

GAHC010131812017



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

Case No. : WP(C)/3534/2017

RAIHANA AKHTAR
W/O AZAD HUSSAIN R/O VILL- JOYPUR, P.O. KOKRJHAR, DIST.
KOKRAJHAR BTAD, ASSAM

VERSUS

THE STATE OF ASSAM and 7 ORS.
TO BE REP. BY THE COMMISSIONER AND SECRETARY, GOVT. OF ASSAM,
HEALTH AND FAMILY WELFARE B DEPARTMENT, DISPUR, GUWAHATI-6

2:THE ASSAM PUBLIC SERVICE COMMISSION

TO BE REP. BY ITS SECRETARY
JAWAHARNAGAR
KHANAPARA
GUWAHATI -22.

3:THE CHAIRMAN

ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
KHANAPARA
GUWAHATI-22.

4:KOBITA BORAH

5:ENU BORO

6:NAMITA RAMCHAYIARY

7:MAITRAYEE GOGOI

8:JURI BORO
RESPONDENT NO. 4 TO 8 C/O THE CHAIRMAN ASSAM PUBLIC SERVICE
COMMISSION
JAWAHARNAGAR
KHANAPARA
GUWAHATI -22

Advocate for the Petitioner : MRA R BHUYAN

Advocate for the Respondent : SC, HEALTH

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri AR Bhuyan, Advocate.

For the Respondents : Shri TJ Mahanta, Sr. Advocate, APSC,
Shri DP Borah, Advocate &
Shri PP Dutta, Advocate.

Dates of Hearing : 03.05.2024.

Date of Judgment : 03.05.2024.

JUDGMENT & ORDER

The controversy raised in this petition filed under Article 226 of the Constitution of India is in connection with a recruitment process initiated by the Assam Public Service Commission (APSC) for different posts of Lecturers in the Nursing Colleges of Assam.

2. The petitioner has structured his petition on two principal grounds, firstly, violation of the reservation policy and secondly, the mode adopted for such selection.

3. I have heard Shri AR Bhuyan, learned counsel for the petitioner. Also heard Shri TJ Mahanta, learned Senior Counsel assisted by Shri PP Duta, learned counsel for the APSC as well as Shri DP Borah, learned Standing Counsel, Health & Family Welfare Department, Assam.

4. By drawing the attention of this Court to the advertisement dated 03.07.2015, Shri Bhuyan, learned counsel for the petitioner has submitted that amongst the various posts advertised, there were 5 nos. of posts of Lecturer in the O&G Department for which, the petitioner had applied. Out of the 5 vacancies, 3 were for unreserved category and 2 for reserved category. It is not in dispute that the petitioner belongs to the unreserved category. The petitioner on her application, was issued a call letter on 30.08.2016 and the interview was scheduled on 05.09.2016 in which, the petitioner had appeared, However, in the results published, the petitioner was not amongst the selected candidates.

5. Shri Bhuyan, learned counsel for the petitioner has submitted that the communication towards declaration of results dated 24.03.2017 would indicate that only one general category candidate has been selected for appointment as Lecturer in O&G Department and the 4 other vacancies have been filled up by reserved category candidate. The learned counsel has, however, fairly submitted that from the affidavit-in-opposition filed by the APSC, it transpires that two of the selected candidates who belong to reserved category candidate have been

treated as general category on account of their merits. He, therefore, contends that he would not press upon the said ground of challenge.

6. Shri Bhuyan, learned counsel, however, has strenuously canvassed that the procedure adopted for selection is not in terms of the stipulations made in the advertisement. By referring to the mode indicated in the advertisement, it is submitted that the selection was to be held by written test/interview and it stipulates that the Commission may short-list the candidates either on the basis of the marks obtained in the qualifying academic examination required for the post in question or by holding screening test (multiple choice objective type written examination) which would be notified. It is submitted that none of the procedures were adopted and only on the basis of viva-voce, the selection has been done which is not as per the mode indicated in the advertisement. The learned counsel, accordingly submits that the selection is to be interfered with and the candidature of the petitioner be considered in proper perspective.

7. Shri Mahanta, learned Senior Counsel representing the APSC, however, has submitted that even the existing ground of challenge is, both factually and legally untenable. He submits that the interpretation of the mode given on behalf of the petitioner is not correct. It is submitted that under heading 'C', the precondition for going for short listing the candidates on the basis of the marks obtained in the qualifying academic examination or by holding a screening test is that the number of applications should be large. By drawing the attention of this Court to the affidavit-in-opposition filed by the APSC on 06.01.2024, the learned Senior Counsel has submitted that for the 5 nos. of vacancies in the post of Lecturer O&G, the total number of applications received were 16. It is

submitted that the said number of 16 is even less than the number which is envisaged for maintaining a ratio of 1:6. It is accordingly submitted on the behalf of the APSC that there was no requirement for adopting either of the two modes for short listing and the candidates were accordingly interviewed based upon which, the selection has been made. It is further submitted that the mode of selection as such, by interview is not the subject matter of challenge as the petitioner had participated in the said selection process without any objection. In support of his submissions, Shri Mahanta, learned Senior Counsel has relied upon the following decisions of the Hon'ble Supreme Court:

i) *HC Pradeep Kumar Rai & Ors., Dinesh Kurmar Pandey & Ors., (2015) 11 SCC 493*; and

ii) *Karnati Ravi & Anr. Vs. Commissioner, Survey Settlements and Land Records & Ors., (1018) 12 SCC 635.*

8. Shri Borah, learned Standing Counsel, Health Department while endorsing the submissions made on behalf of the APSC has further submitted that the APSC is the statutory body through which selections are made and there does not appear that there has been any anomalies in the said selection. He accordingly prays for dismissal of the writ petition.

9. On consideration of the submissions made and the materials placed on record, this Court has noted that the first ground regarding the allegation of violation of the reservation policy has appeared to be factually untenable in view of the facts projected in the affidavit-in-opposition of the APSC that two candidates of reserved category has been appointed in the vacancy meant for

unreserved category on the basis of their merits. As regards the second ground, it would be convenient if the relevant portion of the advertisement is taken into consideration which is extracted hereinbelow:

“C. WRITTEN TEST/INTERVIEW:

If the number of applications received is large, the

i. Commission may short-list the number of candidates either on the basis of their marks obtained in the qualifying academic examination required for the post in terms of advertisement.

-OR-

ii. By holding Screening test (Multiple choice objective type written examination) which will be notified in due course.”

10. The aforesaid provision of the advertisement has clearly indicated the mode of selection as written test/interview. The said heading further stipulates two options of short listing the number of candidates on the basis of the marks obtained in the qualifying academic examination or by holding screening test. It is, however, noted that either of the two options are to be exercised only when the application received is large. In the instant case, admittedly, for 5 nos. of vacancies, the total number of applications received is 16. Therefore, there was no requirement at all for adopting either of the two options and accordingly, the candidates who had applied were subjected to a viva-voce test. The petitioner having participated in the said selection process in the mode adopted by the advertisement without any demur will not be allowed to challenge the mode

that too, on a ground which apparently appears to fallacious. This Court is of the considered opinion that the grounds of challenge structured is both legally and factually untenable and accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant