

GAHC010084832019



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

Case No. : WP(C)/2603/2019

JOGESH BEZBARUAH
S/O SRI SARBESWAR SEAL, VILL. PAICHARA, P.O. AND P.S. GHOGRAPAR,
DIST.-NALBARI, ASSAM-781369

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY OF HEALTH AND FAMILY
WELFARE, DISPUR, GUWAHATI, ASSAM-06

2:DIRECTOR OF HEALTH SERVICES
ASSAM
HENGREBARI
GUWAHATI-36

3:JOINT DIRECTOR OF HEALTH SERVICES
LAKHIMPUR
NORTH LAKHIMPUR

4:THE SUPERINTENDENT OF NORTH LAKHIMPUR CIVIL HOSPITAL
NORTH LAKHIMPUR

Advocate for the Petitioner : MR. P DEKA, MR. R HAQUE, MR. A CHETIA

Advocate for the Respondent : SC, HEALTH,

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 16.08.2024

Heard Mr. P. Deka, learned counsel for the petitioner. Also heard Mr. D. Upamanyu, learned Standing Counsel, Health Department for the State respondents.

This writ petition is filed under Article 226 of the Constitution Of India seeking inter-alia quashing of the speaking order bearing no. HSE/Apptt./52/2018 dated 10.12.2018 whereby the petitioner's appointment to the post of Ward boy was cancelled.

The case of the petitioner is that pursuant to the Advertisement dated 16.07.2017 for filling up vacancies under the establishment of the Directorate of Health Services, Assam, the petitioner applied for the post of Ward boy through online under 3% reservation quota for Person with Disability (PwD) as per provision made in the said advertisement.

Thereafter, the petitioner was appointed after due selection and verification of documents, by order dated 16.07.2018 to the said post of Ward boy and was accordingly posted in North Lakhimpur Civil Hospital.

It is the further case of the petitioner that pursuant to such appointment he resigned from the work where he was previously working and joined the said new post on 16.07.2018. Accordingly he was performing his duties to the full satisfaction of the respondents

and after more than 4 (four) months of service he was asked to furnish documents for re-verification.

Thereafter vide order dated 10.12.2018, the Director of Health Services, Assam issued a speaking order bearing no. HSE/Apptt/52/2018 dated 10.12.2018, whereby the appointment of the petitioner was cancelled on the ground that the petitioner was appointed against 3% reservation quota for Person with Disability (PWD) at the newly created model hospital, however the petitioner was not a Persons with Disability.

Aggrieved by the aforesaid speaking order dated 10.12.2018, the present petition has been filed.

Mr. P. Deka, learned counsel for the petitioner admits that while filing up the application form for the post of Ward boy pursuant to the Advertisement dated 16.07.2017, it was inadvertently ticked as 'Yes' against the column "Person with Disability".

He further submits that during the stage of submission of documents the petitioner verbally clarified to the respondent authorities that it was inadvertently mentioned that he was Person with Disability (PwD) though he is not one such. However the respondent authorities did not raise any objection.

He accordingly submits that the aforesaid mistake being inadvertently done the same may be condoned and the impugned cancellation order be set aside and quashed.

Mr. D. Upamanyu, learned Standing Counsel, Health

Department on the other hand submits that since the petitioner is not a person with disability and he has been appointed against the reserved post for Person with Disability, the impugned cancellation order is valid and warrants no interference from this Court.

I have given prudent consideration to the arguments made by both sides and perused the materials on record.

It appears that the petitioner while filing up the requisite form for selection for appointment to the post of Ward boy pursuant to the Advertisement dated 16.07.2017, he opted 'Yes' against the column for "Person with Disability" and after selection and verification thereof he was appointed against such reserved post.

However, upon detecting that the petitioner got selected for appointment under Person with Disability category, the respondents cancelled the said appointment by the impugned order.

It is observed that there is no written communication given by the petitioner clarifying the said position before the respondent authorities at any time.

Apt to refer to paragraph 7 of the writ petition, which is reproduced hereunder for ready reference:-

7. That the petitioner begs to state that, the Petitioner as directed earlier by the Notice dated 16.05.2018, went for document verification at the office of the Director of Health Services, Assam, Hengrabari, Guwahati on 27.05.2018 with all the required documents. But caste certificate (in case of reserved category candidates), Disability Certificate (in case of Person with Disabilities) Issued by competent authority were not called for verification. Be it mentioned herein that

while preparing for document verification, the petitioner came to know that Differently Able (PW) column indicated Physically Handicaped or person with physical disability and the petitioner opted 'yes' in the said column instead of 'no' in the online application form. The respondent authorities all throughout the document verification process did not raise any objection with regard to the documents of the petitioner. The petitioner was not even asked to produce the Disability Certificate. However, during the verification the petitioner, the petitioner as abundant caution mentioned about the error he made during the submission of the application where the petitioner selected the option 'yes' for differently able column. The respondent authorities accepted the documents of the petitioner much to their satisfaction.

Reading of the aforesaid paragraph indicates that the stand of the petitioner is that the petitioner had verbally informed the respondent authorities, however the respondent authorities did not raise any objection. The aforesaid contention of the petitioner cannot be accepted by this Court in as much as the said averments made in paragraph 7 has been denied by the respondent authorities in the affidavit-in-opposition filed on 26.03.2021.

Apt to refer to paragraph 13 of the affidavit-in-opposition filed by the respondent authorities which is also reproduced hereunder for ready reference:-

13. That as regards to the statements made in paragraph No. 15 of the writ petition; the deponent begs to state that the Petitioner did not get selected for appointment under non person with disability (PwD) category as his marks (i.e. 71 marks) obtained in the list was below the cut-off mark from the unreserved category (i.e. 90 marks) and was appointed against the 3% reservation quota. Hence, the appointment of the Petitioner was cancelled vide Speaking Order dated 10.12.2018.

Since the appointment of the petitioner was cancelled as the

petitioner was not appointed against the unreserved category, this Court finds no illegality or infirmity in the impugned cancellation order dated 10.12.2018.

Therefore, this writ petition has no merit and fails.

Resultantly, this writ petition stands dismissed.

However, considering that the petitioner had worked for few months upon being appointed to the said post of Ward boy the respondents are at liberty to consider the representation, if any is filed by the petitioner for release of salary for the period of employment.

Needless to clarify that as and when such representation is filed, the respondent authorities upon due verification shall do the needful within a period of 3 (three) months from the receipt of such representation.

Disposed of.

No cost.

JUDGE

Comparing Assistant