

GAHC010197992022



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

Case No. : WP(C)/6356/2022

MOHAMMOD ALI BARBHUIYA
S/O- LATE MD. ABDUL NUR BARBHUIYA,
VILL. AND P.O.- DHONEHARI PT. I,
DIST. CACHAR, ASSAM,
PIN- 788013.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
HIGHER EDUCATION (TECHNICAL) DEPARTMENT,
DISPUR, GUWAHATI- 6.

2:THE DIRECTOR
TECHNICAL EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE PRINCIPAL
ASSAM ENGINEERING COLLEGE
JALUKBARI CUM CHAIRMAN SELECTION COMMITTEE

GUWAHATI- 781013

Advocate for the Petitioner : MR. P.K. Roy Choudhury

Advocate for the Respondent : SC, HIGHER EDU

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

JUDGMENT & ORDER (Oral)

Date : 16.02.2024

Heard Mr. P. K. Roy Choudhury and Mr. S. Dey, learned counsels for the petitioner. Also heard Mr. K. Gogoi, and Mr. S. Das, learned Standing Counsels for the Higher Education Department representing the respondents.

2. The petitioner, by way of instituting the present proceedings presented a challenge to a notice dated 17.09.2022, issued by the Director of Technical Education, Assam, publishing the select list for various posts including the post of Junior Instructor in various Polytechnics of the State, on the ground that none from the plumbing trade came to be included therein.

3. The Director of Technical Education, Assam, issued an advertisement bearing No. 05/2020 dated 25.02.2020, inviting applications, amongst others, for the post of Junior Instructor in 5 newly established Polytechnics of the State. The total number of posts so advertised was stated in the advertisement to be 25. The said advertisement was followed by an addendum, by which another 58 posts of Junior Instructors came to be advertised. In total, the recruitment process as initiated vide the advertisement dated 25.02.2020 read with the addendum was for filling up

of 83 posts of Junior Instructors. The petitioner being eligible had submitted his application for being recruited as a Junior Instructor. The petitioner being found to be eligible; he was allowed to appear in the written examination. On conclusion of the written examination vide the notice dated 08.04.2022, the results of the candidates clearing the written examination component of the selection process were required to appear in the Workshop Proficiency Test. The name of the petitioner figured in the list of candidates who were allowed to appear in the second phase of the selection process i.e., the Workshop Proficiency Test. Insofar as the Plumbing trade is concerned, 5 candidates including the petitioner came to be shortlisted for the Workshop Proficiency Test. Thereafter, on conclusion of the selection process, the notice dated 17.09.2022 came to be issued, amongst others, publishing the select list for the post of Junior Instructor. The petitioner's name not having figured in the said select list and also no candidate from the Plumbing trade having been so incorporated in the said select list, the petitioner has instituted the present proceedings.

4. Mr. P. K. Roy Choudhury and Mr. S. Dey, learned counsels for the petitioner have contended that the select list as published vide the said notice dated 17.09.2022, having not incorporated therein any candidate from the Plumbing trade, the select list was contended to be not sustainable, inasmuch as, the posts of Junior Instructor as advertised for various Polytechnics of the State also included vacancies for the post of Junior Instructor (Plumbing Trade) and it was contended that it was not open to the respondent authorities to ignore the candidates from the Plumbing trade like the petitioner while preparing the said select list.

5. Drawing the attention of this Court, to the notification issued towards the shortlisting candidates for the Workshop Proficiency Test for the post of Junior Instructor, it was contended that the list was prepared trade wise and the name of the petitioner along with 4 others was included against the Plumbing trade. It was contended that the respondent authorities with a view to favor certain identified candidates had published the select list in question without accounting for the vacancies trade wise.

6. On the said premises, it is the submission of the petitioner counsels that the selection process stands vitiated and the post of Junior Instructor for the Plumbing Trade having been filled up with persons from other trades, the same being not permissible, the select list requires to be interfered with by this Court.

7. It is the further prayer of the petitioner's counsels that necessary direction is required to be issued to the authorities for inclusion of the name of the petitioner in the select list by reckoning the vacancies available for the post of Junior Instructor (Plumbing Trade).

8. Per contra, Mr. K. Gogoi and Mr. S. Das, learned counsels for the respondents have by placing reliance on the affidavit filed by the Director of Technical Education, Assam in the matter, have contended that the selection in question was not one which was conducted trade wise, but was a general selection for the post of Junior Instructor and the persons so

selected were appointed against the trade to which they so belong. The candidates were placed in the select list on merit basing on the marks scored by them in the written examination as well as the Workshop Proficiency Test. The petitioner, having secured 33 marks in the selection process, he did not procure the cut off marks for inclusion in the select list. It was highlighted that the last candidate selected for the post of Junior Instructor, Male (Unreserved) had secured 59 marks. Accordingly, it was contended that the petitioner not having secured the requisite marks, his name could not be included in the select list as his merit position did not warrant such inclusion.

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

10. Having noticed the submission so made by the learned counsels for the petitioner that the said recruitment process also included the post of Junior Instructor in the Plumbing trade and no candidate having been selected from the said trade, it was projected that persons without the Plumbing trade qualification were appointed as Junior Instructor against the post earmarked for the Plumbing trade, this Court had required the learned Standing Counsel Higher Education (Technical) Department to receive specific instructions on the following points: -

i) as to whether any person having Plumbing trade qualification has been appointed as Junior Instructor (Plumbing) and;

ii) as to whether the posts available for Junior Instructor for the Plumbing trade were filled up by the persons from other trades.

11. The learned Standing Counsel Higher Education (Technical) Department, on receipt of instructions in the matter had submitted that no person having Plumbing trade qualification was appointed as Junior Instructor as no candidate from the said trade could secure the cut off marks. It was highlighted that no person from any other trade was appointed as Junior Instructor against the post so available for Plumbing trade.

12. A perusal of the advertisement dated 25.02.2020, reveals that the authorities had advertised 25 posts of Junior Instructors figuring in 5 newly established Polytechnics in the State, the advertisement had not bifurcated such posts of Junior Instructor trade wise, but, had put up the post for recruitment as post of Junior Instructor only. In the said advertisement in Clause-16 thereof, the selection process that is to be followed has been specified. In terms of the specification with regard to the selection process that would be followed, it has been mandated that the selection process would be so based on a written examination followed by a Workshop Proficiency Test. The addendum as issued to the said advertisement dated 25.02.2020 had also put up the post of Junior Instructor for recruitment without the breakup of the posts into the various trades. Accordingly, the recruitment process was an amalgamated one for the posts of Junior Instructors.

13. The case of the petitioner is that for the purpose of Workshop Proficiency Test, the candidates having been segregated in terms of their

respective trade qualifications, the final select list also should have been prepared trade wise is required to be considered.

14. It is seen that there was a common written examination for all the candidates with different trade qualifications applying for the posts of Junior Instructor in pursuance to the said advertisement dated 25.02.2020, along with its addendum. However, for the purpose of the Workshop Proficiency Test, the candidates were segregated as per their respective trade qualifications. The said process is so mandated because of the fact that the candidates as participating in the selection process could not have been subjected to a common Workshop Proficiency Test, inasmuch as, they all possess different trade qualifications and accordingly, it was necessitated that the Workshop Proficiency Trade component of the selection process was so conducted by reckoning the respective trade qualifications of the candidates participating in the selection process and who had cleared the written examination component of the said selection. The advertisement in question having not segregated the post of Junior Instructor in terms of the respective trades and an amalgamated selection having been held for the post of Junior Inspector, per se, it is not open to

the petitioner, after having participated in such selection process to question the manner and method in which the selection process was so conducted.

15. The affidavit as filed by the Director of School Education, Assam,

brings on record the fact that the petitioner had secured only 33 marks in both the components of the selection process as was held whereas the last candidates so included against the category, Male (Unreserved) had secured 59 marks. The petitioner being a 'Male' candidate belonging to the unreserved category having not secured the cut off marks for the said category, his non-inclusion in the select list cannot be said to be erroneous.

16. It is also to be noted here that in addition to the petitioner, there were 5 candidates belonging to the Plumbing trade who had cleared the written examination component of the selection process and were called for the Workshop Proficiency Test and none of the said 5 candidates could secure the cut off marks in their respective categories, i.e., the Unreserved and/or Reserved categories for being included in the selection process.

17. The selection process involved being an amalgamated one for all the available posts of Junior Instructor and the advertisement having not mandated that such selection process would be conducted trade wise, rather, the advertisement having put up all the available posts to be recruited as only Junior Instructor of Polytechnics in the State, it is not open for the petitioner to now contend that the said selection process must have been carried out trade wise and not as an amalgamated one.

18. The projection as made by the respondent authorities, reflects that the candidates selected in the selection process were appointed against

the posts belonging to their respective trades and no candidate from any other trade came to be appointed against the post of Junior Instructor in the Plumbing trade. Accordingly, no candidate having trade qualification other than Plumbing, been appointed as Junior Instructor (Plumbing) and the petitioner not figuring in the select list on account of the fact that he had not achieved the cut off marks for such inclusion, the preparation of the select list in question cannot be held to have caused any prejudice to the petitioner. Accordingly, the prayer of the petitioner for interference with the said select list cannot be accepted.

19. The other prayer of the petitioner for inclusion of his name in the select list against the post of Junior Instructor (Plumbing trade), cannot also be accepted in view of the fact that the selection process was not carried out trade wise, but was an amalgamated selection for all the posts of Junior Instructor belonging to different trades and persons qualifying in such selection process were appointed as Junior Instructor by reckoning the trade qualification possessed by them.

20. The petitioner, not having assailed the advertisement dated 25.02.2020 along with the addendum and he, after having participated in the selection process and taken a calculated chance for his selection therein cannot be permitted to present a challenge to the select list on the result thereof being unfavorable to him.

21. In view of the conclusions as drawn herein above by this Court,

pertaining to the challenge of the petitioner to the select list for the post of Junior Instructor as published vide the notice dated 17.09.2022, it is held that none of the contentions raised in this connection by the petitioner merits acceptance and accordingly, the writ petition is held to be without any merit and the same stands dismissed.

22. At the stage, it is to be noted that Mr. P. K. Roy Choudhury and Mr. S. Dey, learned counsels for the petitioner have submitted that the petitioner has become over aged by this time for having his case considered in future recruitment processes for the post of Junior Instructor and accordingly, prays that this Court would be pleased to issue directions towards condonation of his over age.

23. It is noted that this Court cannot condone the over age of the candidates and that too for recruitment processes that is yet to be initiated, however, in the event any recruitment process in future is initiated against the post of Junior Instructor and the petitioner is eligible for participating in any such selection process, he would be at liberty to approach the respondent authorities with an application for condonation of his over age, if any, and such application shall be considered by the respondent authorities and disposed of on merits, strictly in accordance with the procedure as prescribed for such condonation of over age.

JUDGE

Comparing Assistant