

GAHC010259492013



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

Case No. : WP(C)/694/2013

ANUP KUMAR SAIKIA
S/O LATE GOPAL SAIKIA, R/O KALIBARI, PNGB ROAD, WARD NO.11, P.O.
TEZPUR, DIST- SONITPUR, ASSAM, PIN-784001, ROLL NO.7

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
HOME DEPARTMENT, DISPUR, GHY-6, KAMRUP, ASSAM

2:THE DY. COMMISSIONER
DIST. SONITPUR
TEZPUR
AS CHAIRMAN OF THE SELECTION COMMITTEE
PIN-784001
ASSAM

3:THE MEMBER OF FOREIGNERS TRIBUNAL-III
DIST- SONITPUR
TEZPUR
AS MEMBER SECRETARY OF THE SELECTION COMMITTEE
PIN-784001
ASSAM

4:THE EXTRA ASSTT. COMMISSIONER
DIST- SONITPUR
TEZPUR
AS MEMBER OF THE SELECTION COMMITTEE
PIN-784001
ASSAM

5:THE TREASURY OFFICER

DIST- SONITPUR
TEZPUR
AS MEMBER OF THE SELECTION COMMITTEE
PIN-784001
ASSAM

6:THE DY. DIRECTOR OF EMPLOYMENT
CENTRAL ASSAM ZONE
TEZPUR
DIST- SONITPUR
AS MEMBER OF THE SELECTION COMMITTEE
PIN-784001
ASSAM

7:KALPAJIT SAIKIA
S/O SRI JATIN SAIKIA
CHANDMARI
PANITANKI PATH
NEAR BIHU STAGE
P.O. HAZARPARA
P.S. LALMATI
TEZPUR
DIST- SONITPUR
ASSAM
PIN-784001
ROLL NO.14

Advocate for the Petitioner : MR.S C DAS

Advocate for the Respondent : MS.L HAZARIKA

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

ORDER

Date : 02.04.2024

Heard Mr. R. C. Das, learned counsel for the petitioner. Also heard Mr. B. Deori, learned counsel for the respondents no. 1, 2, 3, 4 & 6 and Mr. U. Nanda, learned counsel for the respondent no. 7.

None has appeared for the respondent no. 5.

3. The petitioner by way of instituting the present proceeding has assailed the selection and appointment of the respondent no. 7 as LDA in the establishment of the Foreigners Tribunal (III), Sonitpur; Tezpur.

4. The post of LDA along with other posts were put to recruitment by the Member, Foreigners Tribunal (III), Sonitpur; Tezpur vide an advertisement dated 13.12.2011. The petitioner, being eligible submitted his application in pursuance to the said advertisement and thereafter participated in the written examination that was so held. Likewise, the respondent no. 7 also being qualified submitted his application for the post of LDA in pursuance to the said advertisement dated 13.12.2011 and thereafter participated in the written test. In the written test, the petitioner had secured 57 marks while the respondent no. 7 had secured 56 marks. As per the selection procedure mandated, the five candidates shortlisted after the written examination including the petitioner herein and the respondent no. 7 were called for a viva-voce test. On conclusion of the selection process the respondent no. 7 came to be appointed as the LDA in the said establishment. It is to be noted that the respondent no. 7 had obtained 70.4 marks and the petitioner herein

had obtained 68.2 marks in the said selection process. Being aggrieved, the petitioner has instituted the present proceeding assailing the said recruitment process being made in favor of respondent no. 7.

5. The petitioner, in the writ petition has specifically alleged that the marking as made in respect of the respondent no. 7 as well as the petitioner was not in accordance with the procedure as mandated. It was further alleged that the respondent no. 7 had given wrong answers, but, he was given full marks for such wrong answers whereas the same yardstick was not applied in the case of the petitioner herein.

6. This Court has perused the answer scripts available of both the petitioners and the respondent no. 7 along with the questions involved pertaining to the questions, which are contended by the petitioner to have been wrongly assessed in respect of the respondent no. 7.

7. On perusal of the answers as well as questions papers, it is seen that there were no error in the assessment so made. Further with regard to the answer as given by the petitioner and the respondent to question no. 2, the same being a descriptive one, this Court refrains from making any comment on the assessment so made of the same by the examiner.

8. The petitioner thereafter had submitted that the said selection process stood vitiated inasmuch as the respondent no. 7 was given excess marks in the viva-voce held. Out of the 20 marks so earmarked for viva-voce component of the said selection process, the respondent no. 7 was awarded 14.4 marks while the petitioner was awarded 11.2 marks. To substantiate the higher marks as given to the respondent no. 7, the petitioner has contended the respondent no. 7 was so favored because his mother was an officer in

the establishment of the Foreigners Tribunal (III), Sonitpur; Tezpur and his father was an employee in the Nazarat Branch in the Office of the Deputy commissioner.

9. The said two allegations of the petitioner was countered by the Member, Foreigners Tribunal (III), Sonitpur; Tezpur by way filing an affidavit, wherein it was categorically stated that the mother of the respondent no. 7 is not an employee of the Foreigners Tribunal (III), Sonitpur; Tezpur further, it was contended that the father of the respondent no. 7 is an employee of the Nazarat Branch in the office of the Deputy commissioner but, the father have no role in the selection process that was undertaken for the post of LDA in pursuance to the advertisement dated 13.12.2011.

10. Although the petitioner has filed a reply to the affidavit-in-opposition filed by the respondent no. 3, the contentions made in Paragraph-13 of the affidavit denying the allegations of the petitioner that the mother of the respondent no. 7 was an officer in the establishment of the Foreigners Tribunal (III), Sonitpur; Tezpur, the petitioner has not even dealt with the said contention of the respondent no. 3 in Paragraph-9 while replying to the Paragraph-13 of the affidavit-in-opposition.

11. It is seen that the selection process was carried out by the selection committee, strictly in accordance with the procedure mandated. In absence of any malafide alleged against the selection committee members and the said members being made party respondents in the present proceeding, it would not lie in the mouth of the petitioner to level allegations with regard to the selection process. The allegations as leveled by the petitioner as to the selection process are vague to the core of it and do not have any substance.

11. It is a settled position of law that the assessment and evaluation of performance of the candidates appearing before a selection committee in interview board should be left to the members of the selection committee. Thus, there is no reason to find fault with the marks awarded by the selection committee to the respondent no. 7 in absence of any specific allegation of malafides on the part of the members of the selection committee, in trying to favor the respondent no. 7.

12. The petitioner having been participated in the selection process and he being unsuccessful in the said selection process he cannot now be permitted to assail the same.

13. The material as available on record does not permit this Court to hold that there exist malafide intention on the part of the selection committee members to favor the respondent no. 7 in the matter.

14. In view of the said conclusions reached with regard to the contention raised by the petitioner herein, the writ petition is held to be devoid of any merit and accordingly, the same stands disposed of. However, there is no order as to costs.

JUDGE

Comparing Assistant