

GAHC010221152023



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

Case No. : WP(C)/5937/2023

ROSHIDUL ISLAM AND 9 ORS
S/O- GOLAM SORROWAR, VILL.- BARTARY, P.S. KALGACHIA, DIST.
BARPETA, ASSAM

2: SHOHIDUL ISLAM
S/O- LATE AFZAL HUSSAIN
VILL.- KHARMUZA, P.S. GOALPARA
DIST. GOALPARA, ASSAM

3: MONIZA KHATUN
D/O- MUSHLEM UDDIN AHMED
VILL.- BERBHANGI PT-II, P.S. GOLAKGANJ
DIST. DHUBRI, ASSAM

4: JUTIKA DAS
D/O- LATE RAMESWAR ROY
VILL.- JALKHANA PACHIM KETRAPARA
P.S. TIHU, DIST. NALBARI, ASSAM

5: MD. NAZMUL HOQUE
S/O- LATE JAHA BOKSHO
VILL.- DEKDHOWA, P.S. DUBAPARA
DIST. GOALPARA, ASSAM

6: MONIR UDDIN AHMED
S/O- NASER ALI
VILL.- TARANGAPUR, P.S. LAKHIPUR
DIST. GOALPARA, ASSAM

7: BHIMOKALA DEVI
D/O- UTTAM BAHADUR CHETRI
VILL.- THEKASU PT-II, P.S. DUDHNOI
DIST. GOALPARA, ASSAM

8: HIRUMANI DAS
D/O- NABIN DAS
VILL.- HATHINAPUR, P.S. SARTHEBARI
DIST. BARPETA, ASSAM

9: JIARUL HOQUE
S/O- NURUL HOQUE
VILL.- KADAMGURI, P.S. HOWLY
DIST. BARPETA, ASSAM

10: NAZIRUL ISLAM PARAMANIK
S/O- SHAH ALAM PARAMANIK
VILL.- SUPARIVITA, P.S. LAKHIPUR
DIST. GOALPARA, ASSAM

VERSUS

1.THE STATE OF ASSAM AND 7 ORS.
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF ELEMENTARY EDUCATION, ASSAM
KAHILIPARA, GUWAHATI-19.

3:THE DIRECTOR OF HEALTH SERVICES, ASSAM
HENGRABARI, GUWAHATI-36.

4:THE MEDICAL BOARD
CONSTITUTED FOR THE PURPOSE OF VERIFICATION OF PERSONS WITH
DISABILITY CANDIDATES AT GMCH. (TO BE REPRESENTED BY THE
SUPERINTENDENT OF GMCH, GUWAHATI.

5:THE DISTRICT MEDICAL BOARD, BARPETA
CONSTITUTED FOR THE PURPOSE OF VERIFICATION OF PERSONS WITH
DISABILITY CANDIDATES. (TO BE REPRESENTED BY THE CHAIRMAN
DISTRICT MEDICAL BOARD, BARPETA, ASSAM).

6:THE DISTRICT MEDICAL BOARD, BARPETA
CONSTITUTED FOR THE PURPOSE OF VERIFICATION OF PERSONS WITH
DISABILITY CANDIDATES. (TO BE REPRESENTED BY THE CHAIRMAN
DISTRICT MEDICAL BOARD, DHUBRI, ASSAM

7:THE JOINT DIRECTOR OF HEALTH SERVICES, BARPETA, ASSAM

8:JOINT DIRECTOR OF HEALTH SERVICES, DHUBRI, ASSA

Advocate for the Petitioner : MR A R BHUYAN

Advocate for the Respondent : SC, ELEM. EDU

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR
ORDER

03.01.2024

Heard Mr. A.R. Bhuyan, learned counsel for the petitioners. Also heard Mr. B. Talukdar, learned Standing Counsel, Elementary Education Department appearing for respondent Nos.1 & 2 and Mr. D. Upamanyu, learned Standing Counsel, Health Department appearing for respondent Nos.3 to 8.

2. The petitioners, by way of instituting the present proceedings, have presented a challenge to the verification exercise carried out by the Elementary Education Department through the Health Department of the State with regard to the specific disabilities possessed by each of the petitioners.

3. The challenge is also made to the speaking order dated 01.09.2023 by which the cases of the petitioners were rejected on the ground that the petitioners have not appeared before the Verification Committee.

4. The petitioners contend that the competent authorities, having examined their disabilities, have certified their disabilities and that too, to the extent that they met the benchmark prescribed, a subsequent examination thereof are not called for.

5. Mr. D. Upamanyu, learned Standing Counsel, Health Department, responding to the said contention of the petitioners, have produced before this Court an Office Memorandum dated 21.05.2022 wherein in para 5, it has been

provided that the disability certificate issued by the competent authority produced by intending candidate, in the event of selection of such candidate for any post under the Government of Assam, shall be subject to such verification/re-verification as may be decided by the competent authority.

6. Mr. Upamanyu has also produced a copy of the order dated 18.12.2023 passed by this Court in WP(C) No.6977/2023 pertaining to the same very selection process.

This Court after examining the matter and also noticing the provisions of the Office Memorandum dated 21.05.2022, disposed of the aforesaid writ petition (WP(C) No.6977/2023) with the following observations and directions:

“By producing a copy of the Office Memorandum dated 21/05/2022 issued by the Government of Assam, Department of Personal, Dispur, more particularly, clause-5 of the O.M., Mr. Dhar further submits that it is permissible under the law to subject the candidates for verification/reassessment of their disability through a competent mechanism and hence, this exercise.

After hearing the learned counsel for the parties, this Court finds that although all the petitioners are holding Disability Certificates which project them as candidates suffering from “bench mark” disability, yet, it appears that as per the opinion of the specially constituted Medical Board, the disability of the writ petitioners have been found to be less than the “Bench Mark” criteria of 40% disability. There may be cases where the extent of disability of some of the candidates have undergone changes since the issuance of their Disability Certificates or there was some error in assessing their disability status either by the original authority issuing the Certificates or by the Specially Constituted Medical Board. However, the said aspect of the matter cannot be gone into by this Court unless the petitioners are communicated with the decision of the authorities in this regard, thereby, giving them an opportunity to assail such decision, on merit, if so advised.

As such, without expressing any opinion on the stand of the learned departmental counsel or the findings and observations of the Medical Board, these writ petitions are being disposed of by directing the respondents to

communicate the decision of the authorities pertaining to the individual disability status vis-à-vis their claim for appointment of each of the writ petitioners against the posts applied for, in writing, within four weeks from the date of receipt of a certified copy of this Order. Liberty is granted to the writ petitioners to assail the decision of the Medical Board and/or Departments of Social Justice and Empowerment, by filing fresh writ petitions, if so advised.”

7. Mr. Upamany has submitted that the Medical Examination Reports of the petitioners have already been handed over to the counsel of the petitioners on 09.10.2023.

8. Accordingly, following the directions as contained in the order dated 18.12.2023 passed in WP(C) No.6977/2023, this writ petition is disposed of requiring the petitioners to challenge the adverse medical recommendations made in their cases by the Medical Board constituted, pursuant to their selections for the posts in question by filing fresh writ petitions, if so advised.

9. With the above observations, this writ petition stands closed.

JUDGE

Comparing Assistant