

GAHC010270312022



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

Case No. : WA/23/2023

PANKAJ BORUAH AND 2 ORS.
S/O GOLOK BOARAH,
VILL.- MUDOI GAON,
P.O. AND P.S.- CHATIA,
DIST.- SONITPUR, ASSAM, PIN- 784175.

2: AIMONI BORAH
D/O HARA KANTA BORAH

R/O NIJ-BEHALI

P.O. AND P.S.- BIHALI

DIST.- BISWANATH
ASSAM
PIN- 784166.

3: MANJU MANI BORAH HAZARIKA
D/O BIPIN BORAH

VILL.- MALARGAON

P.O.- SOOTEA

DIST.- BISWANATH
ASSAM
PIN- 784175

VERSUS

THE STATE OF ASSAM AND 9 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
HEALTH AND FAMILY WELFARE DEPTT, DISPUR, GUWAHATI- 781006.

2:THE DIRECTOR
HEALTH SERVICE
HENGRABARI
GUWAHATI- 05

3:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
SIXMILE
KHANAPARA
GUWAHATI
KAMRUP(M)
ASSAM
GUWAHATI- 781006

4:THE PRINCIPAL CUM CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM
PIN- 784153

5:MRIDUL HAZARIKA
S/O- MR. JOGEN HAZARIKA
VILL NO. 2 PITHAGURI
P.O- PITHAGURI
P.S- BIHPURIA
DIST- LAKHIMPUR
ASSAM
PIN- 784163.

6:BHUPEN DAS
S/O- MR. DULAL DAS
VILL- NAHARATI
P.O- BAHGORAH
P.S- BIHPURIA
DIST- LAKHIMPUR
ASSAM
PIN- 784161

7:MRINAL MEDHI
S/O- LATE NARAYAN MEDHI
R/O- KUNDILNAGAR
BASISTHA CHARIALI
P.O- BASISTHA
DIST- KAMRUP(M)
ASSAM
GUWAHATI- 29

8:MRIDUL KUMAR BORAH

S/O- LATE KHETESWAR BORAH
VILL- RAJKHOWA GAON
P.O- AZAD
P.S- PANIGAON
DIST- LAKHIMPUR
ASSAM
PIN- 787031

9:MD. NASIOR RAHMAN
S/O- MD. ASHOK ALI
VILL- MOURIPAM
P.O- MANDIA
P.S- BARBHAG
DIST- BARPETA
ASSAM
PIN- 781308

10:ZAKIR HUSSAIN
S/O- LATE NURUL ISLAM
VILL- GHILAZARI
P.O- GHILAZARI
P.S- HOWLY
DIST- BARPETA
ASSAM
PIN- 78131

For appellant(s) : Mr. R.P. Sarmah, Sr. Advocate
Ms. S.P. Chetry, Advocate
For respondent(s) : Mr. K. N. Choudhury, Sr. Advocate
Mr. P. K. Deka, Advocate
Mr. B. Gogoi, SC, Health, Assam

– BEFORE –

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

28.02.2023

(S. Mehta, CJ)

The instant intra-court writ appeal is preferred by the appellants/writ petitioners

for assailing the order dated 27.09.2022, passed by the learned Single Bench in WP(C) 6279/2022, and the order dated 25.11.2022 passed in Review Petition No. 168/2022.

2. The brief facts that are essential for disposal of this writ appeal are noted herein-below:

The private respondents in this appeal preferred Captioned Writ Petition WP(C) 6729/2018, questioning the selection and appointment of the appellants herein and few others on the posts of Laboratory Technicians in the Tezpur Medical College and Hospital, Tezpur, Assam.

The principal ground asserted by the respondents/writ petitioners for questioning the selection of the respondents (appellants herein) was that they were not having the requisite qualification for the post as on the last date of submission of the application forms, i.e. 11.03.2011, and accordingly the respondents/ writ petitioners prayed that the selection of the respondents (appellants herein) be quashed and they (writ petitioners) be considered for appointment against the vacant posts.

The writ court examined the entire fact scenario *in extenso* and came to a conclusion that the appellants herein, who were the respondent nos. 5, 6, 7, 8 and 9 in the writ petition, could not satisfy that they had acquired valid qualification so as to be considered against the posts.

Two findings were arrived at by the learned Single Bench: (i) that the candidates referred to (*supra*) had acquired the qualification after the last date for submission of application forms and/or (ii) that the institutions from where they had acquired the qualification were not recognised as per the terms and conditions of the advertisement. Accordingly, the writ petition was disposed of requiring constitution of an enquiry committee, which was, in turn directed to make verification of the qualifying certificates of the appellants (respondents in the writ petition) and, in case their qualifications were found to be not recognised and/or acquired after the last date

stipulated in the advertisement for submission of the application forms, then their services would be terminated. It was further directed that in case vacancies arose after the aforesaid exercise, the same would be filled up by recasting the Select List on the basis of marks obtained by the candidates in the selection process and the candidates found eligible in terms of the advertisement dated 19.02.2011, would be appointed to the posts in question.

Being aggrieved by the judgment and order dated 27.09.2022 passed in the writ petition, the respondents (appellants herein) preferred a writ appeal, being WA 345/2022, wherein contention was advanced by the appellants that the recruitment process in question was governed by the Assam Laboratory Technician Service Rule, 2012, which *inter alia* provided for authentication of documents/certificates of the candidates by the Director of Medical Education, Assam. Finding that such point was not raised during the proceeding of the writ petition, the Division Bench gave opportunity to the appellants to withdraw the appeal and to file a review petition. As a consequence, Review Petition No. 168/2022 came to be preferred by the appellants herein which was rejected by the order dated 25.11.2022. The appellants/writ petitioners have assailed the order dated 27.09.2022, passed in WP(C) 6279/2022 and the order dated 25.11.2022 passed in Review Petition No. 168/2022 by preferring the instant intra-court appeal.

3. Mr. R. P. Sarmah, learned senior counsel for the appellants herein vehemently and fervently contended that there was no justification for the learned Single Bench to have interfered with the selection process wherein the appellants were selected and appointed as Laboratory Technicians, because the writ petition came to be filed after significant delay of almost eight years. It was further contended that during the intervening period, the Assam Laboratory Technician Service Rules, 2012 were promulgated and the appellants herein are qualified to be appointed as Laboratory Technicians in the light of the aforesaid rules.

4. Per contra, Mr. K. N. Choudhury, learned senior counsel appearing for the private respondents/writ petitioners vehemently and fervently opposed the submissions advanced by the learned senior counsel for the appellants. It was submitted by the learned senior counsel for the private respondents that it is well settled by a catena of judgments rendered by the Hon'ble Supreme Court that a candidate not having acquired the requisite qualification in terms of the rules and the advertisement notification by the last date of submission of application forms, cannot be permitted to stake claim for the post. It was contended that admittedly the appellants herein acquired the qualifying certificates from the institutions not recognised in terms of the recruitment notification and/or had acquired the qualification after the cut-off date and, hence, the learned Single Bench was perfectly justified in directing termination of their services after requisite enquiry.

5. We have given thoughtful consideration to the submissions advanced by the learned senior counsels appearing for the parties and have gone through the materials available on record. At the outset, we would like to note that the learned senior counsel representing the appellants candidly conceded during the course of arguments that the qualifying certificates obtained by the appellants herein were not compliant of the terms and conditions of the recruitment notification. Further-more, some of the candidates procured their certificates after the last date stipulated for filing the application forms. The Hon'ble Supreme Court had the occasion to consider an identical controversy in the case of ***Alka Ojha vs. Rajasthan Public Service Commission and Another***, reported in ***AIR 2011 SC 3547***. In the said case, the Apex Court upheld the order of the Division Bench of the High Court interfering with the selection of the appellants, who were selected and appointed as Motor Vehicle Sub-Inspector despite not having the requisite qualification by the last date of submission of the application forms. In the aforesaid case, the selection of the candidates was cancelled after they had joined in service and had worked on the posts for almost five years.

6. In the wake of the discussion made hereinabove, we are of the firm view that the learned Single Bench was perfectly justified in accepting the writ petition preferred by the respondents herein, as indicated above, and in rejecting the review petition filed by the appellants herein.

7. Resultantly, the impugned orders do not suffer from any infirmity warranting interference by this Court. The writ appeal is devoid of any merit and the same is accordingly dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant