha,
P.O: Galibandha, District: Barpeta,
Assam, PIN: 781375
Roll No. D/50
- 2. The State of Assam**
Represented by the Commissioner and
Secretary to the Government of Assam, General
Administration (B) Deptt. Dispur, Guwahati-6
- 3. The Commissioner,** Lower Assam Division,
Pan Bazar, Guwahati-1, Assam, PIN 781001
- 4. The Bodoland Territorial Council,**

Represented by the Principal Secretary, B.T.C,
Kokrajhar, Assam

5. The Deputy Commissioner, District of Baksa,
Musalpur, BTC, Assam.

6. Shri Tutu Rajbongshi,
Vill: No. 1 Nathkuchi, P.O. No. 1 Nathkuchi,
District: Nalbari, Assam, PIN 781355
Roll No. D/108

7. Shri Phulen Baishya,
Vill: Natun Ulubari, P.O: Tihu
District: Nalbari, Assam, PIN 781371,
Roll No. D/254,

8. Shri Rahul Baro,
Vill: No. 1 Kataligaon, P.O. Kataligaon,
District: Baksa, BTC, Assam, PIN 781372
Roll No. D/235

9. Shri Uttpal Deka,
Vill: Uzirbari, P.O. Thamna,
District: Baksa, BTC, Assam PIN 781377,
Roll No. D/73

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the Petitioner(s) : Mr. B. Ramchiary, Advocate
: Ms. T. Ramchairy, Advocate
: Mr. P.J. Das, Advocate

For the Respondents : Ms. Rita Boro Bora,
Government Advocate, Assam
: Mr. S. Muktar, Advocate for
respondent No. 1
: Mr. S.R. Rabha, Standing Counsel, BTC

Date of Hearing & Judgment : **20.03.2023**

JUDGMENT & ORDER

(SOUMITRA SAIKIA, J)

This appeal is directed against the order dated 18.04.2017 passed by the learned Single Judge in W.P(C) No. 1569/2015 dismissing the writ petition. In response to the advertisement dated 30.11.2014 as many as 261 candidates including the appellant/writ petitioner and the private respondent No. 5 had applied for selection and appointment to 5 posts of Driver in the Office of the Deputy Commissioner, Baksa. The appellant/writ petitioner was assigned Roll No. 53 whereas the respondent No. 5 was assigned Roll No. 50. The Competent Authority issued individual call letters asking the candidates to appear for oral interview. The candidates were also required to appear for driving test to be conducted by Motor Vehicle Inspector at Baksa. Upon due completion of the driving tests, the respondent No. 4, namely the Deputy Commissioner, District Baksa, Mushalpur, BTC, Assam published a list of selected candidates who had successfully cleared the driving tests which was held between 27.01.2015 to 30.01.2015.

2. It is the contention of the appellant that the list of candidates, who successfully cleared the driving tests, contained 18 names and the appellant's name was found at Sl. No. 4. Thereafter, by a Corrigendum dated 06.02.2015 was issued whereby the respondent No. 4 published a list of 19 candidates who

had passed the driving test. In the said selection list published on 06.02.2015, the name of the private respondent No. 5 was included as Sl. No. 4 above the name of the appellant. It was mentioned therein that a typographical mistake in the notice had taken place in the earlier list dated 05.02.2015 while declaring the result of driving tests.

3. Pursuant thereto, all the candidates who had successfully cleared the driving tests were called for interview. After the completion of the selection process, the select list dated 07.02.2015 was published wherein the name of respondent No. 5 appears at Sl. No. 2 but the name of the appellant did not find/mention in the select list dated 07.02.2017. Being aggrieved, the appellant as a writ petitioner filed W.P.(C) No. 1569/2015 challenging the said select list dated 07.02.2015 and seeking directions from the Court to pass adequate orders for setting aside and quashing the said select list as well as for cancellation of the appointment order of the respondent No. 5 and as to why the appellant/writ petitioner should not be appointed in place of the respondent No. 5.

4. The respondents No. 4 & 5 contested the claims of the petitioner by filing separate affidavits denying the allegations made in the writ petition. Similarly respondents No. 6, 7, 8 & 9 also filed a joint affidavit denying all the allegations made in the writ petition.

5. The records of the selection process was also produced before the learned Single Judge at the time of hearing of the writ petition and the same was duly perused by the learned Single Judge.

6. On behalf of the Government, it was submitted that the name of the private respondent No. 5 was left out by mistake committed while preparing the list of short listed candidates dated 05.02.2015 as a result of which the Corrigendum dated 06.02.2015 was required to be issued. The learned Single Judge upon due consideration of the entire matter dismissed the writ petition declining to interfere with the selection made on the appointment of the respondent No. 5. Being aggrieved, the present appeal has been filed on the following grounds:

"-GROUNDS

A. For that the Hon'ble Court Single Bench of this Hon'ble High Court has erred in both law and facts by passing the impugned Judgment and order dtd. 18/04/2017 in W.P.(C) No. 1569 /2015 dismissing the appellant's writ petition prayed for quashing/setting aside the impugned Order, vide- Memo No. BPE-15/2014/65-A, dated 07/02/2015, issued by the Deputy Commissioner, Baksa, Mushalpur and also not recorded the submission of the Counsel of the appellant (writ petitioner) properly in proper perspective.

B. For that the documents, Notice —corrigendum list of 19 nos. candidates' result of the Driving Test inserting the name of - private Respondent No.1 vide- Memo No, BPE-15/2014/ dtd. 6.2.2015 issued by the Deputy Commissioner, Final Result sheet for the Post of Driver having 18 nos. of candidates duly signed by the D.C., ADC and SDO of Baksa District, Mushalpur, hand written List of 19 candidates duly signed by the Motor Vehicle Inspector, Baksa dtd. 30/1/2015 submitted by the Respondent No.5 (Respt. No.4, D.C., Baksa) in his Affidavit in-opposition, are contradictory each other, purported to be manipulated /forged documents / prepared after thought which are self explanatory and revealed on the grounds that on the very day of Oral Test, i.e., on 07/02/2015, the said documents were not available with the so called Interview Board of holding Oral Test / nor could produce to defeat the challenge of the appellant in not allowing the appellant to appear in the Oral test on saying that the name of Homen Baro selected candidate for Oral test at SI. No.4 is not Homen but Hemen Boro which is revealed from the very activities of the Board of Interview allowing the appellant to appear in oral test only on protest showing the actual list of 18 nos. candidates including the name of the appellant at SI. No.4 having no name of the private respondent No.1 (Hemen Boro) even then the respondent No.1 was allowed to appear in the oral test.

C. For that the documents submitted by the Respondent No.1 (Hemen Boro) annexed with his Affidavit in opposition also purported to be manipulated having no authenticity, no signature, date and seal of the authority on the documents so called corrigendum which are self explanatory and contradictory each other.

D. For that the documents served by the RTI authority to the appellant as applied for through RTI Act by, it is revealed that the actual select list of 18 nos. of candidates selected for — oral test which was signed by the RTI authority dtd. 19/03/2015 but the document, Final Result Sheet for the post of Driver having names of 18 nos. of candidates only duly signed by the DC, ADC and SDO, Baksa, but no dates nor signed by the RTI authority with seal on the document and also the document said to be corrigendum was also not signed by any official with date and office seal of the RTI authorities but the so called corrigendum list having 19 nos. of selected candidates for oral test has not been served to the appellant (writ petitioner) by the RTI authority despite applied for.

E. For that the statements made in paragraphs 3 and 4 of the additional affidavit filed on behalf of the Respondent No.5 (D.C., Baksa, Mushalpur, Respondent No.4) in terms

of order dated 10/01/2017 passed by this Hon'ble Court, stating that " it has been indicated that there is no office note authorising issuance of the corrigendum notice dated 06/02/2015, nor is the record of the driving test, as called for this Court, available with the concerned authorities." (Para-3). Further, the statement (Para-4) stating that "deponent has meticulously gone through the records and on perusal and scrutiny there is no approval of the then Deputy Commissioner, Baksa as regards the Notice-Corrigendum issued, vide- Memo No BPE-15/2014 dated 06/02/2015" which is revealed crystal clear from the said statements that the impugned documents mentioned above are purported to be manipulated, forged/ fabricated /prepared after thought, but the Hon'ble Single Bench of this Hon'ble Court failed to see the material of facts of the case and also failed to record the submission of the Counsel of the appellant (writ petitioner) in proper perspective.

F. For that there is a substantial question of law in preferring this Writ Appeal and as such, this Writ Appeal may be. admitted for ends of justice.

G. For that the Hon'ble Court misread and misconceived the proper perspective of the facts and records of the case in dismissing appellant's said writ petition."

7. Before us in appeal, the learned counsel for the appellant as well as the learned counsels for the respondents reiterated their arguments made before the learned Single Judge.

8. It is urged by the learned counsel for the respondents that because of the similarity of the names between the appellant/writ petitioner and the respondent No. 5, a mistake had occurred which was subsequently corrected by issuance of the Corrigendum dated 06.02.2015. No malice can be attributed and the entire selection process had commenced and had been undertaken as per the provisions of law.

9. The learned counsel of the parties have been heard. Pleadings on record have been perused. The impugned order dated 18.04.2017 has also been carefully perused.

10. It is seen that there is indeed a similarity between the names of the appellant and the respondent No. 5. The appellant's name is "Homen Baro" and the respondent No. 5 is "Hemen Baro". Both are residents of within the district of Barpeta although in different localities. It is not urged by the learned counsel for the appellant that the selection process had not been conducted as per the procedure prescribed and/or as per the advertisement. The learned counsel for the appellant has also not disputed the fact that the respondent No. 5 had appeared for the selection process. The learned Single Judge had called for the records and upon due perusal and upon being satisfied had rendered the

Judgment under appeal. Although the learned counsel for the appellant has submitted that the order of the learned Single Judge should be reversed but such submission is not substantiated by such grounds and reasons which calls for interference of the order dated 18.04.2017 passed by the learned Single Judge.

11. It is not submitted that there was a violation of any procedure prescribed in respect of the selection process conducted. There is also no specific averment that the respondent No. 5 did not take part in the driving test and/or interview. No malafide has also been attributed to the respondents.

12. Under such circumstances, we do not find any reason to differ from the view adopted by the learned Single Judge. The learned Single Judge has taken a possible view in the matter. In an intra-Court appeal, the appellate Court will not interfere with an order with a view taken by the learned Single Judge unless the same is perverse or opposed to expressed statutory provisions of law.

13. Accordingly, we find no merit in this appeal,

14. The writ appeal being devoid of any merit, the same is accordingly dismissed. No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant