

GAHC010247882014



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

Case No. : WP(C)/3812/2014

SMT. PRATEEKSHA BARMAN
D/O SHRI DHARANI KANTA BARMAN, R/O KHADILAPUR, P.O. PANDU,
GUWAHATI-12, DIST- KAMRUP METRO, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR, GHY-6

2:THE POLLUTION CONTROL BOARD ASSAM
BAMUNIMAIDAM GHY-21 REP. BY THE MEMBER SECRETARY PCBA
BAMUNIMAIDAM GHY-21

3:THE MEMBER SECRETARY POLLUTION CONTROL BOARD ASSAM
BAMUNIMAIDAM GHY-21

4:THE RECRUITMENT CELL POLLUTION CONTROL BOARD ASSAM
BAMUNIMAIDAM GHY-21 REP. BY THE MANAGER HRandA AND ADDL.
CHIEF ENVIRONMENTAL ENGINEER AND HEAD
RECRUTIMENT CELL BAMUNIMAIDAM GHY-21

5:THE MANAGER HRandA AND ADDL. CHEIF ENVIRONMENTAL
ENGINEER AND HEAD RECRUTIMENT CELL POLLUTION CONTROL
BOARD ASSAM BAMUNIMAIDAM GHY-21

6:HEMANGA GOSWAMI BHETAPARA DISPUR GHY-6
NOTICE THROUGH THE MANAGER HRandA AND AND ADDL. CHEIF
ENVIRONMENTAL ENGINEER AND HEAD RECRUTIMENT CELL
POLLUTION CONTROL BOARD ASSAM BAMUNIMAIDAM GHY-2

Advocate for the Petitioner : MR.B K DAS

Advocate for the Respondent : MR.K GOSWAMI

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

ORDER

Date : 02.04.2024

Heard Mr. B. K. Das, learned counsel for the petitioners. Also heard Mr. B. Deuri, learned Government Advocate, appearing on behalf of Respondent No. 1; and Ms. M. B. Kayastha, learned counsel appearing on behalf of Respondent No. 6. However, none has appeared on behalf of the respondents Pollution Control Board, Assam.

2. At the outset, it is to be mentioned that the instant writ petition was initially instituted by 3(three) writ petitioners, however, vide order, dated 26.06.2019, passed by this Court in the present proceedings; the names of the petitioners No. 2 & 3 were deleted. Accordingly, the present writ petition is limited to the original petitioner No. 1 i.e. Smt. Prateeskha Barman.

3. The petitioner by way of instituting this present proceedings, has raised a grievance with regard selection/ appointment against the post of Junior Accountant(JA) in the Pollution Control Board, Assam, in pursuance to an Employment Notice, dated 23.09.2013.

4. The petitioner, in the present proceedings, has projected that she is a Masters Degree holder in Commerce stream and had acquired the said qualification in the year 2009. The authorities of the Pollution Control Board, Assam, vide an Employment Notice, dated 23.09.2013, invited applications from eligible candidates for filling-up the posts as reflected therein, including

11(eleven) posts of Junior Accountant(JA).

5. The minimum qualification prescribed for the post of Junior Accountant(JA) was B.Com./BBA. It was further provided in the Advertisement that for the post of Junior Accountant(JA), candidates having Masters Degree in Commerce stream, would be preferred. The writ petitioner, accordingly, submitted her application and having cleared the written examination; the petitioner was issued with a call letter to appear for the viva voce component of the selection process.

6. The petitioner has projected that in addition to the petitioner, there were other 46 candidates who had appeared in the viva voce component of the selection process for the post of Junior Accountant(JA). Thereafter, vide a Notice, dated 20.06.2014, the respondent authorities proceeded to publish the select list for the various posts put-up for recruitment vide the Employment Notice, dated 23.09.2013 including the post of Junior Accountant(JA) and Roll Nos. of 11(eleven) candidates so selected, figured therein. The name of the petitioner did not figure in the said select list. On further enquiry being made, it was revealed to the petitioner that most of the candidates so selected, did not have the qualification of Masters Degree in Commerce stream and were so selected only basing on their performance in the selection process. Being aggrieved with the action on the part of the respondent authorities in not reckoning her Masters Degree in Commerce stream and giving her a preferential treatment in the said selection process; the present writ petition has been instituted by the petitioner.

7. Mr. Das, learned counsel for the petitioner, submits that the Advertisement having mandated that for the post of Junior Accountant(JA), candidates having Masters Degree in Commerce stream would be granted preference; the selection committee while conducting the selection ought to have reckoned such preferential treatment reserved for the candidates having Masters Degree in Commerce stream and accordingly, by granting to such candidates; the preference as applicable; ought to have recommended their names for appointment against the post of Junior Accountant(JA).

8. Mr. Das, learned counsel, further submits that given the preference as extended to the candidates with Masters Degree in Commerce stream, such candidates participating in the selection process having the said qualification; ought to have been given an *en bloc* preference over the persons who had only the graduate qualification in the Commerce stream. The respondent authorities having not taken recourse to the said preferential qualification, it is the contention of the petitioner that the selection process stood vitiated and the appointment of the candidates so selected against the post of Junior Accountant(JA) not having the Masters Degree qualification in Commerce stream, is required to be interfered with by this Court and a direction is required to be issued to the authorities of the Pollution Control Board, Assam, to recast the merit list by reckoning the preferential qualification as spelt-out in the Employment Notice, dated 23.09.2013, for candidates having Masters Degree in Commerce stream.

9. Mr. Das, learned counsel for the petitioner, further submits that while the challenge is made to the selection and appointment made against the post of

Junior Accountant(JA) as advertised vide the Employment Notice, dated 23.09.2013; the Respondent No. 6, herein, who is one of the selected candidates has been made as a respondent in a representative capacity. Mr. Das also submits that the Respondent No. 6 is only a graduate in Commerce and accordingly, his appointment is also not sustainable. Mr. Das, learned counsel for the petitioner, in support of his case, has relied upon the decision of the Hon'ble Supreme Court of India in the case of ***Surinder Singh v. Union of India & ors.***, as reported in ***(2007) 11 SCC 599***.

10. The authorities of the Pollution Control Board, Assam, have filed an affidavit-in-opposition in the matter and have contended therein that the appointment against the post of Junior Accountant(JA) was so made on the basis of the marks secured by the candidates in the said selection process i.e. the total of the marks obtained by each of the candidates in the written examination and the viva voce component of the said selection process.

11. It was further contended by the respondents Pollution Control Board, Assam, in the said affidavit-in-opposition that the Employment Notice, dated 23.09.2013, having only mandated a preferential treatment to persons having Masters Degree in Commerce stream, such preference was contended to be applicable only in the event, any such candidates securing equal marks with another candidate in the selection process who did not have the preferential qualification.

12. It is further contended by the authorities of the Pollution Control Board,

Assam, that the petitioner, herein, having not secured marks as secured by another candidate not having the preferential qualification in the category to which she belongs, in the said selection process; there was no occasion for applying the preferential qualification in respect of the petitioner. It was further contended that the preferential qualification as envisaged in the said Employment Notice, dated 23.09.2013; does not mandate an *en bloc* preference to all the candidates participating in the selection process having the Masters Degree in Commerce stream.

13. It was also contended by the respondents Pollution Control Board, Assam, that there being no allegation as regards the manner in which the selection process was so conducted and the only allegation being of not reckoning the preferential qualification possessed by the petitioner i.e. the Masters Degree in Commerce stream; the recruitment process with regard to the post of Junior Accountant(JA) in pursuance to the Employment Notice, dated 23.09.2013, does not call for any interference by this Court.

14. Ms. Kayastha, learned counsel for Respondent No. 6; refers and relies upon the contentions as made by the respondents Pollution Control Board, Assam, in the affidavit-in-opposition so filed by them and submits that there being no allegation with regard to existence of any illegality and/or irregularity in the manner in which the Respondent No. 6 was selected for appointment against the post of Junior Accountant (JA); the appointment of the Respondent No. 6 against the said post of Junior Accountant(JA) does not call for any interference from this Court.

15. I have heard the learned counsels appearing for the parties in the matter and also perused the materials made available on record.

16. Vide the Employment Notice, dated 23.09.2013, the authorities of the Pollution Control Board, Assam, had put-up for recruitment various categories of posts, including 11(eleven) posts of Junior Accountant(JA). The posts of Junior Accountant(JA) were further categorized amongst the various categories and 6(six) posts of Junior Accountant(JA) was mandated for the open category candidates. Further, the said Employment Notice, dated 23.09.2013, mandated under the heading "Experience" that preference would be extended to the candidates having Masters Degree in Commerce stream.

17. The petitioner having qualified in the written examination and coming within the ratio as mandated for calling candidates qualifying in the written examination for appearing in the viva voce component of the selection process; the petitioner was issued with a call letter for participating in the viva voce component. The petitioner, accordingly, participated in the viva voce component and thereafter, on conclusion of the selection process; the respondent authorities proceeded vide the Notice, dated 26.06.2014, to publish the select list for the various posts as put-up for recruitment vide the Employment Notice, dated 23.09.2013. The name of the petitioner did not figure in the select list as published by the respondent authorities for the post of Junior Accountant(JA).

18. It is also to be noted that in terms of the pleadings brought on record, the marks secured by the petitioner was below the marks as scored by the

candidates selected for the post in question with regard to the category to which the petitioner belongs.

19. A perusal of the pleadings of the petitioner as brought on record, reveals that the petitioner has not alleged any illegality and/or irregularity with regard to the selection process. The only allegation levelled by the petitioner with regard to the selection process is the denial to her of appointment against the post of Junior Accountant(JA) by reckoning the Masters Degree in Commerce stream possessed by her on account of the preference as reserved for such candidates in the Advertisement, in question.

20. It is the contention of the petitioner that given the preferential qualification as mandated in the said Advertisement, the petitioner having qualified in the written examination and also having participated in the viva voce component, she ought to have been given an *en bloc* preference over the other candidates who did not have the Masters Degree in Commerce stream.

21. The petitioner has further contended that the respondent authorities having prescribed a particular mode of recruitment vide the Employment Notice, dated 23.09.2013; they could not have ignored the same and proceeded to make appointments against the post of Junior Accountant(JA) solely basing on the merit position obtained by the candidates in the selection process without reckoning the preferential qualification as possessed by the candidates like the petitioner, herein.

22. A perusal of the Employment Notice, dated 23.09.2013, reflects that the minimum eligibility criteria as mandated therein for the post of Junior Accountant(JA) was possession by the candidate concerned of a Bachelor Degree in Commerce and/or Business Administration. The said Employment Notice, dated 23.09.2013, mandated under the heading "Experience", that preference would be granted to persons having the Masters Degree in Commerce stream.

23. An understanding of the recruitment process as was followed for the post of Junior Accountant(JA) in pursuance to the Employment Notice, dated 23.09.2013; would reveal that every candidate applying for the post of Junior Accountant (JA), was required to undergo a selection process consisting of a written examination followed by a viva voce test and thereafter, they were ranked basing on the merit position as obtained by them in the said segments of the selection process. Each and every candidate was mandated to undergo the said recruitment process and there was no relaxation given to the candidates having Masters Degree in Commerce stream from participating in the said selection process.

24. The word "preference' is capable of different meaning taking colour from the context, purpose and object of its use under the scheme of things envisaged. Hence, it is to be construed not as an isolated or for that manner, prescribing a meaning of universal import, for all contingencies capable of an invariable application. The procedure for selection in the case involving a qualifying test i.e. a written examination and a viva voce and the final list of selection being based on the marks obtained by the candidates therein, the

suitability and all-round merit if had to be judged in that manner only; no justification could be there for overriding the said procedure for a particular candidate in possession of a qualification prescribed as a preferential qualification in the advertisement concerned.

25. The preference as mandated in the Employment Notice, dated 23.09.2013, in the view of this Court, under the scheme of recruitment as prescribed and contextually also cannot mean, an absolute *en bloc* preference akin to reservation or separate and distinct method of selection for such candidates alone. A mere rule of preference meant to give weightage to an additional qualification, cannot be enforced as a rule of reservation or a rule of complete precedence.

26. The preference as envisaged in the said Employment Notice, dated 23.09.2013, for the post of Junior Accountant (JA) would mean that the claims of all candidates who are eligible, are taken for consideration and when anyone or more of them found equally positioned on merit; the additional qualification can be utilized in favour of such candidate possessing such additional qualification as a tilting factor vis-à-vis others in the matter of actual selection for the post, in question.

27. In this context, reference is made to the decision of the Hon'ble Supreme Court in the case of ***Secretary, A.P. Public Service Commission v. Y.V.V.R. Srinivasulu & ors.***, reported in ***(2003) 5 SCC 341***, wherein, under similar circumstances, the Hon'ble Supreme Court has held, as under:

“Whenever, a selection is to be made on the basis of merit performance involving competition, and possession of any additional qualification or factor is also envisaged to accord preference, it cannot be for the purpose of putting them as a whole lot ahead of others, dehors their intrinsic worth or proven inter se merit and suitability, duly assessed by the competent authority. Preference, in the context of all such competitive scheme of selection would only mean that other things being qualitatively and quantitatively equal, those with the additional qualification have to be preferred. There is no question of eliminating all others preventing thereby even an effective and comparative consideration on merits, by according en bloc precedence in favour of those in possession of additional qualification irrespective of the respective merits and demerits of all candidates to be considered. If it is to be viewed they way the High Court and Tribunal have chosen to, it would amount to first exhausting in the matter of selection all those, dehors their inter se merit performance, only those in possession of additional qualification and take only thereafter separately those with ordinary degree and who does not possess the additional qualification. Assuming for consideration without even accepting the same to be right or correct view to be taken, at least among the class or category of those possessing the additional qualification, inter se merit performance should be the decisive factor for actual selection for appointment and relief could not have been granted to respondents for the mere asking only on the basis of the interpretation of the provision to some one who came to court, ignoring the fact that those before the court at any rate in spite of the view taken do not come up to the level of selection considered in the context of numerous others with higher ranks of merit performance, in addition to they being also in possession of the additional qualification, as those before the court. That apart, the old rule relating to the post of ACTO, which has become obsolete having been superseded, or even the advertisement if it has stated on the basis of the obsolete rule, that preference will be given first to candidates who possess a degree in Commerce and degree in Law, secondly to those who possess a degree in Commerce and thirdly to those who possess a degree in Law, cannot either support the claim of the respondents No.1 to 3 nor in any manner lend credence to the interpretation placed by the High Court and the Tribunal. The word 'first' has to be construed in the context of even giving preference only in the order and manner indicated therein, inter se among more than one holding such different class of degrees in addition and not to be interpreted vis-a-vis others who do not possess such additional qualification, to completely exclude them, en bloc.”

28. Applying the ratio as available in the said decision to the facts of the present case, it is seen that the preferential qualification as mandated for the candidates having the Masters Degree in Commerce stream for the post of Junior Accountant(JA); does not envisage *en bloc* preference for such candidates and it is only when the candidate concerned is qualitatively and quantitatively equal with a candidate not having such preferential qualification; the preferential qualification as mandated and possessed by the candidate, can be utilized for recommending the name of such candidate for appointment against the post, in question. Accordingly, the petitioner in the recruitment

process, having not secured marks at par with a candidate, selected for appointment; there would arise no occasion for application of the prescription of preference reckoning the Masters Degree as possessed by the petitioner.

29. At this stage, this Court would like to examine the decision relied on by the learned counsel for the petitioner of the Hon'ble Supreme Court in the case of ***Surinder Singh***(supra). The recruitment process as involved in the said case, mandated that if candidates who possess matriculation qualification were available in the fray for selection for the post of extra departmental delivery agent, such selection had to be limited to the marks obtained by the candidates having the preferential qualification i.e. matriculation and it is only in the absence of such matriculate candidates, that the selection had to be made on the basis of the essential qualification i.e. the qualification of having passed Class-VIII. The preferential qualification as mandated in the case of ***Surinder Singh*** (supra), and the recruitment process as laid out for the said post; being distinct from the manner of prescription of preferential qualification in the case on hand as well as the process of recruitment mandated for the said post of Junior Accountant(JA) being different; the said decision rendered in the case of ***Surinder Singh***(supra) does not advance the case of the petitioner herein and the same would have no application to the facts involved in the present case.

30. In view of the conclusions reached hereinabove; the petitioner not having secured the requisite merit position for being appointed against the post of Junior Accountant(JA) as advertised vide the Employment Notice, dated 23.09.2013, and the conclusions as reached hereinabove, with regard to the claim of the petitioner for such appointment basing on the stipulation with

regard to preference to the candidates having Masters Degree in Commerce stream; the contentions raised by the petitioner in the matter, does not merit acceptance.

31. The selection process, in the absence of any material being brought on record to demonstrate that it was vitiated by illegality and/or irregularity; the same does not call for any interference on the ground as urged by the petitioner in the present proceedings.

32. In view of the above, the writ petition is found to be devoid of any merit and the same accordingly stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant