

GAHC010194052021



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

Case No. : WP(C)/6484/2021

PRIYANKA CHANDA
D/O SRI RANJIT CHANDA, R/O R.K. MISSION ROAD, P.O. AND DIST.
KARIMGANJ, PIN 788710, ASSAM.

VERSUS

KARIMGANJ COLLEGE AND 6 ORS
P.O. AND KARIMGANJ, PIN 788710, ASSAM.

2:THE PRINCIPAL
KARIMGANJ COLLEGE
P.O. KARIMGANJ
PIN 788710
ASSAM.

3:THE GOVERNING BODY

REPRESENTED BY THE PRINCIPAL KARIMGANJ COLLEGE
P.O. KARIMGANJ
PIN 788710

4:THE DIRECTOR OF HIGHER EDUCATION

KAHILIPARA
GUWAHATI 19

5:DEPUTY DIRECTOR OF HIGHER EDUCATION

KAHILIPARA
GUWAHATI 19

6:STATE OF ASSAM

REPRESENTED BY THE DIRECTOR OF HIGHER EDUCATION
KAHILIPARA
GUWAHATI 19

7:SOUMITRA NATH
S.S. COLLEGE HAILAKANDI
HAILAKANDI
PIN 788152
ASSAM

Advocate for the Petitioner : MR A DASGUPTA

Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order(Oral)

Date : 03.04.2024

Heard Mr. A. Dasgupta, learned Senior Counsel for the petitioner. Also heard Mr. S. Das, learned Standing Counsel for the Higher Education Department representing the respondents no. 4, 5 & 6. None has appeared for the respondents no. 1, 2, 3 & 7.

2. As consented to by the learned counsel appearing for the parties, the present writ petition is taken up for final consideration and dispose of.

3. The petitioner, by way of instituting the present proceeding has prayed for a direction upon the respondent authorities to issue to her an appointment order as an Assistant Professor in the department of Bengali of Karimganj College, Assam in pursuance to the advertisement issued by the college authorities on 05.10.2019.

4. The petitioner herein contends that she belongs to the OBC community and has her OBC Certificate along with a Non Crème Layer Certificate. The petitioner contends that she had acquired all the requisite qualifications as mandated for appointment as an Assistant Professor in the department of Bengali. The authorities of the Karimganj College vide an advertisement dated 05.10.2019, invited applications from eligible candidates for the post of Assistant Professor in various departments of the said college, including two posts of Assistant Professor in the department of Bengali as available in the college. In the advertisement, it was prescribed that one of the two posts as advertised for the post of Assistant Professor in the department of Bengali would be reserved for ST (P) community candidates and the other post would be reserved for the OBC/MOBC candidates. The petitioner being an OBC candidate and having fulfilled the requisite eligibility criterias proceeded to submit her application in pursuance to the said advertisement dated 05.10.2019.

Accordingly, the petitioner being found to be eligible to participate in the said recruitment process, she was vide a letter dated 22.11.2019, issued by the college authorities required to appear before a selection committee as constituted in the college along with all her requisite particulars. It is the contention of the petitioner that on conclusion of the selection process the selection committee had recommended the name of one Vyasdev Ghosh for appointment against the post of Assistant Professor in the department of Bengali reserved for the OBC candidates. Thereafter, the said decision of the selection committee being accepted by the Governing Body of the college, the name of said Vyasdev Ghosh came to be forwarded to the Director of Higher Education Department for his approval. The Director of Higher

Education Department vide a communication dated 03.03.2021, rejected the proposal as submitted in respect of Vyasdev Ghosh by the college authorities on the ground that the Caste Certificate as submitted by him in the selection process being issued by the authorities in West Bengal, Vyasdev Ghosh cannot be construed to be an OBC community candidate in the State of Assam and he would be considered as a general category candidate only. Accordingly, it was held that the case of Vyasdev Ghosh was not entitled to be considered in response to the advertisement dated 05.10.2019, issued by the college authorities for the post of Assistant Professor in the department of Bengali.

The petitioner on coming to learn of the said developments submitted an application praying for considering her case for appointment against the post of Assistant Professor in the department of Bengali as advertised in the advertisement dated 05.10.2019 and reserved for the OBC candidates. The respondents having not favorably considered the said representation preferred by the petitioner in the matter, the present proceedings have been instituted.

5. Mr. A. Dasgupta, learned counsel appearing for the petitioner submits that in the interview held 12 candidates were shortlisted for the purpose; however, on the date of interview only 11 candidates had appeared in the selection process. Out of the 11 candidates so appeared, 9 candidates were from outside the State and the other 2 candidates i.e. the petitioner and the respondent no. 7 were left in the fray. It was contended that the respondent no. 7 thereafter was selected and appointed as an Assistant Professor in S.S. College, Hailakandi and it is only the petitioner herein who is now left in the

fray for appointment against the post of Assistant Professor, Bengali as advertised vide the said advertisement dated 05.10.2019 and accordingly, the case of the petitioner having satisfied all requisite norms as prescribed by the UGC in the matter and she being an OBC candidate, her case is required to be directed to be considered for appointment against the post in question. It is contended by Mr. Dasgupta that this Court while issuing notice in the matter had vide order dated 06.12.2021 restrained the respondent authorities from proceeding with any fresh process for appointment for the post of Assistant Professor in the department of Bengali.

6. Mr. S. Das, learned counsel appearing for the respondents no. 4, 5, & 6 submits by referring to the affidavit filed by the respondent no. 4 in the matter that the petitioner is not entitled to an appointment in the post in question inasmuch as the petitioner in her academic performance had secured only 39.46% marks, which does not inspire confidence on the part of the respondent authorities to appoint her in the service. Mr. Das, learned counsel further submits that the petitioner on the last date of submission of application in pursuance to the advertisement dated 05.10.2019 and further even on the date of the interview i.e. on 04.12.2019, the petitioner was not eligible to apply for the post of Assistant Professor in the department of Bengali reserved for OBC community candidates advertised vide the advertisement dated 05.10.2019 inasmuch as she did not possess a NCL Certificate. It was contended that for being considered against the OBC candidate, it is mandated that the candidate considered must have OBC Certificate along with a NCL Certificate issued by the competent authority. The petitioner herein not having a NCL Certificate even as on the date of the interview, it is contended that the case of the petitioner was not required to

be considered by the college authorities.

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

8. The petitioner has brought on record a typed copy of the OBC Certificate dated 08.08.2001, issued by the authorized association and counter-signed by the Addl. Deputy Commissioner, Assam. The petitioner has also placed on record typed copy of the NCL Certificated dated 17.09.2020. Mr. Dasgupta, learned counsel submitted that the certificate dated 08.08.2001 was required to be obtained as the earlier one had lost its validity.

9. Be that as it may, the petitioner had in response to the advertisement dated 05.10.2019, issued by the authorities of the Karimganj College submitted her candidature for the post of Assistant Professor in the department of Bengali, reserved for OBC community. The recruitment process as involved being specifically for the purpose of Assistant Professor in the department of Bengali reserved for OBC candidates, the candidates applying against the said post must satisfy the requirements as mandated in this connection and in addition of having an OBC Certificate must also necessarily have a NCL Certificate.

10. It is settled law that when a reservation is provided for an OBC community candidate in the process of recruitment, such reservation is only applicable in case of an OBC candidate having a NCL Certificate. A person not having a NCL Certificate cannot compete for a post preserved for an OBC/MOBC community candidate. The petitioner, admittedly, having not demonstrated before this Court that she had submitted a NCL Certificate

along with the application submitted by her in pursuance to the advertisement dated 05.10.2019 and or, produced such certificate on the date of the interview held in the matter on 04.12.2019, it has to be held that the petitioner was not qualified to apply for the post of Assistant Professor in the department of Bengali, reserved for OBC/MOBC candidates in pursuance to the advertisement dated 05.10.2019.

11. In the above view of the matter and the conclusions reached hereinabove by this Court in the matter that in absence of a NCL Certificate even on the last date of the advertisement and or, on the last date the interview was so held, the petitioner was not eligible to apply against the post of Assistant Professor in the department of Bengali as involved in the present proceeding, this Court is not examining the other grounds for rejection of the petitioner that is the low marks scored by her in the academic performance.

12. In view of the above position, this writ petition is held to be devoid of any merit and the same accordingly, stands dismissed. However, there will be no order as to costs.

JUDGE

Comparing Assistant