

GAHC010281122023



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

Case No. : WP(C)/7250/2023

MAINUL HOQUE AND 14 ORS
S/O- NACHER ALI,
R/O- VILL. SONAPUR,
P.O.- MUGDI,
P.S.- MUKALMUA,
DIST.- NALBARI, ASSAM.

2: PHANI DEKA
S/O- LATE RAMESH DEKA

R/O- VILL.- DHOPATARI

P.O.- CHANGSHARI

DIST.- KAMRUP(RURAL)
ASSAM.

3: NABAJIT SARMA
S/O- HARENDRA NATH SARMA

R/O- VILL.- SUALKUCHI (BATHAN)

P.O. AND P.S.- SUALKUCHI

DIST.- KAMRUP
ASSAM.

4: DUL DEKA
S/O- LATE HUMESWAR DEKA

R/O- TOWN SARTHEBARI (BAPUJI NAGAR)

WARD NO.- 4

P.O. AND P.S.- SARTHEBARI

DIST.- BARPETA
ASSAM.

5: SAMIN KR. NATH
S/O- SRI DANDI RAM NATH

VILL- KALBARI
P.O.- KALBARI

P.S.- TAMULPUR

DIST.- BAKSA (BTAD)
ASSAM.

6: DIPAK NATH
S/O- SATYA NATH

VILL- BIRUBARI

P.O.- GOPINATH NAGAR

P.S.- PALTANBAZAR
GUWAHATI

DIST.- KAMRUP METRO
ASSAM.

7: AMAL DEKA
S/O- MANOHAR DEKA

R/O- TOWN- SARTHEBARI

P.S.- SARTHEBARI

DIST.- BARPETA
ASSAM.

8: RATUL KALITA
S/O- SRI MADAN KALITA

R/O- VILL.- KUKURMARA

P.O.- MAKHIBAHA

DIST.- NALBARI
ASSAM.

9: GENGTHAILIU GONMEI
D/O- LATE KAKUKHON GONMEI

R/O- VILL- LONGJAN THANGAL

P.O.- NUNGBA

DIST.- TAMENGLONG
MANIPUR.

10: PRASANTA DEKA
S/O- LATE RAMESH DEKA

VILL- DHOPATARI

P.O. AND P.S.- CHANGSHARI

DIST.- KAMRUP RURAL
ASSAM.

11: KALPANA BARMAN
W/O- LATE SANATAN BARMAN

R/O- VILL. BIRUBARI
SHANKARPUR

P.O.- GOPINATH NAGAR

P.S.- FATASHIL AMBARI
GUWAHATI

DIST.- KAMRUP
METRO
ASSAM.

12: HIROK DAS
S/O- NEWRAM DAS

R/O- VILL.- THAIBORI

P.S.- PUB- REHABARI

PATACHARKUCHI

DIST.- BARPETA
ASSAM.

13: PRANAB NATH
S/O- SARAT NATH

R/O- VILL.- BIRUBARI

P.O.- GOPINATH NAGAR

P.S.- PALTANBAZAR

KAMRUP(METRO)
ASSAM.

14: BHANITA BARMAN
W/O- PHANI DEKA

R/O- BIRUBARI
SHANKARPUR

P.O.- GOPINATH NAGAR

P.S.- FATASHIL AMBARI
GUWAHATI

DIST.- KAMRUP METRO
ASSAM.

15: RIMALI DOLEY
D/O- LATE BIMAL DOLEY

R/O- KALBARI

P.O.- CHARIGHARIA

P.S.- PULIBAR

DIST.- JORHAT
ASSAM

VERSUS

UNION OF INDIA AND 2 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA,
DEPARTMENT OF ATOMIC ENERGY,
ANUSHAKTI BHAVAN, CHATRAPATI SHIVAJI MAHARAJ MARG,
MUMBAI, MAHARASHTRA, PIN- 400001.

2:TATA MEMORIAL CENTRE
DR. ERNEST BROGES MARG

EAST PAREL
MUMBAI

MAHARASHTRA
PIN- 400012.

3:THE DIRECTOR
DR. B. BAROOAH CANCER INSTITUTE
A.K. AZAD ROAD
P.O.- GOPINATH NAGAR

GUWAHATI- 781016

Advocate for the Petitioner : MR. L C DEY

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

03.04.2024

1. Heard Shri L. C. Dey, learned counsel for the petitioners. Also heard Mr. S. Dutta, learned Senior Counsel assisted by Mr. S. Chakraborty, learned counsel for the respondent nos.2 & 3.

2. The petitioners are working as Ward Boys and Ward Girls on daily wage basis in the Dr. B. Barooah Cancer Institute, Guwahati (respondent no.3) for a long period of time. The said institute however has been taken over by the Central Government and being run as the Tata Memorial Centre. As the petitioners were not being given the minimum pay-scale, while the regular employees were given salary as per scale of pay, a dispute was raised which is presently a matter of adjudication before the learned Central Government

Industrial Tribunal-cum-Labour Court, Guwahati (CGIT) in Reference Case No. 2/2021. It is contended that in the said proceeding, there is an order of *status quo*. However, due to the vacancy caused in the post of the Presiding Officer, since May, 2023, the said reference case has not proceeded further. The petitioners apprehend that in violation of the said order of *status quo*, new incumbents would be inducted as Attendants and Trade Helpers, pursuant to the Advertisement dated 30.10.2023, whose job will be similar to the petitioners' jobs and the same would cause immense prejudice to the petitioners, besides being in violation of the order of *status quo* passed by the learned CGIT.

3. The petitioners' counsel submits that in view of the above reasons, the operation of the impugned Advertisement dated 30.10.2023 for filling up the post of Attendants and Trade Helpers should be stayed, till disposal of the Reference Case No. 2/2021 pending before the Presiding Officer, CGIT-cum-Labour Court, Guwahati.

4. Mr. S. Dutta, learned Senior Counsel for the respondent nos.2 & 3 submits that out of the 15 writ petitioners, the services of the petitioner nos.1 & 2 had been terminated on 09.09.2019. The petitioner nos.3 and 12 had left their service. The petitioner no.14 had appeared in the written examination in pursuance to the Advertisement dated 30.10.2023. However, the petitioner no.14 did not turn up for the interview.

5. Mr. S. Dutta, learned Senior Counsel for the respondent nos.2 & 3 further submits that the dispute that had been referred to the CGIT-cum-Labour Court,

Guwahati by the Government of India, Ministry of Labour & Employment vide letter dated 04.01.2021, which was subsequently registered as Reference Case No.2/2021 was to settle two disputes, which were as per the Schedule. The disputes referred for adjudication was with regard to **(1)** the termination of the service of the petitioner nos.1 & 2 and **(2)** the claim for payment of wages as per the minimum pay-scale to be given to the petitioners. It had nothing to do with the recruitment process for appointment of Attendants and Trade Helpers in pursuant to the Advertisement dated 30.10.2023. He accordingly submits that the writ petition should be dismissed, as the employment of the petitioners on daily wage basis is protected by the *status quo* order passed by the CGIT-cum-Labour Court, Guwahati in Reference Case No.2/2021. The learned Senior Counsel also submits that the petitioners did not make any application for participating in the selection process for appointment of Attendants and Trade Helpers pursuant to the Advertisement dated 30.10.2023. They had only prayed for stopping the recruitment process to be made pursuant to the advertisement and to consider the petitioners only for the said posts. As such, they have no right to ask for participating in the selection process, which has already been completed as on date. The learned Senior Counsel further submits that there is no question of the respondent nos.2 & 3 ousting the petitioners from their jobs as the Reference Case No.2/2021 is pending before the CGIT-cum-Labour Court, Guwahati.

6. I have heard the learned counsels for the parties.

7. The submission made by the counsels for the parties and the pleadings goes to show that an advertisement calling for filling up the post of Attendants

and Trade Helpers had been made on 28.09.2018. One Jadumani Kalita and Paresh Kalita, who were working as Ward Boys in the respondent no.3 hospital, in the same manner as the petitioners herein, had participated in the selection process. Being unsuccessful, they made a challenge to their non-selection vide WP(C) No.6504/2019. This Court, vide order dated 07.03.2024 passed in WP(C) No.6504/2019 dismissed the writ petition, on the ground that it was not within the jurisdiction and domain of a writ Court to enter into the merits of a selection process, unless there was proven allegations of mala-fide, violation of statutory rules or any other inherent arbitrariness or patent material illegality. Further, this Court held that the writ Court could not make any roving and fishing enquiry to ascertain whether any illegality had occurred in the selection process. The above goes to show that there was no bar on the part of the petitioners to have participated in the selection process pursuant to the Advertisements dated 28.09.2018 and 30.10.2023.

8. In the present case, the prayer of the petitioners is that the Advertisement dated 30.10.2023 should be set aside or in the alternative to allow the petitioners to participate in the recruitment process for the post of Attendants and Trade Helpers, by relaxing the age and qualification of the petitioners. Interestingly, the petitioners have not made any representation to the authorities, prior to the filing of this writ petition, for relaxation of their age and qualification, to enable them to participate in the recruitment process for the post of Attendants and Trade Helpers. The representation dated 04.12.2023 submitted by the petitioners to the respondents does not make any prayer to relax the age of the petitioners or their qualification. Their only prayer is to allow them to appear before the Selection Board for recruitment to the said

posts, by doing away with the selection process contemplated under the advertisement.

9. In terms of the Advertisement dated 30.10.2023, the upper age limit for a candidate was 25 years as on 17.11.2023 and age relaxation of 5 years was allowed for employees of the respondent no.3. The educational qualification required as per the advertisement was that the candidates were to be SSC or equivalent pass from a recognized Board.

10. The above being said, the dispute that had been referred to the CGIT-cum-Labour Court, Guwahati by the Central Government, vide letter dated 04.01.2021, and which had been registered as Reference Case No.2/2021, was to decide the dispute in the Schedule, which are re-produced below as follows :

"1. Whether oral termination of the services of Sh. Mainul Hoque & Sh. Phani Deka, workmen with effect from 09.09.2019 by the management of Dr. B Barooah Cancer Institute is proper, legal and justified? If not, what relief these workmen are entitled to? What directions, if any, are necessary in the matter?"

2. Whether the demand of Sh. Mainul Hoque and 14 other workmen (list attached) for payment of wages at the rate of 1/30th of the pay at minimum of the relevant scale plus dearness allowance as applicable to regular employees of Dr. B Barooah Cancer Institute as daily wages for doing regular nature of jobs in Dr. B. Barooah Canceer Institute is legal and justified? if yes, to what relief these workmen are entitled and from which date? What directions, if any, are necessary in the matter?"

11. As can be seen from the Schedule of the disputes to be decided in Reference Case No.2/2021, there is no issue before the learned Presiding

Officer, CGIT-cum-Labour Court, Guwahati regarding the regularisation of service of the petitioners or to appoint/accommodate them in any regular post. The only issue pertaining to the present petitioners is that they should be given the minimum Pay Scale, as applicable to the regular employees of the respondent no.3. As such, the case projected in the present writ petition has nothing to do with the dispute that has to be decided by the Presiding Officer, CGIT-cum-Labour Court, Guwahati. As the petitioners had not made any prayer before the authorities for relaxation of their age or educational qualification, to enable them to participate in the recruitment process pursuant to the Advertisement dated 30.10.2023, prior to the last date of submission of the applications for the said post of Attendants and Trade Helpers, i.e. 17.11.2023, this Court does not find any ground to exercise its discretion in the present case. Further, the selection process has apparently been concluded, except that the names of the selected candidates have not been announced.

12. The facts stated above clearly show that the issue raised in the present writ petition has nothing to do with the issue to be decided by the CGIT-cum-Labour Court, Guwahati. Some of the petitioners do not have the *locus standi* to file the present writ petition, especially the petitioner nos.1, 2, 3, 12 and 14, inasmuch as, the service of the petitioner nos.1 & 2 have been terminated and the issue is before the CGIT-cum-Labour Court, Guwahati. The petitioner nos.3 and 12 have left their service and the petitioner no.14 did not turn up for the interview pursuant to the Advertisement dated 30.10.2023. The writ petition has also been filed only on 12.12.2023, while the last date of submission of the applications pursuant to the Advertisement dated 30.10.2023 was 17.11.2023. For all the reasons stated above, there being no merit in the writ petition, the

writ petition stands dismissed

13. It is needless to add that the question of ousting the petitioners from their service does not arise, as a *status quo* order has been given by the CGIT-cum-Labour Court, Guwahati in Reference Case No.2/2021.

JUDGE

Comparing Assistant