



GAHC010110142016

Page No.# 1/10



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

Case No. : WP(C)/2373/2016

ANIMESH MISHRA
S/O- LT. AJIT MISHRA, R/O- MISTRY PATTY, P.S. and P.O.- LUMDING, DIST.-
NAGAON, ASSAM, PIN- 782447.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
EDUCATION DEPTT., GHY- 6, ASSAM.

B E F O R E

Hon'ble MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner : Shri B. Sinha, Advocate
Advocates for respondents : Shri U. Sharma, SC,
Secondary Education Department;
Shri P. Saikia, Advocate for respondent no. 9
Shri D.K. Sarmah,
Advocate for respondent nos. 4 & 6.

Date of hearing : 19.06.2023

Date of judgment : 19.06.2023

- 1.** At the outset, Shri DK Sarmah, learned counsel for the private respondent nos. 4 and 6 has raised a preliminary objection on the maintainability of the writ petition on the ground that selections pertaining to two Schools have been challenged in one writ petition in which, necessary parties have also not been arrayed.
- 2.** In reply thereto, Shri B Sinha, learned counsel for the petitioner submits that he would not like to proceed with the challenge made to the selection in respect of B.L.B.S.D.V.M. Hindi High School, Lumding and therefore, he prays that the respondent nos. 4, 6 and 7 be struck off from the array of the parties.
- 3.** Accordingly and on such prayer, the respondent nos. 4, 6 and 7 are struck off from the array of respondents in this writ petition.
- 4.** The petitioner has challenged the selection process for the post of LDA initiated vide advertisement dated 12.12.2015 in two schools namely B.L.B.S.D.V.M Hindi High School and B.M.B. High School, Lumding, Nagaon. However, in view of the submissions made which are recorded above that the present challenge would be restricted only to the selection in B.M.B. High School, Lumding, the discussions in this judgment would pertain to the aforesaid selection only.
- 5.** The facts, as projected in the writ petition is that on 12.12.2015, an advertisement was published in the 'Asomiya Pratidin' a vernacular daily for filling up of one post (Unreserved) of LDA in the B.M.B. High School, Lumding

(herein after School). Though the date was initially fixed on 20.12.2015, it was postponed to 21.01.2016 on which date the written test was held. Thereafter, on 30.01.2016, the Typing Test and *viva-voce* were held at the Nagaon Bengali Girls High School. It is the case of the petitioner that both he and the respondent no. 9, along with other candidates had participated.

6. The ground of challenge regarding the selection process in which the respondent no. 9 was selected and appointed is mainly on the basis of bias. According to the petitioner, the respondent no. 9 is related to the Headmistress of the School. The petitioner alleges that though the Headmistress had recused herself from the selection process and was on leave and the entire selection was done under the supervision of the Senior most Assistant Teacher who was given the charge of the Headmaster for those days, there has been interference and participation of the Headmistress in the selection process. The petitioner, therefore, alleges that the selection was not held in a fair manner in which the petitioner was deprived from being selected and appointed.

7. I have heard Shri B. Sinha, learned counsel for the petitioner. I have also heard Shri U. Sharma, learned Standing Counsel, Secondary Education Department and Shri P. Saikia, learned counsel for the respondent no. 9 - the selected candidate. None has appeared for the School Authorities. However, the School Authorities had filed an affidavit-in-opposition on 14.02.2019. The materials placed before this Court have been carefully examined.

8. To substantiate the case of the petitioner, Shri Sinha, the learned counsel for the petitioner has drawn the attention of this Court to the affidavit-in-

opposition dated 14.02.2019 filed by the respondent nos. 5 & 8. He submits that the said affidavit would reveal that one Shri Dhani Ram Das who was the Senior most Assistant Teacher was In-charge of the School as the Headmistress had taken leave on the ground that one of the candidates (respondent no. 9) was her relative. However, the document annexed to the said affidavit-in-opposition would reveal that the Headmistress still had a role in the selection process.

9. Attention of this Court has been drawn to Annexure-D of the said affidavit-in-opposition which is a Notice of candidates who had appeared for the *viva-voce* and Computer Test and the said Notice contains the signature of the Headmistress. The learned counsel has also referred to the Tabulation Sheet of the various candidates who had appeared in the written examination on which the signatures of one Tapan Kr. Dey (Supervisor) and Dilip Kumar Gupta who was the President of the SMDC of the School appear.

10. It is submitted that while the petitioner has secured 41 marks in the written examination, the respondent no. 9 had got the highest with 63 marks. Attention of this Court has also been drawn to Annexure-E of the said affidavit-in-opposition which is also a Notice regarding the date of the *viva-voce* and Computer Test and the same was also signed by the Headmistress. In the final outcome of the selection, while the petitioner has scored a total of 55 marks, the respondent no. 9 had secured 94 marks. The consequent appointment of the respondent no. 9 dated 19.02.2016 has been annexed to the said affidavit-in-opposition as Annexure-G. At this stage, this Court has noticed that there is no challenge to the appointment of the respondent no. 9 done vide order dated 19.02.2016 and the challenge was only pertaining to the selection process

initiated on 12.12.2015.

11. Shri Sinha, the learned counsel for the petitioner has submitted that the aforesaid two documents and the accompanying facts and circumstances would lead to a reasonable conclusion that the selection was not fairly conducted as in spite of the fact that the Headmistress had abstained from the said selection process on paper, her involvement was very much there. The learned counsel accordingly submits that the selection process be interfered with and a new selection be directed to be conducted.

12. On the other hand, Shri U. Sharma, learned Standing Counsel, Secondary Education Department has submitted that in the final selection list, the petitioner was ranked 4th whereas the respondent no. 9 is ranked 1st and therefore, there is no ground of challenge. As regards the ground of bias, he submits that the recusal of the Headmistress was done only to prevent such a situation and the selection was conducted fairly by Experts which is not liable to be interfered with.

13. Endorsing the submissions of the learned Standing Counsel of the Department, Shri P. Saikia, learned counsel for the respondent no. 9, who is the selected candidate and was subsequently appointed submits that since the appointment order dated 19.02.2016 is not under challenge and neither any subsequent amendment was done to the writ petition, the petition in the present form is not maintainable. He submits that the difference of marks is huge and such difference is not there in the *viva-voce* wherein the element of discretion may be there. He submits that the huge difference of marks is seen in

the Written Test as well as the Computer Ability Test which were conducted by Experts.

14. By referring to the affidavit-in-opposition filed by the School Authorities, Shri Saikia, the learned counsel for the respondent no. 9 submits that all due care and attention were taken to ensure that the selection was done in a fair and transparent manner. The said affidavit-in-opposition reveals that the advertisement pertains to different schools wherein question papers were submitted by the School Authorities to the Inspector of Schools, Nagaon District who had randomly allotted such question papers just before the written examination in a sealed cover. It has further been disclosed that the answer scripts were kept in a safe custody in the concerned Police Station and were evaluated by Experts and a ratio of 1:10 was maintained for short listing candidates who are eligible for the Computer Test and *viva-voce*. He submits that the respondent no. 9 was selected purely on merits and the allegation of bias is only an afterthought.

15. In support of his submission, Shri Saikia, the learned counsel had relied upon the case of ***K.A. Nagamani vs. Indian Airlines and Ors. reported in (2009) 5 SCC 515.***

16. The Hon'ble Supreme Court in the said case after relying on the earlier case of ***Madanlal vs. State of J&K*** reported in ***(1995) 3 SSC 486*** had made the following observations.

“54. The Corporation did not violate the right to equality guaranteed

under Articles 14 and 16 of the Constitution. The appellant having participated in the selection process along with the contesting respondents without any demur or protest cannot be allowed to turn round and question the very same process having failed to qualify for the promotion.

55. In Madan Lal vs. State of J&K this Court observed: (SCC p.493, paras 9-10)

‘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...

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful.’ ”

17. Reliance has also been made on the case of ***Utkal University vs. Dr. Nrusingha Charan Sarangi and Ors.*** reported in ***(1999) 2 SCC 193*** which dealt with the allegation of bias in a selection process.

18. The Hon’ble Supreme Court has also laid down that when Experts are appointed in a selection process, such selection should not be lightly set aside unless there are adequate materials which would indicate a strong likelihood of bias.

19. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully perused.

20. Though from the materials placed before this Court, it appears that the appointment of the respondent no. 9 dated 19.02.2016 has not been specifically challenged, this Court is of the view that when the selection itself is the subject matter of challenge, the same may not be an absolute embargo in examining the merits of the challenge.

21. The challenge to the selection is mainly on the ground of bias as has been indicated above. Such allegations have been tried to be substantiated by submitting that though there had been a recusal by the Headmistress from the selection process, materials on record would show that the said Headmistress was involved with the selection process. The allegation, as indicated above is that the Headmistress is a relative of the Respondent No. 9.

22. The said submission has to be tested with the materials which have been placed on record.

23. The first document is a Notice being Notice No. 4 dated 23.01.2016 (Annexure-D) giving the names of 10 candidates who had qualified themselves for the *viva-voce* and Computer Test and the second is another Notice being Notice No. 5 dated 26.01.2016 giving the schedule for such *viva-voce* and Computer Test. Though the said two Notices appear to have been issued by the Headmistress, such issuance of Notice, in the opinion of this Court would not get this Court to come to a *prima facie* finding that there was involvement of the Headmistress in the selection process *per se*. Involvement in a selection has to be an application of mind in selecting the candidates and not in the process

which involves only a mechanical exercise of publication of Notices. That apart, this Court has noticed that the difference of marks is noted only in the written examination and Computer Test and there is hardly any difference in the *viva-voce*. When the written examination and Computer Test were conducted and evaluated by Experts, this Court would be loath in interfering with such markings which are the opinions expressed by Experts in the subject. Further, this Court is of the view that such markings / evaluation are not on subjective basis where the question of discretion is involved and are on objective standards. The only scope of the element of bias to creep in is at the stage of *viva-voce* in which it is seen that there is hardly any difference of marks.

24. There is another aspect which this Court has noticed. In the final selection, the petitioner is ranked 4th whereas the respondent no. 9, who is the selected candidate is ranked 1st and there are two other candidates above the petitioner. The petitioner has not made any grievance against the marks obtained by the other two candidates and even assuming that a case of bias would have been made out, no relief whatsoever would have been entitled to by the petitioner.

25. This Court has also noticed that while the written test was held on 21.01.2016 followed by the *viva-voce* on 30.01.2016, the representation to the Deputy Commissioner was made on 05.02.2016. Apart from the fact that there is no reply to the detailed explanation regarding the procedure adopted in holding the selection process including the written examination, this Court is of the view that if there were any merits or actual apprehension on the part of the petitioner, he should have at least submitted necessary complaints before appearing in the *viva-voce* and Computer Test held on 30.01.2016 which had



not been done.

26. This Court is also guided by the principles laid down by the Hon'ble Supreme Court in the cases cited by Shri Saikia, the learned counsel for the respondent no. 9 that generally an unsuccessful candidate who had fully participated in the selection is not allowed to make a u-turn and challenge the same only because of the fact that he was unsuccessful in the said selection. The Hon'ble Supreme Court has laid down that when a calculated risk was taken in spite of any allegation, challenge by such candidates are not liable to be entertained.

27. This Court is also of the view that an allegation of bias is only a matter of perception which are required to be substantiated by certain situations and / or materials which are lacking in this case. Unless there are such materials to substantiate, each and every selection can be challenged by making stray / vague allegations or bias which cannot be a ground for interfering with any such selection process.

28. Under those facts and circumstances, this Court is of the opinion that no case for interference is made out and accordingly, the writ petition stands dismissed.

JUDGE

Comparing Assistant