

GAHC010151632024



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

Case No. : Review.Pet./129/2024

ARUP KAR AND 9 ORS
S/O- LATE ASHIT KAR, R/O- 2 NO. KEREKONI, P.O. BHADOI PANCHALI,
DIBRUGARH, ASSAM, PIN- 786191.

2: MD. ABDUL AZIZ ALI
S/O- LATE NURUL ISLAM
R/O- VILL. 1 NO. MIRIHULA VILLAGE
P.O. MORANHAT
DIBRUGARH
ASSAM
PIN- 785670.

3: MANASHREE DUTTA
D/O- SRI BIPIN KUMAR DUTTA
R/O- NEAR HANUMAN MANDIR
TARAJAN PATH
P.O. AND P.S. JORHAT
ASSAM
PIN- 785001.

4: HEMANTA KUMAR PATHAK
S/O- NAGENDRA NATH PATHAK
R/O- VILL.- ULUBAM
P.O. KHETRI
DIST. KAMRUP(M)
PIN- 782403.

5: ANUP DAS
S/O- TAPAN DAS
R/O- VILL- PUTHIMARI
P.O. ODALGURI
P.S. PATACHARKUCHI
DIST.BARPETA
ASSAM

PIN- 781325.

6: JONALI DAIMARY
D/O- SHRI KAMALESWAR DAIMARY
R/O- VILL.- SARUFULCHAKI
GORESWAR
BAKSA
P.S. BAKSA
PIN- 781366.

7: KARISHMA GOGOI
D/O- LAKHESWAR GOGOI
R/O- MAKUM
DIST. TINSUKIA
ASSAM
PIN- 786125.

8: KHAGANA BURAGOHAIN
D/O- RUBUL GOHAIN
R/O- RATNPUR MILAN NAGAR
NAMGHAR PATH
DIST. DIBRUGARH
P.O. C.R. BUILDING
ASSAM
PIN- 786003.

9: SAHEERA AZMI HAZARIKA
D/O- IMDAD HUSSAIN HAZARIKA
R/O- JAILROAD
DIST. JORHAT
P.O. AND P.S. JORHAT
ASSAM
PIN- 785001.

10: DIBYA JYOTI DANG
S/O- SUREN CHANDRA DANG
R/O- GREENLAND VILLAGE VIA RATANPUR
DHEMAJI
ASSAM
PIN 787057

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI-781006.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM

HIGHER EDUCATION (TECHNICAL) DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPARTMENT
DISPUR
GUWAHATI-781006.

4:SECRETARY TO THE GOVERNMENT OF ASSAM
HIGHER EDUCATION (TECHNICAL) DEPARTMENT
DISPUR
GUWAHATI-6
ASSAM

5:ASSAM ENGINEERING SERVICE RECRUITMENT BOARD
REPRESENTED BY ITS CHAIRMAN
ASSAM TEXTILE INSTITUTE CAMPUS
AMBARI
GUWAHATI-781001.

6:DIRECTOR OF TECHNICAL EDUCATION
ASSAM
DIRECTORATE OF TECHNICAL EDUCATION
KAHILIPARA
GUWAHATI
ASSAM
PIN- 110070.

7:ALL INDIA COUNCIL FOR TECHNICAL EDUCATION (AICTE)

REPRESENTED BY ITS CHAIRMAN
HAVING ITS HEAD OFFICE AT NELSON MANDALA MARG
VASANT KUNJ
NEW DELHI-110070

Advocate for the Petitioner : MR. D DAS SR. ADV, MS S SHARMA,A J KASHYAP,MR. K
MOHAMMED,MR H K NATH

Advocate for the Respondent : GA, ASSAM, MR. K P PATHAK (r-7),SC, HIGHER EDU,SC, A I C
T E

BEFORE
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR
ORDER

Date of hearing :: 16.09.2024

Date of order :: 20.09.2024

Heard Mr. D. Das, learned Senior counsel, assisted by Mr. H.K. Nath, learned counsel for the review petitioners as well as Mr. D. Saikia, learned Advocate General, Assam, assisted by Mr. K. Gogoi, learned Standing Counsel, Higher Education Department, Government of Assam.

2. The petitioners are working as full time Assistant Professors (Technical and Non-Technical) in the Dhemaji Engineering College, Assam after being subjected to a recruitment process in terms of the Advertisement No. 01/2020 dated 25.02.2020, issued by the Director of Technical Education, Assam under Regulation 3(f) of the Assam Public Service Commission (Limitations and Functions) Regulations, 1951 (Regulations of 1951, in short). The petitioners were successful in the recruitment process. Thereafter, by a Notification, dated 17.02.2021, issued by the Department of Higher Education (Technical), the petitioners were appointed temporarily for a period of four months as Assistant Professors at Dhemaji Engineering College, Dhemaji under Regulation 3(f) of the Regulations of 1951. The services of the petitioners were extended from time to time and they are continuing as such till date. Thereafter, by a Notification, dated 15.12.2021, in pursuance to the Department Notification, dated 17.02.2021, and the Cabinet decision held on 24.11.2021, *ex post facto* approval was given for the appointment of the petitioners as Assistant Professors of Dhemaji Engineering College, Dhemaji.

3. In the meantime, the Assam Engineering Services Recruitment Board issued a Notice No. AESRB/022/2022/248 dated 21.02.2023 inviting online applications from the permanent residents of Assam and having requisite qualifications for recruitment to 61 vacant posts of Assistant Professor in the State Engineering Colleges under Higher Education (Technical) Department, Government of Assam. Similarly, another Notice No. AESRB/023/2022/249 was issued on 21.02.2023 inviting applications for recruitment to 46 vacant posts of Assistant Professors (Non-Technical) in State Engineering Colleges under the Higher Education (Technical) Department, Government of Assam. In both the Notices, dated 21.02.2023, it is prescribed that the recruitment process will comprise of (i) OMR-MCQ based written examination – 75 marks and (ii) teaching proficiency test – 25 marks. The Notices further provided that only the shortlisted candidates will be called for teaching proficiency test. The petitioners participated in the selection process initiated by the Notices dated 21.02.2023 by applying for the post of Assistant Professor in the State Engineering Colleges of Assam. They also appeared in the OMR-MCQ based written examination.

4. Thereafter, the Assam Engineering Services Recruitment Board issued a Recruitment Notice dated 23.04.2023 providing that the teaching/skill proficiency test is to be treated as an integral part of the test to be conducted for selection and the final merit/selection list will be based on the gross performance in the two tests (OMR-MCQ based written test and teaching/skill proficiency test). The recruitment notice further provided that all aspiring candidates will have to appear in both the tests and the candidates appearing in the OMR-MCQ based written test will be shortlisted to appear in an Innovative Written Teaching/Skill Proficiency Test in a level playing field with no marks on interview.

5. The petitioners assailed the Recruitment Notice, dated 23.04.2023 by filing WP(C) No. 3048/2023, which was disposed of by this Court by the judgment and order dated 02.07.2024 wherein the said Recruitment Notice dated 23.04.2023 was interfered with.

6. The petitioners are seeking for review of paragraph-18 of the said judgment wherein this Court had made an observation that the petitioners having already participated in the OMR-MCQ based written examinations without any protest, this Court is not inclined to interfere in all the four Notices dated 21.02.2023. The last four lines of paragraph-18 wherein the review petitioners are seeking a review, is reproduced herein-below:-

“However, considering the fact that the petitioners in both the writ petitions have already participated in the OMR-MCQ based written examinations without any protest, this Court is not inclined to interfere in all the four Notices dated 21.02.2023.”

7. Mr. Das, learned Senior counsel for the review petitioners, submits that this Court had made an error apparent on the face of the record while making the observation that the petitioners has participated in the OMR-MCQ based written examinations without any protest. He submits that the petitioners had already challenged the Notices dated 21.02.2023 by filing WP(C) No.1271/2023 which is still pending for disposal. In the said writ petition, this Court after hearing the parties, passed an order dated 20.03.2023, and the relevant portion reads as under:-

“However, it is made clear that any appointment to the sanctioned vacant posts of Assistant Professor (Technical) in Dhemaji Engineering College, Dhemaji, to which the petitioners alleged in this petition that on 17.02.2021 they were appointed to those sanctioned posts on adhoc basis, in terms of the selection made on the basis of the impugned advertisement vide Notice under No. AESRB/022/2022/248 dated

21.02.2023 issued by the Chairman, Assam Engineering Service Recruitment Board, Guwahati, shall be subject to the outcome of this writ petition."

8. Learned Senior counsel, therefore, submits that when this Court had made the observation that the review petitioners had participated in the OMR-MCQ based written examinations without any protest, the fact that the review petitioners had filed WP(C) No.1271/2023 challenging the Notice dated 21.02.2023 was overlooked.

Learned Senior counsel for the review petitioners also submits that there was no challenge to the Notice dated 20.01.2023 in WP(C) No.3048/2023 and, therefore, the decision of this Court not to interfere in all the four Notices dated 21.02.2023 is also an apparent error on the face of the record.

9. Learned Senior counsel for the review petitioners further submits that as this Court had failed to take notice that the petitioners had filed WP(C) No.1271/2023 challenging the Notices dated 21.02.2023 and also as there was no challenge to the Notices dated 21.02.2023 in WP(C) No.3048/2023, the last four lines of paragraph-18 of the judgment and order dated 02.07.2024 requires to be reviewed.

10. Mr. D. Saikia, learned Advocate General, Assam, on the other hand, submits that the issue involved in WP(C) No.3048/2023 was the Recruitment Notice dated 23.04.2023 wherein it was notified that the teaching/skill proficiency test is to be treated as an integral part of the test to be conducted for selection and final merit/selection list will be based on the gross performance in the two tests (OMR-MCQ based written examination and Technical/Skill Proficiency) test and all aspiring candidates will have to appear in both the tests and the candidates appearing in OMR-MCQ based written examination will be shortlisted to appear in an Innovative Written Teaching/Skill Proficiency Test in a

level playing field with no marks on interview. He submits that the review petitioners had already filed WP(C) No.1271/2023 challenging the Advertisement dated 21.02.2023 on the ground that though their appointment was made under Regulation 3(f) of the APSC (L&F) Regulations, 1951, however, their appointments were followed by advertisement and selection through written examination and, therefore, their cases should be considered as a regular appointment against sanctioned posts. He submits that the grounds for challenge of the Advertisement dated 21.02.2023 by the petitioners in WP(C) No.1271/2023 was on a totally different footing. It is also submitted that the opinion expressed by this Court while passing the judgment and order dated 02.07.2024 was a passing remark while coming to the conclusion that the impugned Recruitment Notice dated 23.04.2023 is invalid. The grounds taken by the review petitioners are not an error apparent on the face of the record and, therefore, do not come within the purview of review jurisdiction. The grievance of the petitioners raised in the present review petition can only be addressed before the appellate jurisdiction and not in review jurisdiction. He, therefore, submits that the present review petition should be rejected.

11. I have considered the submissions advanced by the learned counsel for the parties.

12. This Court has considered paragraph-18, particularly, the last four lines, which have already been reproduced herein-above. It is seen that this Court has made an observation that the petitioners had participated in the OMR-MCQ based written examinations without any protest. It is a fact that the Notice dated 21.02.2023 was put under challenge by the petitioners in WP(C) No.1271/2023. However, they had participated in the OMR-MCQ based written examinations pursuant to the Notice dated 21.02.2023. Therefore, this Court, on

consideration of the materials available on record, is of the considered opinion that an error apparent on the face of the record has occurred when this Court had made the observation that the petitioners had participated in the OMR-MCQ based written test without any protest. Therefore, this Court is of the considered opinion that the words '*without any protest*' should be removed from paragraph-18 in the judgment and order dated 02.07.2024 passed in WP(C) No.3048/2023.

13. The submission of the learned Senior counsel for the review petitioners that there was no challenge made to the Notice dated 21.02.2023 in WP(C) No.3048/2023 has also been considered by this Court.

14. On a perusal of the prayer made in WP(C) No.3048/2023, particularly prayer (c), it is seen that the petitioners had prayed for a writ in the nature of Mandamus directing the respondents not to proceed further with the recruitment process of Assistant Professor in Engineering Colleges of Assam initiated pursuant to the Advertisement dated 21.02.2023.

15. This Court has considered the Notice dated 21.02.2023 and thereafter has proceeded to pass the judgment dated 02.07.2024 in WP(C) No.3048/2023. Therefore, the submission of the learned Senior counsel for the review petitioners cannot be considered inasmuch as there was already a prayer in WP(C) No.3048/2023 praying for a writ of mandamus not to proceed further with the recruitment process pursuant to the Advertisement dated 21.02.2023. Further, if the submission of the learned Senior counsel for the review petitioners is accepted, it would amount to reviewing the observations and directions made by this Court in the judgment and order dated 02.07.2024 and therefore would amount to re-hearing of the matter.

Accordingly, the submission of the learned Senior counsel for the review petitioners is rejected.

16. In terms of what has been discussed herein-above, paragraph-18 of the judgment and order dated 02.07.2024 passed in WP(C) No.3048/2023 is modified to the extent by removing the words '*without any protest*'.

17. With the above modifications, the review petition is disposed of.

JUDGE

Comparing Assistant