



GAHC010051162017

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

**Case No. : WP(C)/7148/2017**

TRISHNA NGATE  
D/O. SRI DEBON NGATE, VILL. BATUAMUKH, P.O. MATIKHULA, P.S.  
DHEMAJI, DIST. DHEMAJI, ASSAM.

VERSUS

THE STATE OF ASSAM and 3 ORS  
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, HOME  
DEPTT., DISPUR, GHY.-06.

2:THE DIRECTOR GENERAL OF POLICE

ASSAM  
ULUBARI  
GHY.07.

3:THE ADDL. DIRECTOR OF POLICE DAP

ASSAM and CHAIRMAN  
STATE LEVEL POLICE RECRUITMENT BOARD  
ULUBARI  
GHY.-07.

4:MS. MONISHA PEGU

D/O. SRI SUNIL PEGU  
VILL. LIAPULIA  
P.O. JAMUGURI  
PANCHALI  
P.S. DHEMAJI  
DIST. DHEMAJI  
ASSAM



PIN-787057

**Advocate for the Petitioner : MR. C HANSE**

**Advocate for the Respondent : GA, ASSAM**

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

**JUDGMENT & ORDER (ORAL)**

**Date of hearing & Judgment : 10.11.2021**

Heard Shri M. Sarania, learned counsel for the petitioner. Also heard Shri S.S. Roy, learned State Counsel representing the respondent Nos. 1 to 3 and the respondent No. 4 is represented by Shri N. Anand, learned counsel.

2. Considering the subject matter of dispute and the fact that the matter is pending since the year of 2017, the same is taken up for disposal at the admission stage.

3. Before going into the issue which calls for determination, it would be convenient if the facts of the case are narrated in brief.

4. The issue pertains to the selection and appointment of Constable which was initiated vide an advertisement dated 10.12.2015. By the said advertisement, 2564 numbers of posts were to be filled up. It is the case of the petitioner that 40 marks were allotted for Physical Efficiency Test, 50 marks were allotted for written test and extra-curricular activities and 10 marks for special skills. The marks secured by the petitioner was declared to be 56.24 whereas the marks secured by the respondent No. 4 was declared to be 57.10. The respondent No. 4 was empanelled in the final merit list in the ST(P) women category and the petitioner was just before her which was published in the Assam Tribune.

5. The case projected by the petitioner is that marks have been allotted to the respondent No. 4 under the Head of extra-curricular activities and special skills, which have been given erroneously and if such marks are deducted, the petitioner would be in the final select list and therefore be eligible to be appointed. Shri Sarania, the learned counsel for the

petitioner has drawn the attention of this Court to the advertisement which has been annexed as Annexure 1 to the writ petition. He submits that the application by the aspiring candidates was to be filled up through on-line. By drawing the attention of this Court to the extra-curricular activities, the learned counsel for the petitioner submits that total three marks were allotted to the category of Sports, out of which two marks would be given for national level Sports person who represents the State in any discipline recognized by the Indian Olympic Association and one mark for state level Sports persons, who has represented the District in State Level Competition and have won medals. Under clause E which deals with Proficiency in Computer under which 5 (five) marks have been allotted. In the break-up, a candidates having MCA would be given 5 (five) marks, for BCA 4 (four) marks and for 2 (two) years Diploma from any Govt. / UGC recognized / accredited Universities / Institutions 3 (three) marks, one year diploma from any Govt. / UGC recognized / accredited Universities / Institutions 2 (two) marks and have minimum six months course in Computer from any Govt. / UGC recognized / accredited Universities / Institutions 1 (one) mark.

6. The contention of the learned counsel for the petitioner, as recorded above is that the marks have been given to the respondent No. 4 under the aforesaid Heads which otherwise is not entitled to by her. To substantiate the allegation, the learned counsel for the petitioner has relied upon the affidavit-in-opposition of the respondent No. 3, who is the Chairman of the State Level Police Recruitment Board with which the Certificates of both the petitioner as well as the respondent No. 4 have been annexed. By referring to the Annexure E of the said affidavit-in-opposition filed on 26.02.2019, Shri Sarania, the learned counsel for the petitioner submits that the said annexure is a Diploma of the respondent No. 4 regarding two years in Computer Diploma Examination and admittedly, the said certificate was issued on 14.12.2016.

7. Apart from seriously contending the authenticity of the Institute namely, Rural Development Mission (RDM), Shri Sarania submits that even assuming that the certificate is an authentic one, the same qualification is obtained after the last date of submission of forms as per the advertisement dated 30.12.2015. Similar allegation is also made with regard to the Sports Certificate which has been annexed as Annexure F to the said affidavit-in-opposition which is of an event held from 18 December to 21 December, 2016, which is much after the last date of submission of forms, as per the advertisement. The Sport Certificate is with

regard to the securing of 3<sup>rd</sup> position in long jump for which marks have been granted to the respondent No. 4. The learned counsel for the petitioner submits that the marks for Proficiency in Computer granted to the respondent No. 4 is 3 (three) whereas that for Sport activities is 1 (one) and therefore it is contended that 4 (four) marks have been additionally granted to the respondent No. 4 which she is not entitled to at all.

8. The learned counsel accordingly submits that on a proper assessment of the *inter se* merits between the petitioner and the respondent No. 4, the position would change wherein initially the difference in marks was only at 0.86 marks between two candidates. In support of his submission, the learned counsel for the petitioner has relied upon the following decisions-

- i. ***Charles K. Skaria & Ors. Vs. Dr. C. Mathew & ors*** reported in **(1980) 2 SCC 752.**
- ii. ***Rakesh Bakshi & Ors. Vs. State of Jammu & Kashmir & Ors.*** reported in **(2019) 3 SCC 511.**

9. The petitioner accordingly submits that the selection and appointment of the respondent No. 4 be interfered with and in her place the petitioner be directed to be appointed, as the petitioner is just before the respondent No. 4 in the select list.

10. Shri S.S. Roy, the learned State Counsel has submitted that the entire records which were submitted by both the petitioner and the respondent No. 4 have been annexed to the affidavit-in-opposition filed on 26.02.2019. He submits that the marks allotted to the respondent No. 4 was done on the basis of the certificate presented by her at the time of PST / PET.

11. Refuting the allegations made by the petitioner, Shri N. Anand, the learned counsel for the respondent No. 4 submits that the issue of authenticity of the certificate was never specifically raised in the writ petition and it is only in the reply-affidavit to the affidavit-in-opposition of the respondent No. 3 that the said plea have been taken and therefore the said allegation should not be taken into consideration without giving him an opportunity. On merits, the learned counsel for the respondent No. 4 has submitted that the advertisement itself contemplates that the essential qualification is to have passed the Higher Secondary



Examination and no documents were required to be submitted with the application form. All the said documents were however required to be submitted at the time of appearing in the PST / PET and the advertisement itself specifies that no documents would be accepted after the said PST / PET. The learned counsel submits that there is no restriction / bar in acquiring and further qualification as per advertisement during the period from submission of the application form and the last date stipulated for submitted the documents.

12. Under such facts and circumstances, the learned counsel for the respondent No. 4 submits that no wrong has been committed by allotting the marks to the respondent No. 4 on account of Sports as well as Proficiency in Computer. The learned counsel further submits that there is no dispute regarding achievement of the respondent No. 4 in the aforesaid fields of Sports and Proficiency in Computer and the vague allegation made by the petitioner raising issue of authenticity of the Computer Certificate by an institute, which is not recognized, shall not be taken into consideration in view of the absence of specific pleadings in the writ petition. The learned counsel has also tried to distinguish the case laws relied upon by the learned counsel for the petitioner by stating that it is essential qualification of passing the Higher Secondary which has to be there before submitting the application pursuant to the advertisement and the other qualifications could be acquired in a time between submission of application form and the date stipulated for submission of the supporting documents which is prior to the PST / PET examination.

13. The rival contentions of the learned counsel for the parties have been duly considered. The challenge raised in the writ petition is with regard to the marks allotted to the respondent No. 4 under the heading of Sports and Proficiency in Computer. Though the said certificate ought to have been produced by the respondent No. 4 in view of the allegation made, the respondent No 4 has chosen not to produce the said certificate. At this time, when the said certificate has been put on record by the respondent No. 3, who is the Chairman of the State Level Police Recruitment Board, Assam, this Court has left with no other option but to refer and rely upon the said certificate. Moreover, the certificate annexed to the affidavit-in-opposition dated 26.02.2019 has not been disputed by any of the parties.

14. Let us first have a look at the certificate of the respondent No. 4 relating to Proficiency

in Computer. The said certificate is issued by one Rural Development Mission (RDM) which has claimed itself to be Government of "Indian" Constituted the document certifies that the two years of Diploma in Computer is conferred upon the respondent No. 4 based upon the examination held in the Dhemaji Centre of the Institute in the month of November, 2016 and is signed by one Shri Surajit Pegu, who claims to be the Chairman cum Mission Director of the Organization. The requirement under the advertisement is that such certificate is to be issued by from any Govt. / UGC recognized / accredited Universities / Institutions. The said certificate does not *prima facie* appear to be one which meets the requirement of the advertisement. However, without even going into that aspect of the matter, in view of the specific plea taken at the time of arguments that proper opportunity was not given on this aspect, what emerges from the certificate is that the same was issued on 14.12.2016 based upon an examination held in November, 2016. Similarly, the Sports Certificate issued by the Assam Athletics Association is for an event of Long Jump held in December, 2016.

15. Going back to the advertisement, the last date of submission of application was stipulated to be 30.12.2015. It is a settled law that all the eligibility criteria has to be met by an aspiring candidates on the date of the application or at least on the last date of submission of the advertisement which in the present case is 30.12.2015. Therefore, even without going into the aspect of the veracity / authenticity of the issuing authority of the Diploma Certificate as well as Sport Certificate, the same admittedly being issued in December, 2016 which is almost after a year of the last date of submission of application form, the same could not have been taken into consideration. Consequently, this Court is of the opinion that the marks allotted to the respondent No. 4 under the aforesaid two heads of Sports and Proficiency in Computer are erroneously allotted which ought not to have been done.

16. In the case of **Charles K. Skaria (Supra)**, the Hon'ble Supreme Court has laid down that a degree or diploma holder of a University who have completed the course and whose results have been published after the last date for publication is ineligible for admission. In the case of **Rakesh Bakshi & Ors.(Supra)**, it has been laid down that eligibility of the candidates decided with reference to the qualification possessed as on the cut-off date and the qualification acquired later in point of time cannot make a candidate eligible.

17. At this stage, it would be beneficial to refer a decision of the Hon'ble Supreme Court in the case reported in **(1997) 4 SCC 18 [Ashok Kumar Sharma Vs. Chander Shekhar]** the relevant part of the Judgment is extracted hereinbelow-

*“6. .... The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one.....”*

18. The aforesaid case of **Ashok Kumar (Supra)** has been referred to in a number of subsequent decisions including the case of **Rakesh Bakshi (Supra)** which is relied upon by the petitioner. In paragraph 13 of the said case, the following has been laid down-

*“13. .... We are not for a moment doubting the correctness of the reasoning of the Division Bench in this case, that eligibility of the candidates must be decided with reference to the qualification possessed as on the cut-off date and the qualification acquired later in point of time cannot make a candidate eligible. However, having regard to the facts obtaining in this case, which we have set out and also the manner in which this Court has decided the matter culminating in Ashok Kumar Sharma v. Chander Shekhar the interests of justice would require the interference with the judgment of the Division Bench. ....”*

19. In view of the aforesaid facts and circumstances, the marks obtained by the respondent No. 4 which was 57.10 has to be reduced by 4(four) marks which will come to 53.10. Resultantly, the petitioner, who was the next candidate in the particular category of ST(P) woman, would be the last selected candidate. The writ petition stands allowed by interfering with the selection process of the respondent No. 4 by directing that based on the marks obtained by the respondent No. 4 as well as the petitioner and on *inter se* comparison of the marks as indicated above, the petitioner be offered the appointment to the post of Constable. Though, the selection and appointment of the respondent No. 4 has been set aside, considering the fact that the said respondent No. 4 has in the meantime, rendered



service of around four years, if vacancy is available, without disturbing the respondent No. 4, the petitioner may be accommodated.

20. At this stage, Shri Sarania, the learned counsel for the petitioner submits that in this proceeding, vide an order dated 22.11.2017 one post of Constable in the DEF, Dhemaji was directed not to be filled up. If the vacancy is still existing, the petitioner can be accommodated without disturbing the respondent No. 4.

21. The aforesaid direction, as indicated above be completed within a period of one month from the date of receipt of a certified copy of this order.

**JUDGE**

**Comparing Assistant**