GAHC010276762023

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

Case No. : WP(C)/7191/2023

MADHURI KALITA MALAKAR
D/O- KHAGENDRA NATH KALITA, R/O- VILLAGE- DOWAMAKHA, POST OFFICE- LATIBARI, POLICE STATION- TAMULPUR, DISTRICT- BAKSA, ASSAM, PIN- 781368

VERSUS

THE UNION OF INDIA AND 8 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT, GOVERNMENT OF INDIA, SHASTRI BHAWAN, NEW DELHI, DELHI- 110001

2:THE STATE OF ASSAM
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL DEPARTMENT
DISPUR
JANATA BHAWAN
GUWAHATI-6

3:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
DEPARTMENT OF SOCIAL JUSTICE AND EMPOWERMENT
DISPUR
JANATA BHAWAN
GUWAHATI-6

4:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM
SECONDARY EDUCATION DEPARTMENT
DISPUR
JANATA BHAWAN
GUWAHATI-6

5:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

6:THE STATE LEVEL RECRUITMENT COMMISSION FOR CLASS-IV POSTS
REPRESENTED BY ITS CHAIRMAN/SECRETARY
ASSAM ADMINISTRATIVE STAFF COLLEGE
JAWAHARNAGAR
KHANAPARA
GUWAHATI-22

7:THE SECRETARY TO THE GOVT. OF ASSAM
MEDICAL EDUCATION AND RESEARCH DEPARTMENT
DISPUR
GUWAHATI-6

8:THE JOINT DIRECTOR OF HEALTH SERVICES
BAKSA
DISTRICT- BAKSA
ASSAM
PIN- 781372

9:THE MEDICAL BOARD
GAUHATI MEDICAL COLLEGE AND HOSPITAL
GUWAHATI-32
ASSA

Advocate for the Petitioner : MR. S K ROY

Advocate for the Respondent : DY.S.G.I.

Linked Case : WP(C)/7119/2023

OMEE HASNU KEMPRAI
D/O- SHRI PRATAP HASNU
R/O- VILL.- PASCHIM GOJALI PAR
P.O. PONDIT GHAT
P.S. HOWRAGHAT
DIST. KARBI ANGLONG
ASSAM
PIN- 782481.

VERSUS

THE UNION OF INDIA AND 7 ORS
REPRESENTED BY THE SECRETARY
MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT
GOVERNMENT OF INDIA
SHASTRI BHAWAN
NEW DELHI-110001.

2:THE STATE OF ASSAM
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL DEPARTMENT
DISPUR
JANATA BHAWAN
GUWAHATI-6.
3:THE PRINCIPAL SECRETARY TO THE GOVERNEMNT OF ASSAM
DEPARTMENT OF SOCIAL JUSTICE AND EMPOWERMENT
DISPUR
JANATA BHAWAN
GHY-6.
4:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM
GENERAL ADMINISTRATION DEPARTMENT
DISPUR
JANATA BHAWAN
GUWAHATI-6.
5:THE STATE LEVEL RECRUITMENT COMMISSION FOR CLASS-IV POSTS

REPRESENTED BY ITS CHAIRMAN/SECRETARY
ASSAM ADMINISTRATIVE STAFF COLLEGE
JAWAHARNAGAR
KAHANAPARA
GUWAHATI-22.
6:THE SECRETARY TO THE GOVT. OF ASSAM
MEDICAL EDUCATION AND RESEARCH DEPARTMENT
DISPUR
GUWAHATI-6.
7:THE JOINT DIRECTOR OF HEALTH SERVICES

KARBI ANGLONG
DIPHU
ASSAM
PIN- 782460.
8:THE MEDICAL BOARD

GAUHATI MEDICAL COLLEGE AND HOSPITAL
GUWAHATI-32
ASSAM

Advocate for : MR. S K ROY
Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 7 ORS

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 18/12/2023

Heard Mr. S. K. Roy, learned counsel appearing for the writ petitioner(s) in this batch of writ petitions. I have also heard Mr. B. Choudhury, learned Standing Counsel, State Level Recruitment Commission (SLRC), Mr. R. Dhar, learned Additional Senior Government Advocate, Assam, Ms. R. M. Deka, learned Standing Counsel, Social Justice and Empowerment Department, Assam, Mr. P.J. Phukan, learned Standing Counsel, Gauhati University, Mr. D. Gogoi, learned Standing Counsel, Forest Department, Assam, Ms. S. Chutia, learned Standing Counsel, Water Resources Department, Assam, Ms. M. D. Bora, learned Standing Counsel, Transport Department, Assam and Mr. D.P. Borah, learned Standing Counsel, Health and Family Welfare Department, Assam, appearing for the respective official respondents.

The controversy arising in all these writ petitions, is common and, therefore, these cases have been bunched together.

The writ petitioners in all these cases are individually holding Disability certificates issued by the competent authority under the Department of Social Justice and Empowerment, Assam, indicating the degree and nature of their disability. According to the certificates held by them, each of the petitioners meet the "Bench Mark" disability criteria of 40% disability, thus making them eligible to seek Government employment as candidates belonging to the Person with Disability (PwD) category. As such, on the strength of these certificate(s), the petitioner(s) had applied for and had taken part in

the recruitment process initiated by the Government departments for filling up of a number of Grade-IV posts. However, after the selection process was over, the writ petitioner(s) have been asked to appear before a specially constituted Medical Board so as to verify/reassess the nature and extent of the disability suffered by them. Aggrieved thereby, the present writ petitions have been filed *inter alia* contending that since the petitioners are holding a Disability Certificate issued by the competent authority, there was no further requirement under the law or any legal justification to subject the petitioner(s) to further scrutiny by another Medical Board, as have been done in their cases.

Taking note of the grievance expressed by the petitioners, this Court had directed the learned Standing Counsel, Health and FW Department, Assam, to obtain instructions. Today, when the matters were called up, Mr. D.P. Borah, learned Standing Counsel, Health and FW Department, Assam, submits that the role of the Health and FW Department, Assam, in these cases, is only to the extent of constituting a Special Medical Board so as to assess the nature and extent of disability suffered by the candidates, on the request of the Nodal Department i.e. the Department of Social Justice and Empowerment. Therefore, the Health Department does not have any independent stand in the matter. He further submits that on such verification, the disability of some of the candidates have been found to be less than the "Bench Mark" of 40% disability. Mr. Borah, however, submits that the outcome of the assessment by the specially constituted Medical Board have already been forwarded to the Social Justice and Empowerment Department, Assam, in respect of each candidate examined by the Board.

Mr. R. Dhar, learned Additional Senior Government Advocate, Assam and Ms. R.M. Deka, learned Standing Counsel, Social Justice and Empowerment Department, Assam, have submitted that in many cases, it has been found that the disability condition varies from that mentioned in the certificates and hence, this exercise.

By producing a copy of the Office Memorandum dated 21/05/2022 issued by the Government of Assam, Department of Personal, Dispur, more particularly, clause- 5 of the OM, Mr. Dhar further

submits that it is permissible under the law to subject the candidates for verification/reassessment of their disability through a competent mechanism and hence, this exercise.

After hearing the learned counsel for the parties, this Court finds that although all the petitioners are holding Disability Certificates which project them as candidates suffering from "bench mark" disability, yet, it appears that as per the opinion of the specially constituted Medical Board, the disability of the writ petitioners have been found to be less than the "Bench Mark" criteria of 40% disability. There may be cases where the extent of disability of some of the candidates have undergone changes since the issuance of their Disability Certificates or there was some error in assessing their disability status either by the original authority issuing the Certificates or by the Specially Constituted Medical Board. However, the said aspect of the matter cannot be gone into by this Court unless the petitioners are communicated with the decision of the authorities in this regard, thereby, giving them an opportunity to assail such decision, on merit, if so advised.

As such, without expressing any opinion on the stand of the learned departmental counsel or the findings and observations of the Medical Board, these writ petitions are being disposed of by directing the respondents to communicate the decision of the authorities pertaining to the individual disability status vis-a-vis their claim for appointment of each of the writ petitioners against the posts applied for, in writing, within four weeks from the date of receipt of a certified copy of this Order. Liberty is granted to the writ petitioners to assail the decision of the Medical Board and/or Department of Social Justice and Empowerment, by filing fresh writ petitions, if so advised.

Writ petitions stand closed.

JUDGE

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Comparing Assistant