



GAHC010136012018

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

Case No. : WP(C)/4271/2018

RIAZUL HAQUE AND 3 ORS.

S/O- USMAN ALI, R/O- H NO. 742, NORTH JALUKBARI, GUWAHATI- 14

2: RASNA SHARMA
D/O- JOGEN SARMA
R/O- HENGRABARI
GHY- 781036
KAMRUP(M)
ASSAM

3: SASANKA SAIKIA
S/O- LATE KAMAKHYA PRASAD SAIKIA
VILL- KAILASHPUR
ASSAM FOREST SCHOOL
P.O- GU
GUWAHATI- 14
KAMRUP(M)
ASSAM

4: TRISHAN BARMAN
S/O- PROMOD BURMAN
VILL- KHANAMUKH
NEAR BUS STOP
P.O- DHARAPUR
GHY- 1

VERSUS

THE GAUHATI UNIVERSITY AND 2 ORS.
REP. BY ITS VICE CHANCELLOR, JALUKBARI, GUWAHATI- 14,
KAMRUP(M), ASSAM

2: THE REGISTRAR
PERSONNEL DEPTT (ESTT) BRANCH



GAUHATI UNIVERSITY
JALUKBARI
GUWAHATI- 14
KAMRUP(M)
ASSAM

3:THE FINANCE OFFICER
GAUHATI UNIVERSITY
JALLUKBARI
GUWAHATI- 14
KAMRUP(M)
ASSAM

Advocate for the Petitioner : MR. P UPADHYAY

Advocate for the Respondent : SC, G U

Linked Case : WP(C)/4762/2018

BIPUL KR. DAS AND 2 ORS.
S/O- MOHAN DAS
VILL- G U CAMPUS
P.O- G U
SATMILE COLONY
PIN- 781011
KAMRUP
ASSAM

2: DIPANJALI KALITA
D/O- ROMI KALITA
VILL- SADILAPUR
GHY- 12
P.O- PANDU
DIST- KAMRUP(M)
ASSAM

3: LUKU DEKA
S/O- BIMAL DEKA
VILL- SONAPUR
P.O- PANITIMA
P.S- KAMALPUR
DIST- KAMRUP(M)
ASSAM



PIN- 781101

VERSUS

THE GAUHATI UNIVERSITY AND 2 ORS
REP. BY ITS VICE CHANCELLOR
JALUKBARI
GHY- 14
KAMRUP(M)
ASSAM

2:THE REGISTRAR
PERSONNEL DEPTT (ESTT) BRANCH
GAUHATI UNIVERSITY
JALUKBARI
GUWAHATI- 14
KAMRUP(M)
ASSAM

3:THE FINANCE OFFICER
GAUHATI UNIVERSITY
JALUKBARI
GHY- 14
KAMRUP(M)
ASSAM

Advocate for : MR B KAUSHIK
Advocate for : SC
G U appearing for THE GAUHATI UNIVERSITY AND 2 ORS

Linked Case : WP(C)/4755/2018

KAMAL KR. DAS
S/O- LATE BOLI RAM HALOI
VILL- HARI BHANGA
P.O- HARIBHANGA
NALBARI
PIN- 781378

VERSUS

THE GAUHATI UNIVERSITY AND 2 ORS
REP. BY ITS VICE CHANCELLOR
JALUKBARI
GHY- 14



KAMRUP(M)
ASSAM

2:THE REGISTRAR
PERSONNEL DEPTT (ESSTT) BRANCH
GAUHATI UNIVERSITY
JALUKBARI
GHY- 14
KAMRUP(M)
ASSAM

3:THE FINANCE OFFICER
GAUHATI UNIVERSITY
JALUKBARI
GHY- 14
KAMRUP(M)
ASSAM

Advocate for : MR B KAUSHIK
Advocate for : SC
G U appearing for THE GAUHATI UNIVERSITY AND 2 ORS

Linked Case : WP(C)/4434/2018

KALYAN DEKA AND 2 ORS.
S/O. HANGSA RAM DEKA
H.NO. 48
BISHNU RABHA PATH
BHETAPARA
BELTOLA
GHY-28.

2: PARTHA PRATIM CHOUDHURY
H.NO. 7
NIZARAPUR PATH
CHANDMARI COLONY
GHY-3
S/O. DIPAK KUMAR CHOUDHURY.

3: ARUP KUMAR SAHA
S/O. LATE BRAJA NATH SAHA
VILL. SAHA NATUNPARA
TEZPUR
SONITPUR
ASSAM- 784001.



VERSUS

THE GAUHATI UNIVERSITY AND 2 ORS.
REP. BY ITS VICE-CHANCELLOR
JALUKBARI
GUWAHATI-14
KAMRUP(M)
ASSAM.

2:THE REGISTRAR
PERSONNEL DEPTT. (ESTABLISHMENT) BRANCH
GAUHATI UNIVERSITY
JALUKBARI
GUWAHATI-14
KAMRUP(M)
ASSAM.
3:THE FINANCE OFFICER

Advocate for : MR. P UPADHYAY
Advocate for : SC
G U appearing for THE GAUHATI UNIVERSITY AND 2 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 25.07.2023.

Date of judgment : 25.07.2023.

JUDGMENT & ORDER (Oral)

Heard Mr. B. Kaushik, learned counsel for the petitioners appearing in this batch of writ petitions. Also heard Mr. P. J. Phukan, learned Standing Counsel, Gauhati University appearing for the respondents.

2. These writ petitions are factually inter-related and therefore, are being taken up for disposal by this common order.



3. The facts of these cases, in a nutshell, are that on 17.04.2012 the Gauhati University had issued an advertisement notice No. NTS/5/2012 inviting applications for filling up a number of posts in various categories including one post of Junior Literary Assistant-cum- Proof Reader, 5 posts of Accounts Assistant, 10 posts of Lower Division Assistant and 6 posts of Computer Typist. The advertisement notice dated 17.04.2012 had clearly mentioned the scale of pay applicable in case of each post. In response to the advertisement notice dated 17.04.2012 the writ petitioners herein had submitted their candidature for the respective posts. After going through the selection process comprising of written test and interview, the petitioners were selected and accordingly, orders of appointments were also issued in their favour. However, contrary to the projections made in the advertisement notice, which had reflected that the recruitments would be made against vacant sanctioned posts, the petitioners were asked to give an undertaking accepting their initial appointment as contractual employees, which would be valid for a period of one year.

4. According to Mr. Kaushik, believing the assurance given by the University authorities to the effect that their services would be eventually regularized, the petitioners had given such undertakings accepting the contractual appointments. However, despite the lapse of more than nearly 7 years since their appointments, the petitioners are still continuing as contractual employees with annual renewal of their appointments thereby, causing serious prejudice to their rights and interest. Hence, these writ petitions.

5. By referring to the materials available on record, more particularly the Office

Order dated 01.11.2016, Mr. Kaushik has argued that a number of similarly situated employees who were also appointed pursuant to the selection process initiated vide advertisement notice dated 17.04.2012 have been permanently absorbed by the University authority. Notwithstanding the same, the cases of the petitioners have not been considered for permanent absorption till today. As such, the petitioners have been compelled to approach this Court by filing the instant writ petitions.

6. A joint affidavit, sworn by the Registrar, Gauhati University, has been filed on behalf of the respondent Nos.1, 2 and 3. The reason for not regularizing and/or permanently absorbing the services of the petitioners has been spelt out in paragraph 5 of the affidavit which has been reproduced herein below for ready reference :-

“5. That, with regard to the statements made in paragraph 6 of the Writ Petition, your Deponent states that, the posts mentioned in the advertisement were sanctioned posts. Before appearing in the interview, the Petitioners were requested to sign in an undertaking showing that they will be appointed on contractual basis initially for 1(one) year. In this regard, it is to be mentioned herein that, a notification vide No.LGI.133/2012/5 dated 30.05.2013 was received from the Government of Assam. By the above orders of the Governor, the University was compelled to maintain the teaching and non- teaching staff ratio. As per the Government notification dated 30.05.2013, a new section i.e. Section 44 was inserted in the Gauhati University Act, 1947 by amending the said Act of 1947 which is quoted herein below.

“The University shall establish and maintain the teaching and non-teaching staff ratio at 1 : 1.5 progressively. In order to establish this teaching and non-teaching staff ratio the University shall not appoint any non-teaching employee afresh against sanctioned vacant post and also

shall not initiate for re-employment of any retired persons upon their retirement without taking prior approval of the State Government."

A bare perusal of the above, it is apparently clear that, the Gauhati University established and maintained the teaching and non-teaching ratio of 1 : 1.5. In order to establish this teaching and non-teaching ratio, the University shall not appoint any non-teaching employee afresh against the sanctioned vacant post and also shall not initiate the re-employment of any retired persons upon their retirement without taking prior approval of the State Government. It is further stated that, as per Section 44(2) of the Gauhati University Act, 1947, it was provided that, the University shall not take any decision or adapt any new rule or scheme which may involve further outflow of fund from the State Exchequer. Therefore, due to the amendment of the Gauhati University Act, 1947 in the year 2013 as stated herein above, the services of the Petitioners could not be regularized and they are continuing on contractual basis."

7. In paragraph 10 of the counter-affidavit filed by the respondent Nos.1, 2 and 3, it has further been mentioned that due to the issuance of the Government Notification dated 30.05.2013 the services of the petitioners could not be regularized. However, the proposal seeking approval of the State Government in this regard has been sent. After receiving the approval of the Government, the services of the petitioners would be regularized.

8. From a plain reading of the averments made in the counter-affidavit, it is apparent that the amendments carried out to Section 44 of the Gauhati University Act, 1947 (in short, the Act of 1947), which was notified on 30.05.2013, has been shown as the only reason why the petitioners have not been regularly absorbed against the vacant sanctioned posts in respect of which the advertisement notice was issued by the University authorities.

9. Mr. P. J. Phukan, learned Standing Counsel, Gauhati University has strenuously argued that the amended provision of Section 44 of the Act of 1947 would be binding on the University. Since the process of selection, including computer tests and interview of the writ petitioners, went upto the month of January, 2016, by which time the amended provision of Section 44 of the Act of 1947 was notified on 30.05.2013, the University authorities did not have the authority to regularly appoint the petitioners without obtaining the approval of the Government.

10. By referring to the decision of this Court in the case of **Sun Bhagawati & others vs. Gauhati University and others** reported in **2018 (30 GLT 758** Mr. Phukan further submits that in view of the prescription of the statute, obtaining approval from the Government is mandatory. It is also the case of the University authorities that there is no indefeasible right of the petitioners to be regularly appointed merely because they were selected. Mr. Phukan has, therefore, argued that even assuming that other candidates were regularized in violation of the provisions of amended provision of Section 44 of the Act of 1947, even then, there is no concept of negative equality under Article 14 of the Constitution. In support of his above argument, Mr. Phukan has placed reliance on the following decisions rendered by the Supreme Court :-

- 1) **Sanjay K. Dixit and others vs. State of Uttar Pradesh and others [(2019) 17 SCC 373].**
- 2) **Union of India and another vs. International Trading Co. and another [(2003) 5 SCC 437]**
- 3) **Mohd. Islam and others vs. Bihar State Electricity Board and others [(2022) 9 SCC 67].**

11. I have considered the submissions made at the bar and have also gone through the materials available on record.

12. At the very outset, it must be noticed herein that the writ petitioners in WP(C) No.4271/2018, numbering four in total, had applied for the post of Lower Division Assistant (LDA) and they were contractually appointed in the said posts pursuant to the aforesaid selection process. Likewise, the three writ petitioners in WP(C) NJo.4434/2018 had applied for and were appointed in the post of Accounts Assistant; the three writ petitioners in WP(C) NJo.4762/2018 had applied for and were appointed in the post of Computer Typist and the sole writ petitioner in WP(C) NJo.4755/2018 had applied for and was appointed in the post of Junior Literary Assistant –cum- Proof Reader. Although Mr. Phukan has submitted that the services of the petitioner No.3 in WP(C) No.4271/2018 viz., Sri Sasanka Saikia has since been terminated on the ground of committing misconduct, this Court is not concerned with the said aspect of the matter in the present proceedings since the order of termination has reportedly been assailed by him in another writ petition which is pending before this Court.

13. Be that as it may, since the only ground taken by the University authorities in the counter-affidavit for not regularly absorbing the writ petitioners herein is amendment carried out in Section 44 of the Act of 1947 with effect from 30.05.2013, the core question that would arise for consideration of this Court in the present proceeding is as to whether, such amendment to Section 44 of the Act would have a retrospective effect on a recruitment process which was initiated by issuing an

advertisement prior to the amendment of the Act i.e. on 17.4.2012. The answer to the said question has to be in the negative.

14. In the present case, as noted above, the recruitment process was initiated on 17.04.2012. As such, it is evident that the vacancies were also in existence prior to the date of issuance of the advertisement notice. Moreover, the respondents have clearly stated in their affidavit that all the posts advertised on 17.04.2012 were sanctioned vacant posts. If that be so, it is apparent from the materials on record that the recruitment process initiated on the basis of advertisement dated 17.04.2012 was meant for filling up those sanctioned vacant posts on permanent basis. The advertisement notice dated 17.04.2012 does not mention anywhere that the selected candidates would be engaged on contractual basis. If that be so, the stand of the University authorities that the petitioners could only be absorbed on contractual basis due to amendments carried out to Section 44 of the Act of 1947 with effect from 30.05.2013 appears to be wholly untenable in the eyes of law and therefore, stands rejected.

15. It is also to be noted herein that there is no dispute about the fact that a number of other similarly situated persons were permanently absorbed by the Office Order dated 01.11.2016, although those candidates were also appointed on the basis of the same advertisement notice dated 17.04.2012. In his attempt to create an intelligible differentia between the two categories of candidates, Mr. Phukan has strenuously argued that the process of interview of those candidates were concluded prior to 30.05.2013 whereas, the interview process of the writ petitioners continued

beyond that date and until the month of January, 2016, I am afraid, such argument of Mr. Phukan cannot be countenanced. The process of conducting interview/proficiency test etc. is an integral part of the recruitment process conducted as per the convenience of the recruiting agency and therefore, merely because the interview of some of the candidates were held on an early date, the same by itself, cannot confer any special right on them to be permanently absorbed by leaving aside the others. It is the conditions laid down in the advertisement notice which alone would determine the rights of the candidates in these matters.

16. Moreover, it appears that even the beneficiaries of the Office Order dated 01.11.2016 had been appointed after 30.05.2013. The only distinguishing feature appears to be that the resolution of the Executive Council in their case was adopted on 29.04.2013 i.e. prior to 30.05.2013. Even if such argument of the respondents is granted, even then, for the reasons stated herein above, the date of decision of the Executive Council, in the opinion of this Court, would not have any decisive bearing on the rights of the selected candidates to be appointed on regular basis against the vacant sanctioned posts since all the candidates were subjected to a common recruitment process in terms of the advertisement notice dated 17.04.2012.

17. The authorities had issued an advertisement notice spelling out the qualification, number of vacancies and pay scale etc. applicable in respect of thereof, and as such the same would be binding on the respondents as well. Merely because an amendment was carried out subsequently to a provision of the statute putting a rider in the future recruitment in respect of some of the vacancies, that by

itself, cannot denude the petitioners of their rights to be absorbed on regular basis against the advertised sanctioned vacant posts in respect of which, they had originally applied for. Since a few other candidates, as mentioned above, have been regularly appointed based on the same recruitment process, fairness demanded that similar treatment be meted out to the petitioners as well, which was not done in the present case. Therefore, this Court is of the opinion that the principles of equality, as enshrined in Article 14 of the Constitution of India, has been violated in this case.

18. The decisions relied upon by Mr. Phukan, on a close scrutiny, goes to show that those were rendered on the facts of those cases. Even the decision in the case of **Sun Bhagawati & others** (supra) does not lay down any proposition of law restricting the Gauhati University authorities from obtaining the approval of the Government if the same is warranted. This Court has already opined that the amended provision of Section 44 of the Act of 1947 would not have any retrospective bearing on the advertisement notice dated 17.04.2012. Therefore, the ground taken in the affidavit filed by the respondent Nos.1, 2 and 3 for not regularizing the services of the writ petitioners is held to be completely untenable in law.

19. For the reasons stated herein above, this Court is of the opinion that all the writ petitions must succeed and are hereby allowed. The writ petitions are, therefore, disposed of with a direction upon the respondents, more particularly the Registrar of Gauhati University, to process the cases of the petitioners in the light of the observations made herein above and thereafter, take necessary steps for regular absorption and/or regularization of the services of all the writ petitioners by issuing



necessary office orders. Accordingly, the Registrar, Gauhati University shall place the matter before the Executive Council of the University for taking appropriate decision in the matter and thereafter, notify the same. The aforesaid exercise be carried out and completed as expeditiously as possible but not later than 8 (eight) weeks from the date of receipt of a certified copy of this order.

Parties to bear their own cost.

JUDGE

T U Choudhury/ Sr.PS

Comparing Assistant