

GAHC010185442014



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

Case No. : WP(C)/2811/2014

APURBA DEKA
S/O LT. DHATU RAM DEKA, VILL. DHEKIAPARA, P.O. DHEKIAPARA, DIST-
DARRANG, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, FISHERY DEVELOPMENT DEPARTMENT, ASSAM
SECRETARIAT, DISPUR, GHY-6

2:DIRECTOR OF FISHERIES ASSAM GUWAHATI-01

3:DISTRICT FISHERIES DEVELOPMENT OFFICER
DARRANG MANGALDAI DIST- DARRANG ASSAM PIN-784145

4:DY. COMMISSIONER DARRANG P.O. MANGOLDAOI
DIST- DARRANG ASSAM PIN-784145

5:KUMUD CHANDRA DAS S/O JOGENDRA PRASHAD DAS
VILL. BARKUMARPARA P.O. AULACHOWKA DIST- DARRANG
ASSAM PIN-784145

6:ANIRUDDHA RABHA S/O ABINATH RABHA W/NO.7
MANGALDAI DIST- DARRANG ASSAM PIN-78414

Advocate for the Petitioner : MR.B K DAS
Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 23.04.2024

Heard Mr. G. Jalan, learned counsel for the petitioner. Also heard Mr. J. K. Goswami, learned Additional Senior Government Advocate, appearing on behalf of Respondents No. 1, 2, 3 & 4; and Mr. M. Dutta, learned counsel, appearing on behalf of Respondent No. 5.

2. The petitioner has instituted the present proceeding making a grievance against the selection and appointment of Respondent No. 5 to the post of Power Pump Operator in the establishment of the District Fisheries Development Officer (DFDO), Darrang. The petitioner has further challenged the selection and appointment of the Respondent No. 6 to the same post by the District Fisheries Development Officer (DFDO), Darrang. The petitioner has also prayed for a direction for his appointment against the post of Power Pump Operator in the establishment of the District Fisheries Development Officer(DFDO), Darrang.

3. The facts as requisite for consideration of the issues as arising in the present proceeding, is noticed as under:

The District Fisheries Development Officer(DFDO), Darrang, vide an Advertisement, dated 25.06.2013, invited application, amongst others, for a post of Power Pump Operator. The qualifications as prescribed in the said Advertisement, dated 25.06.2013, for the said post was Class-VIII passed along

with a "2 year ITI Diesel Machine" course passed certificate. The said Advertisement, dated 25.06.2013, further mandated that the candidate so desirous to apply in pursuance to the said Advertisement, dated 25.06.2013, must be between the age of 18 years and 38 years as on 01.01.2013.

It is contended in the writ petition that the qualification as mandated, more particularly, the requirement of a "2 year ITI Diesel Machine" course certificate being not a qualification as awarded by the ITI authorities; the petitioner approached the Respondent No. 3 for rectifying the same to a "1 year Diesel Mechanic" course.

It is contended that the Respondent No. 3 had accepted the error of prescription of qualification against the post of Power Pump Operator in the Advertisement, dated 25.06.2013, and accordingly, it was held that the said qualification would now be treated as a "1 year Diesel Mechanic" course passed certificate. Accordingly, the petitioner applied in terms of the said Advertisement, dated 25.06.2013, for consideration of his candidature against the post of Power Pump Operator and he was, on being found eligible for the said post of Power Pump Operator; issued with a call letter for a viva voce and machinery skills which was scheduled on 19.02.2022. The petitioner, accordingly, participated in the said selection process and therein, in addition to the petitioner, 2(two) more candidates had participated.

It is contended by the petitioner that on conclusion of the said selection process wherein he had fared well, the petitioner could gather that the other

2(two) applicants i.e. Respondents No. 5 & 6, herein, did not have the prescribed qualification for being recruited against the said post and accordingly; he, for having the requisite information in the matter, invoked the provisions of the Right to Information Act, 2005, and sought information with regard to the qualification as possessed by the Respondents No. 5 & 6, herein.

In response; the petitioner was furnished with a reply on 20.04.2014, wherein, it was contended that the Respondent No. 5 had the qualification of Higher Secondary School passed with ITI Plumber course certificate whereas the Respondent No. 6 had the qualification of Higher Secondary School passed with ITI Machinist trade passed.

The petitioner has also brought on record, a corrigendum issued in the matter by the respondent authorities wherein the advertised qualification in the said Advertisement, dated 25.06.2013, was modified from Class- VIII passed with 2 year ITI Diesel Machine course to Class-VIII passed with 1 year Diesel Mechanic/1 year Plumber/2 year Mechanist course passed from a recognized ITI institute.

In pursuance to the said selection process; it is contended that the modified qualification as brought into effect, vide the corrigendum, dated 26.06.2013, does not meet the requisite qualification as mandated for the post of Power Pump Operator in-as-much as for the said post only; the qualification of ITI Diesel Machine course is mandated and the other qualification pertaining to a 1 year Plumber and 2 year Mechanist course is not a prescribed qualification and

the said qualification does not meet the requirements as mandated for the works involved against the post of Power Pump Operator.

4. Accordingly, it is held that both the Respondents No. 5 & 6 are ineligible for being considered against the said post of Power Pump Operator. The petitioner has raised a further allegation that the age of the Respondent No. 5, at the time of issuance of the advertisement, was 44 years and accordingly, he being beyond the age limit as prescribed in the Advertisement, dated 25.06.2013, his case could not have been considered for appointment against the said post of Power Pump Operator. It was further contended that the corrigendum as purportedly issued in the matter on 26.06.2013, was not given wide publicity and candidates who may be desirous of applying against the said post, were kept in the dark about the same. The petitioner could come to learn of the said corrigendum, dated 23.02.2014, only when the RTI reply in the matter was so furnished to him on 20.03.2014.

5. Basing on the said premises; the petitioner assails the selection of Respondents No. 5 & 6 as well as the appointment as effected in the case of Respondent No. 5 against the post of Power Pump Operator on 25.02.2014.

6. Mr. Jalan, learned counsel for the petitioner, reiterating the contentions as made in the writ petition; has submitted that the entire selection process stood vitiated on account of the fact that qualifications as now prescribed for the said post of Power Pump Operator vide the corrigendum, dated 26.06.2013, not being one mandated for the post, in question, and the only qualification

mandated being a 1 year Diesel Mechanic course; consideration of candidates not having the prescribed qualification of 1 year Diesel Mechanic course on the basis of the said corrigendum, dated 26.06.2013, has vitiated the selection process and accordingly, the appointment of Respondent No. 5 against the post of Power Pump Operator as advertised vide the Advertisement, dated 25.06.2013, requires to be interfered with by this Court.

7. Mr. Jalan, learned counsel for the petitioner, has further submitted that the Respondent No. 5 admittedly being over-aged as on 01.01.2013 as per the prescription in the Advertisement, dated 25.06.2013, without a condonation being made as regards the over-age of the Respondent No. 5; his selection and appointment against the post of Power Pump Operator stands vitiated and accordingly, the same is required to be interfered with by this Court.

8. Mr. Goswami, learned Additional Senior Government Advocate, by referring to the affidavit as filed in the matter by the Respondent No. 3, has contended that on account of non-availability of candidates possessing the 2 year ITI Diesel Machine course; a corrigendum was issued on 26.06.2013 to the Advertisement, dated 25.06.2013, and the qualification was relaxed to a 1 year Diesel Mechanic course along with 2 other qualifications i.e. 1 year Plumber course and 2 year Mechanist course. The said qualifications were so prescribed for the reason that in the 1 year Plumbing/Mechanist course, there are chapters for repairing, maintenance and opening a Diesel Engine and further that the job of a Power Pump Operator is not only to start and stop the machine but to operate and maintain the same under all situation.

9. It was contended that the private Respondent No. 5 was the only candidate who possessed the said knowledge of operating and maintaining the machine and the said aspect was also ascertained during the selection process. It was stated that the corrigendum, in question, was given wide publicity and the candidates while appearing in the selection process, had not disputed the said position.

10. The selection committee having found the Respondent No. 5 to be suitable for the post of Power Pump Operator on merits as assessed in the selection process; recommendations came to be made in his favour against the post of Power Pump Operator and accordingly, he was so appointed.

11. With regard to the allegation that the Respondent No. 5 was over-aged, it is contended that the Respondent No. 5 had applied through proper channel to the Government for condonation of his over-age and the said application was forwarded to the Director, Fisheries Department, Government of Assam, vide a communication, dated 11.07.2013, with a direction to take necessary steps in the matter.

12. It is further contended by Mr. Goswami, learned Additional Senior Government Advocate that the over-age of the Respondent No. 5, on being considered, was condoned by the appointing authority i.e. District Fisheries Development Officer(DFDO), Darrang.

13. Mr. Dutta, learned counsel appearing on behalf of Respondent No. 5, with

regard to the allegation made by the petitioner that the Respondent No. 5 was over-aged in terms of the prescriptions made in the Advertisement, dated 25.06.2013, has submitted that the application of the respondent No. 5 for condonation of his over-age, on being remanded to the Director, Fisheries, Government of Assam, was placed before the District Fisheries Development Officer (DFDO), Darrang, for taking necessary steps in the matter. It is contended that the District Fisheries Development Officer(DFDO), Darrang, upon examining the matter, had proceeded to condone the over-age of the Respondent No. 5 in the matter. However, it is contended that the District Fisheries Development Officer(DFDO), Darrang, had not furnished any document in this connection to the respondent No. 5.

14. It was further contended that the Respondent No. 5 had secured the highest marks in the selection process which was admittedly more than the marks secured by the petitioner, herein, and accordingly, he was favoured with an appointment order on 25.02.2014 and it was contended that the Respondent No. 5 has been serving against the said post of Power Pump Operator since that date with all benefits as applicable to him in this connection. It was contended that the Respondent No. 5 would retire on attaining the age of superannuation on 31.12.2028. Accordingly, it was contended that in view of the long services being rendered by the Respondent No. 5 in the matter pursuant to his appointment effected against the post of Power Pump Operator vide the order, dated 25.02.2014; such appointment of the Respondent No. 5 may not be interfered with by this Court on the basis of the technical pleas now raised in the matter by the petitioner, herein, who had participated in the selection process without raising any objections thereon.

15. I have heard the learned counsels appearing for the parties and also perused the materials brought on record.

16. Mr. Goswami, learned Additional Senior Government Advocate, had produced before this Court, the records pertaining to the selection process held in pursuance to the Advertisement, dated 25.06.2013, and on perusal of the same; it is found that the selection committee had noted in its proceedings that the over-age of the petitioner was condoned by the appointing authority i.e. the District Fisheries Development Officer(DFDO), Darrang. However, on perusal of the records, it is seen that the order by which such condonation was so effected, was not found in the record.

17. In view of the fact that the minutes of the selection committee having revealed that the over-age of the Respondent No. 5 was duly condoned by the appointing authority i.e. District Fisheries Development Officer(DFDO), Darrang, in pursuance to an application made by him in this connection and accordingly, he was facilitated to appear in the selection process, this Court at this distant point of time, merely, in the absence of the order by which such condonation of over-age was granted to the Respondent No. 5; would not like to interfere with such condonation of over-age of the Respondent No. 5, as made way back in the year 2013.

18. This now brings this Court to consider the issue raised by the petitioner, herein, that the Respondent No. 5 did not possess the requisite educational qualification for being considered for the post of Power Pump Operator as

advertised vide the Advertisement, dated 25.06.2013.

19. It is to be noted that in the Advertisement, dated 25.06.2013, the qualification as prescribed for the post of Power Pump Operator was Class 8 passed along with a 2 year ITI Diesel Machine course certificate. Admittedly, the said qualification was not possessed by the petitioner, herein, also and accordingly, as per the contention made by him in the writ petition; he had approached the District Fisheries Development Officer(DFDO), Darrang, requiring for an amendment of the qualification as prescribed in the Advertisement, dated 25.06.2013. In the writ petition, the petitioner has contended that his such request was accepted by the District Fisheries Development Officer(DFDO), Darrang, and accordingly, he was permitted to appear in the interview.

20. It is also available on record that the authorities, after issuance of the Advertisement, dated 25.06.2013; on 26.06.2013, itself, had issued a corrigendum modifying the educational qualification as prescribed in the said Advertisement, dated 25.06.2013. The educational qualification vide the corrigendum, dated 26.06.2013, was prescribed as "Class-VIII passed candidates with 1 year Diesel Mechanic/1 year Plumber/2 year Mechanist course passed from a recognized ITI institute".

21. The petitioner, in the writ petition, has contended that the qualification of ITI certificate of 1 year Plumber course and 2 year Mechanist course is not mandated for the post of Power Pump Operator. The said contention was

controverted in the affidavit filed in the matter by the State respondents wherein, by providing reasons, had justified the inclusion of the said 2 educational qualifications along with that of 1 year Diesel Mechanic course passed certificate for the post of Power Pump Operator as advertised.

22. The prescriptions of an educational qualification as an eligibility condition for recruitment to a post, in question, is basically a function of the executive and this Court, in the absence of *mala fide* being alleged in the matter and/or it being not conclusively demonstrated that the prescription of qualification has got no nexus with the works as involved against the post so advertised, would not interfere with such prescriptions of qualification made by the respondents in the advertisement so published for a particular post.

23. In the present proceeding, the respondents have brought on record reasons towards justifying the inclusion of the said qualification with the further prescription that such justification was so mandated on account of the fact that it was found that there is no candidate available who had possessed the qualification of "class 8 passed along with 2 years ITI Diesel Machine course pass certificate from a recognized ITI".

24. In view of the above position and also noticing the settled position of law that this Court is not empowered to examine the issue as to what would be the qualification mandated to be prescribed for a particular post and also in the absence of any material brought on record to demonstrate that the said qualification as now prescribed vide the corrigendum, dated 26.06.2013, had

got no nexus with the job attached to the post of the Power Pump Operator; this Court is not in a position to accept the contentions made by the petitioner in this connection.

25. This Court having concluded that the Respondent No. 5 on account of the condonation of over-age as granted to him by the appointing authority i.e. the District Fisheries Development Officer(DFDO), Darrang, was eligible to participate in the selection process, as well as the conclusion reached on the qualifications prescribed in the corrigendum, dated 26.06.2013, for the post, in question, and the same not having been demonstrated by the petitioner to have got any nexus with the works involved against the post of Power Pump Operator; holds that the Respondent No. 5 was eligible for having his case considered against the post of Power Pump Operator in terms of the Advertisement, dated 25.06.2013, *read with* the corrigendum, dated 26.06.2013.

26. Having held that the Respondent No. 5 to be eligible for being considered against the post of Power Pump Operator, this Court notices the contention of the State respondents that the Respondent No. 5 had in the selection process secured more marks than the petitioner, which position not having been disputed by the petitioner; it has to be held that the Respondent No. 5 was appointed against the post of Power Pump Operator vide the order, dated 25.02.2014, issued by the District Fisheries Development Officer(DFDO), Darrang, on merits, assessed in the selection so held.

27. In view of the conclusions reached by this Court hereinabove, the contentions raised contrary to the above position by the petitioner, does not merit acceptance and accordingly, this writ petition is held to be bereft of any merit and the same, therefore, stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant