

GAHC010151642024



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

Case No. : Review.Pet./130/2024

ARJUARA BEGUM AND 21 ORS
D/O AYUB ALI R/O GERAMARI PART-IV, P.O. ALOMGANJ, P.S. GAURIPUR
DHUBRI, ASSAM, PIN-783339.

2: AYAN BHATTACHARJEE
S/O ASHIM BHATTACHARJEE
R/O HOUSE NO. 36

SUNDARI MOHAN ROAD

RANGIRKHARI
SILCHAR
ASSAM

PIN-788005.

3: DHANASHREE DEVI
D/O AMIYA KUMAR NATH
R/O NO. 1 KALAIGAON
P.O. AND P.S. KALAIGAON

UDALGURI
ASSAM
PIN-784525

4: DHOROM TERON
S/O DHONIRAM TERON
R/O VILL- RAPADANG

WEST KARBI ANGLONG
P.S. BAITHALANGSO
PIN-783410

5: MANAS PRATIM NATH

S/O KHAGENDRA KUMAR NATH
R/O WARD NO. 8
SANKAR NAGAR

MANGALDOI
DARRANG
ASSAM
PIN 784125

6: NASIR HUSSAIN
S/O MIRZA HUSSAIN
R/O GOHALIBHANGA
P.O. BURIGANG
P.S. GINGIA
BISWANATH (SONITPUR)
ASSAM
PIN-784176.

7: NITAMANI CHOUDHURY
D/O JOGESH CHANDRA CHOUDHURY
R/O KARARA
P.O. KARARA
P.S. BAIHATA CHARIALI
KAMRUP
ASSAM
PIN-781381

8: PANKAJ SARMA
S/O LATE RAMANI SARMAH
R/O KHATIKUCHI
LOCALITY- SANPARA
P.O. DHEKIAPARA
P.S. SIPAJHAR
DARRANG
ASSAM
PIN-784145

9: SASANKA BUJAR BARUAH
S/O KULEN BUJARBARUAH
R/O HOUSE NO. 21
BYLANE 06
JANAPATH
NABIN NAGAR
GUWAHATI
PIN-781024

10: SONARAM BRAHMA
S/O RAJA BRAHMA

R/O HABRUBARI

KOKRAJHAR
P.O.AND P.S. KOKRAJHAR
ASSAM
PIN-783370

11: BISHNUBRAT HAZARIKA
S/O SATYENDRAJJIT HAZARIKA
R/O MILIJULI PATH SIPAHIGAON

JOYSAGAR
P.O. AND P.S. JOYSAGAR

DIST. SIBSAGAR
ASSAM
PIN-785665

12: MANASH JYOTI GOGOI
S/O ARUP KUMAR GOGOI
R/O LOHONG KACHARI GAON
MADHAPUR
TITABAR JORHAT

DIST. JORHAT
ASSAM
PIN-785630

13: SASANKA SEKHAR SARMAH
S/O PRAFULLA KUMAR SARMAH
R/O WARD NO. 13
CHOLADHARA
P.O. JORHAT
P.S. JORHAT
ASSAM
PIN-785001

14: NIDARSHANA NEELAM
D/O JITU CH. SARMAH BORDOLOI
R/O SONALI JAYANTI NAGAR

TARAJAN
P.O. JORHAT
P.S. PULIBOR
JORHAT
ASSAM
PIN-785001

15: ZARIR SUBBANI ISLAM
S/O RAFIQUUL ISLAM
R/O HOWLY TOWN

WARD NO. 8
P.O. AMBARI
P.S. HOWLY
BARPETA
ASSAM
PIN CODE- 781316

16: RACKTACKSHREE CHELLENG
D/O LAKHINDRA CHELLENG
R/O MANCOTTA
KACHARIBARI DIBRUGARH
PIN CODE- 786003

17: DIPIKA BORDOLOI
D/O SRI NILEN BORDOLOI
R/O UTTAR BALIPARA

RAHA
DIST. NAGAON
ASSAM
PIN CODE- 782103

18: MIMLI DAS
D/O RAJANI KANTA DAS
R/O HOUSE NO. 23
LUIT PATH

JYOTINAGAR
GUWAHATI
PIN CODE- 781021

19: MANAS JYOTI BHARALI
S/O SRI ATUL BHARALI
R/O VILL- PUB PANERI

P.O. PANERIHAT
P.S. PANERI
DIST. UDALGURI
ASSAM

PIN CODE- 784523

20: KULDEEP DEKA
S/O LATE BIPUL CH. DEKA

R/O HOUSE NO. 33
VILL- PACHARIA (UJANTOL SUBURI)
PIN CODE- 781104

21: JUBI BEGUM
D/O SAMSER ALI
R/O VILL- DOLAITOLA
P.O. SANIADI
P.S. HAJO
DIST. KAMRUP (R)
ASSAM
PIN-781102

22: RAHUL NATH
S/O SRI HIREN NATH
R/O HOUSE NO. 9

BISHNU PATH

LOKHRA NOONMATI
GUWAHATI
PIN CODE- 78104

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 GOVT. OF ASSAM

HIGHER EDUCATION (TECHNICAL) DEPARTMENT
DISPUR
GUWAHATI-6

ASSAM

5:ASSAM ENGINEERING SERVICE RECRUITMENT BOARD

REP. 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)

REP. BY ITS CHAIRMAN
HAVING ITS HEAD OFFICE AT NELSON MANDALA MARG
VASANT KUNJ
NEW DELHI-11007

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 Lecturers (Technical and Non-Technical) in different Polytechnics of five districts of Assam, namely, Tinsukia, Hailakandi, Chirang, Morigaon and Udalguri. The petitioners were subjected to a recruitment process in terms of the Advertisement No. 04/2020 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). On being successful, they were appointed as temporary lecturers under Regulation 3(f) of the Regulations of 1951 by a Notification dated 22.02.2021 issued by the Department of Higher Education (Technical), Government of Assam. The appointment of the petitioners as lecturers were also given *ex post facto* approval by a Notification, dated 15.12.2021, in pursuance of the Department Notification, dated 22.02.2021, and the Cabinet decision held on 24.11.2021.

3. The Assam Engineering Services Recruitment Board issued a Notice No. AESRB/034/2022/250 on 21.02.2023 inviting online applications from permanent residents of Assam and having requisite qualification for recruitment to 80 vacant posts of Lecturer (Technical) in Polytechnics of Assam under the Higher Education (Technical) Department, Government of Assam. By another Notice No. AESRB/035/2022/251 dated 21.02.2023 online applications were invited for recruitment to 57 vacant posts of Lecturer (Non-Technical) in the Polytechnics of Assam under the Higher (Technical) Department Government of Assam. Both the Notices, dated 21.02.2023, provided that the recruitment process will comprise of (i) OMR-MCQ based written examination – 75 marks and (ii) teaching proficiency test – 25 marks. The Notice further provided that only the shortlisted candidates will be called for the teaching proficiency test.

The petitioners, being qualified, made their applications to the Notice dated 21.02.2023 and they also appeared in the OMR-MCQ based written examination.

While the petitioners were awaiting their results, 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 for interview.

4. The petitioners assailed the Recruitment Notice, dated 23.04.2023 by filing WP(C) No. 3051/2023, 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.

4.1. The petitioners are seeking for a 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.”

5. 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.1267/2023 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 Lecturer (Technical) in those newly opened five Polytechnics of Assam at Chirang, Hailakandi, Morigaon, Tinsukia and Udalguri, in which the petitioners alleged in this petition that they were appointed to those sanctioned posts under Regulation 3(f) of the APSC (L&F) Regulations 1951, in terms of the Page No.# 10/10 selection made on the basis of the impugned advertisement vide Notice under No. AESRB/034/2022/250 dated 21.02.2023 issued by the Chairman, Assam Engineering Service Recruitment Board, Guwahati, shall be subject to the outcome of this writ petition.”

6. 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.1267/2023 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.3051/2023 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.

7. 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.1267/2023 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.3051/2023, the last four lines of paragraph-18 of the judgment and order dated 02.07.2024 requires to be reviewed.

8. Mr. D. Saikia, learned Advocate General, Assam, on the other hand, submits that the issue involved in WP(C) No.3051/2023 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.1267/2023 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.1267/2023 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.

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

10. 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.1267/2023. 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.3051/2023.

11. The submission of learned Senior counsel for the review petitioners that there was no challenge made to the Notice dated 21.02.2023 in WP(C) No.3051/2023 has also been considered by this Court.

12. On a perusal of the prayer made in WP(C) No.3051/2023, particularly prayer (c), it is seen 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.

13. 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.3051/2023. 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.3051/2023 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.

14. 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.3051/2023 is modified to the extent by removing the words '*without any protest*'.

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

JUDGE

Comparing Assistant