

GAHC010180992022



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

Case No. : WP(C)/5882/2022

MS BHABITA DEKA
DAUGHTER OF SRI PARASHU DEKA,
RESIDENT OF VILLAGE- DAGAON,
P.S.- RANGIA, DISTRICT- KAMRUP(M), PIN- 781380, ASSAM.

VERSUS

THE STATE OF ASSAM AND 8 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, IRRIGATION DEPARTMENT, DISPUR,
GUWAHATI- 781006

2:THE SECRETARY TO THE DEPARTMENT OF IRRIGATION
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI- 781006.

3:THE CHIEF ENGINEER
IRRIGATION DEPARTMENT

GUWAHATI- 781003
ASSAM.

4:THE ASSAM PUBLIC SERVICE COMMISSION
REPRESENTED BY THE CHAIRMAN
JAWAHAR NAGAR

KHANAPARA
GUWAHATI - 781022.

5:THE SECRETARY TO THE ASSAM PUBLIC SERVICE COMMISSION
JAWAHAR NAGAR

KHANAPARA
GUWAHATI- 781022.

6:THE PRINCIPAL CONTROLLER OF EXAMINATION
ASSAM PUBLIC SERVICE COMMISSION
JAWAHAR NAGAR
KHANAPARA
GUWAHATI- 781022.

7:THE UNDER SECRETARY
ASSAM PUBLIC SERVICE COMMISSION
JAWAHAR NAGAR
KHANAPARA
GUWAHATI- 781022.

8:THE STATE COUNCIL FOR TECHNICAL EDUCATION
ASSAM

REPRESENTED BY ITS SECRETARY
STATE COUNCIL OF TECHNICAL EDUCATION
ASSAM
GUWAHATI-781019
ASSAM

9:THE DIRECTOR OF TECHNICAL EDUCATION

KAHILIPARA
GUWAHATI-781019
ASSAM

Advocate for the Petitioner : MR. H. BURAGOHAIN

Advocate for the Respondent : SC, IRRIGATION

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 24-06-2024

Heard Mr. H. Buragohain, learned counsel for the petitioner. Also heard Mr. N. Upadhyay, learned standing counsel for the Irrigation Department appearing for respondent nos.1, 2 and 3; Mr. P.P. Dutta, learned standing

counsel for the APSC representing respondent no.4, 5, 6 and 7 and Ms. P. Mahanta, learned standing counsel appearing for the respondent nos. 8 and 9.

2. The case of the petitioner no.1 in WP(C) 5182/2022 was that she was awarded Diploma in Civil Engineering and Planning vide certificate no.011601 dated 05.03.2016, issued by the State Council for Technical Education upon passing a three year Diploma course in Civil Engineering and Planning in May 2011 from PCPS Girls Polytechnic Bamunimaidan. The petitioner no.2 in WP(C) 5182/2022 was awarded Diploma in Civil Engineering and Planning vide certificate no.027280 dated 15.09.2015, issued by the State Council for Technical Education upon passing three year Diploma Course in Civil Engineering and Planning in May 2015 from the said PCPS Girls Polytechnic Bamunimaidan.

3. The petitioner in WP(C) 5882/2022 had also obtained Diploma in Civil Engineering and Planning from PCPS Girls Polytechnic, Bamunimaidan.

4. The case of the petitioner is that by an Office Memorandum dated 13.07.2017, issued by the Higher Education (Technical) Department, the Diploma of Civil Engineering and Planning is considered equivalent to Civil Engineering by virtue of adoption of qualification and experience prescribed by AICTE for direct recruitment in Engineering and Technology. It is also projected that by letter no. SCTE-08/2022/157 dated 10.03.2022, the Director of Technical Education, Assam had issued a letter to the Secretary, APSC, informing the said authority that as per Assam Govt. OM dated 13.07.2017, Diploma of Civil Engineering and Planning may be considered as equivalent to Diploma in Civil

Engineering. Accordingly, it is submitted that the case of the petitioner is squarely covered by the law laid down by this Court in the case of *Mofidul Islam Khandakar and Ors. v. State of Assam*, WP(C) 2064/2023 decided on 26.02.2024.

5. It was submitted that in the said judgment, this Court had observed as follows:

2. The issue pertains to the non-consideration of the petitioners' application for selection to the post of Junior Engineers (Civil) in the PWD under the Government of Assam, pursuant to the Advertisement No. 06/2019 dated 19.11.2019.

3. The case of the petitioners in all the writ petitions mentioned above, except WP(C) No. 2064/2023, is that the petitioners are diploma holders in "Civil Engineering & Planning" and in "Construction Technology". The Advertisement No. 06/2019 required the candidates for recruitment to the post of Junior Engineers (Civil) to have passed the three years diploma course in "Civil Engineering" from an institution recognised by the Government. Though the petitioners in all the writ petitions, except for WP(C) No. 2064/2023, are diploma holders in "Civil Engineering & Planning" and "Construction Technology", which are branches/disciplines under the major/core branch of "Civil Engineering", the petitioners were not being considered in the selection process for recruitment to the post of Junior Engineers (Civil) under the PWD, on the ground that the advertisement had only made a mention of diploma in "Civil Engineering" as the eligible educational qualification for the purpose of selection and that it had not made a mention of "Civil Engineering & Planning" or "Construction Technology".

15. The conclusion of the report dated 11.01.2024 made by the Committee constituted on 18.11.2023 and which has been accepted by the Government of Assam states as follows- "5. Conclusion: Based on the above observations, it may be concluded that Diploma in Civil Engineering and planning offered by the PCPS Girl's Polytechnic and Diploma in Construction Technology offered by the CIT, Kokrajhar are comparable to that of Diploma in Civil Engineering offered by SCTE, Assam. Subjects offered for all the three Diploma programmes are core subjects of Civil Engineering and useful in discharging duties of PWD, Assam, as Junior Engineer."

16. The above averments made by the respondent No.1, i.e., the Government of Assam, in conjunction with the Report dated 11.01.2024 submitted by the Committee, which was constituted on 18.11.2023, clearly goes to show that the petitioners, who have diploma in "Civil Engineering and Planning" and diploma in "Construction Technology", who had submitted their candidature for being considered for the post of Junior Engineer(Civil) in pursuance to the Advertisement dated 19.11.2019, would also have to be considered for the said posts, as the diplomas they possess are equivalent to Diploma in "Civil Engineering." Thus, the petitioners are having the requisite qualification for the post of JE (Civil) in terms of the Advertisement dated 19.11.2019.

17. Accordingly, as the controversy regarding the issue whether the petitioners could be considered for the posts of Junior Engineer (Civil) having been decided by the State respondents, the APSC, which is only the selecting and recommending body, would also have to consider the cases of the petitioners, for appointment to the post of Junior Engineer (Civil), in pursuance to the Advertisement dated 19.11.2019, provided they submitted their applications for the same and had taken part in the written examination.

18. It is made clear that the present order will only be applicable to the petitioners herein and other persons who had participated in the selection process, pursuant to the Advertisement dated 19.11.2019. Consequently, any of the petitioners/persons, who had been found ineligible earlier by the APSC, will have to be considered to be eligible for consideration in terms of the direction and observation made hereinabove, provided they submitted their candidature for the said posts pursuant to the Advertisement dated 19.11.2019 and participated in the written examination. If any of the above persons were not allowed to participate in the interview/viva voce test on the ground of not having the requisite qualification, they should be called for interview/viva voce test. Thereafter, the results of the selection process should be published.

19. The writ petitions are accordingly disposed of.

6. The learned standing counsel for the APSC has submitted that the APSC had only conducted the recruitment process as per the requirement of the requisitioning authority, which is the Irrigation Department of the State. It is submitted that as per the requirement of the Irrigation Department, and as per the recruitment advertisement no.6/2020 dated 19.08.2020, the education

qualification as prescribed is as follows:

“A candidate must have passed three years diploma course in the concerned Engineering discipline from an Institution recognized by the Government, SCTE (State Council for Technical Education). Diploma obtained through distance mode of education will not be acceptable. (Attach self attested valid supporting documents.)

7. It is submitted that the facts of the present case is distinguishable from the case of *Mofidul Islam Khandarkar (supra)* on the ground that in the said case the PWD who had issued a clarification to the APSC in respect of the equivalency of the Diploma in Civil Engineering and therefore, the APSC had accepted the said stand of the PWD and resultantly, the said judgment was delivered by this Court.

8. It is submitted that in the present case in hand, this Court by order dated 22.05.2024, had issued a direction upon the Irrigation Department to file an affidavit by placing their stand in the present case in record. It is submitted that no stand was taken by the Irrigation Department and therefore as per the requisition made, the APSC had to go by the educational qualification which was set-out by the Irrigation Department. It is also submitted that there is a distinguishable feature in the two writ petitions which are being heard. It is submitted in WP(C) 5182/2022, the APSC had initially declared the results of the petitioner. However, because of the lack of requisite qualification, the recommendation was withdrawn. It is submitted that in connection with WP(C) 5882/2022, the petitioner therein was not called for in the screening test and the name of the petitioner was not declared as successful owing to the lack of Degree in Civil Engineering, though the petitioner had a Diploma in Civil Engineering and Planning.

9. On a specific query of the Court Ms. P. Mahanta, learned standing counsel for the Higher Education (Technical) Department has submitted that they are also relying on the Office Memorandum dated 13.07.2017, and the said Department is treating 3 years Diploma in Civil Engineering and Planning as a equivalent to the Engineering Degree.

10. Moreover, it was submitted in so far as the Diploma in Civil Engineering was awarded by the Director of Technical Education, Assam jointly with the Secretary, Examination Committee of State Council for Technical Education, Assam, the learned standing counsel for the Higher Education (Technical) Department has no objection to make.

11. The State Govt. through its PWD had accepted the Diploma in Civil Engineering and Planning as an equivalent to the Degree in Engineering for recruitment of Engineers. Under such circumstances, the Govt. of Assam cannot be permitted to take a different stand in so far as Irrigation Department is concerned.

12. The State Govt. is expected to have a single stand for all its Works Department. Therefore, the Court is inclined to hold that as the appropriate Govt. in the State of Assam have accepted the Diploma in Civil Engineering and Planning issued by the State Council for Technical Education is equivalent to the Degree in Civil Engineering for the purpose of recruitment in Junior Engineer (Civil), as in the present case also as the recruitment is for the post of Junior Engineer (Civil) in the Irrigation Department, the respondents

cannot be permitted to change their stand.

13. Therefore, the Diploma in Civil Engineering and Planning issued by the State Council for Technical Education will have to be considered as an equivalent to the Degree in Civil Engineering for the purpose of recruitment for the post of Junior Engineer (Civil) in the Irrigation Department.

14. Therefore, in terms of the Office Memorandum dated 13.07.2017, issued by the Higher Education (Technical) Department, as well as in light of the ratio laid down in the case of *Mofidul Islam (supra)*, the Court is of the considered opinion that the petitioner who have Diploma in Civil Engineering and Planning and have submitted their candidature for the post of Junior Engineer (Civil) pursuant to the advertisement no.6/2020 dated 19.08.2020 issued by the APSC, would have been considered for the said post as the Diploma in Civil Engineering and Planning, which the petitioner have acquired is declared to be equivalent to the Degree in Civil Engineering by the Govt. of Assam through the Higher Education (Technical) Department and which is also clarified by letter dated 10.03.2022 issued by the Director of Technical Education, Assam to the Secretary, APSC which is referred above. Therefore, the petitioner are found to be holding the requisite qualification for applying for the post of Junior Engineer (Civil) in the Irrigation Department pursuant to the above referred advertisement dated 19.08.2020.

15. Resultantly, the APSC is directed to consider the cases of the petitioner for appointment to the post of Junior Engineer (Civil) as they have already submitted their applications and had taken part in the recruitment

process.

16. Accordingly, from the stage of marks obtained by the petitioner in the screening test in which they had already participated, the APSC shall consider the case of the petitioner accordingly.

17. We take notice of the fact that this Court by order dated 10.08.2022, passed in WP(C) 5182/2022, in the interim, had directed the respondents not to fill up one open category post of Junior Engineer (Civil) (Female) and one SC category post (Female) in the Irrigation Department, if not already filled up.

18. In connection with WP(C) 5882/2022, this Court by order dated 09.09.2022, had provided that in the event, the Govt. had not made appointments to all the posts for the women in the EWS category in pursuant to the advertisement dated 19.08.2020, 1(one) post should be kept vacant till the next returnable date. The interim order passed earlier was extended till the next date of listing by order dated 30.04.2024.

19. Accordingly, the APSC shall declare the result of the petitioner. In the event, if the petitioner are found to have scored marks which are higher than the last selected candidates in their respective category, the results of the petitioner shall be issued as a supplementary/ revised result against the advertisement no. 6/2020 dated 19.08.2020.

20. At this stage, the learned standing counsel for the APSC has

submitted that as the results have already been declared, there was a requisition for 290 posts and the result declared by the APSC is for 290 candidates. In this regard, the Court is of the considered opinion that there is already a interim direction which will be operative against the State, it would be the State to take a call as to how they would accommodate the petitioner in light of the order passed by this Court.

21. Accordingly, the result of the selection process would be published within a period of 1(one) month from the date of service of the certified copy of this order to the office of the APSC.

22. This writ petition stands allowed to the extent as indicated above.

JUDGE

Comparing Assistant