GAHC010284592019

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

Case No. : WP(C)/8569/2019

JONALI NATH
D/O. NABA KUMAR NATH, PRITI NAGAR, WARD NO.8, NEAR GANESH MANDIR, MANGALDAI-784125, DIST. DARRANG, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE CHIEF SECRETARY, GOVT. OF ASSAM, JANATA BHAWAN, DISPUR, GUWAHATI-781006.

2:THE STATE OF ASSAM

REP. BY ITS COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES
JANATA BHAWAN
BLOCK-D
3RD FLOOR
DISPUR
GUWAHATI-781006.

3:THE STATE OF ASSAM

REP. BY ITS SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES
JANATA BHAWAN
BLOCK-D
3RD FLOOR
DISPUR
GUWAHATI-781006.

4:THE STATE OF ASSAM

REP. BY ITS DY. SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES
JANATA BHAWAN
BLOCK-D
3RD FLOOR
DISPUR
GUWAHATI-781006.

5:THE DY. COMMISSIONER

DARRANG
MANGALDAI
ASSAM
PIN-784125.

6:THE UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF PERSONNEL

PUBLIC GRIEVANCES AND PENSIONS
(DEPARTMENT OF PERSONNEL AND TRAINING

Advocate for the Petitioner : Mr. U.K. NAIR, learned senior counsel
MR H GUPTA, learned counsel.

Advocate for the Respondent : GA, ASSAM, MR. S.S. ROY, CGC

BEFORE
HONOURABLE MR. JUSTICE MANOJIT BHUYAN

ORDER

02.12.2020

Heard Mr. U.K. Nair, learned senior counsel representing the petitioner, assisted by Mr. A. Chetry, Advocate as well as Mr. D. Nath, learned counsel representing respondent nos.1 and 5. Mr. R. Dhar, learned counsel represents respondent nos.2, 3 and 4 whereas Mr. S.S. Roy, learned counsel appears for respondent no.6.

The petitioner is presently serving as Computer Operator (English) in the Assam Secretariat. For better prospects, she had applied and appeared in the selection process for recruitment to the post of Junior Engineer etc., as advertised by the Railway Recruitment

Board, Ministry of Railways, Government of India. The petitioner belongs to the Other Backward Community and for the purpose of selection and appointment she had also applied for Non-Creamy Layer Certificate on 10.04.2019 before the Deputy Commissioner, Darrang, Mangaldai. Grievance raised is that her application was rejected by the said authority on 01.06.2019. Representations made for re-consideration and for grant of Non-Creamy Layer Certificate was eventually rejected on 13.09.2019 (Annexure-13), holding that the petitioner is not entitled to such Certificate. Reason assigned is that in view of Clause VI of the Schedule to the Office Memorandum dated 08.09.1993, issued by the Government of India in the Ministry of Personnel, Public Grievances & Pensions, the petitioner is not entitled to such Certificate. In the impugned order dated 13.09.2019, the ground of rejection has been explained.

The requirement of a Non-Creamy Layer Certificate in favour of the petitioner is on account of the fact that after having successfully qualified in all stages of the examination for the post of Junior Engineer etc., the petitioner has been called for documents verification, which is the final stage of the recruitment process. It is stated by the petitioner that the documents verification is not yet over in view of a pending litigation before the concerned Tribunal.

This Court would note that as and when this matter had come up for consideration on 12.10.2020, the authorities under the Department of Welfare of Plain Tribes and Backward Classes was required to file affidavit by stating in detail the complete criteria necessary to be followed as to who is to be included or excluded for grant of Creamy Layer Certificate. Pursuant thereto an affidavit-in-opposition on behalf of the respondent no.4 was filed on 10.11.2020 and at paragraphs 3, 4 and 5 thereof an indication was made that the Wealth Test under Clause VI of the aforesaid Office Memorandum dated 08.09.1993 would not be applicable to the petitioner. However, again on 23.11.2020 this Court requested Mr. Dhar to obtain instructions to answer to the submissions of Mr. Nair who had advanced an argument to the effect that the affidavit of respondent no.4 dated 10.11.2020 clearly indicated that the petitioner stands to be excluded from the ambit of the Office Memorandum dated 08.09.1993. Today, Mr. Dhar have produced the written instructions contained in letter dated 01.12.2020, issued under the hand of the Secretary to the Government of Assam, WPT & BC

Department to show that Wealth Test is not applicable in respect of Grade-III Government service category, which would also squarely cover the case of the petitioner, in that, the petitioner being the daughter of a retired Grade-III Government employee and her mother being presently employed as Sub-Post Master in the Department of Posts, Government of India, the applicability of the Wealth Test under Clause VI would not be applicable in respect of the petitioner.

Having regard to the clear stand of the State respondents and also on consideration of the concerned Office Memorandum, this Court is of the clear view that the impugned orders dated 01.06.2019 and 13.09.2019 issued by the Deputy Commissioner, Darrang, Mangaldai, rejecting grant of Non-Creamy Layer Certificate to the petitioner cannot stand the scrutiny of law and are liable to be set aside, which is accordingly done.

The writ petition stands allowed with direction to the respondent no.5 to take immediate steps for grant of Non-Creamy Layer Certificate to the petitioner within an outer limit period of 2 (two) weeks from today.

Petitioner is permitted to furnish a copy of this order before the respondent no.5 for his doing the needful in terms of the above.

A copy of this order be also furnished to Mr. Dhar, Mr. Nath and Mr. Roy for onward transmission of the same to the respondents concerned.

JUDGE

Comparing Assistant