

GAHC010243602017



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

Case No. : WP(C)/7027/2017

ATUL CH. DAS
S/O. SANTI RAM DAS, R/O. VILL. RAMPUR, P.O. RAMPUR, DIST. BAKSA,
BTC, ASSAM.

----VERSUS----

1. THE STATE OF ASSAM and 54 ORS.
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, SECONDARY
EDUCATION DEPTT., DISPUR, GUWAHATI-6, ASSAM.

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

3:THE INSPECTOR OF SCHOOLS
BAKSA BTAD DIST. CIRCLE
DIST. BAKSA, BTAD, ASSAM.

4:THE CHIEF EXECUTIVE OFFICER
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR, ASSAM.

5:THE SECY.
EDUCATION DEPTT.
B.T.C., KOKRAJHAR, ASSAM 783370.

6:THE DIRECTOR OF EDUCATION
BTC, KOKRAJHAR, ASSAM 783370.

7:ASHIM ROY
VILL. KALISANIMAL
P.O. BHOWRAGURI
DIST. KOKRAJHAR, 783370.

8:NABA KRISHNA ROY
VILL. BALDIABATHAN
P.O. SAKUASHRAM
DIST. KOKRAJHAR, 783370.

9:BINITA DEVI BRAHAMA
RNB HOSPITAL
P.O. and DIST. KOKRAJHAR
783370.

10:DIPALI BRAHMA CHOUDHURI
VILL. SUDEMPURI, W/NO. 4
DIST. KOKRAJHAR, 783370.

11:MD. ALI AKBAR AHMED
VILL. MOKRAMBIL
P.O. TULSIBIL
DIST. KOKRAJHAR, 783370.

12:MRS. JURI KAITA DAS
C/O. KALINDRA KALITA
VILL. and P.O. AMAYAPUR
DIST. BAKSA 781368.

13:CHANDI SARMAH
S/O. LT. PRASAD SARMAH
VILL. GANAKPARA
P.O. BHULABARI
DIST. BAKSA, 781368.

14:NIJWMSRANG BRAHMA
VILL. AITHENGJHAR
P.O. GERUABAJAR
DIST. UDALGURI 781362

15:SUBRATA DUTTA
C/O. SUBODH DUTTA
VILL. and P.O. TANGLA
DIST. UDALGURI 781362.

16:MAYA RAM BASUMATARY
S/O SRI AMARENDRA BASUMATARY
VILL. NORTHMAORIGAON
P.O. and DIST. KOKRAJHAR, 783370.

17:ADHUNA BRAHMA
W/NO.-7 RNB ROAD
KOKRAJHAR 783370.

18:DIGANTA BRAHMA CHOUDHURY
SUDEMPURI, W/NO. -4
P.O. and DIST. KOKRAJHAR 783370.

19:UTTAM DAS
VILL. and P.O. ACHALI
DIST. BAKSA 781368.

20:CHANDA SAHA ROY
VILL. PACHAGARH
P.O. FAKIRGRAM
DIST. KOKRAJHAR 783370.

21:KAMAL KR BORO
S/O. NAGENDRA CHANDRA BORO
VILL. KAWOIMARI
P.O. JALUKBARI
DIST. UDALGURI, 781362.

22:MAYUR MAHANTA
MAIN ROAD, W/NO. 9
DIST. KOKRAJHAR 783370.

23:MD SAJEDUR RAHMAN
S.O. ATABARI RAHMAN
VILL. KATAJHARGAON
P.O. KATAJHAR
DIST. BAKSA 781368.

24:TARALI BORO
VILL. and P.O. UDALGURI
DIST. UDALGURI 781362.

25:ANJALI KALITA
C/O. LT. RAJANI KT KALITA
VILL. and P.O. BIJNI DIST. CHIRANG 781365

26:MRS KANKANA SAHARIA
VILL and P.O. KHOIRABARI DIST. UDALGURI 781362.

27:MINU DAS
P.O. and VILL.-DHOLIGURI DIST. BAKSA 781368.

28:MD TAYIFUR RAHMAN
S/O. LT. KHAJUR ALI
VILL. MAKUNDAPUR
P.O. BHOGPUR, DIST. BAKSA 781368.

29:MRS. NANDITA RABHA
VILL. and P.O. THANGURI
DIST. BAKSA 781368.

30:SUBHONGKOR GIRI BASUMATARY
VILL. DANGAIGAON
P.O. DAKSHIN BIJNI
DIST. CHIRANG 781312.

31:MRS. HIRON PRABHA ROY
VILL. NATABARI
P.O. TAMARHAT
DIST. BAKSA 781368.

32:PRABHAT DAS
VILL. PUB ATHIBARI
P.O. ATHIBARI
DIST. KOKRAJHAR, 783370.

33:ANANDA CH. GHOSH
VILL. BAJIGAON
P.O. KATAJHAR
DIST. KOKRAJHAR 783370.

34:DIPTI REKA MAJUMDAR
VILL. BPPL TOWNSHIP

35:PRANITA BRAHMA
VILL. and P.O. TINPUKHURI
DIST. KOKRAJHAR 783370.

36:SUBHAS TALUKDAR
VILL. GAREMARI
P.O. ATHIABARI
DIST. KOKRAJHAR 783370.

37:BIRKHAND BASUMATARY
VILL. CHALCHALI
PO. BETABARI
DIST. BAKSA 781368.

38:JUTHIKA NARZARY
C/O. BHUBEN NARZARY
P.O. and DIST. KOKRAJHAR
783368

39:AJIT KR MAZUMDER
S/O. LT DAMBARUDHAR MAZUMDAR
VILL. KHARMAKHA
P.O. MAZBAT, DIST. UDALGURI 781362.

40:MANASHJYOTI SARMA
VILL. HATIMATA, WARD NO. 8
P.O. and DIST. KOKRAJHAR, 783370.

41:RAJAT KUNDU
VILL. SAPATGRAM
P.O. FAKIRAGRAM
DIST. KOKRAJHAR 783370.

42:BIKRAM KALITA
C/O. SATISH KALITA
VILL. BHOTEPAYABARI
P.O. CHARUABARZAR
DIST. BAKSA, 781368.

43:GEETANJALI MEDHI
VILL. KALBARI
P.O. JAMUGURI, DIST. UDALGURI, 781362.

44:GANGA PRASAD ACHARJEE
VILL. NO. 4 SUAGPUR
P.O. SUAGUR, DIST. BAKSA 781368.

45:MAHIM SARMAH
VILL. ROWTA STATION
P.O. ROWTA, DIST. UDALGURI

46:NILANJANA SINGHA BARO
VILL.-215/G BRPL
DHALIGAON, DIST. CHIRANG.

47:PUNAM RANI BASUMATARY
VILL. BAGANSHALI
WARD NO. 7, P.O. and DIST. KOKRAJHAR.

48:CHANDANA DEVI
VILL. and P.O. BARAMA, DIST. BAKSA.

49:MRS. HIMADRI BRAHMA
VILL. TENGAPARA
W/NO-5, KOKRAJHAR.

50:KALYANI DEBNATH
VILL. STATE BANK COLONY
P.O. and DIST. KOKRAJHAR.

51:PRANJALATA DEVI
VILL. KOKRAJHAR RASFIELD
P.O. and DIST. KOKRAJHAR.

52:PINKU BORA
VILL. BISHNUNAGAR
P.O. MAZBAT, DIST. UDALGURI.

53:MRS. MAINO BASUMATARY
VILL. SUDEMPURI, WARD NO. 4
P.O. and DIST. KOKRAJHAR.

54:SUBODH BASUMATARY
C/O. ROBERT B MARAK
P.O. SALBARI, DIST. KOKRAJHAR.

55:MUKESH BASUMATARY
VILL. AND P.O. RUPAHI
DIST. BAKSA, ASSAM

Advocate for the Petitioner : MR.P J SAIKIA

Advocate for the Respondent : SC, SECONDARY EDUCATION

– B E F O R E –

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

08.01.2024

Heard Mr. M. Pathak, learned counsel for the petitioner. Also heard Mr. P.K. Bora, learned Standing Counsel, Secondary Education Department for respondent Nos.1 & 2; Ms. R. B. Bora, learned Standing Counsel, BTC for respondent Nos.4, 5 & 6 and Ms. K. Jain, learned counsel for private respondents.

2. The grievance raised by the petitioner in the present proceedings is with regard to the manner and method of publishing the select list for appointment to the post of Subject Teacher in pursuance to an advertisement issued for the purpose on 16.12.2005 and the interview held for the same on 06.07.2006. The name of the petitioner was not reflected in the select list in question.

3. The Director of Education, Bodoland Territorial Council (BTC), vide an advertisement dated 16.12.2005, had invited applications from the eligible candidates for filling up the vacant posts of Subject Teacher (Post Graduate) of provincialised Higher Secondary Schools coming under the jurisdiction of the Bodoland Territorial Council (BTC). The petitioner, in pursuance to the said advertisement, had submitted his application for the said purpose. On not getting any information as to the result of the selection process held in pursuance of the said advertisement dated 16.12.2005 and finding that the persons similarly situated like the petitioner, were upgraded to the post of Subject Teacher in Assamese, the petitioner had instituted WP(C) No.2097/2015 before this Court, *inter-alia*, with a prayer for direction for upgradation of his post to that of Post Graduate Teacher and further praying for a direction for declaration of the results of the interview held on 06.07.2006.

4. The respondent authorities had entered appearance in the said case and had brought to the notice of this Court that in pursuance to the selection process held, a select list was published containing the names of the 49 selected candidates on 09.06.2010. It was also brought to the notice of this Court that the name of the petitioner did not figure in the said select list.

5. Accordingly, this Court, vide order dated 09.11.2016 proceeded to hold that the petitioner, having not presented a specific challenge to the orders

of upgradation of similarly situated Graduate Teachers to the post of Post Graduate Teacher, this Court would not be in a position to consider such a challenge although the Rules do not provide for upgradation.

6. This Court noticing publication of the select list on 09.06.20210, had required the same to be furnished to the petitioner and disposed of the writ petition by reserving liberty to the petitioner to assail the legality and validity of the select list in question.

7. The petitioner, by way of the present writ petition, assailed the said select list dated 09.06.2010.

8. The learned counsel for the petitioner has contended that the purported select list dated 09.06.2010 cannot be construed to be the select list issued in pursuance to the advertisement dated 16.12.2005 inasmuch as the select list in question does not contain the marks scored by the selected candidates. He has further contested the validity of the said select list on the ground that the same, although stated to be existing before this Court in the earlier round of litigation, however, the same was never furnished to him in pursuance to his RTI application. The respondent authorities have also not furnished to the petitioner the contemporaneous record based on which the select list was so published. Accordingly, it is the case of the petitioner that the respondents did not prepare and published any select list and had only prepared a list of candidates by adopting pick and choose policy.

9. It is further the case of the petitioner that the list dated 09.06.2010 does not satisfy the requirement of a select list as no marks of the candidates have been disclosed therein. Accordingly, it is the case of the petitioner that the said list dated 09.06.2010, not being the select list required to be published in

pursuance to the advertisement in question, appointments made therefrom are required to be interfered with.

10. The learned counsel for the petitioner, by placing reliance on the order of upgradation issued to the Graduate Teachers, more specifically, the order issued in respect of one Anupama Devi, who was upgraded from the post of Graduate Teacher to that of Subject Teacher in Assamese vide order dated 30.06.2006 submits that the said upgradation has not been interfered by the respondent authorities and the said Anupama Devi continues in her duties as a Subject Teacher. The petitioner, being the similarly placed like Anupama Devi, prays that his services as a Graduate Teacher be also upgraded to that of the post of Subject Teacher.

11. The respondent authorities have placed their stand on record by way of filing an affidavit-in-opposition through the Director of Education, BTC. It has been specifically contended therein that the private respondents Nos.7 to 55 have been selected by the duly constituted Committee and on their placement in the select list so prepared, they were appointed as Subject Teachers in various Higher Secondary Schools in Baksa district as per the approval of the BTC.

12. It is the stand of the respondents that under the provisions of the Assam Secondary Education (Provincialised) Service Rules, 2003, there is no provision for effecting upgradation of a Graduate Teacher to that of a Subject Teacher in a provincialised Higher Secondary School. The petitioner, not being recommended by the Selection Committee so constituted for the purpose, could not be favoured with an appointment to the post of Subject Teacher in question.

13. Referring to the contention made by the petitioner with regard to

Anupama Devi whose services were upgraded as Post Graduate Teacher, it is brought on record that the said Anupama Devi had appeared in an interview held on 28.06.2006 in pursuance to the advertisement in question. However, her name was not included in the list of selected candidates for appointment to the post of Subject Teacher. However, the earlier incumbent in the post of Director of Education, Assam had upgraded the services of said Anupama Devi which was contended to be unfortunate and contrary to the Rules.

14. The materials available on record denote that the petitioner had submitted his applications for being considered for appointment against the post of Subject Teacher in provincialised Higher Secondary Schools under the BTC in pursuance to the advertisement dated 16.12.2005 and had also participated in the selection process held for the purpose. The contention of the petitioner in the present proceedings that the purported list dated 09.06.2010 cannot be deemed to be a select list published in pursuance to the said advertisement dated 16.12.2005 is to be considered. The ground on which the petitioner had assailed the validity of the said select list is that the list dated 09.06.2010 does not contain the marks obtained by the candidates in various segments of the selection process along with the signatures of the members of the Selection Committee. The petitioner also contends that the said select list having been not furnished to him pursuant to the application preferred by him under the RTI Act, a doubt arises with regard to the existence of the said select list.

15. A perusal of the said select list and the communication dated 09.06.2010 available at Annexure 21 to the present writ petition would go to show that the select list enclosed to the communication dated 09.06.2010 is one which was approved by the Bodoland Territorial Council (BTC) for appointment of 49 numbers of candidates against the 49 sanctioned vacant posts of Subject

Teachers available in different Higher Secondary Schools under the BTC area. The same is so done on the basis of a proposal submitted by the Director of Education, BTC vide his communication dated 18.05.2010. The list as enclosed to the communication dated 09.06.2010, is the select list for intent and purpose inasmuch as it contains the names of the persons against whom recommendations were made by the Selection Committee for appointment against the post of Subject Teacher in pursuance to the advertisement in question. There is no provision in the Rules holding the field, mandating a list of selected candidates called the select list to contain the marks scored by them in various segments of the selection process. Accordingly, on the said ground, the select list as contained in the communication dated 09.06.2010 cannot be interfered with. Further, the said select list was also brought to the notice of this Court on 09.11.2016 and liberty was granted to the petitioner to challenge the legality and validity of the said select list. Accordingly, the existence of the select list was noticed by this Court as far back as on 09.11.2016.

16. The petitioner has not brought on record any material other than the contention with regard to the select list made by him as noticed hereinabove to demonstrate that the candidates incorporated in the said select list, were not eligible for such inclusion on the ground that they did not fulfill the eligibility condition for recruitment as Subject Teacher in any provincialised Higher Secondary School. Further, the petitioner has not raised any allegation of *malafide* against the Selection Committee members by bringing on record the materials highlighting the illegality, they may have committed while recommending the names of the candidates as contained in the select list dated 09.06.2010.

17. The respondent No.2 in his affidavit has clearly stated that the

private respondent Nos.7 to 55 were recruited in terms of the recommendations made by a duly constituted Committee and were appointed as Subject Teachers at various Higher Secondary schools in Baksa district in terms of the approval granted to the said recommendations made by the Selection Committee by the BTC vide its communication dated 09.06.2010. The petitioner in the reply filed by him to the said affidavit-in-opposition has not denied the correctness of the contentions made by the respondent No.2 with regard to the manner of preparation of the select list in question by bringing on record materials relevant to the purpose. The only contention even in the affidavit-in-reply was made to the extent that no select list was prepared pursuant to the selection held in pursuance of the advertisement dated 16.12.2005,

18. Accordingly, the challenge of the petitioner to the select list as enclosed to the communication dated 09.06.2010 cannot be accepted and accordingly, is required to be rejected.

19. The prayer of the petitioner for a direction to the authorities for his upgradation to the post of Post Graduate Teacher is not required to be considered. The petitioner in the earlier round of litigation in WP(C) No.2097/2015 had also raised similar grievance. This Court vide order dated 09.11.2016 had rejected the said prayer of the petitioner on the ground that there was no specific challenge to the order of upgradation of any similarly situated person.

20. In the present proceedings also, other than referring to the upgradation effected in the case of Anupama Devi vide order dated 30.06.2006 and praying for similar benefit in his case also, the petitioner has not challenged the upgradation of Anupama Devi in the present proceedings.

21. In absence of any challenge to the said upgradation order, this Court would not be in a position to answer as to the validity of the order dated 30.06.2006 issued in the case of Anupama Devi. It is provided that if any person is aggrieved by the said order of upgradation dated 30.06.2006, it would be open to such person to challenge the upgradation by way of instituting appropriate proceedings, subject to explanation of the laches involved on account of the delay in instituting such proceeding.

22. In view of the conclusions arrived hereinabove, the challenge of the petitioner to the select list dated 09.06.2010 is rejected.

23. Accordingly, the instant writ petition stands dismissed. However, there would be no order as to costs.

JUDGE

Comparing Assistant