



GAHC010008812012

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

Case No. : WP(C)/4734/2012

DHAN SHARMAH
S/O LATE PUTUL SARMAH, VILL. KALITA GOAN, P.O. BORDOLANI, DIST-
DHEMAJI, ASSAM, PRESIDENTLY RESIDING C.O. HEMANTA SARMAH,
PRAFULLA ENCLAVE FLATE NO.4G2, NAMGHARPATH PANJABARI, GHY-
37, DIST- KAMRUPM, ASSAM

VERSUS

THE STATE OF ASSAM AND ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HEALTH and FAMILY WELFARE DEPARTMENT, DISPUR, GHY-6

2:THE DIRECTOR OF MEDICAL EDUCATION ASSAM
KHANAPARA
GHY-37

3:THE REGISTER
SRIMANTA SANKARDEVA UNIVERSITY OF HEALTH SCIENCES
ASSAM
NARAKASUR HILL TOP
GHY-32

4:THE PRINCIPAL CUM CHIEF SUPERINTENDENT
GUWAHATI MEDICAL COLLEGE
BHANGAGARH
GHY-5

5:THE CHAIRMAN
SELECTION BOARD
WARD BOYS AND GIRLS
GUWAHATI MEDICAL COLLEGE and HOSPITAL
BHANGAGARH



GHY-

Advocate for the Petitioner : MR.Z HUSSAIN

Advocate for the Respondent : MR.D P BORAH

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

12.09.2023.

Judgment & Order

Heard Shri Z Hussain, learned counsel for the petitioner. Also heard Ms. D Borah, learned Standing Counsel, Health and Family Welfare Department, Assam.

2. The issue involved is with regard to a recruitment process initiated vide an advertisement dated 21.10.2011 for the post of Wardboy in the Gauhati Medical College and Hospital. The said process was initiated for a total 15 posts, out of which, 7 posts were for unreserved category to which the petitioner belongs.

3. It is the case of the petitioner that being qualified, he had submitted his candidature in response to the said advertisement and on 23.05.2012, Call Letter was issued to him for the written test which was scheduled on 10.06.2012. The petitioner had appeared in the said written test with Roll No. 202735.

4. Shri Hussain, learned counsel for the petitioner has referred to the results of the written test which was published in the Dainik Janasadharan in its issue

dated 18.07.2012 wherein he was stated to be qualified. It is contended on behalf of the petitioner that he had also fared well in the subsequent oral interview, in spite of which, he was not amongst the selected candidates. The learned counsel has drawn the attention of this Court to the averments made in paragraphs 5 and 6 of the writ petition. While in paragraph 5, it has been stated that there has been illegal, arbitrary and *mala fide* action of the authorities in not selecting the petitioner, in paragraph 6, the petitioner has cited 7 roll numbers and has made an allegation that those candidates did not even appear in the oral interview but were, however, selected.

5. Shri Hussain, the learned counsel, accordingly submits that the selection be set aside and a direction be issued for consideration and appointment of the petitioner.

6. Ms. Borah, learned Standing Counsel, however, submits that there is no foundation of the challenge made in petition and in the petition, vague allegations have been made. She submits that the recruitment process consisted of two components, namely, written and oral and only on being finally qualified and selected, appointments were offered. In the instant case, while the petitioner could clear the written examination, he could not qualify in the oral examination and therefore, was not amongst the selected candidates. By drawing the attention of this Court to the affidavit-in-opposition filed on 27.11.2017, the learned Standing Counsel has referred to the averments made in paragraph 7 thereof which is in reply to paragraph 5 of the writ petition and the allegations have been categorically denied. Reference has also been made to the averments in paragraph 8 of the said affidavit-in-opposition whereby, the

allegation that 7 numbers of persons did not appear in the oral examination has not only been denied but the details of those candidates have also been given.

7. The rival contentions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

8. The challenge, as mentioned above, is with regard a recruitment process in which, admittedly, there were two components, namely, written and oral. Mere qualification in the written examination would not be sufficient and one has to be selected even in the oral interview which would make a candidate eligible for appointment based on the merit and the vacancy position. In the instant case, though the petitioner was successful in the written examination, he could not qualify in the oral examination. The allegations of illegality and arbitrariness made in paragraph 5 of the writ petition are not substantiated by any materials on record. In any case, such allegations have been categorically denied in the affidavit-in-opposition.

9. Though the petitioner had tried to make out a case by citing 7 roll numbers with the allegation that those persons did not appear in the oral interview, such allegation has been categorically denied in the affidavit-in-opposition. It is a settled position of law that an unsuccessful candidate who has submitted to the jurisdiction of the recruitment process cannot be allowed to turn around and challenge the selection only because of the fact that such candidate had come out unsuccessful.

10. In this case one may gainfully refer to the cases of ***Om Prakash Shukla v. Akhilesh Kumar Shukla***, reported in **1986 Supp SCC 285** wherein it has been stated as follows:

“In the case of, the Hon’ble Supreme Court held that when a party appears in an examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, such party is not entitled to any relief.”

11. Following the aforesaid case, in the later case of ***Madan Lal v. State of J&K***, reported in **(1995) 3 SCC 486**, it has been laid down as follow:

“9. ...It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. ...”

12. Though the aforesaid law may have some exceptions, in the instant case, no case at all has been made out for a writ court to embark upon such a dispute which is also factual in nature. In any case, the allegations of the writ petition have been categorically denied in the affidavit-in-opposition and therefore, it may not be possible for the writ court to enter into such disputed questions of fact.



13. In view of the aforesaid facts and circumstances, this Court is of the opinion that no case for interference is made out and accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant