

GAHC010175952015



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

Case No. : WP(C)/2139/2015

PURNANANDA KOCH
S/O- SRI MAHENDRA KOCH, R/O VILL.- SONAIGHULI, ASSAM SURVEY and
SETTLEMENT TRAINING CAMPUS, P.O.- SAUKUCHI, P.S.- DISPUR, GHY- 34.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER and SECY., GOVT. OF ASSAM, DEPTT. OF
REVENUE, DISPUR, GHY- 6.

2:ASSAM BOARD OF REVENUE
REP. BY CHAIRMAN
GHY- 1
ASSAM.

3:SECY. CUM ADMINISTRATIVE OFFICER
ASSAM BOARD OF REVENUE
GHY- 1
ASSAM.

4:THE DIRECTOR
OFFICE OF THE DIRECTORATE OF EMPLOYMENT AND CRAFTMAN
TRAINING
ASSAM
REHABARI
GHY- 8.

5:PRASANTA KUMAR SINGH
S/O- SRI RAVINOD SINGH
R/O- DISPUR LAST GATE
CAPITAL COMPLEX
QR. NO. 2

BLOCK- IV
P.O. and P.S.- DISPUR
GHY- 6
DIST.- KAMRUP M
ASSAM.

6:PALLAB BORO
S/O- SRI NARAYAN BORO
R/ VILL.- AHOMN GAON
P.O. and P.S. - GORCHUK
GHY- 14
DIST.- KAMRUP M
ASSAM.

7:PULEN TALUKDAR
S/O- LT. BARUN TALUKDAR
R/O VILL.- AMAYAPUR
P.O. and P.S.- TAMULPUR
DIST.- BAKSA
ASSAM
PIN- 781344.

8:KAMAL CHANDRA DEKA
C/O- CHAIRMAN
BOARD OF REVENUE
PANBAZAR
GHY- 1

Advocate for the Petitioner : MR.N BARMAN

Advocate for the Respondent : MR. S SARMA

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner	: Mr. SK Goswami, Advocate
For the Respondents	: Mr. S Sarma, Senior Advocate
	Mr. TK Bhuyan, Advocate
	Mr. RM Deka, Advocate
	Mr. S Dutta, Advocate

Date of Hearing : 26.02.2024

Date of Order : 26.02.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. SK Goswami, learned counsel for the petitioner. Also heard Mr. S Sarma, learned Senior counsel assisted by Mr. TK Bhuyan, learned counsel for the respondent Nos. 2 and 3, Mr. RM Deka, learned counsel for the respondent No. 8 and Mr. S Dutta, learned counsel for the respondent No. 1.

2. The present writ petition is filed assailing a selection process initiated by the respondent Nos. 2 and 3 by way of an advertisement dated 20.11.2014 for selection of driver. Prior to the interview, which was supposed to be held on 10.04.2015, the petitioner approached this court and challenged the selection process with a specific ground that he had come to know from one influential employee under the respondent No. 2 that the respondent No. 8 will be appointed in the post of driver as per the advertisement inasmuch as the said respondent No. 8 at that point of time was working as a driver of Chairman of the Board.
3. Thereafter, this court under its order dated 09.04.2015, while issuing notice of motion, as an interim measure, directed not to proceed with the selection process. Subsequently, thereafter on 10.04.2015 selection was held and order of appointment was also issued on 10.04.2015 in favour of the respondent No. 8.
4. In the aforesaid backdrop, Mr. SK Goswami, learned counsel for the petitioner argues that the apprehension of the petitioner as pleaded in the writ petition was established inasmuch as even after intimation of the order of this court, the respondent proceeded with the selection process and selected the respondent No. 8. The petitioner did not participate in the selection as already a stay order was operating. Accordingly, Mr. Goswami submits that on this ground alone the entire selection process is vitiated and is liable to be interfered with. In support

of such contention, Mr. Goswami relies on the decision of the Hon'ble Apex court in ***Christopher Nelson Vs UPSC*** reported in ***(2017) 4 SCC 585***.

5. Per contra, Mr. Sarma, learned Senior counsel submits that the interim order was passed ex-parte against the respondent Nos. 2 and 3 inasmuch as there is no pleadings on record stating that the petitioner put the respondent Nos. 2 and 3 on notice as regards passing of an interim order. It is further contended by Mr. Sarma that subsequently when they received notice, the respondents on their own had withdrawn the earlier order of appointment. Mr. Sarma further contends that subsequently the respondent No. 8 i.e. the selected candidate has preferred an Interlocutory Application for modification of the earlier order dated 09.04.2015, which was registered as IA (Civil) 1132/2020 and this court under its order dated 01.10.2020 modified the interim order dated 09.04.2015 to the extent that appointment of the respondent No. 8 shall be subject to the result of the writ petition. Mr. Sarma further submits that subsequently the respondent No. 8 was once again appointed subject to outcome of the present writ petition.
6. This court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the records including the records of IA (Civil) 1132/2020.
7. Mr. Goswami fairly submits that he will confine his argument only to the point of continuing with the selection process even after the order dated 09.04.2015.
8. In that view of the matter, let us now take the said argument only. The record reveals that notice of motion was issued on 09.04.2015 and after hearing the learned counsel for the petitioner and learned counsel representing the respondent Nos. 1 and 4, the interim order was passed to the effect that the selection for the post of driver pursuant to the advertisement dated 20.11.2014 shall remain stayed. From the aforesaid order, it is clear that the said interim order was passed ex-parte against the respondent Nos. 2,3 and 8. Thereafter,

as reflected in order dated 12.05.2020, a submission was made by the learned counsel for the petitioner that even after the interim order dated 09.04.2015, respondent No. 8 was appointed as driver. On the basis of such submission, this court opined that if any appointment of driver had been made subsequent to the interim order of this court in a situation where an interim order was duly communicated, the same would mean deliberate and willful violation of this Court's order, which shall call for contempt proceeding. On that date also respondent Nos. 2 and 3 were not represented. And no affidavit was filed as regards manner and mode of service of copy of the order upon the respondent Nos. 2 and 3. Thereafter, on 09.06.2020, the learned Senior counsel for the respondent Nos. 2 and 3 had produced an instruction dated 01.06.2020, wherein it was provided that the appointment of the respondent No. 8 as driver had in the meantime been withdrawn. Thereafter, the IA was filed by the respondent No. 8 and the earlier order dated 09.04.2015 was modified as discussed hereinabove.

9. To uphold the contention of Mr. SK Goswami, learned counsel for the petitioner, this court is to come to a definite finding that order dated 09.04.2015 was within the knowledge of the respondent Nos. 2 and 3 and even after such knowledge they proceeded with the selection process. However, in the present proceeding, this court could not find any material or statement to show that the order dated 09.04.2015 was served upon the respondent Nos. 2 and 3 before the selection was held on 10.04.2015. Though pleadings were made to the extent in the IA, however, considering the material and pleading available in the IA, this court had modified the earlier interim order of stay dated 09.04.2015.
10. Though Mr. Goswami made a submission that a specific stand was taken by filing affidavit in the IA as regards service of the order dated 09.04.2015 upon the respondent Nos. 2 and 3, however, such contention cannot be taken note of in the present proceeding to interfere with the selection inasmuch as the IA was

considered by this court and interim order was modified. No contempt petition has also been filed.

11. That being the position, the ground of non-implementation of an order passed by this court dated 09.04.2015 cannot be a ground to set aside the selection process in the given facts of the present case.
12. This court cannot also be oblivious of the fact that though the court has expressed a prima-facie view of contempt in its order dated 12.05.2020, however, no such contempt was drawn and when the respondent Nos. 2 and 3 took a stand that earlier order was withdrawn, this court directed the matter to be taken up for hearing on its own merit and thereafter the interim order dated 09.04.2015 even was modified.
13. Accordingly, the only ground urged by Mr. SK Goswami, learned counsel for the petitioner, in the considered opinion of this court, cannot be a ground to set aside the selection process.
14. Accordingly, the present writ petition stands dismissed. Parties to bear their own costs.

JUDGE

Comparing Assistant