

GAHC010298592019



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

Case No. : WP(C)/9039/2019

WAHED ALI
S/O LT. SARIAT ULLAH, R/O VILL. KAURJOHI, P.O. AND P.S- KALGACHIA,
DIST- BARPETA, ASSAM, PIN-781319

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPTT. DISPUR, GUWAHATI,
PIN-781006

2:THE DEPUTY COMMISSIONER
BARPETA
DIST. BARPETA
ASSAM
PIN-781301

3:THE CIRCLE OFFICER
KALGACHIA REVENUE CIRCLE
P.O. AND P.S. KALGACHIA
DIST. BARPETA
ASSAM
PIN-781319

4:THE MOUZADAR
RUPSHI MOUZA
P.O. AND P.S. RUPSHI
DIST. BARPETA
ASSAM
PIN-78131

Advocate for the Petitioner : MR N N UPADHYAYA

Advocate for the Respondent : SC. REVENUE

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri R. Dhar

Advocate for the respondents : Shri CKS Baruah, GA-Assam
Shri J. Handique, SC-Revenue

Date of hearing : **13.05.2024**

Date of Judgment : **13.05.2024**

JUDGMENT & ORDER

A short controversy has been raised in this writ petition filed under Article 226 of the Constitution of India pertaining to selection and appointment of Gaonburah of Charge No. 16 under Kalgachia Revenue Circle in the district of Barpeta. A recruitment process was initiated vide an advertisement dated 27.06.2018 issued by the Deputy Commissioner, Barpeta. The petitioner, who claims to be eligible in all respects, had offered his candidature. Subsequently, there was a clarification vide notification dated 08.11.2019 whereby a clause was introduced with regard to filing of declaration of number of living children of the prospective candidate. Such notice was issued in view of the Gazette Notification dated 19.07.2019 whereby certain amendments were made to the Executive Instruction No. 162(1) and 162-A in the Assam Land and Revenue Regulation pertaining to an appointment of a Gaonburah. As per the said amendment, no person would be eligible for such appointment if he or she has

more than two living children from a single or multiple partners. It is the contention of the petitioner that such amendment would affect his candidature.

2. I have heard Shri R. Dhar, learned counsel for the petitioner. I have also heard Shri CKS Baruah, learned State Counsel and Shri J. Handique, learned Standing Counsel, Revenue Department.

3. Shri Dhar, learned counsel for the petitioner has submitted that the eligibility of the petitioner has to be examined from the aspect of the date of original advertisement which is 27.06.2018 and any subsequent notification cannot change the eligibility criteria. He has also informed this Court that an impugned order is in operation regarding the impugned advertisement dated 08.11.2019.

4. Shri Handique, learned Standing Counsel, Revenue Department has however submitted that the apprehension of the petitioner with regard to the advertisement dated 08.11.2019 may not be correct. He submits that the Gazette Notification dated 19.07.2019 itself clarifies that the embargo was inserted with regard to the factor of having more than 2 living children prior to the date of coming into force of the notification i.e. 19.07.2019. The learned Standing Counsel accordingly submits that because of the advertisement in question i.e. 08.11.2019, the eligibility of the petitioner would not adversely affect.

5. Shri Baruah, learned State Counsel endorses the views expressed by the learned Standing Counsel, Revenue Department and submits that because of the interim order, the recruitment process have been put on halt.

6. Considering the aforesaid facts and circumstances and the submission advanced, this Court is of the opinion that the Gazette Notification dated

19.07.2019, while inserting the embargo in the form of disqualification for a candidate having two or more living children has itself clarified that such embargo would be effective prospectively from the date of the notification which is 19.07.2019. The original advertisement for the recruitment process in the instant case being of 27.06.2018, the subsequent notice dated 08.11.2019, in the considered opinion of this Court would not have any bearing on the eligibility of the petitioner on the aspect of the aforesaid embargo, if otherwise the petitioner is found to be eligible in other aspects.

7. In view of the above, the writ petition is disposed of by directing that the aforesaid aspect of disqualification on the ground of having two or more children would not be applicable to the petitioner *qua* the advertisement dated 27.06.2018 and his candidature may accordingly be considered at par with other eligible candidates. The authorities however are required to look into the other eligibility aspects of the petitioner while assessing such candidature. It is further made clear that the aforesaid consideration is to be made in case the recruitment process was not finalized before the stay order was passed on 19.12.2020. In case the process is still on, the same be completed expeditiously and appointment of the concerned Gaonburah of Charge No. 16 under Kalgachia Revenue Circle in the district of Barpeta be made.

8. The interim order dated 19.12.2020 stands vacated to facilitate the completion of the aforesaid process.

9. Cost made easy.

JUDGE

Comparing Assistant