

GAHC010218602014



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

Case No. : WP(C)/1751/2014

MD. SAIDUR RAHMAN and 2 ORS.
S/O- MD. AMIRUDDIN, R/O VILL.- DHANIA BHETI, P.O.- DHANIA BHETI,
P.S.- BATADRAVA, DIST.- NAGAON, ASSAM, PIN- 782122.

2: AMINUL ISLAM S/O- MD. SAIDUR RAHMAN
R/O VILL. and P.O.- DHANIA BHETI
P.S.- BATADRAVA
DIST.- NAGAON
ASSAM PIN- 782122.

3: ABUL KALAM AZAD
S/O- MD. MOFIZUDDIN AHMED
R/O VILL.- KUBAI KATA
P.O.- DHANIA BHETI
P.S.- BATADRAVA
DIST.- NAGAON
ASSAM PIN- 782122

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
DEPTT. OF HEALTH, DISPUR, GHY- 6.

2:THE DIRECTOR OF HEALTH SERVICES ASSAM HENGRABARI GHY- 36.

3:THE DIRECTOR OF MEDICAL EDUCATION ASSAM
SIX MILE KHANAPARA GHY- 22.

4:THE PRINCIPAL-CUM-CHIEF SUPDT. TEZPUR MEDICAL COLLEGE AND
HOSPITAL TEZPUR DIST.- SONITPUR ASSAM PIN- 784001

Advocate for the Petitioner : MR.A K PURKAYASTHA
Advocate for the Respondent :

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

Date of hearing : 03.04.2024

Date of Judgment : 03.04.2024

Judgment & order(Oral)

Heard Mr. A. K. Purkayastha, learned counsel, appearing on behalf of the petitioners. Also heard Ms. D. Borah, learned standing counsel, Health & Family Welfare Department, appearing on behalf of all the respondents.

2. The petitioners by way of instituting the present proceeding, have presented a challenge to the selection and appointment as effected in respect of the posts of Storekeeper-cum-Clerk/Storekeeper, as advertised vide an Advertisement, dated 19.02.2011, by the Principal, Tezpur Medical College & Hospital, Tezpur.

3. The facts as requisite for adjudication of the issues arising in the present proceeding, is noticed as under:

The petitioners in pursuance of the said Advertisement, dated 19.02.2011, submitted their applications for recruitment against the post of Storekeeper-cum-Clerk/Storekeeper as available in the establishment of the Principal, Tezpur Medical College & Hospital, Tezpur. It is to be noted that there were 30 posts of Storekeeper-cum-Clerk/Storekeeper that was advertised for recruitment. It is the contention of the petitioners that after issuance of the said Advertisement, the recruitment process was not initiated for about 2 years and 7 months and

no reason for the same, was so assigned and thereafter, the petitioners, herein, being found to have satisfied the eligibility criterias mandated; were issued with call letters on 02.08.2013, fixing the written Examination on 18.08.2013. However, the said written Examination was postponed and was finally held on 22.09.2013. It is categorically contended by the petitioners that in the said written Examination, more than 10,000 candidates had appeared. The result of the said written Examination was declared on 01.10.2013 and the candidates so short-listed, were required to appear in a viva voce test. On conclusion of the selection process, a select list against the post of Storekeeper-cum-Clerk/Storekeeper came to be published and 30 persons, on merit, figured therein. Being aggrieved by their non-selection for the said posts; the petitioners have instituted the present proceeding on 19.03.2014.

4. Mr. Purkayastha, learned counsel for the petitioners, at the outset, has submitted that the said selection process was a farce and was so held for recruitment of candidates belonging to a particular district under political influence. The learned counsel has further submitted that the materials coming on record reveals that the respondent authorities, after the selection process had begun, had fixed cut-off marks for various components of the selection process which has been contended to be not permissible and in this connection, has relied on the following decisions of the Hon'ble Supreme Court as well as this Court:

- 1. *Rakhi Roy v. The High Court of Delhi & ors.*, reported in **2010 (2) SCR 289**. Para 22**
- 2. *State of U.P. v. Rafiq Uddin & ors.*, reported in **AIR 1988 SC 162**, Para 7 and 12.**
- 3. *Arunachal Pradesh Public Commission v. Tage Habung*, Sub Para 1 and 2 at Page 2. Date of Judgment 1st May, 2013.**

5. On a query made by this Court as to why the selected candidates were not arrayed as party respondents in the present proceeding; Mr. Purkayastha, learned counsel for the petitioners, has submitted that the names of the candidates not being available with the petitioners; they could not be arrayed as party respondents in the present proceeding.

6. Ms. Borah, learned standing counsel, Health & Family Welfare Department, by referring to the affidavit-in-opposition filed in the matter, has submitted that the allegations as levelled by the petitioners of there being prescription of cut-off marks for the written Examination, is clearly perverse in-as-much as the respondent authorities, on conclusion of the written examination, had proceeded to short-list the candidates on merits belonging to the different categories for appearing in the viva voce component, which action is contended to be permissible. It is stated that the candidates from the written Examination were called for the viva voce at the ratio of 1:3 i.e. for every post, there were 3 candidates so called for the viva voce segment of the selection process.

7. By referring to the particulars of the selected candidates as laid-out in paragraph No. 20 of the affidavit-in-opposition filed by the respondent No. 4; it was contended that the candidates so selected, belonged to different districts of the State and accordingly, the contention that the candidates so selected were from a particular district as made by the petitioners, is demonstrated to be without any substance. It was further submitted that the marks scored of the petitioners in the written Examination did not mandate for inclusion of their names in the list so prepared by the respondent authorities of candidates for appearing in the viva voce segment of the selection process.

8. Ms. Borah, learned standing counsel, Health & Family Welfare Department, has also placed on record, a communication received from the Principal-cum-Chief Superintendent, Tezpur Medical College & Hospital, Tezpur, dated 02.04.2024, wherein, it was contended that the ratio applied for calling candidates clearing the written examination for the viva voce segment of the selection process, was so fixed by the recruiting authority in the ratio of 3(three) candidates against 1(one) number of post. It was also contended that in terms of the said ratio, although 90 numbers of candidate were required to be called; however, in total, 104 numbers of candidates were called for the viva voce segment of the selection process in-as-much as many of the candidates have scored the same marks as the last candidate so short-listed and accordingly, they were also required to be called for the said viva voce segment of the selection process. It was contended that in terms of the said ratio as applied, the last candidate as short-listed for the viva voce against unreserved vacancies worked-out to be 84 marks while for SC, ST(P) and ST(H) candidates, it worked-out to be 82 marks, 78 marks and 38 marks respectively.

9. Accordingly, it is contended that the candidates so selected for appointment in pursuance to the selection process, not being arrayed as party respondents to this proceeding inspite of their names being disclosed in the affidavit-in-opposition so filed by the respondent No. 4 in the matter on 05.11.2015; the instant writ petition requires to be dismissed.

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

11. The thrust of the arguments of the petitioners in the present proceeding, was to the effect that the said selection process was a farce in view of the fact that the same resulted in the selection of candidates belonging to a particular district although the said Advertisement was so issued inviting applications from candidates residing in different districts of the State. The above procedure was contended to have been adopted by the recruiting authorities under political influence. However, the said contention as made by the petitioners in view of the contentions and disclosures as made in paragraph No. 20 of the affidavit-in-opposition filed by the respondent No. 4 on 05.11.2015, demonstrates that the candidates so selected, belonged to various districts of the State and were not concentrated to a particular district. Accordingly, the said contention of the petitioners, in the absence of any material being brought on record to counter the contentions so made in paragraph No. 20 of the affidavit-in-opposition filed by the respondent No. 4, does not merit any further consideration.

12. The above position having been noticed, the next argument of the petitioners that the recruiting authority without a disclosure being made in the said Advertisement, have resorted to apply the cut-off marks both in the written Examination as well as the viva voce segment of the selection process, is now required to be so considered.

13. It is the contention of the petitioners that the cut-off marks as assigned for inviting a candidate for appearing in the viva voce segment of the selection process, is not permissible in-as-much as the same was not so disclosed in the Advertisement so issued in the matter. The said contention of the petitioners when examined in view of the contentions made in the affidavit-in-opposition as

filed by the respondent No. 4 as well as the disclosure as made in the communication, dated 02.04.2024, placed on record, during the hearing of the matter, reveals that there was no cut-off marks prescribed for the purpose but the respondent authorities had resorted to a process of short-listing of candidates basing on the marks as scored by them in the written Examination. The cut-off marks as disclosed in the affidavit-in-opposition filed by the respondent No. 4, is as a result of the said short-listing of the candidates, as resorted to by the respondent authorities in the matter.

14. In this connection, it is relevant to notice the decision of the Hon'ble Supreme Court in the case of ***B. Ramakichenin alias Balagandhi v. Union of India*** reported in ***(2008) 1 SCC 362***, wherein, the Hon'ble Supreme Court on the issue of adoption of the method of short-listing by a recruiting agency has held that even if there is no rule providing for short-listing or any mention of it in the advertisement calling for the application for the post, the selection body can resort to a short-listing procedure if there are large number of eligible candidates who had applied and it is not possible for the authority to interview all of them. The relevant observations of the Hon'ble Supreme Court in the above-noted case as available in paragraphs No. 15, 16 & 17 thereof, is extracted hereinbelow:

“15. It is well settled that the method of short-listing can be validly adopted by the Selection Body vide Madhya Pradesh Public Service Commission vs. Navnit Kumar Potdar and another 1994 (6) SCC 293 (vide paras 6, 8, 9 and 13), Government of Andhra Pradesh vs. P. Dilip Kumar and another 1993 (2) SCC 310, etc.

16. Even if there is no rule providing for short-listing nor any mention of it in the advertisement calling for applications for the post, the Selection body can resort to a short-listing procedure if there are a large number of eligible candidates who apply and it is not possible for the authority to interview all of them. For example, if for one or two posts there are more than 1000 applications received from eligible candidates, it may not be possible to interview all of them. In this situation, the procedure of

short-listing can be resorted to by the Selection Body, even though there is no mention of short-listing in the rules or in the advertisement.

17. However, for valid short-listing, there have to be two requirements-

(i) It has to be on some rational and objective basis. For instance, if selection has to be done on some post for which the minimum essential requirement is a B. Sc. degree, and if there are a large number of eligible applicants, the Selection Body can resort to short-listing by prescribing certain minimum marks in B. Sc. and only those who have got such marks may be called for the interview. This can be done even if the rule or advertisement does not mention only those who have the aforementioned minimum marks, will be considered or appointed on the post. Thus the procedure of short-listing is only a practical via-media which has been followed by the courts in various decisions since otherwise there may be great difficulties for the selecting and appointing authorities as they may not be able to interview hundreds and thousands of eligible candidates;

(ii) If a prescribed method of short-listing has been mentioned in the rule or advertisement then that method alone has to be followed.”

15. The conclusions as reached by the Hon'ble Supreme Court in the case of ***B. Ramakichenin*** (supra) when applied to the facts of the case, on hand; it is seen that in the present case; the recruiting authority had resorted to short-listing of candidates and the same in view of the large no. of candidates participating in the selection process, cannot be held to be a process so resorted to, without any authority. Accordingly, the said short-listing of candidates as resorted to by the recruiting authority for the purpose of inviting candidates for the viva-voce segment of the said selection process, cannot be held to be an erroneous method.

16. The petitioners having not scored the cut-off marks as mandated for bringing them within the zone for inclusion of their names in the list of the candidates as prepared for appearing in the viva voce segment of the selection process; no prejudice can be stated to have occasioned in respect of the petitioners, herein.

17. At this stage; it is required to note the submissions of Mr. Purkayastha, learned counsel for the petitioners, that the petitioner No. 1 being a person of benchmark disability, was required to be so included in the said selection process; the said argument is noted only for the purpose of rejecting the same, in-as-much, as the reservation as mandated for persons with disability is a horizontal reservation and there cannot be a situation wherein the candidates belonging to the said category are short-listed, ignoring their merit position. The recruitment process as undertaken, it is seen that the short-listing as resorted to by the recruiting authority was so done, by reckoning the candidates belonging to the reserved community category also. Accordingly, the petitioner No. 1, by virtue of the merit position as obtained by him in the written examination, not having come within the zone for inclusion in the list so prepared for candidates for the purpose of appearing in the viva voce segment of the selection process, no prejudice can be held to have occasioned to the petitioner No. 1, herein.

18. The petitioners in the writ petition have contended that they were not in a position to array the selected candidates as party respondents in the writ petition in-as-much as the select list that was so published only disclosed the Roll Nos. and not the names of the selected candidates and accordingly, they were not arrayed as party respondents in the present proceeding. However, it is to be noted that the respondent No. 4 in his affidavit-in-opposition filed on 05.11.2015 in the matter, had brought on record, the names of the selected candidates along with their Roll Nos., but the petitioners although being in possession of such information, had not proceeded to implead the said selected candidates as party respondents in the present proceeding. Accordingly, the challenge as made, if so proceeded to be so considered, would have an adverse

effect on the selected candidates and in their absence, no order adverse to their interest, is permissible to be passed by this Court and therefore, the present challenge as presented by the petitioners in the matter, in addition to the conclusions reached hereinabove with regard to the other arguments advanced by the petitioners in the matter, also requires to be negated on the ground of absence of the selected candidates as party respondents in the present proceeding.

19. In view of the conclusions reached by this Court hereinabove; the decisions as relied upon by Mr. Purkayastha, learned counsel for the petitioners, in the matter, and noted hereinabove, are not being alluded to.

20. In view of the above, the writ petition is found to be devoid of any merit and accordingly, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant