

GAHC010131842013



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

Case No. : WP(C)/5896/2013

PARESH HAZARIKA
S/O- PURNADHAR HAZARIKA, R/O VILL.- BRAHMAPUR, P.O.-
JAMUGURIHAT, DIST.- SONITPUR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
THROUGH THE SECY. TO THE GOVT. OF ASSAM, SOCIAL WELFARE
DEPTT., DISPUR, GHY- 6.

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPTT.
DISPUR
GHY- 6.

3:THE DIRECTOR OF SOCIAL WELFARE
ASSAM
UZAN BAZAR
GHY- 1.

4:THE DIRECTOR OF HEALTH AND FAMILY WELFARE DEPTT.
HENGRABARI
GUWAHATI-

5:THE JOINT DIRECTOR OF HEALTH SERVICES
HEADQUARTER
DIRECTORATE OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI.

6:THE JOINT DIRECTOR OF HEALTH SERVICES

SONITPUR
TEZPUR
DIST.- SONITPUR
ASSAM

Advocate for the Petitioner : MR.U. Nanda

Advocate for the Respondent : Mr. D. Bora, learned Junior Government Advocate (R-1,2 & 3)
Mr. D. Upamanyu, learned standing counsel, Health Department (R-4,
5 and 6.)

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 13.02.2024

Heard Ms. U. Nanda, learned counsel for the petitioner. Also heard Mr. D. Bora, learned Junior Government Advocate appearing for the respondents no. 1, 2, 3 and Mr. D. Upamanyu, learned standing counsel, Health Department appearing for respondents no. 4, 5 and 6.

2. The petitioner in the present proceedings has raised a grievance with regard to the denial to him his due appointment in terms of his selection against a Grade-IV post included in the Special Recruitment Drive carried out by the respondent authorities for filling up of 662 backlog vacancies in different Government Departments for persons with benchmark disabilities in the year 2005.

3. The petitioner being eligible has submitted his candidature in

pursuance to a notice issued by the Directorate of Social Welfare, Assam in the year 2005 for filling up of 662 vacancies in Grade-IV post for persons with benchmark disabilities. The petitioner had applied against the category of Visually Impaired. On being successful in the selection process his name figured in the select list against the post so available under the various establishments of the Director of Health Services, Assam. The petitioner was placed against the post identified for persons with Visual Impairment. Appointments from the said selection list were being made, however, the petitioner not being considered for such appointment and the representations submitted by him in this connection having not been responded to, the petitioner approached this Court by way of instituting WP(C)/3652/2012. This Court vide order dated 02.08.2012, proceeded to direct the Director of Social Welfare, Assam to dispose of the representation submitted by the petitioner in the matter by way of passing a speaking order. The Director of Social Welfare, Assam, thereafter convened a meeting and therein in the presence of the petitioner, representatives of the Director of Health Services, Assam, it was concluded that the Grade-IV posts involved in the recruitment process as initiated in the year 2005 was available in the establishment of the Joint Director of Health Services, Sonitpur and the petitioner could be adjusted against the same, however, it was noted that the validity of the select list having expired on 31.07.2011, the appointment of the petitioner could not be so effected. The petitioner thereafter has instituted the present proceedings and has highlighted that even after 31.07.2011, appointments were being made in terms of the selection process initiated in the year 2005.

4. The matter was taken up for hearing and this Court on noticing that even after the validity of the select list had expired on 31.07.2011, appointments were being made against the posts involved in the selection process as initiated in the year 2005, had required the respondents to place on record the necessary clarifications in this direction.

5. Mr. D. Upamanyu, learned standing counsel for the Health & Family Welfare Department, Assam had placed on record copies of the order dated 06.12.2016 and 30.01.2017, by which the appointments were effected in the case of persons with benchmark disability, who had participated in the selection process as initiated in the year 2005. Vide order dated 06.12.2016 as many as 45 persons belonging to various categories came to be appointed under the various establishments coming under the purview of the Director of Health Services, Assam while 4 persons were so appointed vide the order dated 30.01.2017 under the Joint Director of Health Services, Kokrajhar, which falls under the control of the Bodoland Territorial Council.

6. On perusal of the order dated 06.12.2016, it is seen that the same was so passed in compliance of an order dated 23.04.2015 passed by this Court in *WP(C)1424/2011 (Shri Bhupen Bhuyan & 105 Ors. V. State of Assam & Ors.)*

7. A perusal of the said order dated 23.04.2015, passed by this Court in the case of *Bhupen Bhuyan (Supra)*, it is seen that persons similarly

situated like the petitioner and who had participated in the recruitment process initiated in the year 2005 had approached this Court alleging that the select list as prepared in pursuance to the selection process initiated in the year 2005, was not so prepared in the manner required and accordingly, a challenge was presented to the same before this Court.

8. This Court on examination of the matter found that the select list so prepared had numerous illegalities/irregularities even to the extent of inclusion of names of persons, who did not appear in the selection process. This Court, also noticed that the said illegalities/irregularities coming to the notice of the authorities, an enquiry was conducted in the matter and the authorities thereafter streamlined the select list on the basis of the merit list originally prepared in the matter. It was also found that around 134 nos. of posts had not been filled up by different departments. This Court also noticed that the validity of the select list had come to an end in the month of July, 2011. However, this Court, noticing that the exercise undertaken was a Special Recruitment Drive carried out by the State to fill up backlog vacancies for benchmark disabilities candidates and there being, admittedly, around 134 vacancies relatable to the said Special Recruitment Drive, which were not filled up and still available to be filled up by the candidates for whom the said Special Recruitment Drive was so carried out, proceeded to direct the respondents to appoint the petitioners in the available vacancies relatable to the recruitment drive carried out in the year 2005-06.

9. The directions as passed by this Court in the case of *Bhupen Bhuyan (supra)* being relevant in the issues arising in the present proceedings is extracted herein below:-

"In this case what transpires is that a recruitment drive was carried out in the year 2005-06 to fill up 662 backlog vacancies in Gr-III and IV. These vacancies therefore obviously pertained to previous years i.e., prior to the year 2005-06. Even in this drive, 134 of the backlog vacancies could not be filled up. It appears that since the year 2005-06 no review has been carried out by the State regarding identification of posts earmarked to be filled up by persons with disability or to update the list so prepared. In such circumstances, when admittedly petitioners could not be appointed because of anomalies in the selection process particularly at the time of preparation of State level select list, Court is of the view that it would meet the ends of justice if a direction is issued to the respondents to appoint the petitioners in the available vacancies relatable to the recruitment drive carried out in the year 2005-06. Naturally, these vacancies are available in the different departments, the list of which is available with the Social Welfare Department.

Ordered accordingly.

Keeping in view the mandate of the persons with Disabilities act, all the concerned administrative departments shall cooperate with the Social Welfare Department in ensuring that petitioners are suitably accommodated against the identified posts in the respective departments. The Social Welfare Department being the nodal department shall verify the position of the petitioners vis a vis the selection process and proceed with their appointment in terms of their position."

10. The orders dated 06.12.2016 and 30.01.2017, appointing in total 49 persons with benchmark disabilities was so effected in pursuance to the directions passed by this Court in the case of *Bhupen Bhuyan (supra)*.

11. The case of the petitioner was duly considered by the authorities in the Social Welfare Department in pursuance to the directions passed by this Court vide the order dated 02.08.2012, in WP(C)/3652/2012 and the minutes as drawn reflects that there existed a post against which the petitioner could be so appointed.

12. The persons having been so appointed in pursuance to the said recruitment drive initiated in the year 2005, in the year 2016 and the petitioner being before this Court with effect from the year 2013, the petitioner is also entitled to have his case so considered for appointment against the vacancies as were available in the said Special Recruitment Drive initiated in the year 2005.

13. The decision of this Court in the case of *Bhupen Bhuyan (supra)*, squarely applies to the case of the petitioner herein and he is also entitled for a similar direction.

14. It is noted that at the relevant point of time, when this Court has passed the order dated 23.04.2015, in the case of *Bhupen Bhuyan (supra)*,

the present proceedings were already instituted and pending, however, this aspect of the matter was not brought to notice of this Court and accordingly, the case of the petitioner could not also be brought within the fold of the directions passed by this Court in the said case of *Bhupen Bhuiya (supra)*.

15. The select list having been operated till the year 2016/2017 and the present proceedings being pending since 2013, insofar as the petitioner is concerned, the select list, on account of the pendency of the present proceedings should be deemed to be continuing and accordingly, the petitioner is entitled to a direction for consideration of his case for appointment against any available vacancy forming the basis of the said selection process initiated in the year 2005.

16. In view of the above, the Director of Health Services, Assam shall now consider the case of the petitioner for appointment against a post identified for persons with Visual Impairment, which post formed the basis of the Special Recruitment Drive initiated in the year 2005 and thereafter, reckoning the merit position of the petitioner in the said recruitment drive shall appoint the petitioner against any such available vacant posts, which was included in the said recruitment exercise. It is to be noted that in the event, the petitioner's case was ignored and persons placed lower than him on merit in the select list so prepared have been favored with an appointment, the case of the petitioner shall not be rejected on the ground of non-availability of vacancy, but, he shall be so appointed against

a vacancy identified for the benchmark disability possessed by him. Even if it is found that persons placed below the petitioner in the category of Visually Impaired candidates were appointed, such appointments be not disturbed, but, the petitioner be also accommodated against an available vacancy, which formed the part of the Special Recruitment Drive initiated in the year 2005.

17. In the event, if it is found that the persons placed below to the petitioner on merit in the select list were favored with appointments, and all the post involved have been utilized for the purpose, the petitioner be appointed by creating a supernumerary post.

18. In the event, the Director of Health Services, Assam on examination of the select list and the merit position obtained by the petitioner finds that no candidate placed below the petitioner in the said select list belonging to the Visually Impaired category were offered appointment and that the merit position of the petitioner also did not warrant his appointment, the same shall be communicated to the petitioner in the form of a speaking order and the case of the petitioner for appointment need not be processed any further.

19. The above exercise shall be undertaken by the Director of Health Services, Assam in consultation with the authorities of the Social Welfare Department and concluded either by issuing an order of appointment to the petitioner or by a speaking order in terms of the directions passed

hereinabove within a period of 90 days from the date of receipt of a certified copy of this order.

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

JUDGE

Comparing Assistant