

GAHC010177512024



2024:GAU-AS:10304-DB

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

Case No. : WA/299/2024

1: PRANJAL PRATIM GOSWAMI AND 30 ORS
S/O. RAMESH CHANDRA GOSWAMI, R/O. VILLAGE AND P.O. HEKRA,
P.S. BOKO, PIN CODE 781127, DISTRICT KAMRUP, ASSAM

2: MONZIL KOTOKY
S/O. ROTNESWAR KOTOKY R/O. TITABOR BHAGAWATIPARA
P.O. TITABOR PIN CODE 785101 DISTRICT JORHAT ASSAM

3: BHUPEN SAIKIA
S/O. MR BHOGESWAR SAIKIA R/O. VILLAGE - 2 NO. SOLOGURI
BOMPATHAR P.O. TIPOMIA DISTRICT JORHAT ASSAM. PIN CODE 785630

4: BIREN KACHARI
S/O. LATE BHOLA KANTA KACHARI R/O. VILLAGE NO. 2 SOLOGURI
BOMPATHAR P.O. TIPOMIA DISTRICT JORHAT ASSAM. PIN CODE 785630

5: BIKASH JYOTI DAS
S/O. LATE NARAYAN CHANDRA DAS R/O. VILLAGE PATHEKAKURI
P.O. SOOTEA PIN CODE 784175 DISTRICT SONITPUR ASSAM

6: L. LAIRANGTOMBI SINGHA
S/O. Y. BROJENDRA SINGHA R/O. VILLAGE AND P.O. RAJYESWARPUR
PART - 2 DISTRICT HAILAKANDI ASSAM. PIN CODE 788151

7: DILEEP KUMAR DAS
S/O. LATE BHAGWAN CHANDRA DAS R/O. VILLAGE GOSAIPARA
DISTRICT BONGAIGAON ASSAM. PIN CODE 783380

8: KISHORE THAKURIA
S/O. HIRENDRA THAKURIA R/O. VILLAGE DHUMGORA
P.O. AG-GUMI PIN CODE 781124 DISTRICT KAMRUP ASSAM

9: ANJAN JYOTI DAS
S/O. CHANDRA KANTA DAS R/O. VILLAGE BORKUCHI NIZESWARY GAON

P.O. MIRZA PIN CODE 781125 DISTRICT KAMRUP ASSAM

10: MD SIDDIQUE ALI KHAN

S/O- LATE ALEP KHAN R/O. VILLAGE AND P.O. JAHURPAM DISTRICT
BARPETA ASSAM. PIN CODE 781314

11: SHARBAL KHAN

S/O. LATE MONGAL KHAN R/O. VILLAGE RANGIA NADIR PAM P.S.
SARTHEBARI P.O. BAGODI DISTRICT BARPETA ASSAM. PIN CODE 781311

12: MD SHAHIDUR RAHMAN

S/O. SAFIOR RAHMAN R/O. VILLAGE TIAMARI PART - II P.O. TIAMARI
DISTRICT DHUBRI ASSAM. PIN CODE 783331

13: DIP KUMAR DAS

S/O. LATE GIRINDRA CHANDRA DAS R/O. VILLAGE BAMUNPARA
DISTRICT GOALPARA ASSAM. PIN CODE 783125

14: MUNINDRA DEKA

S/O- LATE TARANATH DEKA R/O- VILLAGE TETELIA
P.S- HAJO DIST- KAMRUP ASSAM PIN-781108

15: APURBA KUMAR DEKA

S/O- DHIREN DEKA R/O- VILLAGE AND P.O- MAJORKURI
DIST- KAMRUP ASSAM PIN-781101

16: MANJU KAKATI

S/O- RAMESWAR KAKATI R/O- VILLAGE KAMARPANI GAON
P.O- NANOI P.S- SADAR DIST- NAGAON ASSAM PIN-782101

17: KUSHAL CHANDRA DAS

S/O. SARAT CHANDRA DAS R/O. VILLAGE BAJALBARIGAON
P.O. BARUAJAN P.S. TITABOR DISTRICT JORHAT ASSAM. PIN CODE 785101

18: BEDANTA DUTTA

S/O. LATE KUMUD DUTTA R/O. VILLAGE SALAGURI PAHIGAON
P.O. KALOOGAON PIN CODE 785666 DISTRICT SIVASAGAR ASSAM

19: MANASH PRATIM SAIKIA

S/O. KRISHNA KAMAL SAIKIA R/O. SAIKIA CHUBURI BARJHAR
P.O. DEKARGAON DISTRICT SONITPUR ASSAM. PIN CODE 784501

20: BUBUL CHANDRA BORA

S/O. LATE MANIK CHANDRA BORA R/O. DERGAON MOUZADAR ALI
WARD NO. 8 P.O. DERGAON DISTRICT GOLAGHAT ASSAM. PIN CODE
785614

21: MRIDU PABAN BORA

S/O. GHANA KANTA BORA R/O. VILLAGE AND P.O. CHIRAKHUNDA GAON
PIN CODE 785666 DISTRICT SIVASAGAR ASSAM

22: NAZRUL ISLAM
S/O. LATE KALIMUDDIN AHMED R/O. VILLAGE MURAL KUCHO
DISTRICT NALBARI ASSAM. PIN CODE 781303

23: RUBUL HOQUE
S/O. SAYED BASIR ALI R/O. VILLAGE RAJA BAZAR
P.O. KALITA KUCHI PIN CODE 781102 DISTRICT KAMRUP ASSAM

24: BAREN NATH
S/O. RABIRAM NATH R/O. VILLAGE DHAMDHAMA
DISTRICT NALBARI ASSAM. PIN CODE 781349

25: AMAR JYOTI BORAH
S/O. GOPAL BORAH R/O. VILLAGE GOALGAON
DISTRICT MAJULI ASSAM. PIN CODE 785104

26: ABDUR RAHIM SARKAR
S/O. LATE FOYJAR RAHMAN SARKAR R/O. VILLAGE KATANGA SATDUBI
PART - II P.O. PATAKATA PIN CODE 783127 DISTRICT SOUTH SALMARA
MANKACHAR ASSAM

27: CHANDRA JYOTI OZAH
S/O. LATE SONARAM OZAH R/O. VILLAGE TATAYA GAON
DISTRICT MAJULI ASSAM. PIN CODE 785106

28: BALIN SARMAH
S/O. MR MANIK SARMAH R/O. VILLAGE BARPATHAR HAZARIGAON
DISTRICT GOLAGHAT ASSAM. PIN CODE 785602

29: BIPUL SAIKIA
S/O. HAREN SAIKIA R/O. VILLAGE SARALA BARUA CHOWK
P.O. SOOTEA DISTRICT BISWANATH ASSAM

30: PRABIN RAJBONGSHI
S/O. LATE MOHAN RAJBONGSHI R/O. VILLAGE ALENGIDAL
P.O. BHANDRA PIN CODE 781334 DISTRICT NALBARI ASSAM

31: BIREN KACHARI
S/O. LATE BHOLA KANTA KACHARI R/O. VILLAGE NO. 2 SOLOGURI
BOMPATHAR P.O. TIPOMIA DISTRICT JORHAT ASSAM. PIN CODE 78563

VERSUS

1: THE STATE OF ASSAM AND 2 ORS THROUGH - THE SECRETARY, TO THE
GOVERNMENT OF ASSAM, HANDLOOM, TEXTILES AND SERICULTURE

DEPARTMENT, DISPUR, GUWAHATI - 781006

2:THE DIRECTOR OF SERICULTURE
ASSAM KHANAPARA GUWAHATI - 781022

3:THE CHAIRMAN SELECTION COMMITTEE FOR THE POST OF
SERICULTURE DEMONSTRATOR KHANAPARA GUWAHATI - 78102

For the Appellant(s) : Mr. K.N. Choudhury, Senior Advocate, assisted by Mr. D.J. Das, Advocate.

For the Respondent(s) : Mr. D. Mazumdar, Additional Advocate General, Assam, assisted by Mr. R. Dhar, Standing Counsel, Handloom, Textiles and Sericulture Department.

- B E F O R E -

**HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KARDAK ETE**

21.10.2024

(Vijay Bishnoi, CJ)

This writ appeal is preferred by the appellants being aggrieved with the judgment & order dated 01.08.2024 passed by the learned Single Judge in WP(C) No.5655/2023.

2. Brief facts of the case are that the appellants have applied for appointment on the posts of Sericulture Demonstrator under the Directorate of Sericulture, Assam pursuant to the advertisement dated 01.03.2023. They approached the Writ Court with the grievance that while prescribing the mode of selection to the posts of Sericulture Demonstrator on 25.08.2023, the respondent authorities had newly introduced the aspect of written examination.

3. It is the case of the appellants that the earlier recruitments for the posts of Sericulture Demonstrator held in the years 2014, 2015, 2016 and 2018 were conducted only on the basis of walk-in interview and written examinations were not conducted. It was also contended on behalf of the appellants before the Writ Court that the service conditions for the post of Sericulture

Demonstrator are governed by the Assam Sericulture Technical and Miscellaneous (Non-Gazetted) Service Rules, 2008 (hereinafter to be referred as "2008 Rules") and in the said Rules, there was no such provision for conducting written examination. It was argued before the learned Single Judge that as the appellants have already been sufficiently aged, it will be difficult for them to compete with the others who are younger in age and, therefore, the action of the respondents of introducing written examination for selection on the post of Sericulture Demonstrator is arbitrary and *dehors* the Rules.

4. The challenge of the appellants to the written examination was contested by the respondents and it was contended that the earlier appointment procedures were not done in scientific manner and there was no specific procedure to examine the competency of the candidates and, therefore, written examination, which is the most suitable method to select the best candidates out of the lot, has been introduced.

5. The learned Single Judge, after hearing the learned counsel appearing for the parties, has held that adopting the procedure of conducting written test cannot, by any stretch of imagination, be held to be arbitrary or unreasonable. The learned Single Judge has further opined that the same will add to the aspect of maintaining a fair and transparent mode of selection. It is further observed by the learned Single Judge that it is a settled position of law that for public employment open competition is a pre-condition and while such competition is to be held by means of selection, it should be the prerogative of the employer as to how a selection is to be made and it is only when any method adopted is violative of any statute or is suffering from *mala fide*, the Court can interfere.

6. The learned Single Judge, while relying on the decisions of the Hon'ble Supreme Court rendered in ***Lila Dhar -Vs- State of Rajasthan & Ors.***, reported in ***(1981) 4 SCC 159***; ***Vijay Syal & Anr. -Vs- State of Punjab & Ors.***, reported in ***(2003) 9 SCC 401*** and ***Tajvir Singh Sodhi & Ors. -Vs- State of Jammu & Kashmir & Ors.***, reported in ***2023 0 AIR (SC) 2014***, has dismissed the writ petition preferred on behalf of the appellants.

7. Assailing the impugned judgment, Mr. K.N. Choudhury, learned senior counsel appearing for the appellants has argued that the learned Single Judge has grossly erred in placing reliance on the decision rendered by the Hon'ble Supreme Court in ***Lila Dhar*** (supra). It is contended that in the said judgment, in fact, the Hon'ble Supreme Court has clearly held that in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test is the only way. It is argued that as a matter of fact the judgment of the Hon'ble Supreme Court rendered in ***Lila Dhar*** (supra) is contrary to the view expressed by the learned Single Judge, wherein it has held that having a written test cannot, by any stretch of imagination, be held to be arbitrary and unreasonable.

8. Referring to the provisions of Rule 5 of the 2008 Rules, Mr. Choudhury has argued that Rule 5 provides for method of recruitment and in the said Rule, there is no provision for holding written test. It is contended that when there is no provision for conducting written test for recruitment to the cadre of Sericulture Demonstrator, the action of the respondents of introducing written test for the said recruitment is violative of the 2008 Rules.

Mr. Choudhury has further argued that since all the earlier selections for the posts of Sericulture Demonstrator were held on the basis of walk-in

interview, there is no good reason for the respondents to introduce written test. Relying on the decision of the Hon'ble Supreme Court rendered in N. Suresh Nathan -Vs- Union of India & Ors., reported in 1992 (Supp) 1 SCC 584, it is contended that a past practice extending over a long period cannot be said to be unreasonable.

Lastly, Mr. Choudhury has prayed that in the above facts and circumstances of the case, the impugned judgment may kindly be set aside and the reliefs prayed for in the writ petition filed on behalf of the appellants may kindly be granted.

9. Per contra, Mr. D. Mazumdar, learned Additional Advocate General, Assam has vehemently opposed the writ appeal and has argued that the learned Single Judge has rightly refused to allow the writ petition because the respondents have not committed any illegality in introducing the mode of written examination for recruitment to the posts of Sericulture Demonstrator. Mr. Mazumdar has invited our attention towards Rule 6 of the 2008 Rules and has argued that Rule 6(1)(c) clearly provides that the Committee or the Commission, as the case may be, may hold test or interview, as may be considered necessary. Mr. Mazumdar has further submitted that since the 2008 Rules permits selection through test, the respondents have introduced the written test for recruitment to the posts of Sericulture Demonstrator to select the best candidates out of the lot.

It is contended that earlier there was no specific procedure to examine the competency of the candidates and, therefore, the respondents had introduced the written test so that most suitable candidates be selected. The learned counsel has further argued that the Hon'ble Supreme Court in catena of decisions, including the decisions on which the learned Single Judge has relied

upon, has specifically held that the written examination is the best method for selection in public services which reduces the scope of favouritism and arbitrariness.

Mr. Mazumdar, learned Additional Advocate General, Assam has lastly submitted that there is no force in the writ appeal and hence no case for interference is made out in the impugned judgment.

10. Heard the learned counsel appearing for the parties and also perused the material available on record.

11. Recruitment to the posts of Sericulture Demonstrator is governed by the 2008 Rules. Rule 5 of the 2008 Rules prescribes mode of recruitment wherein it is specified that the various posts in the Directorate of Sericulture, Assam, including the post of Sericulture Demonstrator, are to be filled by way of promotion or direct recruitment. The extent of promotion and direct recruitment is specified in Rule 5. So far as the posts of Sericulture Demonstrator are concerned, 100% of the said posts are to be filled by direct recruitment. In Rule 5, the qualifications for various posts have also been specified. However, Rule 6 of the 2008 Rules is in relation to direct recruitment, which prescribes the general procedure of selection. It provides that direct recruitments for the various posts shall be made on the basis of the selection made by the Committee or the Commission, as the case may be, in accordance with the procedure provided. Rule 6(c) specifically provides that the Committee or the Commission, as the case may be, shall make selection in accordance with the procedure prescribed by the Government. It further provides that the Committee or the Commission, as the case may be, may hold such test or interview as may be considered necessary.

12. From the above, it is clear that the Committee or the Commission can hold the selection for any post either through test or interview. If the appointing authority feels that for the purpose of recruitment to the cadre of Sericulture Demonstrator written test is appropriate method for selecting suitable persons, then there is no reason for this Court to question the said decision simply on the ground that earlier selections for the posts of Sericulture Demonstrator were held only on the basis of the walk-in interview.

13. It is well settled that the Courts are not supposed to pronounce upon the method of selection unless it is demonstrated that the same is in violation of any statutory Rule or suffers from *mala fides*. In the present case, the appellants have failed to demonstrate that the action of the respondents of conducting written examination for recruitment to the cadre of Sericulture Demonstrator is violative of any statutory Rule and is suffered from *mala fide*. Therefore, we do not find any merit in the challenge made by the appellants.

14. It is true that the Hon'ble Supreme Court in the case of **Lila Dhar** (supra) has observed that in case of services to which recruitment is necessarily to be made from the persons of mature personality, interview test may be the only way. However, at the same time and in the very same judgment, the Hon'ble Supreme Court has observed that there cannot be any Rule of thumb regarding the precise weight to be given to which of the test because it must vary from service to service according to the requirements of the service. So far as the contention of the learned senior counsel for the appellants that the selection on the basis of walk-in interview was a past practice from a long period is concerned, it is observed that when the Rule permits two methods of selection, i.e. one is test and the other is interview, and if the respondents

decide to discontinue the past practice of selecting candidates on the basis of walk-in interview by introducing written test with the intention to select best suitable out of the lot, the same cannot be questioned until and unless the said action is violative of statutory Rules or suffers from *mala fides*.

15. In view of the above discussion, we are of the view that the impugned judgment passed by the learned Single Judge is not liable to be interfered with. Hence, this writ appeal is dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant