

GAHC010284762023



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

Case No. : WP(C)/119/2024

BISWA DEBNATH
S/O. LT. BIREN DEBNATH,
R/O- VILLAGE- DHING BETKATI GAON,
POST OFFICE- CHAMUA GAON,
POLICE STATION- DHING,
DISTRICT- NAGAON, ASSAM, PIN- 782123.

VERSUS

THE UNION OF INDIA AND 8 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF SOCIAL JUSTICE AND
EMPOWERMENT, GOVERNMENT OF INDIA, SHASTRI BHAWAN, NEW
DELHI- 110001.

2:THE STATE OF ASSAM
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT
OF ASSAM, PERSONNEL DEPARTMENT
DISPUR, JANATA BHAWAN, GUWAHATI-6.

3:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
DEPTT. OF SOCIAL JUSTICE AND EMPOWERMENT
DISPUR, JANATA BHAWAN, GUWAHATI-6.

4:HE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM
SECONDARY EDUCATION DEPARTMENT
DISPUR, JANATA BHAWAN, GUWAHATI-6.

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

6:THE STATE LEVEL RECRUITMENT COMMISSION FOR CLASS-IV POSTS
REPRESENTED BY ITS CHAIRMAN/ SECRETARY
ASSAM ADMINISTRATIVE STAFF COLLEGE
JAWAHARNAGAR, KHANAPARA, GUWAHATI-22.

7:THE SECRETARY TO THE GOVT. OF ASSAM
MEDICAL EDUCATION AND RESEARCH DEPARTMENT
DISPUR, GUWAHATI-6.

8:THE JOINT DIRECTOR OF HEALTH SERVICES, NAGAON
NAGAON, ASSAM. PIN- 782001.

9:THE MEDICAL BOARD
GAUHATI MEDICAL COLLEGE AND HOSPITAL
GUWAHATI-32, ASSAM

Advocate for the Petitioner : MR. S K ROY

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

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

02.02.2024

Heard Mr. S.K. Roy, learned counsel for the petitioner. Also heard Ms. D.D. Barman, learned Additional Senior Government Advocate, Assam for respondent No.2; Ms. R. Deka, learned counsel appearing for respondent No.3; Ms. P. Das, learned Standing Counsel, Education (Secondary) Department for respondent Nos.4 & 5; Mr. B. Choudhury, learned counsel representing SLRC/respondent No.6 and Mr. D. Upamanyu, learned Standing Counsel, Health Department for respondent Nos.7, 8 and 9.

2. The petitioner, by way of instituting the present proceedings, has presented a challenge to the verification exercise carried out by the State Level Recruitment Commission (SLRC) for Class IV posts through the Health Department with regard to the specific disabilities possessed by him and rejection of his candidature on the ground of not meeting the benchmark percentage of disability.

3. The petitioner contends that the competent authority having, on examination,

certified him to be a person with disability and that too, to the extent that he met the benchmark prescribed, a subsequent examination thereof is not called for.

4. Mr. D. Upamanyu, learned Standing Counsel, Health Department, responding to the said contention of the petitioner, has referred to an Office Memorandum dated 21.05.2022 wherein in para 5, it has been provided that the disability certificate issued by the competent authority produced by intending candidate, in the event of selection of such candidate for any post under the Government of Assam, shall be subject to such verification/re-verification as may be decided by the competent authority.

5. Mr. Upamanyu has also produced a copy of the order dated 03.01.2024 passed by this Court in WP(C) No.5937/2023 pertaining to the same very selection process.

This Court, after examining the matter and also noticing the provisions of the Office Memorandum dated 21.05.2022 and also following the directions contained in the order dated 18.12.2023, passed in WP(C) No.6977/2023, vide order dated 03.01.2024, disposed of the aforesaid writ petition [WP(C) No.5937/2023].

The aforesaid order dated 03.01.2024, passed in WP(C) No.5937/2023, is extracted hereinbelow for the sake of ready reference.

“ 03.01.2024

Heard Mr. A.R. Bhuyan, learned counsel for the petitioners. Also heard Mr. B. Talukdar, learned Standing Counsel, Elementary Education Department appearing for respondent Nos.1 & 2 and Mr. D. Upamanyu, learned Standing Counsel, Health Department appearing for respondent Nos.3 to 8.

2. The petitioners, by way of instituting the present proceedings, have presented a challenge to the verification exercise carried out by the Elementary Education Department through the Health Department of the State with regard to the specific disabilities possessed by each of the petitioners.

3. The challenge is also made to the speaking order dated 01.09.2023 by which the cases of the petitioners were rejected on the ground that the petitioners have not appeared before the Verification Committee.

4. The petitioners contend that the competent authorities, having examined their

disabilities, have certified their disabilities and that too, to the extent that they met the benchmark prescribed, a subsequent examination thereof are not called for.

5. *Mr. D. Upamanyu, learned Standing Counsel, Health Department, responding to the said contention of the petitioners, have produced before this Court an Office Memorandum dated 21.05.2022 wherein in para 5, it has been provided that the disability certificate issued by the competent authority produced by intending candidate, in the event of selection of such candidate for any post under the Government of Assam, shall be subject to such verification/re-verification as may be decided by the competent authority.*

6. *Mr. Upamanyu has also produced a copy of the order dated 18.12.2023 passed by this Court in WP(C) No.6977/2023 pertaining to the same very selection process.*

This Court after examining the matter and also noticing the provisions of the Office Memorandum dated 21.05.2022, disposed of the aforesaid writ petition (WP(C) No.6977/2023) with the following observations and directions:

“By producing a copy of the Office Memorandum dated 21/05/2022 issued by the Government of Assam, Department of Personal, Dispur, more particularly, clause-5 of the O.M., Mr. Dhar further submits that it is permissible under the law to subject the candidates for verification/reassessment of their disability through a competent mechanism and hence, this exercise.

After hearing the learned counsel for the parties, this Court finds that although all the petitioners are holding Disability Certificates which project them as candidates suffering from “bench mark” disability, yet, it appears that as per the opinion of the specially constituted Medical Board, the disability of the writ petitioners have been found to be less than the “Bench Mark” criteria of 40% disability. There may be cases where the extent of disability of some of the candidates have undergone changes since the issuance of their Disability Certificates or there was some error in assessing their disability status either by the original authority issuing the Certificates or by the Specially Constituted Medical Board. However, the said aspect of the matter cannot be gone into by this Court unless the petitioners are communicated with the decision of the authorities in this regard, thereby, giving them an opportunity to assail such decision, on merit, if so advised.

As such, without expressing any opinion on the stand of the learned departmental counsel or the findings and observations of the Medical Board, these writ petitions are

being disposed of by directing the respondents to communicate the decision of the authorities pertaining to the individual disability status vis-à-vis their claim for appointment of each of the writ petitioners against the posts applied for, in writing, within four weeks from the date of receipt of a certified copy of this Order. Liberty is granted to the writ petitioners to assail the decision of the Medical Board and/or Departments of Social Justice and Empowerment, by filing fresh writ petitions, if so advised.”

7. Mr. Upamany has submitted that the Medical Examination Reports of the petitioners have already been handed over to the counsel of the petitioners on 09.10.2023.

8. Accordingly, following the directions as contained in the order dated 18.12.2023 passed in WP(C) No.6977/2023, this writ petition is disposed of requiring the petitioners to challenge the adverse medical recommendations made in their cases by the Medical Board constituted, pursuant to their selections for the posts in question by filing fresh writ petitions, if so advised.

9. With the above observations, this writ petition stands closed.”

6. Mr. Upamanyu has submitted that the Medical Examination Report of the petitioner has already been handed over to the counsel of the petitioner.

7. Accordingly, following the directions as contained in the order dated 03.01.2024 passed in WP(C) No.5937/2023 and the order dated 18.12.2023 passed in WP(C) No.6977/2023, the instant writ petition is disposed of requiring the petitioner to challenge the adverse medical recommendations made in his case by the Medical Board constituted, pursuant to his selection for the post in question by filing fresh writ petition, if so advised.

8. With the above observations, this writ petition stands closed.

JUDGE

Comparing Assistant