

GAHC010212882019



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

Case No. : WP(C)/6504/2019

JADU MANI KALITA AND ANR.
S/O SRI KARUNA KANTA KALITA, R/O VILL. ISCHADAGHARIA, P.O.
KANIHA, P.S. RANGIA, DIST. KAMRUP (R), ASSAM

2: PARESH KALITA
SON OF LATE BONGSHI DHAR KALITA
RESIDENT OF VILLAGE DWIGUNPAR
P.O - SONESWAR
P.S - KAMALPUR
P.S - KAMALPUR
DIST - KAMRUP
ASSAM

VERSUS

UNION OF INDIA AND 15 ORS.
REPRESENTED BY DEPARTMENT OF ATOMIC ENERGY, ANUSHAKTI
BHAVAN, C.S.M. MARG, MUMBAI, MAHARASHTRA - 400001.

2: THE CHIEF VIGILANCE OFFICER
DEPARTMENT OF ATOMIC ENERGY
ANUSHAKTI BHAVAN
C.S.M. MARG
MUMBAI
MAHARASHTRA - 400001.

3: THE DIRECTOR
TATA MEMORIAL HOSPITAL
DR. E BORGES ROAD
PAREL
MUMBAI - 400012.

4: THE DIRECTOR
DR. BHUBANESWAR BAROOAH CANCER INSTITUTE

A GRANT - IN- AID INSTITUTE OF DEPARTMENT OF ATOMIC ENERGY
GOVERNMENT OF INDIA AND A UNIT OF TATA MEMORIAL CENTRE
(MUMBAI)
GOPINATH NAGAR
A K AZAD ROAD
GUWAHATI - 781016.

5:SAFIKUL HAQUE
SON OF SHRI. SAYED ALI
RESIDENT OF VILLAGE - BIHAMPUR
P.O - MULARKUCHI
P.S - BELSOR
NALBARI
PIN - 781303
ASSAM.

6:MRIDUL SHARMA
SON OF SHRI. POWAL CHANDRA SARMA
RESIDENT OF VILLAGE - KUIAPANI
P.O - AULACHOWKA
P.S - MANGALDAI
PIN - 784529
ASSAM.

7:AMAR JYOTI SHARMA
SON OF SHRI. NAJEN SHARMA
DR. B. BOROOAH CANCER INSTITUTE CAMPUS
GOPINATH NAGAR
GUWAHATI - 781016.

8:HITESH SARMA
SON OF SHRI. MADAN CH. SARMA
DR. B. BOROOAH CANCER INSTITUTE CAMPUS
GOPINATH NAGAR
GUWAHATI - 781016.

9:KHANINDRA BHUYAN
SON OF SHRI. RAMESWAR BHUYAN
DR. B. BOROOAH CANCER INSTITUTE CAMPUS
GOPINATH NAGAR
GUWAHATI - 781016.

10:SHUBHAM BHARDWAJ
SON OF SHRI. MANOJ KUMAR
N4/3F6
NEAR VIDYA BHAWAN
KARAUNDI POST BHU
VARANASI - 221005

UTTAR PRADESH.

11:AFJULLAH ANSARI
SON OF MD. ASGAR ALI
VILLAGE - DHUPNAGAR
P.O - DHOBWAL
P.S - KHAIRAH
DIST - CHAPRA
PIN - 841412
BIHAR.

12:PATNALA PUSHPA KUMARI
SON OF SHRI. P.V.V.S.V. PRASAD
D. NO.5-59
RAAVICHETTU JUNCTION
V. MADUGULA
VISAKHAPATNAM
PIN - 531027
ANDHRA PRADESH.

13:JYOTISKA HAZARIKA
SON OF SHRI. PADMA HAZARIKA
VILLAGE - MANDAUARI
P.O - MANDAUARI
DIST - DARRANG
PIN - 784522
ASSAM.

14:KUMUD KALITA
SON OF SHRI. SURJYA KALITA
VILLAGE - ISCHADAGHARIA
P.O - KANIHA
P.S - SIPAJHAR
DIST - DARRANG
PIN - 781380.

15:ABHIJIT KALITA
SON OF SHRI. BALEN KALITA
DR. B. BAROOAH CANCER INSTITUTE
GOPINATH NAGAR
GUWAHATI - 781016
ASSAM.

16:DIGANTA KALITA
SON OF SHRI. MAHESH KALITA
DR. B. BAROOAH CANCER INSTITUTE
GOPINATH NAGAR
GUWAHATI - 781016

ASSAM

Advocate for the Petitioner : MR. A K BHUYAN

Advocate for the Respondent : ASSTT. S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 07-03-2024

1. Heard Ms. B Bhuyan learned senior counsel assisted by Ms. B Borah learned counsel for the petitioner. Also heard Mr. S Dutta learned senior counsel assisted by Ms. S Mushayary, learned counsel for the respondent.

2. The petitioners who claim to be working as Ward Boy at the Bhubaneswar Borooah Cancer Institute (for short, "the Institute"), participated in a selection process pursuant to an advertisement dated 28.09.2018 for selection of Trade Helpers conducted by the Institute.

3. The grievance of the petitioners are that there are serious anomalies in the selection process and accordingly, the petitioners had been deprived of their rights of fair selection process and their right to get an opportunity of being appointed pursuant to the impugned selection process.

4. The basic grievance of the petitioners as pleaded and urged by learned senior counsel can be summarized as follows:

I. No OMR answer sheets were given for answering the objective type questions, instead only Xerox question papers were given to the petitioners as well as to the other candidates, where they were supposed to put tick marks for

the correct answer. Thus, it is evidence that the invigilators themselves have answered the unanswered questions of the preferred candidates.

II. Petitioners were quite astounded with one of the written instructions in the question booklet that any candidate can change their answers and the same can be ratified with invigilator countersigning the same. Taking it as a leniency, candidates did it frequently, and subsequently they got ratified by the invigilators.

III. The stipulated syllabus was not followed in the written exam, questions from English and G.K were not perceived in the same way. As per the syllabus for questions about equipment in OT/ICU/Labs were supposed to be asked but in reality questions about patients and illness were only asked. Thus, most of the candidates used the malpractice influencing the invigilators and other modes, for which invigilators helped the candidates favourable and pre chosen by the authorities.

IV. Unauthorized or unknown persons were also seen entering in the exam hall and as they were found with the answer key with them and helped the preferred candidates as the provision for correction, was there, the candidates corrected the answer and subsequently these were ratified by the invigilators.

V. There was no transparency. There were many loop holes in the whole examination. Question paper as well as answer key was not published. Score card was also not published. There was no CCTV coverage to identify

malpractices etc; which clearly means that there was some sort of malpractice involved.

VI. The question papers were not under sealed cover. Only Xerox papers of question papers were given/distributed. Thus, it is a clear indication that questions papers got out prior to the exam and thus the preferred candidates got the chance to manipulate the examination.

VII. There was no seating plan for the candidates roll number wise and the preferred candidates were allowed to seat as per their convenience and took the help from the other candidates and got the help from the invigilators too.

VIII. Mobile phones were not debarred inside the hall, thus a few candidates did cheating using mobile phones too.

IX. Under the above circumstances, seeing all these the petitioners were shell shocked and an apprehension raised to their mind that no fair means is being adopted, which was not expected in a national level examination. The petitioners have never observed and adopted such means which is against their principle. The petitioners were nervous and with a hope that if something goes wrong, they will miss the last opportunity too, they did not come out of the examination hall.

X. Petitioners were stunned when they did not find their name in the list of qualified candidates for skill test. If all fair means would have been adopted, then the petitioners were sure that they could have established their competence. The petitioners believed that they would be able to score good marks as they have answered more than 25 correct answers.

XI. Petitioners saw that the skill test/trade test was for namesake only; No cut off mark was earmarked for qualifying the written examination, and no proportionate ratio was maintained for passing to the next level i.e. from written exam to trade test. E.g. Against 10 numbers of General category posts only 12 persons were allowed to sit for the skill test by which a portion of deserving candidates have been deprived to sit for the skill test.

5. The respondents have filed an affidavit and specifically denied such allegation of anomalies and allegations made in the writ petition and relying on such affidavit the learned counsel for the respondent argues the following:

- I. There is no written norms to use the OMR sheets.
- II. The evaluation was done by a team including outside expert and they were not aware of the names of the candidates. The permission to change the answer was provided in the answer script itself and such advantage was given to every candidates.
- III. The questions were framed as per syllabus. No malpractices were followed during the examination. The investigators were not influenced by any of the candidates, the allegations are imaginary and devoid of any substance.
- IV. No unauthorised persons were allowed to enter the examination rooms. The answer key was with the authorised personnel in a sealed cover which was opened at the time of evaluation.
- V. The entire examination was strictly monitored by

responsible invigilators and conducted in a fair manner. The question papers were sealed and opened in the examination hall in front of the candidates. As the examination was held in two rooms, question papers were opened in one room and were passed on to the other room.

VI. The candidates were allowed to sit as per the availability of seat and not as per the choice of the candidates. No malpractices were allowed as alleged. No invigilators were communicating with the candidates.

VII. The candidates were sufficiently informed to switch off their mobile phones and they were instructed to keep their belongings at the desk of the invigilators.

VIII. The cut off marks of the written examination was decided by the Committee with concurrence of the Director of the Institute. Result was published in the website of the institute and was also published in the notice board of the institution and the candidates started joining from 06.09.2019 onwards i.e. after 10 (ten) days after issuance of the appointment order.

6. This Court has given anxious consideration to the submission advanced by the learned counsel for the parties. Also perused the record of the selection.

7. Pursuant to the advertisement dated 28.09.2018, the petitioners participated in selection for the post of Trade Helper against 10 un-reserved category vacancies. The Clause 12 of the advertisement clarifies that the Tata Memorial Centre (TCS) shall have the right to fix minimum eligibility standard/ benchmark; Restrict number of candidates

to be called for written exam/ interview/ skill test; it is further disclosed in the advertisement that such right shall be exercised on consideration of various factors, like number of vacancies, percentage of marks in qualifying degrees; etc. Thus, the argument of the learned Senior Counsel Ms. Bhuyan that the Selection Board has decided to prescribe cut off marks for appearance in the skill test is a result of hidden criteria, do not find favour of this Court. The policy and procedure of the selection is very clear from the Clause 12 of the advertisement itself. It is provided herein that there may be a cut off mark in the written test to be qualified for skill test. The petitioners without having any objection to such conditions appeared in the selection process and when their results were declared and were not selected, had challenged such conditions. Such a course of action is not permissible under law.

8. The selection record and the minutes of the decision of the selection committee also clearly reveals that a conscious decision was taken to fix 25 mark as cut off mark for allowing the candidates to participate in the skill test. The record of performance of the participating candidates in the written examination goes to show that the petitioner No.1 Jadumoni Kalita obtained 20 marks out of 100 marks in the written examination and the petitioner No.2 Paresh Kalita obtained 18 marks out of 100 marks. 12 qualified unreserved candidates were called for the skill test. Such requirement of cut off marks were made applicable to all the candidates and therefore, this court cannot conclude such action to be a result of arbitrary exercise of power, resulting in violation of the right of the petitioners under articles 14 or 16 of the constitution of India.

9. A specific stand has been taken that in the selection process

the Selection Board has taken a conscious decision to fix the cut off mark in the written examination and on the basis of such cut off mark the candidates were called for the skill test and thereafter the selections were made and the private respondents were appointed.

10. Coming to the other allegation of anomalies committed inside the examination hall, as discussed herein above, such facts has specifically been denied by the institution in its affidavit. Thus, the allegation of candidates resorting to mal practice, unauthorised/unknown persons entering into the exam hall being disputed, veracity of the same cannot be determined in exercise of the power of judicial review.

11. There is also no mandate in the advertisement or in the call letter that the examination shall be based on OMR sheet and the questions were multiple choice question and answer. The question paper clearly prescribes that it is obligatory to sign and take counter signature of the supervisor in case of change in the choice of answer and it was provided that the candidate is to put a circle on the choice of the answer. It is universally applicable to all. The question paper also mandated that mobile /smart phone/calculator /laptop are not allowed inside the examination hall.

12. It is well settled that it is not the function of a writ court to hear an appeal over the decision of the selection committee in exercise of its power of judicial review. The decision of the selection committee can be interfered only when there is illegality or patent material irregularity in constitution of the committee or its procedure vitiating the selection or proved mala-fide affecting the selection etc.

13. It is equally well settled that the writ court should be slow to

interfere with the decision of the selection committee unless allegations of mala-fide are made and established.

14. In the backdrop of aforesaid settled propositions of law, the argument of the learned Senior counsel for the petitioners that the question papers were set beyond the syllabus cannot be decided by this Court inasmuch this Court is not an expert authority to decide which are the questions that relates to disease and which one relates to Laboratory/OT, more particularly, in the backdrop of specific stand that the question paper was set by expert and questions were within the syllabus. Above all, such question paper was set by competent authority having expertise in this regard inasmuch as some candidates similarly situated to the petitioners have qualified such examination.

15. Further, the allegation of the petitioner that there is mala-fide exercise of power and only to accommodate the private respondents, the selection was done hurriedly, also being not substantiated by any material to make a further enquiry by this Court in exercise of its power of judicial review. There is no material in the selection record produced by the Institution even to remotely suggest mala-fide exercise of power, not to say about any established mala-fide exercise of power. Above all, the members of the selection committee are not made parties, though allegations of mala-fide are pleaded against those members. Therefore, in this count also, this writ petition is liable to be dismissed.

16. At the cost of repetition it is reiterated that it is not within the jurisdiction and domain of a writ court to enter into merit of a selection process, which is vested upon the expert selection committee until and unless there are proved allegation of mala-fide or violation of statutory rules or any other inherent arbitrariness or patent material illegality.

17. In that view of the matter, this court cannot make a roving and fishing enquiry to ascertain whether such illegality is there more so in view of the determination made in the forgoing paragraphs.

18. Accordingly, this writ petition stands dismissed.

19. Parties to bear their own cost.

JUDGE

Comparing Assistant