

GAHC010238332017



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

Case No. : WP(C)/4008/2017

JANOK LOSHAN MOSHAHARY
S/O. LT. SONARAM MOSHAHARY, PRESENT RESIDENT OF WARD NO. 5
NEAR SHIV MANDIR, P.O., P.S. and DIST. KOKRAJHAR, BTC, ASSAM.

VERSUS

1: THE STATE OF ASSAM and 6 ORS. REPRESENTED BY THE CHIEF
SECRETARY, GOVT. OF ASSAM, DISPUR, GUWAHATI-6.

2: THE COMMISSIONER and SECRETARY GOVT. OF ASSAM
EDUCATION SECONDARY DEPTT. DISPUR GUWAHATI-6.

3: THE BODOLAND TERRITORIAL COUNCIL REP. BY ITS PRINCIPAL
SECRETARY KOKRAJHAR BTC ASSAM.

4: THE DIRECTOR OF EDUCATION
BTC KOKRAJHAR ASSAM.

5: THE INSPECTOR OF SCHOOLS
KOKRAJHAR DISTRICT CIRCLE KOKRAJHAR BTC ASSAM.

6: THE BTC LEVEL SELECTION COMMITTEE FOR SELECTION OF
GRADUATE TEACHERS OF GOVT. HIGHER SECONDARY and
MULTIPURPOSE SCHOOL KOKRAJHAR THROUGH DIRECTOR EDUCATION
BTC KOKRAJHAR ASSAM.

7: MISS BINA BRAHMA
D/O. SRI ABINASH BRAHMA VILL. BABUBIL
P.O. and P.S. GOSSAIGAON DIST. KOKRAJHAR BTC ASSAM

Advocate for the Petitioner : MR.S HOQUE

Advocate for the Respondent : MR. M KHATANIAR (SC, BTC, R-3,4,6)

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

ORDER

Date : 08-01-2024

Heard Mr. M.U. Mahmud, learned counsel for the petitioner. Also heard Mr. G. Pegu, learned Government Advocate, Assam, representing the respondent No.1; Mr. R. Majumder, learned standing counsel, Education (Secondary) Department, representing the respondent No.2 and Mrs. R.B. Bora, learned standing counsel, BTC, representing the respondent Nos.3, 4, 5 & 6.

The petitioner, by way of the present writ petition has, challenged the eligibility criteria as prescribed in the advertisement dated 08.11.2016 issued by the Inspector of Schools, Kokrajhar District Circle, Kokrajhar, inviting applications, amongst others, for the post of Music Teacher in Government H.S. & M.P. School, Kokrajhar. The challenge as presented in the writ petition is with regard to the educational qualification prescribed for the said post. The petitioner also assails the order dated 13.06.2017, issued by the Director of Education, Bodoland Territorial Council, Kokrajhar, by which the respondent No.7 was appointed against the said advertised post of Music Teacher in pursuance to a process of selection.

The petitioner in the writ petition has contended that he was engaged as a Music Teacher in Government H.S. & M.P. School, Kokrajhar on 02.11.2014. The said appointment was as stop-gap arrangement and was to be terminated as and when a selected candidate joins against the said post. Thereafter, the Inspector of Schools, Kokrajhar District Circle, Kokrajhar, vide an advertisement dated 08.11.2016, invited applications, amongst others, for filling up the vacant post of Music Teacher in Government H.S. & M.P. School, Kokrajhar. In the said advertisement, the educational qualification for being eligible to apply for the

post of Music Teacher was B. Music having 50% marks and having Degree qualification from any recognized University.

The petitioner submitted his application and participated in the selection process. In pursuance to the said selection process, the Director of Education, Bodoland Territorial Council, vide his order dated 13.06.2017, appointed the respondent No.7 against the post of Music Teacher at Government H.S. & M.P. School, Kokrajhar, as advertised vide advertisement dated 08.11.2016. The petitioner accordingly being aggrieved had instituted the present proceedings.

Mr. M.U. Mahmud, learned counsel for the petitioner has submitted that the petitioner was initially engaged against the said post on 02.11.2014 and prior to that the petitioner was serving w.e.f. 01.01.2003 at Raisumai Sangeet Academy, Kokrajhar. It is the contention of Mr. Mahmud that the prescription as made in the advertisement dated 08.11.2016 cannot be made applicable to the case of the petitioner inasmuch as the petitioner has been in service since 2003 and at the time of his initial recruitment, the said prescription of requiring 50% marks in B. Music along with requirement of a Degree qualification was not in existence. The prescription as reflected in the advertisement came to be made only as per the provisions of the Assam Secondary Education (Provincialised) Service Rules, 2003 (in short, "Rules of 2003"), which came into effect w.e.f. 12.08.2003. The learned counsel for the petitioner further contended that the Rules of 2003 having come into effect from 12.08.2003, the same cannot be applied in the case of the petitioner inasmuch as he has been working as a Music Teacher w.e.f. 01.01.2003.

With regard to the appointment of the respondent No.7, it is the contention of Mr. Mahmud that the respondent No.7 is not eligible for

appointment as a Music Teacher of Government H.S. & M.P. School, Kokrajhar inasmuch as she is not a graduate and does not have a B. Music Degree and only possesses a Diploma. It is the further contention of Mr. Mahmud that the respondent No.7 having not satisfied the criteria as spelt out in the advertisement dated 08.11.2016, she could not have been considered for the said post. Mr. Mahmud further contended that the petitioner along with the respondent No.7 had appeared before the Selection Committee constituted in pursuance to the advertisement dated 08.11.2016 on 10.03.2017 and had successfully answered the queries put to him therein. Basing on the said contentions, Mr. Mahmud submits that the eligibility criteria with regard to educational qualification as spelt out with regard to the post of Music Teacher in the said advertisement dated 08.11.2016 requires interference to the extent that the same cannot be made applicable in the case of the petitioner in view of the fact that he was serving prior to the date of coming into force of the said Rules of 2003. Accordingly, it is prayed that the selection process as initiated in pursuance to the advertisement dated 8.11.2016 requires to be interfered with along with the appointment effected in the case of the respondent No.7, vide the order dated 13.06.2017, and a fresh process is required to be initiated and therein the petitioner is to be given exemption from the educational qualification as mandated for the post in question in the said Rules of 2003.

Mrs. R.B. Bora, learned standing counsel, BTC, representing the respondent Nos.3, 4, 5 & 6, by referring to the affidavits filed on behalf of the said authorities in the present proceeding, has submitted that the petitioner was not selected in the selection process held pursuant to the advertisement dated 08.11.2016 on account of the fact that the petitioner did not have the educational qualification mandated in the said advertisement for the post of

Music Teacher. Mrs. Bora submits that the petitioner, in addition to not having 50% marks in his B. Music Degree, did not possess a graduate degree from any recognized University. Mrs. Bora, by referring to the additional affidavit filed on behalf of the respondent No.4, i.e. the Director of Education, BTC, Kokrajhar, has submitted that the respondent No.7 had the qualification equal to B. Music Degree and had the requisite percentage therein as mandated under the advertisement dated 08.11.2016. Further, it was contended that the respondent No.7 had passed her B.A. Examination in the year 2005. Accordingly, the Selection Committee, on consideration of the candidatures of the petitioner and the respondent No.7, recommended the name of the respondent No.7 for appointment against the post of Music Teacher on the basis of her merit assessed in the interview held in the matter.

I have heard the learned counsel appearing for the parties and also considered the materials available on record.

The grievance of the petitioner has to be understood in the background of the facts existing in the matter. The petitioner, in terms of the advertisement dated 08.11.2016, had submitted his application for being considered against the post of Music Teacher without any objection with regard to the qualification as spelt out therein. The petitioner had thereafter appeared in the interview conducted by the Selection Committee for the post of Music Teacher in pursuance to the advertisement dated 08.11.2016. The petitioner had not raised any grievance and had taken a calculated chance in having his case considered for recruitment against the said post of Music Teacher. It is only after the order dated 13.06.2017 came to be issued appointing the respondent No.7 against the said advertised post of Music Teacher in Government H.S. & M.P. School, Kokrajhar that the petitioner has instituted the

present proceeding before this Court on 22.06.2017.

It is a settled law that in the event a candidate participates in a selection process without any objection raised with regard to any aspect of the selection process, which is known to him, such candidate having taken a calculated chance cannot be permitted to assail the selection process and/or the result thereof after having failed to succeed therein. In the case on hand, the objection of the petitioner is not with regard to any criteria and/or method of selection that may have been adopted by the Selection Committee, as constituted in the matter, at the time of the selection and/or thereafter, which may have prejudiced the rights of the petitioner. The objection in the present case is with regard to the qualification that has been spelt out for the post of Music Teacher in the advertisement dated 08.11.2016. In such view of the matter, the petitioner although not being eligible for being considered against the post of Music Teacher, with open eyes, had participated in the said selection process without having challenged the educational qualification as prescribed in the advertisement dated 08.11.2016 immediately after the same came to be issued.

The prescription of a qualification is in the realm of the executive and this Court would not interfere with such prescriptions made either in the Rules or in the advertisement until and unless it is shown that the qualification so prescribed had no nexus with the duties attached with the post in question. The petitioner in the present case had not raised any such contention. The only contention raised by the petitioner is that he having been working since 01.01.2003, the qualification prescribed in the advertisement being based on the Rules coming into force after the said date, i.e. 01.01.2003, the same cannot be insisted to be possessed by the petitioner and he should be

considered basing on the qualifications that mandated as of 01.01.2003. The said contention of the petitioner is considered only to be rejected inasmuch as the initial appointment of the petitioner on 01.01.2003 was not against a post existing in a Government and/or provincialised School. The School wherein the petitioner was so appointed, i.e. Raisumai Sangeet Academy, Kokrajhar, has not been shown by the petitioner to be a Government and/or a provincialised school. Further, the prescription of qualification in an advertisement is based on such prescription in the Service Rules holding the field on the date of issuance of such advertisement. The engagement of the petitioner as a Music Teacher in Government H.S. & M.P. School, Kokrajhar was purely a stop-gap arrangement and the order of appointment itself reflects that the same would be terminated on a selected candidate joining in the said post.

Further, there is nothing brought on record to show that the engagement of the petitioner on 02.11.2014 as a Music Teacher in Government H.S. & M.P. School, Kokrajhar was in pursuance to a due process of selection. What is evident from record is that the post of Music Teacher in the said School is a post required to be filled up by way of direct recruitment and accordingly, the respondent authorities had proceeded to issue the advertisement dated 08.11.2016 with the educational qualification as stated herein above. The qualification as prescribed for the post of Music Teacher, in the view of this Court, cannot be held to have no nexus with the work involved against the said post. The petitioner has also not advanced any argument in the direction that the said qualification has no nexus with the work involved against the post of Music Teacher. Accordingly, the petitioner is required to be held to be not eligible for being considered for appointment against the post of Music Teacher as advertised vide the said advertisement dated 08.11.2016 and his non-

selection against the said post has caused no illegality.

The contention of the petitioner with regard to the appointment of the respondent No.7 is now required to be considered. The affidavits brought on record by and on behalf of the BTC authorities reflect that the respondent No.7 had possessed the requisite qualification as mandated in the advertisement. The respondent No.7 had a Government accepted equivalent qualification to that of B. Music Degree and she had secured more than 50% marks in such equivalent examination. Further, the respondent No.7 also had cleared her B.A. Examination in the year 2005.

In that view of the matter, it cannot be held that the respondent No.7 did not satisfy the educational qualification as mandated in the advertisement dated 08.11.2016 and as such, the selection of the respondent No.7 by the duly constituted Selection Committee on the basis of her merit cannot be held to be illegal. Accordingly, the appointment of the respondent No.7 effected vide the order dated 13.06.2017 does not call for any interference.

In view of the conclusions reached herein above with regard to the issues raised by the petitioner in the present proceeding, the contentions as raised by the petitioner in support of the issues are without any merit and the same does not favour acceptance of this Court. Accordingly, the writ petition is held to be without merit and the same stands dismissed. However, there will be no order as to cost.

JUDGE

Comparing Assistant