GAHC010284772023

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

Case No. : WP(C)/112/2024

JAKARIA AHMED BARBHUIYA
S/O- ABDUL HOQUE BARBHUIYA,
R/O- VILLAGE- CHANDIPUR, PT-III,
POST OFFICE- KALIBARI BAZAR,
P.S.- ALGAPUR, DISTRICT- HAILAKANDI,
ASSAM, PIN- 788150.

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:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF

ASSAM
PUBLIC WORKS (BUILDING AND NH) DEPTT.
DISPUR
JANATA BHAWAN
GUWAHATI-6.

5:THE CHIEF ENGINEER
PUBLIC WORKS (BUILDING AND NH) DEPARTMENT
ASSAM
KRISHNA NAGAR
CHANDMARI
GUWAHATI-03.

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
HAILAKANDI
GNM TRAINING SCHOOL CAMPUS

OLD HOSPITAL ROAD

DISTRICT- HAILAKANDI
ASSAM

PIN- 788151.

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.

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 11-01-2024

Heard Mr. J. Singh, learned counsel appearing for the writ petitioner. I have also heard Mr. S.S. Roy, learned CGC, Mr. B. Choudhury, learned standing counsel, State Level Recruitment Committee, Assam, Mr. D. Borah, learned Government Advocate, Assam, Ms. D. Musahary, learned standing counsel, Education Department, Assam, Ms. R.M. Deka, learned Standing Counsel, Social Justice and Empowerment Department, Assam, Mr. B. Gogoi, learned Standing Counsel, Finance Department, Assam and Mr. D. Upamanyu, learned Standing Counsel, Health and Family Welfare Department, Assam, appearing for the respective official respondents.

The writ petitioner in this case is holding Disability Certificates issued by the competent authority under the Department of Social Justice and Empowerment, Assam, indicating the degree and nature of his disability. According to the certificates held by him, the petitioner meets the "Bench Mark" disability criteria of 40% disability, thus making him eligible to seek Government employment as candidate belonging to the Person with Disability (PwD) category. As such, on the strength of this certificate, the petitioner had applied for and had taken part in the recruitment process initiated by the Government departments for filling up of a number of Grade-IV posts. However, after the selection process was over, the writ petitioner has been asked to appear before a specially constituted Medical Board so as to verify/ re-assess the nature and extent of the disability suffered by him. Aggrieved thereby, the present writ petition has been filed *inter alia*

contending that since the petitioner is holding a Disability Certificate issued by the competent authority, there was no further requirement under the law or any legal justification to subject the petitioner to further scrutiny by another Medical Board, as has been done in his case.

Today, when the matter was called up, Mr. D. Upamanyu, learned Standing Counsel, Health and FW Department, Assam, submits that the role of the Health and FW Department, Assam, in this case, is only to the extent of constituting a Special Medical Board so as to assess the nature and extent of disability suffered by the candidate, on the request of the Nodal Department *i.e.* the Department of Social Justice and Empowerment. Therefore, the Health Department does not have any independent stand in the matter. He further submits that on such verification, the disability of some of the candidates have been found to be less than the "Bench Mark" of 40% disability. Mr. Upamanyu, however, submits that the outcome of the assessment by the specially constituted Medical Board have already been forwarded to the Social Justice and Empowerment Department, Assam, in respect of each candidate examined by the Board.

Mr. D. Borah, learned Government Advocate, Assam and Ms. R.M. Deka, learned Standing Counsel, Social Justice and Empowerment Department, Assam, have submitted that in many cases, it has been found that the disability condition varies from that mentioned in the certificates and hence, this exercise.

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 OM, Mr. Borah further submits that it is permissible under the law to subject the candidate

for verification/reassessment of his disability through a competent mechanism and hence, this exercise.

After hearing the learned counsel for the parties, this Court finds that although the petitioner is holding a Disability Certificates which project him 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 petitioner has 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 petitioner is communicated with the decision of the authorities in this regard, thereby, giving him 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, this writ petition is being disposed of by directing the respondents to communicate the decision of the authorities pertaining to the disability status *vis-à-vis* his claim for appointment against the post 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 petitioner to assail the decision of the Medical Board and/or Department of Social Justice and Empowerment, by filing fresh writ petition, if so advised.

Writ petition stands closed.

JUDGE

GS

Comparing Assistant