



GAHC010128992019

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

Case No. : WP(C)/3842/2019

RUPSHREE DUWARAH
W/O- SRI BONI KONWAR
R/O- VILL- BAHUPATHER (NO.1)
P.O. DULIA PATHAR
DIST- LAKHIMPUR
PIN- 784164 ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPTT.
DISPUR
GHY-6

2:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.
DISPUR
GHY
ASSAM
PIN- 781006

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY
ASSAM
PIN- 781019

4:THE PRINCIPAL
JALUGUTI HIGHER SECONDARY SCHOOL
P.O. JALUGUTI
DIST- MORIGAON
ASSAM



PIN- 782104

Advocate for : MR A D CHOUDHURY

Advocate for : SC

SEC. EDU. appearing for THE STATE OF ASSAM AND 3 ORS.

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri T. Chakraborty

Advocates for the respondents : Shri U. Sarma, SC-SED

Date of hearing & Judgment : **21.06.2023**

JUDGMENT & ORDER

Heard Shri T. Chakraborty, learned counsel for the petitioner. Also heard Shri U. Sarma, learned Standing Counsel, Secondary Education Department appearing for the respondents.

2. The issue is with regard to the selection and appointment of the petitioner as Post Graduate Teacher wherein the question of her eligibility vis-à-vis Teacher Eligibility Test qualification has arisen. The projected case of the petitioner is that she is a Post Graduate Degree holder in Education and belongs to the OBC category. The petitioner also claims to have qualified the Teacher Eligibility Test examination for Higher Secondary securing 57%. The learned counsel has also drawn the attention of this Court to the mark sheet of the petitioner regarding the Teacher Eligibility Test examination wherein the individual marks of the two papers are more than 55%. The petitioner claims to have possessed all the qualification for appointment to the post of Post Graduate Teacher as per the Assam Secondary Education (Provincialisation)

Service Rules, 2003 (hereinafter called the Rules, 2003).

3. An advertisement was published on 23.02.2018 for filling up of a post of Post Graduate Teachers in the in Jaluguti Higher Secondary School in the district of Morigaon. As per the said advertisement, the post of Post Graduate Teacher in Education was an unreserved post.

4. It is the case of the petitioner that she had applied for the said post and had participated in the selection process. The learned counsel has also drawn the attention of this Court to an OM dated 14.07.2016 which provides for the recruitment to the post of Post Graduate Teacher in provincialized Higher Secondary Schools. Under the eligibility criteria given in the said OM, it has been laid down that candidates who had qualified in the Teacher Eligibility Test conducted for the Post Graduate Teacher are only eligible to apply for such post. It is the case of the petitioner that she had also possessed the minimum educational and professional qualification as per the said OM.

5. Shri T. Chakraborty, learned counsel for the petitioner submits that in spite of his best effort, the mark sheet could not be obtained. However, from the reply in the RTI application, it is discernible that the petitioner had obtained the first position in the selection.

It is the case of the petitioner that upon such completion of the selection process, though her name was recommended, the offer of appointment was not given to her. The learned counsel, Shri Chakraborty submits that from the information received as well as from the stand of the respondents discernible from the affidavit-in-opposition dated 19.06.2023, the reason for not offering the appointment to the petitioner is that she had not obtained 60% in her Teacher Eligibility Test examination.

6. The learned counsel for the petitioner has referred to the Rules of 2003 more specific Rule 10 thereof concerning academic and professional qualification. He submits that the second proviso to the said Rule makes it clear that the qualification in the Teacher Eligibility Test is an eligibility and not the test for recruitment for the post

of Teachers. It has further been clarified that any person, who has qualified in the Teacher Eligibility Test was not entitled to claim appointment as a Teacher, only on that basis. The learned counsel accordingly submits that deprivation of the petitioner from the appointment on the ground that she had not secured the benchmark in the Teacher Eligibility Test examination which is meant for open / unreserved candidate in spite of the fact that the petitioner belongs to the OBC category, the aforesaid action is wholly unreasonable, misconceived and therefore is liable to be interfered with.

7. By drawing the attention of this Court to the information received under the RTI, the learned counsel for the petitioner has submitted that vacancy still exists. In support of his submission, Shri Chakraborty has relied upon a decision of the Hon'ble Supreme Court in the case of ***Vikash Sankhala & Ors. ETC Vs. Vikas Kumar Agarwal*** reported in ***(2017) 1 SCC 350***.

8. On the other hand, Shri Sarma, learned Standing Counsel, Secondary Education Department has defended the action of the respondents by submitting that if the petitioner wants to compete in a vacancy meant for unreserved candidates, the eligibility condition meant for unreserved candidates would apply. He submits that the benchmark for unreserved category is 60% in Teacher Eligibility Test examination whereas admittedly the petitioner has secured marks less than 60% in the Teacher Eligibility Test examination and therefore she was not eligible for consideration for such appointment.

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

10. The reason which is forthcoming from the affidavit filed by the respondents as well as by the stand taken by the Department is that the petitioner did not secure the benchmark meant for an unreserved candidate in the Teacher Eligibility Test examination. Such stand has been taken in view of the fact that the petitioner, who though belongs to the OBC category had offered her candidature against the vacancy

in the unreserved category. The aforesaid contention is a fallacious one inasmuch as, there is a clear distinction between a candidate being eligible and candidate being ultimately selected for a particular post. The sphere of considering the eligibility cannot come into the way in the issue of selection, once the candidate is held eligible.

11. Though it appears that the benchmark for OBC category and unreserved candidate so far as being eligible in respect of the Teacher Eligibility Test qualification is concerned are different, once such eligibility criteria is met by an unreserved category candidate there is bar for such reserved category candidate to compete in a post vacant for unreserved candidate. Once the selection is conducted, the same has to be finalized on the basis of the performance and the marks secured in such selection and at that stage, the authorities cannot revert back to the issue of eligibility which had otherwise attained finality.

12. This Court is also of the opinion that if eligibility was at all an issue, the petitioner should not have been allowed to participate in the selection process which was not done. In any case, the petitioner's eligibility not being questioned which also appears to be in consonance with the law governing the field, the same cannot be brought in at the stage of offering the appointment on the basis of the performance in which the petitioner was evaluated to be the first nominee.

13. This Court finds force in the contention made by the learned counsel for the petitioner and also finds in the case relied upon of **Vikas Sankhala (Supra)**, the issue has been adequately explained. The relevant part of the judgment is extracted hereinbelow for a better understanding of the position.

“ISSUES TO BE DECIDED

27. ...

(iii) Whether reserved category candidates, who secured better than general category candidates in recruitment examination, can be denied migration to general seats on the basis that they had availed relaxation in TET?

60. Having regard to the respective submissions noted above, first aspect that needs consideration is as to whether relaxation in TET pass marks would amount to concession in the recruitment process. The High Court has held to be so on the premise that para 9(a) dealing with such relaxation in TET marks forms part of the document which relates to the recruitment procedure. It is difficult to accept this rationale or analogy. Passing of TET examination is a condition of eligibility for appointment as a teacher. It is a necessary qualification without which a candidate is not eligible to be considered for appointment. This was clearly mentioned in guidelines/notification dated February 11, 2011. These guidelines pertain to conducting of TET. Basic features whereof have already been pointed out above. Even para 9 which provides for concessions that can be given to certain reserved categories deals with 'qualifying marks' that is to be obtained in TET examination. Thus, a person who passes TET examination becomes eligible to participate in the selection process as and when such selection process for filling up of the posts of primary teachers is to be undertaken by the State. On the other hand, when it comes to recruitment of teachers, the method for appointment of teachers is altogether different. Here, merit list of successful candidates is to be prepared on the basis of marks obtained under different heads. One of the heads is marks in TET. So far as this head is concerned, 20% of the marks obtained in TET are to be assigned to each candidate. Therefore, those reserved category candidates who secured lesser marks in TET would naturally get less marks under this head. We like to demonstrate it with an example. Suppose a reserved category candidate obtains 53 marks in TET, he is treated as having qualified TET. However, when he is considered for selection to the post of primary teacher, in respect of allocation of marks he will get 20% marks for TET. As against him, a general candidate who secures 70 marks in TET shall be awarded 14 marks in recruitment process. Thus, on the basis of TET marks reserved



category candidate has not got any advantage while considering his candidature for the post. On the contrary, "level playing field" is maintained whereby a person securing higher marks in TET, whether belonging to general category or reserved category, is allocated higher marks in respect of 20% of TET marks. Thus, in recruitment process no weightage or concession is given and allocation of 20% of TET marks is applied across the board. Therefore, the High Court is not correct in observing that concession was given in the recruitment process on the basis of relaxation in TET."

14. This Court has seen that the Hon'ble Supreme Court had taken into consideration the leading cases on the field before coming to the aforesaid conclusion. This Court has also been apprised that the post in question is lying vacant. Though, Shri Sarma, learned Standing Counsel submits that he does not have the instructions as to whether the post is lying vacant as on today, this Court has noted that while issuing notice, an observation was made that any appointment made, would be subject to the outcome of the writ petition.

15. Under those facts and circumstances, this Court is of the firm opinion that the writ petition is liable to be allowed and while doing so, a direction is issued to appoint the petitioner on the strength of her selection made pursuant to the advertisement in question. The aforesaid appointment be offered within a period of 45(forty five) days from the date of receipt of a certified copy of this order.

16. The writ petition accordingly stands allowed.

JUDGE

Comparing Assistant