



GAHC010142412017

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

Case No. : WP(C)/5903/2017

DR. AMIT SWARNAKAR
S/O- SRI MANINDRA SWARNAKAR, LIG-4, HENGRABARI HOUSING
COMPLEX, GANESHGURI, DISPUR, GUWAHATI-06, ASSAM

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO TE GOVT OF ASSAM,
HEALTH AND FAMILY WELFARE B DEPTT., DISPUR, GHY- 06, ASSAM

2:THE ASSAM PUBLIC SERVICE COMMISSION
REP. BY THE SECRETARY
JAWAHARNAGAR
KHANAPARA
GHY- 22
ASSAM

3:UPEN KALITA
S/O- LATE RATNA RAM KALITA
H/O- DR. HIRAMONI DEKA
ASSTT. PROF
GMC
APFC-2
NEAR TV TOWER
INDRAPUR
GHY
ASSAM
PIN- 781032

4:NEELAKSHI DEVCHOUDHURY
LACHITNAGAR
BYE LANE-7



H NO.3
GHY- 07
ASSA

Advocate for the Petitioner : MS.R VERMA

Advocate for the Respondent : SC, APSC

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 07-03-2024

1. Heard Mr. K Paul learned counsel for the petitioner. Also heard Ms. D Borah, learned standing counsel Health and Family Welfare Department appearing for respondent No.1, Mr. PP Dutta learned standing counsel, Assam Public Service Commission appearing for respondent No.2, Ms. P Das learned counsel appearing for respondent No.3 and Mr. S S Goswami learned counsel appearing for respondent No.4.

2. The present application is filed with a grievance that while making selection to the post of lecturer in the department of Kriya Sharir and in the Department of Samhita, Sanskrit and Siddhanta of Govt. Ayurvedic College, Guwahati the petitioner has been wrongly deprived of marks for which he is otherwise entitled and in the process the respondent No.3 has been selected and appointed as lecturer in the department of Kriya Sharir and the respondent No.4 has been selected and appointed as lecturer in the department of Samhita, Sanskrit and Siddhanta.

3. At the very outset Mr. Paul learned counsel for the petitioner submits that his client is not interested to pursue the challenge made to the selection of respondent No.4 who is being represented by Mr. S S Goswami learned counsel. In that view of the matter, this court will not deal with the selection to the post of lecturer in Samhita, Sanskrit and Siddhanta in the Govt. Ayurvedic College.

4. Mr. Paul learned counsel for the petitioner argues the following:

I. Additional marks have been granted to the respondent No.3 against experience and educational qualification, which the respondent No.3 is otherwise not entitled and for which the petitioner is deprived from the selection and therefore, the selection process is vitiated.

II. Even if it is assumed that the selection committee has rightly granted marks, however, the selection committee by the APSC was not even constituted in terms of the extant norms and rules. Selection procedure prescribed under University Grants Commission Act, 1956 (in short, 1956 Act) and UGC Regulations on Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for Maintenance of Standards in Higher Education, 2010 (in short 'Regulation 2010') ought to have been adhered to. Such regulation prescribes a selection committee consisting of three subject experts for selection of Assistant Professor in Government

Colleges. However, in the case in hand, such a rule has not been followed by the APSC. The mandate of Regulation 2010 for selection cannot be avoided citing the prescription of procedure mandated in APSC Rule' 2010. A harmonious reading is required to be done between the mandate of the aforesaid Rules. In support of such contention Mr. Paul relies on the decision of this court in ***Banashree Bharaddash Vs. State of Assam & Ors*** reported in ***2015 (3) GLT 211***.

5. Per contra, learned counsel for the respondent No.3 submits the following:

I. This court in exercise of its power of judicial review should not interfere with the selection process inasmuch as the selection has been conducted by the Assam Public Service Commission which is an authority created by the Constitution of India for an impartial selection process.

II. No interference in the selection process can be made or any presumption can be drawn that there was any malafide exercise of power. It is further contended that the petitioner has duly participated in the selection process and he has become wise after becoming unsuccessful. Therefore, this court in exercise of power of judicial review may not like to interfere with the selection made by the selection committee. In support of such contention the learned Counsel relies on the decision of Apex Court in ***Trivedi Himanshu Ghanshyambhai Vs. Ahmedabad Municipal Corporation and Others*** reported

in **(2007) 8 SCC 644**.

6. Mr. PP Dutta learned standing counsel APSC argues:

I. On the request of the employer, the APSC has conducted the selection in terms of the extent norms also after due adherence of the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010.

II. While referring to the record he submits that the marks were given against experience and additional qualification etc and all the persons were equally treated. Therefore, the APSC cannot be faulted with the selection process.

7. I have given my anxious considerations to the arguments advanced by the learned counsel for the parties. Perused the materials produced by Mr. PP Dutta learned Standing counsel, APSC and Ms. D Borah learned standing counsel, Health and Family Welfare Department.

8. Dealing first with the issue of non adherence of 1956 Act and Regulation 2010 framed thereunder. It is seen that the Regulation 2010 was framed under section 26 of the 1956 Act with an object to ascertain the quality education in the colleges including minimum qualification of teachers of the institution which are under recognition and control of University Grants Commission.

9. The said regulation deals in detail with the selection and appointment of different categories of teacher and staffs including

their qualification, however, such regulation does not find any place as regards appointment of teachers in Medical and Ayurvedic Colleges and in the considered opinion of this court, the reason is obvious.

10. The legislature in its wisdom had enacted Indian Medicine Central Council Act, 1970 (in short 'Act'1970) with an object to provide for constitution of a Central Council for Indian Medicine and for maintenance of central register of Indian medicine and the matters connected therewith. Section 36 of the said Act'1970 empowers the Central Council to make regulations which includes course and period of such study, the standards of staff, equipment, professional examination and qualifications of examinations, the standard of professional conduct etc. in exercise of such power, the Council had formulated a Regulation namely, Indian Medicine Central Council (Minimum Standards of Education) in Indian Medicine Regulation, 1989. Such Regulation was amended in the year 2012 by a notification dtd. 25.04.2012. The said regulation prescribes the educational qualification for appointment of teaching staff for undergraduate teachers. Such regulation is silent as regards the prescription of procedure of the selection process.

11. Under the UGC Act, 1956 and Regulation 2010 the UGC is having control over higher educational institution and the Central Council constituted under the Act1970 is having control over the colleges imparting education of Indian Medicine. Therefore, the UGC Act 156 and the Regulation framed thereunder shall not be made applicable in the selection process of a lecturer in Ayurvedic College,

which is imparting education of Indian Medicine.

12. That being the position and looking at the clear object of the Act and Regulations framed therein, this court is having no doubt that to maintain the standard of education a specific regulation has been framed by the Central Council of Indian Medicine which is the creature of a statute i.e., Indian Medicine Central Council Act, 1978. Thus, so far relating to education as regards Indian medicine and its education shall be controlled by the aforesaid 1970 Act and its regulation hereunder and the regulation framed under UGC Act shall have no application in this case so far the same relates to maintenance of standard of education in Indian medicine.

13. The decision of Banashree (supra) was rendered in factual backdrop relating to selection of Assistant Professor in a college under the control of UGC. The ratio of harmonious construction to be made between UGC Regulation and APSC Rule 2010 laid down in Banashree (supra), in the context of the present case, shall be a harmonious construction between the Rule 1989 and the APSC Rule, 2010._

14. Accordingly, this Court is of the view that in absence of any prescription for the selection procedure mandated in the Regulation'2012, the APSC shall be within its jurisdiction to proceed with the selection process in terms of the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010. Therefore, this court cannot find any fault with the APSC in not having three subject experts in the selection process.

15. Coming to the second part of the argument i.e., award of mark etc, this court has perused the record produced by the learned counsel. After perusal of the same, this Court is unable to hold that the selection committee either had granted more marks to the respondent No.4 or that the petitioner had been deprived of any mark due to him, nor any such irregularity has been brought to the notice of record this Court in as much as this Court had allowed the learned Counsel for the petitioner to go through the selection record. In absence of any grave irregularities or arbitrary action on the part of the selection Committee, this Court cannot quash the entire selection process in exercise of its power of judicial review. Furthermore, as held herein above, the process of selection was governed by the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 and the record reveals that selection was conducted, in terms of such Rules'2010, including constitution of the Selection Committee.

16. In view of the aforesaid, this court finds no merit in this writ petition and accordingly the same stands dismissed. Parties to bear their own cost.

JUDGE

Comparing Assistant