

GAHC010205142019



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

Case No. : WP(C)/6261/2019

RATAN MORAN

S/O- SRI PAKHIDHAR MORAN, R/O- KAKAPATHAR TINIALI, P.O. AND P.S.
KAKAPATHAR, DIST- TINSUKIA, PIN- 786152, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(SECONDARY) DEPTT., DISPUR, GHY-6

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT. DISPUR GHY ASSAM PIN- 781006

3:THE DIRECTOR OF SECONDARY EDUCATION ASSAM
KAHILIPARA GHY ASSAM PIN- 781019

4:CONCERN MEMBER SECRETARIES OF SCHOOL SELECTION
COMMITTEE TINSUKIA PIN- 786125

5:THE PRINCIPAL DIRAK HIGHER SECONDARY SCHOOL
P.O. DIRAK DIST- TINSUKIA ASSAM PIN- 78615

Advocate for the Petitioner : MR A D CHOUDHURY

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 10.06.2024

Date of Judgment : 10.06.2024

Judgment & order(Oral)

Heard Mr. T. Chakraborty, learned counsel, appearing on behalf of the petitioner. Also heard Mr. Bedanta Kaushik, learned standing counsel, Elementary Education Department, appearing on behalf of respondents No. 1, 2 & 3. None has appeared on behalf of respondents No. 4 & 5.

2. The grievance raised by the petitioner in the present proceeding is with regard to the denial of appointment to the petitioner, herein, in pursuance to his selection for the post of Subject Teacher in Dirak Higher Secondary School, Tinsukia, on the ground that the petitioner had not scored 60% marks in aggregate as well as in each of the papers in his TET Examination.

3. As projected in the writ petition, the petitioner who belongs to the MOBC category and possessing the requisite mandated qualification, had appeared in the TET Examination for Higher Secondary Level and had qualified the said Examination with 57.50% of marks in aggregate.

4. It is to be noted that the minimum qualifying marks in the said TET Examination is 60% marks in each paper for General category candidate. However, the same is relaxed to 55% marks in respect of each paper for candidates belonging to the reserved category candidate and/or for candidates having benchmark disability.

5. The Principal Secretary to the Government of Assam, Secondary Education

Department, issued an Office Memorandum, dated 14.07.2016, laying down the guidelines for recruitment to the post of Post Graduate Teacher in provincialized Higher Secondary Schools. In pursuance to the said Office Memorandum, dated 14.07.2016, and in accordance with the provisions of the Assam Secondary Education (Provincialized) Service Rules, 2003, an Advertisement was issued on 28.10.2015, for filling up of 22 nos. of vacant sanctioned posts of Post Graduate Teacher in Tinsukia District including the post of Post Graduate Teacher in the subject of Political Science available in Dirak Higher Secondary School. The Advertisement, dated 29.10.2015, had also brought on record, the break-up of the vacancies so advertised.

It is contended that the petitioner, herein, had submitted an application in pursuance to the said advertisement for recruitment against the post of Post Graduate Teacher in the subject of Political Science available in Dirak Higher Secondary School.

The petitioner, thereafter, had appeared in the selection process and the District Selection Committee so constituted, had recommended the name of the petitioner at Serial No. 2 against the post of Subject Teacher in Political Science available in Dirak Higher Secondary School.

It is contended that the candidate placed at Serial No. 1 by the said District Selection Committee i.e. Dakshya Baruah had submitted an application requesting that she be not considered for the said post and accordingly, the District Selection Committee had recommended the name of the petitioner,

herein, against the post for appointment.

It is also contended that after the District Selection Committee had made its recommendations, further processing of the matter was done at the State Level by the constituted authority and a select list came to be published in the matter on 03.01.2019. However, the name of the petitioner did not figure amongst the Post Graduate Teachers so selected for appointment against the post of Post Graduate Teachers in Tinsukia district.

It is further contended that basing on the said selection process; the respondent authorities, more particularly, the Director, Secondary Education Department, Assam, vide order, dated 21.11.2017, proceeded to make appointments therefrom. However, no appointment was made against the post of Post Graduate Teacher in Political Science as advertised for Dirak Higher Secondary School.

On an enquiry, the petitioner was given to understand that his case for such appointment inspite of being recommended by the District Selection Committee; was not considered in-as-much as it was found that the petitioner had not scored 60% marks in the TET Examination.

The case of the petitioner was not so considered in view of the fact that the post against which the petitioner had submitted his application, was an unreserved post and accordingly, the petitioner not having scored 60% marks in his TET Examination, his case was not considered further for appointment

against the said unreserved post.

6. In view of the materials brought on record; an issue arises in the present proceeding as to whether the petitioner having cleared the TET Examination with relaxed standards, can be denied consideration for appointment against a post which was advertised as an unreserved post although he had scored marks higher than the other candidates participating and now available in the fray for the said post.

7. The said issue need not detain this Court any further in-as-much as the Hon'ble Supreme Court in the case of ***Vikas Sankhala & ors. v. Vikas Kumar Agarwal & ors.***, reported in ***(2017) 1 SCC 350***, had concluded that on the basis of the TET marks, a reserved category candidate had not got any advantage while having his case considered against an unreserved post and accordingly, permitted reserved category candidates clearing the TET with relaxed standards to appear in the selection process and to have their cases also considered against the unreserved posts involved.

8. The relevant part of the judgment, referred to above, is extracted hereinbelow for a better understanding of the position:

“ISSUES TO BE DECIDED

27. The history of events, right upto the decision of the High Court, gives a clear glimpse of the questions of law that need to be determined by this Court. At this juncture, we would like to formulate these issues, as under:

i) Whether policy of the State as reflected in its letter dated March 23, 2011 deciding to give relaxation ranging from 10% to 20% in TET marks to different reserved categories as mentioned therein is valid in law?

ii) Whether NCTE notification dated July 29, 2011, which amends paragraph 3 of its earlier guidelines/notification dated February 11, 2011, provides 5% relaxation to the reserved category for passing TET?

If so, whether it would be applicable to the reserved categories in the State of Rajasthan as well?

iii) Whether reserved category candidates, who secured better than general category candidates in recruitment examination, can be denied migration to general seats on the basis that they had availed relaxation in TET?"

“60. Having regard to the respective submission is noted above, first aspect that needs consideration is as to whether relation in TET pass marks would amount to concession in the recruitment process. The High Court has held to be so on the premise that para 9(a) dealing with such relaxation in TET marks forms part of the document which relates to the recruitment procedure. It is difficult to accept this rationale or analogy. Passing of TET examination is a condition of eligibility for appointment as a teacher. It is a necessary qualification without which a candidate is not eligible to be considered for appointment. This was clearly mentioned in guidelines/notification dated February 11, 2011 These guidelines pertain to conducting of TET. Basic features whereof have already been pointed out above. Even para 9 which provides for concessions that can be given to certain reserved categories deals with 'qualifying marks' that is to be obtained in TET examination. Thus, a person who passes TET examination becomes eligible to participate in the selection process as and when such selection process for filling up of the posts of primary teachers is to be undertaken by the State. On the other hand, when it comes to recruitment of teachers, the method for appointment of teachers is altogether different. Here, merit list of successful candidates is to be prepared on the basis of marks obtained under different heads. One of the heads is marks in TET So far as this head is concerned, 20% of the marks obtained in TET are to be assigned to each candidate. Therefore, those reserved category candidates who secured lesser marks in TET would naturally get less marks under this head. We like to demonstrate it with an example Suppose a reserved category candidate obtains 53 marks in TET, he is treated as having qualified TET. However, when he is considered for selection to the post of primary teacher, in respect of allocation of marks he will get 20% marks for TET. As against him, a general candidate who secures 70 marks in TET shall be awarded 14 marks in recruitment process. Thus, on the basis of TET marks reserved category candidate has not got any advantage while considering his candidature for the post. On the contrary, "level playing field" is maintained whereby a person securing higher marks in TET, whether belonging to general category or reserved category, is allocated higher marks in respect of 20% of TET marks. Thus, in recruitment process no weightage or concession is given and allocation of 20% of TET marks is applied across the board. Therefore, the High Court is not correct in observing that concession was given in the recruitment process on the basis of relaxation in TET.

61. Once this vital differentiation is understood, it would lead to the conclusion that no concession becomes available to the reserved category candidate by giving relaxation in pass marks in TET insofar as recruitment process is concerned. It only enables them to compete with others by allowing them to participate in the selection process. In this backdrop, irrespective of circular dated May 11, 2011, the reserved category candidates who secured more marks than marks obtained by the last candidate selected in general category, would be entitled to be considered against unreserved category vacancies. However, it would be subject to the condition that these candidates have not availed any other concession in terms of number of attempts, etc., except on fee and age.”

9. Applying the conclusions as reached by the Hon'ble Supreme Court in the case of **Vikas Sankhala**(supra) to the facts involved in the present proceeding; this Court is of the considered view that the case of the petitioner is squarely covered by the said decision and accordingly, it is held that the denial of appointment to the petitioner by the respondent authorities on his selection, only, on the ground of not having scored 60% marks in aggregate as well as in each of the papers in his TET Examination, clearly cannot be sustained and calls for an interference by this Court.

10. It is to be noted that this Court vide order, dated 04.09.2019, had directed that until further orders; the post of Post Graduate Teacher in Dirak Higher Secondary School, Tinsukia, be not filled-up without leave of this Court.

11. It is stated in the Bar that the said post is presently lying vacant in the aforesaid school, as on date.

12. In view of the above conclusions as well as following the decision of the Hon'ble Supreme Court in the case of **Vikas Sankhala**(supra); this Court hereby directs that the respondent authorities, more particularly, the respondent No. 3

shall now process the case of the petitioner in terms of the recommendations made in his favour by the District Selection Committee and after completion of the requisite formalities involved; proceed to issue an order of appointment in favour of the petitioner, herein, against the post of Post Graduate Teacher in the subject of Political Science as advertised for Dirak Higher Secondary School.

13. The above exercise as now required to be carried-out along with the issuance of the order of appointment to the petitioner, herein, shall be so carried-out and concluded by the respondent No. 3 within a period of 60 days from the date of receipt of a certified copy of this order.

14. With the above directions and observations, this writ petition stands allowed to the extent indicated hereinabove.

JUDGE

Comparing Assistant