

GAHC010165952021



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

Case No. : WP(C)/5450/2021

DR. JIBAN JYOTI KAKOTI AND ANR
S/O- LT. BIPIN CHANDRA KAKATI, R/O- CHANDMARI, WARD NO. 10, DIST.-
GOLAGHAT, ASSAM, PIN- 785621

2: TARUN GOGOI
S/O- SRI GAURI GOGOI
R/O- N.B PATH
JYOTI NAGAR
GOLAGHAT
ASSAM
PIN- 78562

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HIGHER
EDUCATION DEPTT., DISPUR, GHY-06

2:THE DIRECTOR TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
KAHILIPARA
GHY-19

3:THE PRINCIPAL
GOLAGHAT COMMERCE COLLEGE
JYOTI NAGAR
DIST.- GOLAGHAT
ASSAM
PIN- 785621

4:THE SELECTION COMMITTEE CONSTITUTED FOR APPOINTMENT TO
THE POST OF PRINCIPAL
OF GOLAGHAT COMMERCE COLLEGE UNDER THE CHAIRMANSHIP OF
THE VICE CHANCELLOR

DIBRUGARH UNIVERSITY DIBRUGARH- 786004

5:THE GOVERNING BODY OF GOLAGHAT COMMERCE COLLEGE
REP. BY ITS PRESIDENT
OFFICE OF THE PRINCIPAL
GOLAGHAT COMMERCE COLLEGE
JYOTI NAGAR
DIST.- GOLAGHAT
ASSAM
PIN- 785621

6:UTPAL SARMA
PRINCIPAL
GOLAGHAT COMMERCE COLLEGE
JYOTI NAGAR
DIST.- GOLAGHAT
ASSAM
PIN- 785621

7:JOYA GOGOI COLLEGE
REP. BY ITS PRINCIPAL
KHUMTAI
DIST.- GOLAGHAT
ASSAM
PIN- 785619

8:UNIVERSITY GRANTS COMMISSION
REPRESENTED BY ITS SECRETAR

Advocate for the Petitioner : MR. K N CHOUDHURY, MR D J DAS,N GAUTAM,MS N MAHANTA,MR. R M DEKA

Advocate for the Respondent : SC, HIGHER EDU, MS P AGARWAL (r-8),MR. A CHAMUAH (SC, UGC),MRS. R DEVI (r-5),MR H BEZBARUA (R4),MR. R MAZUMDAR (R4),MR. A BHATTACHARYYA (R6),MR. A BORUA (R6),MR. M DUTTA (R6),MR. T J MAHANTA (R6)

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioners : Shri RM Deka, Advocate.

For the Respondents : Shri K Gogoi, SC, Higher Education Department,
Shri R Mazumdar, Advocate, R/4,

Ms. R Devi, Advocate, R/5 and 7,
Shri TJ Mahanta, Sr. Advocate, R/6 and
Dr. P Agarwal, Advocate, R/8.

Date of Hearing : 16.09.2024.

Date of Judgment : 24.09.2024.

JUDGMENT & ORDER

The challenge in the instant petition filed under Article 226 of the Constitution of India is with regard to a recruitment process for the post of Principal of the Golaghat Commerce College. It is the selection and appointment of the respondent no. 6 which has been put to challenge mainly on the basis that the said respondent no. 6 did not meet the eligibility criteria, more specifically, the one relating to experience of 15 years.

2. As per the facts projected in the petition, pursuant to an advertisement dated 18.06.2020, the petitioners, who are two in numbers, had participated in the selection process for the aforesaid post of Principal along with the respondent no. 6. It is averred that amongst others, one of the eligibility condition was that the candidate must have 15 years of total experience in teaching/research/administration in Universities/Colleges and other institution of higher education as Professor/Associate Professor. It is the case of the petitioners that the respondent no. 6 did not meet the said requirement in his previous service in the Joya Gogoi College in the Department of Mathematics. As per the petitioners, information was extracted under the Right to Information Act, 2005 from where it has been learnt that there was no student in the aforesaid Joya Gogoi College in the Department of Mathematics from 1998 to 2000 and from 2002 to 2021. It is accordingly the case of the petitioners that the

respondent no. 6 did not have any teaching experience for the aforesaid period and therefore, was not eligible.

3. I have heard Shri RM Deka, learned counsel for the petitioners and Shri K Gogoi, learned Standing Counsel, Higher Education Department, Assam. I have also heard Shri R Mazumdar, learned counsel for the respondent no. 4; Ms. R Devi, learned counsel for the respondent nos. 5 & 7; Shri TJ Mahanta, learned Senior Counsel assisted by Shri M Dutta, learned counsel for the respondent no.6 and Dr. (Ms.) P Agarwal, learned counsel for the respondent no. 8.

4. Shri Deka, the learned counsel for the petitioners has submitted that pursuant to their participation in the recruitment, the respondent no. 6 was wrongfully selected and was appointed on 08.12.2020. However, after the said appointment, the petitioners had sought information under the Right to Information Act and vide a reply dated 19.01.2021, it could be learn that there were no students in the Joya Gogoi College in Mathematics as a Major/Core/GE in the Under Graduate Course since 2011. Vide another reply dated 22.04.2021 obtained under the RTI Act, it has been learnt that there were no students in Mathematics in the said college from the year 1998 to 2000 in Major or General Course; in the year 2001, four students appeared and in the year 2002, one student appeared; from the year 2003 to 2010, no student opted for Mathematics (Major or General Course) in the said College.

5. The learned counsel for the petitioner has also drawn the attention of this Court to two numbers of Experience Certificates dated 14.12.2021 and 21.05.2022 which have been annexed in the affidavit-in-opposition of the respondent no. 6. It is averred that when the recruitment process was of the year 2020, such Certificates of a subsequent period cannot be taken into consideration. It is submitted that the eligibility criteria has to be met by a candidate before the last date of submission of

candidatures.

6. In respect of the aspect of teaching experience, the learned counsel for the petitioners has placed reliance upon the case of the Hon'ble Supreme Court in ***VB Prasad Vs. Manager PMD Upper Primary School & Anr.***, reported in **(2007) 10 SCC 269**. In the aforesaid case, the difference between teaching experience and deemed teaching experience has been laid down. The learned counsel accordingly submits that the impugned appointment order of the respondent no.6 dated 08.12.2020 is liable to be interfered with.

7. *Per contra*, Ms. Devi, learned counsel appearing for the respondent nos. 5 and 7 has defended the impugned decision. By referring to the affidavit-in-opposition filed on 14.03.2023 on behalf of the respondent no. 5 which is the Governing Body of the Golaghat Commerce College, the learned counsel has submitted that the respondent no. 6 duly met the eligibility criteria, including the requirement of experience. It is submitted that apart from the advertisement dated 18.6.2020, there is an Office Memorandum dated 25.02.2019 laying down the eligibility criteria. On the aspect of experience, the requirement is 15 years of teaching/research/administration experience as Associate Professor/Professor. It is submitted that such experience is not confined to the aspect of teaching alone. She has also referred to the consideration part of the candidature which has been pleaded in paragraph 9 of the said affidavit-in-opposition.

8. On the aspect of the role of the Joya Gogoi College which has been arrayed as the respondent no.7, the learned counsel has referred to the affidavit-in-opposition filed on 03.04.2024. It is submitted that the respondent no. 6 was appointed in the said College on 10.08.1995 and such appointment was approved by the Director of Higher Education on 25.03.1998. In the said affidavit, a chart of the numbers of

students has also been annexed. It is clarified that the reply under the RTI Act was sought for only with regard to graduation course and not of Under Graduation. However, it is submitted that the said College also had UG course having Mathematics subject wherein, the respondent had imparted classes. It is also pleaded that the respondent no. 6 also took classes of Mathematics of BPP, BA, BCA under the Krishna Kanta Handique State Open University (KKHSOU). The learned counsel accordingly submits that there is no shortcoming in the aspect of experience of the respondent no. 6 and accordingly, the selection has been properly done.

9. Shri Gogoi learned Standing Counsel, Higher Education Department has submitted that the Director had given the approval after being satisfied with the manner of the selection which has been done by the selection body. It is submitted that there is no particular requirement of having the 15 years experience only in teaching. It is submitted that the post in question is that of the Principal which also involves administrative works and therefore, the 15 years experience as an Assistant Professor/Professor is on other aspects also, including the aspect of research and administration. It is submitted that the respondent no. 6 has been in the teaching line in the Joya Gogoi College for the last 24 years and in the said period, he had served as the Head of the Department for 3 years and had been the Coordinator of the KKHSOU for 11 years. It is submitted that experience in the aforesaid fields is also relevant for the purpose of meeting the eligibility criteria.

10. Sri TJ Mahanta, learned Senior Counsel appearing for the respondent no. 6 has submitted that the writ petition itself is not maintainable as two petitioners, who are participants in the same selection for the post single post or Principal have joined together. It is submitted that there would be a clash of interest between the petitioners. In any case, the learned Senior Counsel has referred to the affidavit-in-opposition dated 23.08.2022 wherein, the respondent no. 6 has put his defence in

details. So far as the Certificates dated 14.12.2021 and 21.05.2022 are concerned, it is clarified that those were never the matters of consideration in the recruitment which was done in the year 2020 resulting in the appointment order dated 08.12.2020. It is submitted that the said Certificates were obtained later only in view of the allegations made in the writ petition and such Certificates have accordingly been annexed to the counter affidavit. The learned Senior Counsel has also referred and relied upon the Office Memorandum dated 25.02.2019. It is submitted that the teaching experience in Mathematics is not confined only to the Department of Mathematics as in other Departments, namely, Economics and BBA, the subject of Mathematics is required in which, the petitioner had conducted classes.

11. He has also highlighted the aspect that the RTI reply are only confining to the Graduation Course whereas in the Joya Gogoi College, there were Under Graduate course also in which, the respondent no. 6 had teaching experience. He has also highlighted that in the Selection Committee, there was a nominee of the University and accordingly, the procedure adopted was fair in which, the experience and other criteria of the respective candidates were duly assessed and verified.

12. The rival contentions have been duly considered and the materials placed on records have also been carefully examined.

13. As regards the objection taken that the writ petition is not maintainable, this Court is of the opinion that two candidates cannot join together in challenging the appointment of a selected candidate when the number of post is one as there would be apparent clash of interest. However, this Court has been informed by the learned counsel for the petitioners that the petitioner no. 1 has, in the meantime, crossed 55 years of age and is outside the purview of consideration and therefore, the present challenge would remain only for the petitioner no. 2.

14. From the context of a challenge from one petitioner, namely, the petitioner no. 2, the issue is required to be examined. The advertisement dated 18.06.2020, amongst others, had the following condition as an eligibility criterion:

“3. Associate Professor/Professor with a total experience of 15 years of teaching/ research/administration in Universities, Colleges and other institution of Higher Education.”

The said condition is in consonance with the Office Memorandum dated 25.02.2019 which reads as follows:

“(iii) Associate Professor/Professor with a total experience of fifteen years of teaching/research/Administration in University/Colleges and other institutions of Higher Education.”

15. It is clear that the 15 years of experience as Assistant Professor/Professor is not only confined to teaching but is also extended to the field of research and administration. It is not in dispute that the respondent no. 6 was the Head of the Mathematics Department of the Joya Gogoi College for 3 years. He was also the Coordinator of the KKHSOU for 11 years. The Joya Gogoi College, which has been arrayed as the respondent no. 7, in its affidavit filed on 03.04.2024 has given the history of the service experience of the respondent no. 6. It has been stated that the respondent no. 6 was appointed on 10.08.1995 in the said College which was approved by the DHE on 25.03.1998. The affidavit has also given a chart regarding the numbers of students and also a clear statement that apart from teaching in his own Department, the respondent no. 6 had taken classes of Mathematics for the BPP, BA and BCA. It is also stated that he had taken classes under the KKHSOU and he was

the Coordinator for 11 years.

16. The respondent no. 6 in his affidavit-in-opposition, has submitted that apart from the Department of Mathematics, he had taken classes in Economics and BBA wherein Mathematics is an integral part. He has also highlighted that the RTI reply was only in respect of Graduation course wherein, the aspect of Under Graduation course has not been dealt with. The chart annexed in the affidavit of the respondent no. 7 clearly shows that the respondent no.6 has met the requirement of 15 years of experience as per the advertisement as well as the Office Memorandum dated 25.02.2019.

17. The reliance upon the case of **VB Prasad** (*supra*) is only on the difference between teaching experience and deemed teaching experience. When the requirement in the instant case is not confined only to teaching experience, the ratio of the said case would not be relevant.

18. There is no objection or challenge on any other aspect of the selection and admittedly, the respondent no. 6 had secured more marks in the selection. It also transpires that in the said selection, there was a nominee of the University and in any case, the constitution of the Selection Committee is not the subject matter of challenge.

19. In view of the aforesaid facts and circumstances and the discussions made, this Court is of the opinion that no case for interference is made out and accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant