

GAHC010204912024



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

Case No. : WP(C)/4793/2024

DRISHTI BORA
D/O- DR. ANIL KUMAR BORA
R/O- BALI RAM TERON PATH
HOUSE NO.- 4-B
NARAKASUR
KAHILIPARA- 781019
SUB-DISTRICT- GUWAHATI
DISTRICT- KAMRUP(METRO)
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR
GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM
MEDICAL EDUCATION AND RESEARCH DEPTT.
DISPUR
GUWAHATI- 781006.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF SOCIAL JUSTICE AND EMPOWERMENT
DISPUR
GUWAHATI- 781006.

4:THE JOINT DIRECTOR OF HEALTH SERVICES
KAMRUP(M)
SATPUKHURI
UZANBAZAR

GUWAHATI-01.

5:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
SIXMILE
KHANAPARA
GUWAHATI- 781022.

6:THE MEDICAL BOARD
C/O- THE PRINCIPAL CUM CHIEF SUPERINTENDENT
GUWAHATI MEDICAL COLLEGE AND HOSPITAL
GUWAHATI- 781005.

Advocate for : MR. B D KONWAR SR. ADV.
Advocate for : SC
HEALTH appearing for THE STATE OF ASSAM AND 5 ORS.

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 04.11.2024

Heard Mr. B. D. Konwar, learned senior counsel, assisted by Mr. P. Doley, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned standing counsel, Health Department for the respondent Nos. 1, 2, 4, 5 and 6 and Mr. R. M. Das, learned standing counsel, Social Justice and Empowerment Department for the respondent No.3.

2. The petitioner suffers from a disability of Thalassemia Intermedia, Genotype- β^+/β^+ and has a 40% permanent disability as per the guidelines for the purpose of assessing the extent of specified disability in a person included under the Rights of Persons with Disability Act, 2016. Accordingly, Disability Certificate was issued to the petitioner by the Joint Director of Health Services, Kamrup Metro on 28.02.2024.

3. The petitioner appeared in the National Eligibility cum Entrance Test (UG)-2024 which was conducted on 05.05.2024 by the National Testing Agency (NTA) under the person with Disability (PWD) quota. The petitioner secured a total of 205 marks out of 720 and she ranked at 2486 in the PWD Category.

4. The Director of Medical Education, Assam issued an Educational Notice dated 08.08.2024 for the first round of on-line counselling for admission into the first year MBBS/BDS Courses in the Government Medical and Dental Colleges of Assam for the 2024 session. Thereafter, by an Admission Notice dated 29th of August, 2024 issued by the Director of Medical Education, Assam all candidates who are provisionally selected under the PWD quota were directed to report with all their relevant certificates in original before the Office of the Principal cum Chief Superintendant, Guwahati Medical College & Hospital for verification of their disability status by the Medical Board on 2nd of September, 2024. In the provisional select list of the candidates (Round-1) for Assam State Quota, the name of the petitioner appeared at Sl. No. 3031 and she is placed in the Tinsukia Medical College, Tinsukia under the PWD category. Pursuant to the Admission Notice dated 29th of August, 2024, the petitioner presented herself before the Medical Board on 2nd of September, 2024. However, when the Admission Notice dated 6th of September, 2024 was issued by the Director of Medical Education, Assam with regard to eligible candidates under PWD (DIVYANG) category for admission into MBBS/BDS Course in the Government Medical and Dental Colleges of Assam, the Roll Number of the petitioner was missing and therefore, being aggrieved, the petitioner has filed the present writ petition.

5. The learned senior counsel for the petitioner submits that the petitioner is

having a 40% permanent disability of Thalassemia Intermedia, Genotype- β^+/β^+ and therefore, in terms of the Notification dated 12th of March, 2024, issued by the Ministry of Social Justice and Empowerment, Department of Empowerment of Persons with disabilities (DIVYANG) the petitioner qualifies for the benchmark disability of 40% as provided in the said notification.

6. To solve the controversy involved in the present writ petition, this Court passed an order on 28.10.2024 requesting the authorities in the All India Institute of Medical Sciences, Guwahati to constitute a Medical Board and to give an independent opinion by assessing the disabilities in terms of the Disability Certificate of the petitioner and thereafter to submit a report. The petitioner was directed to appear before the Medical Board to be constituted by the AIIMS, Guwahati on 30.10.2024. Accordingly, the petitioner appeared before the Medical Board constituted by the AIIMS, Guwahati. Thereafter, the Medical Board constituted by the authorities of AIIMS, Guwahati gave its comments with regard to the petitioner which states as "*HbE+HPEF (Thalassemia intermedia, genotype- β^+/β^+) disability grading less than 40% (less than forty percent)*".

7. The learned senior counsel for the petitioner submits that the Medical Board constituted by the authorities of AIIMS, an independent body, has given their findings with regard to the petitioner to be having Thalassemia intermedia, Genotype- β^+/β^+ , however with the disability grading as less than 40%. The Medical Board AIIMS, Guwahati failed to consider the guidelines provided in the Notification dated 12th of March, 2024, however, if the Medical Board had considered the said Notification the petitioner would have the disability benchmark of 40%.

8. This Court after considering the submission made by the learned senior

counsel for the petitioner that the Medical Board constituted by the authorities of the AIIMS Guwahati has not taken into consideration the Notification dated 12th of March, 2024, issued by the Ministry of Social Justice & Empowerment, requested the learned Deputy Solicitor General of India to take instructions as to whether the said Medical Board, AIIMS Guwahati has considered the Notification dated 12th of March, 2024. Mr. R. K. D. Choudhury, learned Deputy Solicitor General of India on instructions submits that the Medical Board, AIIMS has considered the Notification dated 12.03.2024, particularly, Table-2 which pertains to disability score assignment for organ involvement in patients suffering from Thalassemia major TDT/ Thalassemia intermedia NTDT (Blood disorder) and has come to the finding that the disability of the petitioner is less than 40 %.

9. This Court have considered the remarks of the Medical Board, AIIMS Guwahati with regard to the petitioner.

10. A perusal of the Notification dated 12.03.2024, issued by the Ministry of Social Justice & Empowerment would indicate that the said Notification was issued in supersession of the Notification dated 12th of April, 2016 and notified the guidelines for the purpose of assessing the extent of specified disability in a person after having considered the recommendation of the Sub-committee of experts to assess the extent of specified disability in a person. In the list, Serial No. VI pertains to blood disorder which is the disability of the petitioner. Section-B of the Notification dated 12th of March, 2024 pertains to Thalassemia Major Intermedia and therein it is provided that for the purpose of disability Certification, the person of Thalassemia major and intermedia, qualify for bench mark disability of 40%. Further Clause- 27.7 provides the disability as 40 %.

11. This Court is not an expert to assess as to whether the disability of the petitioner i.e., Thalassemia intermedia, Genotype- β^+/β^+ falls under the 40% disability. However, the Notification issued by the Ministry of Social Justice & Empowerment on 29th of March 2024 clearly prescribes that a patient having Thalassemia major and intermedia, qualify for bench mark disability of 40%. The said Notification was issued after considering the recommendation of the Sub-Committee of experts to assess the extent of specified disability in a person. Under the circumstances, this Court has no hesitation to come to the conclusion that the petitioner falls within 40% disability of Thalassemia intermedia, genotype β^+/β^+ inasmuch as that as the Medical Board AIIMS has commented that the petitioner has HbE+HBFH (Thalassemia intermedia, genotype β^+/β^+) and the Notification dated 12.03.2024 prescribes that a person with Thalassemia intermedia qualify for the bench mark disability of 40%. This Court is therefore of the opinion that the petitioner is qualified to be admitted into the Medical College, under PWD category. Accordingly, the petitioner is directed to appear before the Principal, Tinsukia College, Tinsukia along with all requisite documents for admission.

12. Writ petition is accordingly allowed.

13. As this order is passed in the presence of Mr. B. Gogoi, learned standing counsel, Health Department, he is requested to intimate the Principal, Tinsukia Medical as well as the Director of Medical Education, Assam for doing the needful.

JUDGE

Comparing Assistant