

GAHC010234022013



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

Case No. : WP(C)/2780/2013

PARUL AHMED
S/O ABDUL JALIL, VILL. BURUNGATOLI, P.O. BURUNGA BAZAR, DIST-
NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION SECONDARY DEPARTMENT, DISPUR, GHY-6

2:THE DIRECTOR OF MADRASSA EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:SELECTION BOARD OF BURUNGA BAZAR SENIOR MADRASSA

REPRESENTED BY ITS SECRETARY CUM SUPERINTENDENT
P.O. BURUNGA BAZAR
DIST- NAGAON
ASSAM
PIN-782445

4:MD. ATAR ALI CHOUDHURY
PRESIDENT OF THE MANAGING COMMITTEE OF BURUNGA BAZAR
SENIOR MADRASSA
P.O. BURUNGA BAZAR
DIST- NAGAON
ASSAM
PIN782445

5:JALAL UDDIN

SUPERINTENDENT CUM MEMBER SECRETARY OF BURUNGA BAZAR
SENIOR MADRASSA
P.O. BURUNGA BAZAR
DIST- NAGAON
ASSAM
PIN782445

6:ASHFAK UDDIN
S/O FAKAR UDDIN
VILL. BURUNGATOLI
P.O. BURUNGA BAZAR
DIST- NAGAON
ASSAM
PIN-78244

Advocate for the Petitioner : MR.D A KAIYUM, MRJ RAHMAN,MR.S H RAHMAN

Advocate for the Respondent : MR.R A CHOUDHURY, MR. E AHMED,MR.N I KHAN,SC, EDU

Linked Case : WP(C)/3473/2013

PARUL AHMED
S/O ABDUL JALIL
VILL. BURUNGATOLI
P.O. BURUNGA BAZAR
DIST- NAGAON

VERSUS

THE STATE OF ASSAM AND 11 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM EDUCATION
SECO DEPARTMENT
DISPUR
GHY-6

2:THE DIRECTOR OF MADRASSA EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT

DISPUR
GHY-6

4:THE DY. DIRECTOR
MADRASSA EDUCATION
ASSAM CUM SECRETARY STATE MADRASSA EDUCATION BOARD
ASSAM
KAHILIPARA
GHY-19

5:ATAR ALI CHOUDHURY
CHAIRMAN/PRESIDENT OF THE SELECTION BOARD OF BURUNGA BAZAR
SENIOR MADRASSA
C/O SUPERINTENDENT
BURUNGA BAZAR SENIOR MADRASSA
P.O. BURUNGA BAZAR
PIN-782445
DIST- NAGAON
ASSAM

6:JALAL UDDIN
MEMEBER SECRETARY OF SELECTION BOARD - CUM - SUPERINTENDENT
OF BURUNGA BAZAR SENIOR MADRASSA
P.O. BURUNGA BAZAR
PIN-782445
DIST- NAGAON
ASSAM

7:ESHRAKHAQ ALI

8:SHOFIQR RAHMAN

9:FOIZ MOHAMMAD

10:BADAR UDDIN

11:FAKAR UDDIN
RESPONDENT NO.7 TO 11 ARE THE MEMBERS OF THE SELECTION BOARD
OF BURUNGA BAZAR SENIOR MADRASSAM C/O SUPERINTENDENT
BURUNGA BAZAR SENIOR MADRASSA
P.O. BURUNGA BAZAR
PIN-782445
DIST- NAGAON
ASSAM

12:ASHFAK UDDIN
S/O FAKAR UDDIN
VILL. BIRUNGATOLI
P.O. BURUNGATOLI BAZAR
PIN-782445
DIST- NAGAON
ASSAM

Advocate for : MR A R BHUIYAN

Advocate for : MR.R A CHOUDHURY appearing for THE STATE OF ASSAM AND
11 ORS

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri AR Bhuiyan

Advocate for the respondents : Shri NJ Khataniar, SC-Edu. Deptt.

Date of hearing : **19.09.2024**

Date of Judgment : **19.09.2024**

JUDGMENT & ORDER

Heard Shri AR Bhuiyan, learned counsel for the petitioner. Also heard Shri NJ Khataniar, learned Standing Counsel, Secondary Education Department.

2. Both these writ petitions being filed by the same petitioner and connected with the same recruitment process, have been heard analogously and are disposed of by this common order.

3. The matter pertains to a recruitment process for the post of Junior Assistant in the Burunga Bazar Senior Madrassa in the district of Nagaon. An advertisement was issued on 17.12.2012 for the said post in which the petitioner, respondent no. 12 and other candidates had offered their candidatures. It is the contention of the petitioner that as at the relevant time,

there were no recruitment rules, a notification dated 12.09.2012 laying down the procedures was governing the field. In the selection so held, while the petitioner claims to have been selected as the first nominee, he has alleged manipulation by which the positions have been altered and the respondent no. 12 has been shown to be the first nominee and the petitioner has been placed in the 3rd position. It is the case of the petitioner that on a comparison of the academic record, the petitioner steals a march over the respondent no. 12 and only by allotting more marks in the oral segment, undue favor has been given to the said respondent no. 12.

4. Shri Bhuiyan, learned counsel for the petitioner has submitted that there is a communication dated 23.04.2013 by the Chairman of the Selection Board wherein it has been stated that in the selection so held, the petitioner has secured the first position and the name of the private respondent no. 12 was not even amongst the panel of three candidates. It is also stated in the said communication that undue pressure was put on the Chairman to put his signature in the erroneous select list and accordingly, the complaint was made. The learned counsel has also submitted that in the WP(C)/2780/2013, an interim order was passed on 21.05.2013 directing that no appointment should be made and in spite of the said interim order, it transpires from the affidavits and other materials placed on record subsequently that the respondent no. 12 has been appointed. He submits that such appointment order was issued in violation of the interim order passed by the Court. He has however informed this Court that the aforesaid Institution has now been converted into a High School. However, the respondent no. 12 is continuing to serve in the said post.

5. Shri Khataniar, learned Standing Counsel has submitted that the selection was duly conducted in terms of the notification dated 12.09.2012. He submits

that the procedure of the notification is not the subject matter of challenge and is the same were duly followed. By drawing the attention to the statement of marks of the panel of candidates, the learned Standing Counsel has submitted that while the respondent no. 12 had secured 146.94%, the petitioner had secured 139.91%. He has also highlighted the aspect that there is one more candidate against candidate sl. no. 2 – Islam Uddin, who had secured more marks than the petitioner who however has not been made party respondent. So far as the communication dated 23.04.2013 is concerned, it is submitted that there is another communication by the said Chairman whereby a different stand has been taken and therefore the said communication cannot be given any credence.

6. Though the private respondent no. 12 had entered appearance through counsel and has also filed an affidavit-in-opposition on 21.05.2014, none has appeared for the said respondent no. 12. The perusal of the said affidavit-in-opposition would however reveal that the President and Chairman of the Committee had issued a communication dated 06.05.2013 revoking the earlier complaint made by him and the matter was clarified.

7. The selection appears to have been done by following the procedures laid down in the notification dated 12.09.2012. The notification stipulates for allotting marks for HSLC, Computer Diploma and *Viva-Voce*. Though it appears that the petitioner had secured slightly higher marks in the objective assessment consisting of HSLC and Computer Diploma, he had secured lesser marks than the respondent no. 12 in the *Viva-Voce*. Ultimately, it is the total marks which should be taken into consideration and as indicated above, while the total marks secured by the respondent no. 12 is 146.94%, those secured by the petitioner was 139.91%. This Court has also taken into consideration that

above the petitioner, there is another candidate, namely, Islam Uddin, who had secured 141.14% who however has not been made party respondent.

8. Even assuming that a case of interference is made out, the petitioner would not get any fruits of the litigation inasmuch as, there is another candidate mentioned above the petitioner against sl. No. 2. This Court has also taken into consideration that more than a decade had passed since the appointment of the respondent no. 12 and unsettling the said appointment may not serve the interest of justice, more so, when the petitioner would not be entitled for the appointment pursuant to the selection held in the year 2012.

9. As regards the aspect of violation of the interim order, as per written instructions received by the learned Standing Counsel, while the appointment order was issued on 31.05.2013, it has been stated that copy of the interim order was received only on 01.06.2013.

10. Considering all the aforesaid facts and circumstances, this Court is of the opinion that no relief can be granted in this petition. Accordingly, these writ petitions are dismissed.

11. Interim order passed earlier stands vacated.

JUDGE

Comparing Assistant