

GAHC010182682021



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

Case No. : WP(C)/5937/2021

DIPANKAR MAZUMDER AND ANR.
S/O LATE DILIP MAZUMDER, R/O SILCHAR ROAD, GHATLINE
DURGAPALLY, WARD NO. 27, P.O. AND DIST-KARIMGANJ, ASSAM

2: RAJAT GOSWAMI
S/O LATE RANADHIR GOSWAMI
R/O VILL-ERALIGOOL
P.O.-ERALIGOOL
DIST-KARIMGANJ
ASSA

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, LAND REVENUE AND DISASTER
MANAGEMENT DEPARTMENT, DISPUR, GUWAHATI-01

2:THE DIRECTOR OF LAND RECORDS AND SURVEY ETC
ASSAM
RUPNAGAR
GUWAHATI-32

3:THE DEPUTY COMMISSIONER
KARIMGANJ
DIST-KARIMGANJ
ASSAM

4:THE SETTLEMENT OFFICER
KARIMGANJ
DIST-KARIMGANJ
ASSA

Advocate for the Petitioner : DR. B AHMED

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 23/01/2024

Heard Mr. S. K. Talukdar, learned counsel appearing for the writ petitioners. Also heard Mr. J. Handique, learned Standing Counsel, Revenue and DM Department, Assam, appearing for the respondent nos. 1 & 2 and Mr. T.C. Chutia, learned Additional Senior Government Advocate, Assam, appearing for the respondent nos. 3 and 4.

On 22/01/2020, the Director of Land Records and Survey, Assam i.e. the respondent no. 2 herein had issued an advertisement notice inviting applications from the intending candidates to undergo 6 (six) months' Recorder's Certificate Class Course (RCCC) training to be held in the Assam Survey and Settlement Training Centre, Rajahnagar, Dakhingaon, Guwahati-40, for the session 2020-21. In response to the said advertisement notice, the writ petitioner nos. 1 & 2, along with several other candidates had applied for the training programme. Thereafter, they had taken part in the selection process which comprised of a written test and viva-voce examination. Upon completion of the selection process, on 24/09/2021, the respondent no. 2 had published the list of 19 candidates, who had participated in the process including the two writ petitioners, along with the marks obtained by them.

As per the select list, the petitioner no. 2 herein had secured the highest mark of 88.33 whereas, the petitioner no.1 had secured 84.33. Notwithstanding the same, the petitioner nos. 1 & 2 were not allowed to participate in the training programme although there were as many as 22 seats. The petitioners were denied admission in the training course apparently on the ground that 16 out of the 22 seats were allocated to reserved category candidates whereas, both the petitioners belonged to the general category i.e. (un-reserved) category. Aggrieved thereby, the petitioners have approached this Court by filing the instant writ petition.

It appears from the record that after taking note of the facts and circumstances of the case and more particularly, the fact that the petitioner no. 2 herein had secured the highest mark in the selection process, this Court had passed an interim order dated 06/12/2021 directing the respondents to permit the petitioner no. 2 to participate in the ongoing course for the RCCC training. The appeal

preferred by the respondent no. 2 against the order dated 06/12/2021 having been dismissed by the Division Bench, by order dated 31/03/2022 passed in Writ Appeal No. 68/2022, the petitioner no. 2 was allowed to take part in the RCCC training programme. However, since no such interim order was passed in favour of the petitioner no. 1, he could not get admission in the training programme for the relevant year.

By referring to the materials available on record, Mr. Talukdar, learned counsel for the petitioners submits that this is not a case where vacancies in the Government department were being filled up and, therefore, the question of applying the reservation roster would not arise in the eyes of law. Mr. Talukdar has also relied upon the observations made by the Hon'ble Division Bench in the order dated 31/03/2022 so as to submit that in case of selection of candidates for training, the principles of reservation roster would not be applicable. Therefore, submits Mr. Talukdar, the petitioners, who have secured very high marks in the selection test, had been meted out with a completely discriminatory treatment meriting interference in the matter by this Court.

Mr. J. Handique, learned Standing Counsel, Revenue and DM Department, Assam, has obtained instruction and submits that due to operation of the reservation policy, the petitioner nos. 1 & 2 were not allowed to take part in the training programme. He further submits that such reservation policy was required to be applied in the cases of the candidates undergoing RCCC training programme since eventually, the trained candidates would become the aspirants for the post of Lat Mondal in various Revenue Circles, which post would have to be filled up by following the reservation policy. Similar is the submission of Mr. T.C. Chutia, learned Government Advocate, Assam, appearing for the respondent nos. 3 & 4.

I have considered the submissions made by the learned counsel for both the sides and have also gone through the materials available on record.

At the very outset, it deserves to be mentioned herein that the advertisement dated 22/01/2020 was issued inviting applications from intending candidates only for undergoing RCCC training programme and not for filling up any vacant post. There is also no mention in the advertisement notice dated 22/01/2020 regarding reservation of seats for any candidate. Therefore, it is apparent that subsequently, by applying the reservation criteria, the authorities have tinkered with the *inter se* merit position of the candidates, which had resulted in denial of opportunity to participate in the training programme to a number of general category candidates including the writ petitioners, who had scored higher marks than some of those candidates who had been admitted in the training programme.

While examining the said aspect of the matter, the Division Bench of this Court had made the following observations in the order dated 31/03/2022 :-

“Our prima facie opinion on this is that it is not a normal selection where the reserved posts have to be filled by the members belonging to the community for which the seats are reserved and in case there are no candidates available, the seats will be carried forward for the next year. For the Training, the same principle cannot be adopted as firstly, it is not a process of selection to a post but it is a training where two seats will remain unfilled throughout the period of training if the petitioners are not sent and secondly, the training is only for a period of six months.”

The aforesaid observations of the Division Bench has remained unaltered till today. Therefore, the same will be binding on this Court. Even otherwise, since the exercise initiated in terms of the advertisement dated 22/01/2020 was not for the purpose of filling up any vacant post, the question of applying the reservation roster, in the opinion of this Court, would not arise.

It is no doubt correct that the RCCC trained candidates would ultimately be the aspirants for appointment as Lat Mondal, in which process, the Government may have to fill up the vacancies by following the reservation roster. To that extent, it may be justified for the State to ensure participation of sufficient number of candidates belonging to the reserved categories in the RCC training programme. However, even if that is the idea behind the process, the said aspect of the matter ought to have been clearly spelt out in the advertisement notice itself which was not done in the present case. On the contrary, by ex-post-facto application of the reservation policy *de hors* any indication of number of posts/vacancies, the respondents have sought to deny opportunity to the meritorious candidates to participate in the training programme, thus, violating their fundamental rights guaranteed under Articles 14 & 16 of the Constitution of India.

For the reasons stated herein above, this Court is of the opinion that this writ petition must succeed and is hereby allowed.

At this stage, Mr. Handique submits that since the petitioner no. 2 has already completed his RCCC training programme, it is only the petitioner no.1 herein, who would be entitled to any relief in this writ petition. Mr. Talukdar, learned counsel for the writ petitioners has also fairly agreed to the said proposition.

In view of the above, this writ petition stands disposed of with a direction upon the respondent

nos. 1 & 2 to permit the petitioner No. 1, viz. *Shri Dipankar Mazumdar* to participate in the next RCCC training programme, to be conducted by the respondent no.2, without insisting on any further eligibility condition from him.

Writ petition stands allowed.

Parties to bear their own cost.

JUDGE

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Comparing Assistant