

GAHC010089832024



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

Case No. : WP(C)/7521/2023

Linked Case : WP(C)/7521/2023

MD. ABDUL HANNAN
S/O- MD. ABUL KALAM
R/O- VILLAGE- EAST BARHAWOR
P.O.- BARHAWOR
DISTRICT- NAGAON
ASSAM
PIN- 782439.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (HIGHER) DEPARTMENT
DISPUR GUWAHATI- 06.

2:THE DIRECTOR OF HIGHER EDUCATION
KAHILIPARA GUWAHATI ASSAM PIN- 781019.

3:THE GOVERNING BODY OF B.P. CHALIHA COLLEGE
NAGARBERAKAMRUP ASSAM PIN- 781127
REPRESENTED BY ITS PRESIDENT.

4:THE PRINCIPAL AND SECRETARY B.P. CHALIHA COLLEGE
NAGARBERA KAMRUP ASSAM PIN- 781127.

Advocate for : MR. P MAHANTA

Advocate for : SC

HIGHER EDU appearing for THE STATE OF ASSAM AND 3 ORS

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

ORDER

Date : 12.06.2024

Heard Mr. P. Mahanta, learned counsel, appearing on behalf of the petitioner. Also heard Mr. S. Bhuyan, learned standing counsel, Higher Education Department, appearing on behalf of respondents No. 1 & 2; Ms. A. Hussain, learned counsel, appearing on behalf of respondents No. 3 & 4; and Mr. J. Ahmed, learned counsel who has entered appearance on behalf of the applicant in IA(c)1315/2024.

As consented to by the learned counsels appearing for the parties; the instant writ petition is taken-up for final consideration and disposal.

The writ petitioner has instituted the present proceeding being aggrieved by the deprivation as purportedly caused to him in not allowing him to participate in the interview held on 05.08.2023 for the purpose of filling-up the post of Assistant Professor in Arabic(unreserved) in B. P. Chaliha College, Nagarbera, Kamrup.

This Court while issuing notice vide order, dated 05.01.2024, was pleased to direct that any appointment made in pursuance of the said selection process, shall be subject to the outcome of the present proceeding.

It is stated in the Bar that the Director, Higher Education Department, Assam, on account of the pendency of the present proceeding, has not taken a final decision in the matter as required to be taken by him in terms of the provisions of Rule 7 of the Assam College Employees (Provincialization) Rules, 2010.

It is settled position of law that the selection as made by the college authorities do not attain a finality till the same is approved by the Director, Higher Education Department, Assam, in terms of the powers as conferred on him under the provisions of the said Rules of 2010.

In view of the said position; the parties to the proceeding, have submitted that the matter may be remanded back to the Director, Higher Education Department, Assam, for arriving at a decision in the matter.

Mr. P. Mahanta, learned counsel for the petitioner, while have agreed to the matter being remanded back to the Director, Higher Education Department, Assam, for a decision in the matter; had required this Court also to direct the said authority to consider the grievances of the petitioner with regard to the manner in which the qualifications possessed by him and disclosed for the post in question, were considered by the selection committee as constituted in the matter and as to why, he was not permitted to participate in the selection process.

Mr. P. Mahanta, learned counsel, has submitted that before proceeding to decide upon the selection so made in the matter by the selection committee in pursuance to the Advertisement, dated 13.06.2023, for the post of Assistant Professorin Arabic subject; the Director, Higher Education Department, Assam, be required to examine the grievances of the petitioner, herein.

The said prayer of the petitioner, was not objected to by Mr. Bhuyan, learned standing counsel, Higher Education Department, or by Mr. J. Ahmed, learned counsel, representing the applicant in IA(c)1315/2024.

In view of the above position and the statement made at the Bar that the Director, Higher Education Department, Assam, had not given his final consideration in the selection made with regard to the post of Assistant Professor in the subject of Arabic as advertised by the respondents No. 3 & 4, vide Advertisement, dated 13.06.2023; the Director, Higher Education Department, Assam, is now directed to examine the said selection records in terms of the powers as conferred upon him under the provisions of the said Rules of 2010, and thereafter, arrive at a conclusion with regard to the selection so made.

However, considering the grievances raised by the petitioner, herein, in the present proceeding; it is directed that the Director, Higher Education Department, Assam, before proceeding to consider the selection records involved in the matter, shall arrive at a conclusion with regard to the grievances of the petitioner as raised in the present proceeding.

It is only after a decision is arrived at by the Director, Higher Education Department, Assam, with regard to the grievances raised by the petitioner in the matter; the Director, Higher Education Department, Assam, shall proceed to consider the selection records for grant of his approval therein.

For facilitating the above process; the petitioner, herein, shall submit a detailed representation in the matter before the Director, Higher Education Department, Assam, within a period of 10 days from today along with a certified copy of this order.

The Director, Higher Education Department, Assam, on receipt of such representation, if so submitted by the petitioner within a period of 10 days from today, shall issue notices to the petitioner as well as the authorities of B.P. Chaliha College,

Nagarbera, Kamrup, and to the candidates involved in the said selection process and thereafter, on fixing of such dates and on appearance of the respective parties; proceed to decide the issue involved in the manner directed hereinabove.

With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant