

GAHC010236552018



2024:GAU-AS:7986

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

Case No. : WP(C)/7695/2018

SAHIDUL ALAM

S/O- MD. TAHER ALI, R/O- VILL- WARD NO 2, MANGALDAI TOWN, JAGA
BANDHU DAS PATH, NEAR DIST- ADULT EDUCATION OFFICE, P.O.
MANGALDAI, DIST- DARRANG, ASSAM, PIN- 784125

VERSUS

ASSAM POWER DISTRIBUTION COMPANY LTD AND 5 ORS.
REP. BY CHIEF GENERAL MANAGER (HR), APDCL, BIJULEE BHAWAN
GHY-1

2:THE CHAIRMAN
ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)
BIJULEE BHAWAN
GHY-1

3:THE SUPERVISORY COMMITTEE
C/O CHIEF GENERAL MANAGER (HR)
APDCL
BIJULEE BHAWAN
GHY-1

4:THE GENERAL MANAGER
OFFICE OF THE GENERALMANAGER GUWAHATI ZONE LAR
APDCL (LOWER ASSAM) 6 MILE GUWAHATI ZONE
PIN- 781022

5:THE DY. GENERAL MANAGER
OFFICE OF THE DY. GENERAL MANAGER
MANGALDAI ELECTRICAL CIRCLE
APDCL MANGALDAI
PIN- 784125

6:THE CHIEF EXECUTIVE OFFICER
MANGALDAI ELECTRICAL CIRCLE
LAR
APDCL MANGALDAI
PIN- 78412

Advocate for the Petitioner : G UDDIN, MS. P A TALUKDAR,MR N Y KONYAK

Advocate for the Respondent : SC, APDCL,

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri AK Azad

Advocate for the respondents : Shri SP Sharma, SC-APDCL

Date of hearing : **07.08.2024**

Date of Judgment : **16.08.2024**

JUDGMENT & ORDER

The instant application under Article 226 of the Constitution of India has been filed with the following reliefs:

“(i) *A Writ in the nature of certiorari/Mandamus and / or any other appropriate writ, order or direction should not be issued, directing to set aside and quashed the illegal and arbitrary reason assigned vide impugned letter dated 14-05-2018 (Annexure-15) for non consideration of appointment of the petitioner.*

And/or

- (ii) *A Writ in the nature of Mandamus and / or any other appropriate writ, order or direction should not be issued, directing to the respondents for consideration of the prayer of the petitioner to appoint him in the Department in the post of Bill Clerk / Meter Reader.*

And/or

- (iii) *A Writ in the nature of Mandamus and / or any other appropriate writ, order or direction should not be issued, directing to the respondents for providing the relevant documents as prayed by the petitioner in connection to selection & appointment of the Bill Clerk/ Meter Reader.*

And/or

- (iv) *A Writ in the nature of Mandamus and / or any other appropriate writ, order or direction should not be issued for making an inquiry as regard to fraud committed by respondents for levelling the allegations of unfair practice as adopted by the petitioner and punish them as per law.*

And

- (v) *After showing cause(s) if any and upon hearing of the parties be pleased to make the Rule absolute and/ or pass such further order/ orders as your*

Lordships may deem fit and proper.”

2. The aforesaid relief is in connection with a recruitment process for the post of Bill Clerk-cum-Meter Reader (BCMR) under the APDCL, which was initiated by an advertisement dated 19.07.2011. The petitioner was an aspirant who had applied for the said post and accordingly, a Call Letter was issued to him on 16.11.2011 for written examination, which was followed by a notice dated 03.04.2012 for Viva-Voce. On 12.05.2012, the results were declared. However, the Roll No. of the petitioner was within the category of those candidates whose results were withheld. On 25.04.2012, the petitioner was called to the Office of the General Manager for review along with three others. Thereafter, on 22.06.2012, a notice was published whereby the withheld results were cleared. However, the petitioner's candidature was not cleared. The petitioner had made enquiries to know the reasons and ultimately, vide the communication dated 14.05.2018, the reasons were disclosed that the petitioner was found to be adopting unfair means in the examination.

3. I have heard Shri AK Azad, learned counsel for the petitioner. I have also heard Shri SP Sharma, learned Standing Counsel, APDCL.

4. Shri Azad, the learned counsel for the petitioner has submitted that there was no explanation or reasons for withholding his results. It is submitted that the so-called reasons which would reveal from the communication dated 14.05.2018 is regarding adopting of unfair means. He however, submits that if any unfair means was adopted, the detection should have been made in the examination hall itself. He has also highlighted the aspect that till date, no affidavit-in-opposition has been filed and no records pertaining to the decision making process have been produced in this Court. He accordingly submits that the impugned communication dated 14.05.2018 be set aside and a direction be

issued to appoint the petitioner.

5. *Per contra*, Shri Sharma, the learned Standing Counsel, APDCL has, at the outset, submitted that in spite of his best efforts, the relevant records could not be traced out by the Department. He submits that the selection process is more than a decade old and the writ petition was itself instituted at a later stage. It is submitted that the response to the enquiry made by the petitioner was given and the reasons for his candidature to be withheld has been communicated. It is submitted that the said reasons being based on the materials on record, no interference may be made.

6. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

7. Admittedly, no affidavit-in-opposition has been filed in this case and neither the records have been produced. The learned Standing Counsel has given the explanation that in spite of best efforts, the records could not be traced out. Under those conditions, this Court is required to examine the case projected by the petitioner. The case of the petitioner, as indicated above, is with regard to withholding his candidature in the recruitment for the post of Bill Clerk-cum-Meter Reader. The petitioner claims to have cleared the written examination as well as the Viva-Voce and in the results declared on 12.05.2012, his name was found to be withheld. The petitioner was allotted Roll No. 14-02388 and the notice dated 12.05.2012 contains the said Roll No. of those candidates whose results were withheld. It appears that the petitioners along with certain candidates were called for a review on 25.04.2012 and in the ensuing exercise, the names of the other candidates were cleared on 22.06.2012 while the petitioner's name was not cleared.

8. What however intrigues this Court is the attempt of the petitioner made in the year 2017 to know the reasons why his name was not cleared. Admittedly, the RTI applications were submitted in the year 2017 which is more than 5 years after the notice dated 22.06.2012. The recruitment itself was initiated in the year 2011, vide the advertisement dated 19.07.2011. When the petitioner had himself sought for the reasons after 5 years of the notice, this Court is of the opinion that no Mandamus can be issued for directing the consideration of the case of the petitioner for appointment. The validity of a Select List is normally for a period of 1 year and the Select List having published in the year 2012, after more than a decade, it would not be proper or justified to make any direction for consideration, more so, when the petitioner is not protected by any interim order.

9. As regards the prayer to set aside the communication dated 14.05.2018, the materials on record make it clear that the case of the petitioner was indeed considered along with other candidates for review, as would appear from the notice dated 25.04.2012. While the candidatures of the other candidates were cleared, the petitioner's candidature was withheld with the reason that he had adopted unfair means. Though ideally, the records should have been produced before this Court to come to a definite conclusion, the aspect of *laches* in the case of the petitioner even to know about the reasons for his candidature to be withheld is a major impediment for him to seek relief under a Court of Equity.

10. This Court under Article 226 of the Constitution of India exercises equitable jurisdiction and the conduct of the party approaching the Court is of paramount importance. In the instant case, the petitioner, on his own admission had applied under the RTI to know the reasons in the year 2017 and the reasons were made known to him by communication dated 14.05.2018

pertaining to a recruitment initiated in the year 2012 and the results of which was declared on 12.05.2012. Under the aforesaid facts and circumstances and the discussions made, this Court is of the opinion that no relief can be granted to the petitioner and accordingly the writ petition is dismissed.

JUDGE

Comparing Assistant