

GAHC010226982023



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

Case No. : WP(C)/5992/2023

GITA RANI GOSWAMI
W/O- SRI ASHITAV BARUAH, R/O- UZANBAZAR, HOUSE NO. 61, NAOJAN
ROAD, UZANBAZAR, GUWAHATI-781001, DIST. KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI-6.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF SKILL
EMPLOYMENT AND ENTREPRENEURSHIP DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE DIRECTOR

DIRECTORATE OF EMPLOYMENT AND CRAFTSMEN TRAINING
ASSAM
REHABARI
GHY-8

Advocate for the Petitioner : MR H K DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER**Date : 10-05-2024**

Heard Mr. H.K. Das, learned counsel for the petitioner as well as Mr. A. Chakravarty, learned Govt. Advocate appearing for the respondent no.1 and Mr. S.K. Das, learned counsel for the respondent nos.2 and 3.

2. Two separate employment advertisements dated 07.03.2007 and 18.05.2007 were issued by the Director of Employment and Craftsmen Training, Govt. of Assam for appointment to Grade-III and Grade-IV posts respectively. The case of the petitioner is that adequate provision was not made for applying the mandate envisaged in the Assam Women (Reservation of Vacancies in Services and Posts) Act, 2005. It is projected that instead of providing for 30% reservation for women, lesser vacancies were earmarked for women. Accordingly, it is submitted that the petitioner is the only woman who is agitating for her appointment as others have not challenged the selection process.

3. It has been submitted by the learned counsel for the petitioner that being aggrieved by her non-selection, the petitioner had approached this Court by filing WP(C) 1999/2012 and this Court by order dated 09.12.2013, had dismissed the said writ petition. Thereafter the matter was taken up in an appeal filed by the petitioner. However, by order dated 02.03.2015, passed by the Division Bench of this Court, WA 50/2014 filed by the petitioner was dismissed. Aggrieved by the dismissal of her appeal, the petitioner had filed a review petition. But, the Division Bench of this Court had dismissed the Review Petition No.131/ 2016 by an order dated 08.09.2016.

4. Against the dismissal of Review Petition no.131/2016 and dismissal of the WA 50/2014, the aggrieved petitioner had approached before

the Supreme Court of India and the Supreme Court of India, by an order dated 06.03.2020, passed in SLP (C) 9280-9281 of 2017, directed the learned Govt. Advocate for the State of Assam to seek "instructions as to whether the petitioner can be adjusted."

5. The learned counsel for the petitioner has submitted that the petitioner was hopeful that her case would be favourably considered by the State Govt. and with such hope, the petitioner had withdrawn her SLP with a view to make a representation to the State Govt. Accordingly, the Supreme Court of India by an order dated 02.09.2021, granted leave to the petitioner to withdraw the SLP and to submit a representation before the State Govt., however, without making any observation on the merit of the representation.

6. Thereafter, the petitioner had submitted a representation dated 30.09.2021 before the Director of Employment and Craftsmen Training, Assam. However, the said authority, by an order dated 05.01.2023, had rejected the said representation without any consideration. This was followed by the petitioner submitting another representation dated 23.03.2023 before the said authorities. However, as the result of said representation, if any, was not communicated to the petitioner, the present writ petition has been filed under Article 226 of the Constitution of India. In this writ petition, the petitioner has prayed for quashing of the aforesaid order dated 05.01.2023, and for a direction upon the respondent authorities to select and appoint the petitioner in the post of Junior Assistant or in any other Grade- III post with retrospective effect and with notional pay fixation.

7. It is seen that in the previous writ petition filed by the petitioner, this Court in its order dated 09.12.2013, passed in W.P.(C) 1999/2012, this Court had observed as follows:-

“Having regard to the fact that the appointments were made in respect of Grade III vacancies following court monitoring which ensured issuance of consequential appointment letters to the selected candidates to prevent future complications and litigation, this Court is not inclined to entertain the writ petition. Moreover, the challenge has been made very belatedly. All the appointments were made around December, 2010 but the writ petition was filed more than two years thereafter on 18.02.2012. ...According to the petitioner, there are 13 excess male candidates. But none of the male selected candidates under the unreserved category have been made parties. In their absence, there can be no adjudication on the issue so belatedly raised by the petitioner.”

8. Therefore, as the issue of lesser reservation for women was the subject matter of adjudication in W.P.(C) 1999/2012, the principles of *res judicata* prevents the Court to re-examine the said issue.

9. Therefore, the two live questions to be determined in this writ petition are:-

- a. *Whether the petitioner was entitled to be offered with a job/ service by the respondents on the strength of her representations dated 30.09.2021 and 23.03.2023, submitted before the Director of Employment and Craftsmen Training, Assam?*
- b. *Whether the rejection of representation dated 30.09.2021, submitted by the petitioner vide letter dated 05.01.2023, issued by the Director of Employment and Craftsmen Training, Assam is liable to be interfered with?*

10. The learned counsel for the petitioner could not place before the Court any provision of law or binding precedent, which allows service to be doled-out on the strength of representation. There cannot be any adjustment and/or fitment of the petitioner in service without being selected in a transparent recruitment drive which has a sanction of law. It is needless to

mention that such a procedure is unknown in service jurisprudence and is contrary to transparent public employment policy. If employment is given only on the strength of consideration of representation, it would be contrary to the mandate of Article 14 of the Constitution of India.

11. Moreover, from the herein before quoted relevant part of the order dated 09.12.2013, passed in W.P.(C) 1999/2012, it is clear that all appointments pursuant to employment advertisement issued on 07.03.2007, was made in the month of December, 2010. Therefore, after appointments were made, the recruitment process that was initiated by employment advertisement dated 07.03.2007, has come to an end in or about the month of December, 2010 for all intents and purposes. Moreover, although unlikely, even if it is assumed that the select list in respect of employment advertisement dated 07.03.2007, is valid till now even after a lapse of 17 long years, the person whose names appear in the select list can only be appointed. Therefore, the petitioner cannot be offered an appointment merely because she has submitted a representation.

12. The learned counsel for the petitioner had stressfully submitted that from the order dated 06.03.2020 passed by the Supreme Court of India in SLP (C) 9280-9281 of 2017, whereby the learned Govt. Advocate for the State of Assam was directed to seek "*instructions as to whether the petitioner can be adjusted*" was sufficient to be construed to be an intention of the Supreme Court of India that the petitioner should be considered for being given an employment. We are unable to take that view because subsequently, the said SLP was dismissed as withdrawn by order dated 02.09.2021. The petitioner has not placed any material before this Court from which it can be construed that the earlier order of the Supreme Court of India dated 06.03.2020, was saved while allowing the petitioner to withdraw the SLP.

13. Therefore, the first question for determination is answered in the negative and against the petitioner by holding that the respondent authorities could not have offered employment to the petitioner on the strength of her herein before referred representations.

14. Resultantly, the second question for determination is also answered in the negative and against the petitioner by holding that the rejection of representation dated 30.09.2021, submitted by the petitioner vide letter dated 05.01.2023, issued by the Director of Employment and Craftsmen Training, Assam, being in accordance with law is not liable to be interfered with.

15. In view of the discussions made herein before, this writ petition fails on all counts and is therefore, dismissed.

16. We refrain from imposing heavy cost upon the petitioner.

JUDGE

Comparing Assistant