

GAHC010098382018



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

Case No. : WP(C)/3141/2018

PURABI SINGHA,
D/O- PRADIP KR. SINGHA,
R/O- KRISHNANAGAR (UTTAR ADHIYABARI),
P.O- BARPETA ROAD, DIST- BARPETA, ASSAM.

.....Petitioner

--- VERSUS---

1. THE STATE OF ASSAM AND 5 ORS,
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
EDUCATION (HIGHER)DEPTT, DISPUR, GUWAHATI- 6

2:THE DIRECTOR OF HIGHER EDUCATION, ASSAM,
KAHILIPARA, GHY- 19.

3:THE DEPUTY DIRECTOR OF HIGHER EDUCATION, ASSAM,
KAHILIPARA, GHY- 19.

4:THE INSPECTOR OF COLLEGES, ASSAM,
OFFICER OF THE DIRECTOR OF HIGHER EDUCATION,
ASSAM, KAHILIPARA, GUWAHATI- 781019.

5:THE PRINCIPAL AND SECRETARY,
B B K COLLEGE, NAGAON,
DIST- BARPETA, ASSAM.

6:THE CHAIRMAN SELECTION COMMITTEE,
B B K COLLEGE, NAGAON,
DIST- BARPETA, ASSAM.

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioner : Mr. A.J. Atia, Advocate.

For the Respondents : Mr. S. Das, Standing Counsel, Education (Higher) Department, Govt. of Assam, for respondent Nos.1, 2, 3 & 4.

: Mr. T.J. Mahanta, Senior Advocate assisted by Ms. P. Sarma, Advocate for respondent Nos.5 & 6.

Date of Hearing & Judgment : 11.01.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. A.J. Atia, learned counsel for the petitioner. Also heard Mr. S. Das, learned Standing Counsel, Higher Education Department appearing for the respondent Nos.1, 2, 3 & 4 and Mr. T.J. Mahanta, learned Senior Counsel assisted by Ms. P. Sarma, learned counsel appearing for respondent Nos.5 & 6.

2. The petitioner, in the present proceedings, has presented a challenge to an order dated 17.04.2017, issued by the Director of Higher Education, Assam, by which the proposal submitted for appointment of the petitioner as Assistant Professor in the Department of Education of Baosi Banikanta Kakati College, Nagaon, Barpeta was rejected. The present petitioner has also challenged the advertisement dated 12.04.2018 which was issued by the college authorities in pursuance to the said order dated 17.04.2017.

3. In pursuance to an advertisement dated 18.07.2015, issued by the Principal of Baosi Banikanta Kakati College, Nagaon, Barpeta, inviting applications from candidates fulfilling UGC norms for filling the post of Assistant Professor, Education in the said college, the petitioner submitted her application and the petitioner was called for appearing in the interview scheduled on 05.12.2015.

4. The Selection Committee, in pursuance to the said selection process, placed the petitioner at Serial No.1 on merits and after approval of the recommendations of the Selection Committee, by the Governing Body of the College, the proposal along with the requisite materials were forwarded by the college authorities to the Director of Higher Education, Assam, vide their communication dated 17.12.2015 for approval of the selection of the petitioner against the said post and for issuance of her appointment order.

The Director of Higher Education, vide a communication dated 16.07.2016 required the college authorities to examine the marks given under the heading "teaching experience" of the selected candidate as per the provisions of Clause 3 of the Office Memorandum dated 14.05.2015.

The College authorities, thereafter on re-examination of the matter, resubmitted the proposal seeking approval of the selection of the petitioner and for her appointment against the said post of Assistant Professor, Education.

The Director of Higher Education, Assam, vide his order dated 17.04.2017 rejected the proposal as submitted by the college authorities and returned the same to the college with a further direction to re-advertise the post in question. The proposal was rejected on the ground that the marks awarded for "teaching experience" was not in accordance with the Office Memorandum dated

25.06.2012 and on that count the “teaching experience” marks given to the petitioner for her such experience garnered while working at Barpeta B.T. College was held to be not sustainable on the ground that the said college was not an affiliated Degree College.

Thereafter, vide a communication dated 18.09.2017, it was further clarified by the Deputy Director, Higher Education, Assam, that the request made by the college authorities for reconsideration of the rejection of approval to the selection of the petitioner could not be entertained on the ground that the experience garnered by the petitioner in Barpeta B.T. College is not reckonable for awarding to her marks under the Column “Teaching experience” as the said College does not fall within the purview of the term “First Degree College”.

In terms of the order dated 17.04.2017, the college authorities, vide an advertisement dated 12.04.2018 proceeded to re-advertise the post of Assistant Professor in the Department of Education.

5. The order dated 17.04.2017 and the advertisement dated 12.04.2018 are presently under challenge in the present proceedings.

6. Mr. A.J. Atia, learned counsel for the petitioner, by referring to the order dated 17.04.2017, has submitted that the interview for the said post was held on 05.12.2015 and on the date when the interview was so scheduled, the Office Memorandum dated 25.06.2012 was already modified by the respondent authorities vide a Office Memorandum dated 14.08.2015. It is also pointed out that vide a communication dated 18.08.2015, the copy of the Office Memorandum dated 14.08.2015 was furnished to the Principals of all Government/Provincialised Colleges/Mahavidyalays in the State requiring the implementation of the same for the purpose of selection of Assistant

Professors/Librarian, for distribution of marks and for ranking of the candidates. Accordingly, in the selection process in question, the college authorities had applied the provisions of Office Memorandum dated 14.08.2015 inasmuch as the selection for the post in question was held on 05.12.2015 i.e. after the date of issuance of the Office Memorandum dated 14.08.2015.

7. Basing on the said premises, it is the submission of Mr. Atia, learned counsel for the petitioner that the college authorities have not committed any error in applying the provisions of the Office Memorandum dated 14.08.2015 while considering the cases of the candidates appearing for the post of Assistant Professor, Education in the said college.

8. Mr. Atia, by referring to Clause 3 of the Office Memorandum dated 14.08.2015, has stated that the marks for "teaching experience" was mandated to be given at the rate of 2 marks for each year of experience subject to maximum of 10 marks. It is the further submission of Mr. Atia that the said "teaching experience" in terms of Clause 3 of the Office Memorandum dated 14.08.2015 is to be granted for such experience garnered in a State Government recognized college. As such, it is submitted that the Barpeta B.T. College, being a Government recognized college, the experience as garnered by the petitioner therein has been correctly marked by the Selection Committee and there is no error in awarding to the petitioner 8(eight) marks for such experience in the said selection process and the same does not call for any interference.

9. With regard to the second ground assigned by the Director of Higher Education, Assam in his order dated 17.04.2017 in rejecting the proposal submitted by the college authorities in respect of the selection of the petitioner,

Mr. Atia has contended that the said Barpeta B.T. College was granted Government concurrence on 14.08.1989 and as such, the said college is a Government recognized college. Accordingly, in terms of the provisions of Clause 3 of the Office Memorandum dated 14.08.2015, the petitioner is entitled to marks under the heading "teaching experience" for the period of her service rendered in the said Barpeta B.T. College. As such, the marks awarded by the Selection Committee to the petitioner under the heading "teaching experience" by reckoning her services in the said Barpeta B.T. College was so done in terms of the norms in place.

10. Mr. Atia submits that the grounds as assigned in the said order dated 17.04.2017 not being sustainable, the same calls for interference by this Court. Further in the event the order dated 17.04.2017 is interfered with, the subsequent advertisement issued on 12.04.2018 in pursuance of the order dated 17.04.2017, should also be interfered with.

11. Mr. S. Das, learned Standing Counsel, Higher Education Department, has submitted that the contentions raised by the petitioner in support to her challenge to the order dated 17.04.2017 is so based on the Office Memorandum dated 14.08.2015. It is the contention of Mr. Das that the Office Memorandum dated 14.08.2015 would have no application in the selection for the post in question inasmuch as the advertisement for the same was issued on 18.07.2015 and on the said date, it was the provisions of the Office Memorandum dated 25.06.2012 which was holding the field and accordingly, the selection process as held in pursuance to the advertisement dated 18.07.2015, should be held in terms of the provisions of the Office Memorandum dated 25.06.2012. Accordingly, the marks awarded to the petitioner for teaching experience being not in terms of the provisions as contained in this connection in Office

Memorandum dated 25.06.2012, the Director of Higher Education, Assam, vide his order dated 17.04.2017 had rightly refused to approve the selection of the petitioner.

12. Mr. Das, by referring to the Office Memorandum dated 14.08.2015 has contended that the same was not given any retrospective effect. The Office Memorandum dated 14.08.2015 only having given prospective effect, the same could not have been utilized for the selection for the post of Assistant Professor, Education in the college which had been initiated vide advertisement dated 18.07.2015.

13. Mr. Das further submitted that under the provisions of the Office Memorandum dated 25.06.2012, marks for "teaching experience" can only be awarded for such experience garnered in an "affiliated Government last Degree College" and the maximum marks permitted to be allotted under the said heading is 5(five) marks only. The petitioner, not having such experience in an "affiliated Government last Degree College" and further, having been awarded marks under the heading "teaching experience" more than what has been prescribed in the Office Memorandum dated 25.06.2012, the refusal by the Director, Higher Education, Assam to approve the selection of the petitioner made in clear violation of the provisions of the Office Memorandum dated 25.06.2012, does not call for any interference by this Court. Accordingly, Mr. Das submits that the order dated 17.04.2017 issued by the Director of Higher Education, Assam does not call for any interference by this Court and this Court would be pleased to permit the authorities to take the process as initiated vide the subsequent advertisement dated 12.04.2018 to its logical conclusion.

14. Mr. T.J. Mahanta, learned Senior Counsel appearing for the respondent

Nos.5 and 6 has submitted that the college authorities had acted in the matter strictly in terms of the directions issued by the departmental authorities and had submitted the selection panel including the name of the petitioner after having held the selection in terms of the Office Memorandum dated 14.08.2015. The same, not having been approved by the Director of Higher Education, Assam vide his order dated 17.04.2017, a fresh advertisement came to be issued on 12.04.2018 for the post in question.

15. I have considered the submissions advanced by the learned counsel for the parties and also perused the materials available on record.

16. While the facts involved in the matter are not disputed, the issue arising in the proceeding is as to whether in the selection held on 05.12.2015 in pursuance to the advertisement issued by the college authorities on 18.07.2015, the provisions of the Office Memorandum dated 25.06.2012 and/or the provisions of Office Memorandum dated 14.08.2015, would be applicable.

17. For resolving the said issue, the provisions of the Office Memorandum dated 25.06.2012 and the Office Memorandum dated 14.08.2015 have been perused in detail.

18. On perusal of the Office Memorandum dated 14.08.2015, it is revealed that the same was issued in conformity with the UGC Guidelines and in partial modification of the earlier Office Memorandum with regard to the selection against the post of Assistant Professors in colleges. It is seen that the Office Memorandum dated 14.08.2015 is in the nature of a clarification and the same does not over-ride the provisions of the Office Memorandum dated 25.06.2012 but only modifies the same to make it inconformity with the UGC guidelines. The Office Memorandum dated 14.08.2015 also requires all concerned to follow

the same to ensure transparency and fair play in the process of selection of Assistant Professors in various colleges in the State.

19. The said Office Memorandum was also furnished to the college authorities of Baosi Banikanta Kakati College, Barpeta prior to holding of the said selection dated 05.12.2015. The Office Memorandum dated 14.08.2015, being clarificatory one, the same would relate back to the date of issuance of Office Memorandum dated 25.06.2012. Given the form in which the Office Memorandum dated 14.08.2015 was issued and also the purpose for which the same was stated to have been issued as reflected from the Office Memorandum dated 14.08.2015 itself, it is seen that the same being a clarificatory one, it would have its operation from the date of issuance of the Office Memorandum dated 25.06.2012 itself.

20. On a perusal of the Office Memorandum dated 25.06.2012 and 14.08.2015, it is to be noted that both the Office Memorandums have to be read together and applied for the purpose of the selection of Assistant Professors. The Office Memorandum dated 25.06.2012 continues to hold the field subject to the provisions therein modified vide Office Memorandum dated 14.08.2015.

21. In view of the said conclusions that Office Memorandum dated 14.08.2015 was not a new guideline for holding the selection process in question but a clarification issued in respect of the guidelines including the Office Memorandum dated 25.06.2012, the reliance placed on the Office Memorandum dated 14.08.2015 for the purpose of awarding marks by the Selection Committee to the candidates appearing in the selection process in colleges in question, cannot be denoted to be erroneous.

Clause 3 of the said Office Memorandum dated 14.08.2015, having

mandated that for "teaching experience" shall be awarded at the rate of 2 marks for one year of such experience in a State Government recognized college subject to the maximum of 10 marks, the petitioner having had experience of 4(four) years was rightly awarded 8(eight) marks for such teaching experience.

22. In view of the above conclusions reached by the Court, the reasoning of the Director of Higher Education as contained in the order dated 17.04.2017 that the petitioner having not been awarded marks for teaching experience in terms of the Office Memorandum dated 25.06.2012, her selection could not be approved, is held to be not sustainable.

23. The reasoning as put forth by the Director of Higher Education, Assam in the said order dated 17.04.2017 and also reiterated in the hearing of this proceeding by Mr. S. Das, learned Standing Counsel, Higher Education Department, the teaching experience garnered by the petitioner having not been so accorded for the services rendered by her in "First Degree College", such experience is not liable to be awarded marks under the heading "teaching experience" inasmuch in terms of the Office Memorandum dated 25.06.2012, the requisite experience to be garnered for being awarded marks under the heading "teaching experience" must have been so garnered in an affiliated Government First Degree College and the Barpeta B.T. College, not being an affiliated Government First Degree College, the experience garnered by the petitioner therein could not have been reckoned for the purpose of awarded to her marks under the heading "teaching experience", is now being considered.

24. The prescription as made in the Office Memorandum dated 25.06.2012 with regard to award of marks for the various components in the selection process including the marks for teaching experience, was modified vide the

Office Memorandum dated 14.08.2015 to make it inconformity with the UGC Guidelines and therein the experience was required to be so garnered from a "State Government recognized college" only. The petitioner, having garnered experience on account of her services in Barpeta B.T. College, it is to be examined as to whether the said college comes within the purview of the term "State Government recognized college".

25. The materials brought on record by the petitioner in this proceeding demonstrate that the said Barpeta B.T. College is an affiliated Degree College and had received due Government concurrence way back in the year 1989. As such, the said college being an affiliated college and also having the Government concurrence has to be deemed to be a State Government recognized college and as such, the Barpeta B.T. College, being a State Government recognized college, the teaching experience garnered by the petitioner therein, has to be reckoned for the purpose of awarding marks to the petitioner in the selection process for the component "Teaching Experience". As petitioner had 4 (four) years of teaching experience, she was rightly given 8 (eight) marks for her teaching experience.

In view of the said conclusions, the second ground as taken by the Director of Higher Education, Assam in his order dated 17.04.2017 also cannot be sustained.

26. In view of the conclusions reached hereinabove and also the conclusion that it is the provisions of the Office Memorandum dated 14.08.2015 that is applicable to the selection in question, the order dated 17.04.2017 cannot be sustained and the same is accordingly interfered with.

The interference made by this Court with the order dated 17.04.2017

would also result in interference of the subsequent advertisement dated 12.04.2018, which too stands interfered with.

27. The order dated 17.04.2047 and the advertisement dated 12.04.2018, having been interfered with, the matter now stands remanded back to the Director of Higher Education, Assam to re-examine the proposal as submitted by the college authorities in pursuance to the selection held in terms of the advertisement dated 18.07.2015.

28. The Director of Higher Education shall consider the proposal as submitted by the college authorities recommending the name of the petitioner for appointment as an Assistant Professor, Education Department of Baosi Banikanta Kakati College, Nagaon, Barpeta in accordance with the provisions of the Assam College Employees (Provincialised) Rules, 2010 (in short Rules of 2010) and arrive at his conclusion thereon.

The Director, Higher Education, Assam, while examining the proposal, as required by this order, shall note the observations made/conclusions reached by this Court hereinabove with regard to the applicability of the Office Memorandum dated 14.08.2015 to the said selection process in question and would arrive at his conclusion with regard to the proposals so submitted strictly in accordance with the said observations and directions.

The Director is required to examine the proposal and arrive at his decision thereon within a period of 1(one) month from the date of receipt of a certified copy of this order.

The Director, on such examination, shall pass appropriate order(s), as may be called for, with regard to the said proposal in terms of the directions passed herein above.

29. With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant