



GAHC010009052020

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

Case No. : WP(C)/289/2020

KULDEEP DEKA
S/O- UDAY SANKAR DEKA, VILL. JAPARKUCHI, NEAR NALBARI COLLEGE
OLD GIRLS HOSTEL, MOINPUR PATH, P.O.- TERECHIA, P.S./ DIST.-
NALBARI, ASSAM. PIN- 781334.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HIGHER
EDUCATION, DISPUR, GHY.-06.

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GHY.-19.

3:THE GOVERNING BODY OF GAWAHATI COLLEGE
REP. BY THE SECY. OF THE COLLEGE
BAMUNIMAIDAM
GUWAHATI- 781021.

4:THE SELECTION COMMITTEE FOR THE POST OF ASSISTANT PROFESSOR
DEPTT. OF PHYSICS
GUWAHATI COLLEGE
REP. BY CHAIRPERSON OF THE GOVERNING BODY
GUWAHATI COLLEGE
BAMUNIMAIDAM
GUWAHATI
KAMRUP(M)
ASSAM
PIN- 781021.



5:THE PRINCIPAL
GUWAHATI COLLEGE
BAMUNIMAIDAM
GUWAHATI
KAMRUP(M)
ASSAM
PIN- 781021.

6:SMTI. NANDITA LAHKAR
ASSISTANT PROFESSOR
DEPTT. OF PHYSICS
GIRIJA NANDA CHOWDHURY INSTITUTE OF MANAGEMENT AND
TECHNOLOGY
GUWAHATI ROAD
NEAR BARJHAR AIRPORT
HATKHOWAPARA
AZARA
GUWAHATI- 781017

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : SC, HIGHER EDU

BEFORE

THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner :Mr. F. U. Barbhuiya, Advocate

For the Respondents : Mr. K. Gogoi,
Standing Counsel
Higher Education,
Mr. D. M. Nath.
Advocate.

Date of Hearing : 20.05.2022

Date of Judgment & Order :06.06.2022

JUDGMENT & ORDER(CAY)

Heard Mr. F. U. Barbhuiya, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned Standing Counsel for the Higher Education Department and Mr. D. M. Nath, learned counsel for the respondent No. 6. None appears for the College.

2. By way of the present writ petition, the petitioner has assailed the selection of respondent No.6 as Assistant Professor in Physics in Guwahati College by the selection Committee of Guwahati College.
3. The respondent No. 5, i.e., Guwahati College by an advertisement dated 01.08.2019 invited applications for filling up of certain posts of Assistant Professors in the College. The post of Assistant Professor in Physics is the subject matter of the present litigation.
4. The petitioner along with other candidates including respondent No.6, participated in the selection process and the respondent No. 6 was recommended by the College on finding her to be the most eligible candidate, which is under challenge.
5. Mr. Barbhuiya, learned counsel for the petitioner assails the order on the following Counts:
 - I. The State of Assam in Higher Education Department by Office Memorandum dated 08.11.2018 laid down guidelines for selection of Assistant Professors/Librarians in Provincialized Colleges of Assam. Such guideline has been violated while selecting the respondent No. 6. The said guide line has been violated.
 - II. Clause- 2(iii) requires that a person is entitled for maximum two marks against Publication of Research Papers and Article having



published in UGC recognized journal and the Clause 2 (iv) of the said guideline mandates for granting four marks for Publication of Research Paper, Articles in Scopus and weight of science/ waved of knowledge. But in the case in hand, the respondent No. 6 has submitted five papers out of which only two papers are UGC recognized and therefore, the respondent No. 6 ought to have been granted four marks, however, the selection committee granted her six marks and therefore, the petitioner has been deprived.

- III. Mr. Barbhuiya, learned counsel for the petitioner submits that while making the selection, the Selection Committee has also violated the Clause 2(vii) of the said guideline by granting full marks against teaching experience in favour of the respondent No. 6. Mr. Barbhuiya, further submits that the respondent No. 6 was admittedly teaching at Girijananda Chowdhury Institute of Management and Technology from 24th August 2009 and the respondent No. 6 has completed her Ph.D. during 2015 to 2017 and thus such period of doing Ph.D. must be deleted from her experience in view of Clause 2 (vii).
- IV. The learned counsel for the petitioner further submits that the experience of teaching in the Engineering Institute cannot be treated as an experience in view of the Clause 2 (vii) as teaching experience is required in the subject. He submits that the respondent No. 6 is having the subject of the Physics and he was teacher in Engineering Institute, therefore, such teaching experience cannot be counted. However, ignoring such mandate of guideline, the selection committee has wrongly granted mark to the

respondent No. 6.

V. Mr. Barbhuiya, learned counsel for the petitioner further submits that the respondent No. 6 has acquired M.Phil Degree from an un recognized Institute through distance mode and against such qualification, no marks could have been granted to the respondent No. 6, in view of Clause 2 (ii) of the guideline.

VI. While concluding the argument, Mr. Barbhuiya, submits that in view of aforesaid violation of the guideline and granting of excess marks, which the respondent No. 6 was not entitled, the entire selection process has been vitiated and therefore, the selection process should be set aside and quashed and the petitioner be directed to be appointed against the post in question.

6. Countering such argument, Mr. K. Gogoi, learned Standing Counsel for the Higher Education Department and relying on the affidavit-in-opposition filed by the Director of Higher Education Department contends the following:

I. There is no violation of any of the provision of the Guideline, except on one count that the selection committee granted 3 marks against the M.Phil Degree to the respondent No.6, which the respondent No. 6 was not entitled in view of the fact that the respondent No. 6 obtained M.Phil Degree from Binayak Mission University through distance mode and such degree is not recognized. He further submits that except this, there is no violation of any guideline while granting marks either to the petitioner or in that case any other candidates including the respondent No. 6. Therefore, the selection

is not vitiated on any count.

- II. He further submits that even the marks granted against M.Phil Degree is deleted, the respondent No. 6 scores the highest marks and she has rightly been recommended by the Selection Committee.
 - III. Mr. Gogoi, further submits that as per mandate of the Assam College Employees (Provincialization) Rules,2010, the recommendation of the selection committee is not final and the same is to be approved by the Director of Higher Education. Such procedure cannot be treated as an empty formality and the Director is within its jurisdiction to go through the materials available for selection and reassess the marks on the basis of predetermined criteria laid down in the Guideline. In that view of the matter, even if wrong marks are granted, the Director of Higher Education Department should be allowed to exercise his power but by virtue of the interim order, the same power could not be exercised. And accordingly, he submits that this writ petition is pre-measured.
7. Mr. D. M. Nath, learned counsel for the respondent No. 6 while adopting the arguments advanced by the learned Standing Counsel of the Higher Education Department submits that the respondent No. 6 is having all the qualification.
 8. I have given anxious consideration to the submission made by the learned counsel for the parties and also perused the record produced by Mr. K. Gogoi, learned Standing Counsel for the Higher Education Department.
 9. The learned counsel for the petitioner basically contends that the respondent No. 6 has been awarded more marks against Publication of

paper in terms of Clause-2.(iii) and 2 (iv) and additional mark has been awarded against M.Phil Degree, which the respondent No.6 is not entitled.

10. Clause-2.(iii) of the Guideline shows that two marks are allotted for publication etc. with ISSN/impact factor subject to publication of ISSN/ISBN document in UGC recognized journal.

Clause-2.(iv) prescribes four marks for publication of research paper etc. in the data base of Scopus, web science and web of knowledge.

11. Such exercise of power to award of mark by selection committee depends upon verification whether the articles/research papers are duly published in specific journal and also needs verification such research paper etc. are actually ISSN/ISBN documents and the selection committee members expert in this field.
12. It is settled proposition of law that normally the Court should not sit over the recommendation of the Selection Committee in the process of judicial review, except on the ground of malades or serious violation of statutory rules. This Court cannot sit as an appellate authority to examine the details of the award of mark inasmuch as this Court cannot sit over the subjective satisfaction of assessment of a candidate made by the Selection Committee.
13. In the case in hand, determination is necessary, whether the papers published by the respondent No. 6 is having ISBN/ISSN recognition and/or whether those were published in specific journals recognized by UGC.
14. It is stated at the Bar that Scopus is a bibliographic database containing abstract and citations for academic journal articles.

Impact factor is measure of the frequency with which the average article

in a journal has been cited in particular year. The same is used to measure the importance or rank of a journal by calculating the times the article is cited.

Web of Science/ web of knowledge are paid access platform that provides through internet to access multiple database that provides reference and citation data from academic journal.

Therefore, even after going through the selection record, this Court is not in a position to verify, whether the publications of the candidates including the respondent No.6 are qualified to be awarded marks and such determination is required to be left at the hands of selection Committee.

15. Another aspect of the matter is that the selection of Assistant Professor in Provincialized Colleges in Assam, like the respondent College are governed by Assam College Employees Provincialization Rules, 2010, framed in exercise of power under Section 12 (1) of Assam College Employees Provincialization Act, 2005.

Rule 7 provides that direct recruitment or promotion is to be made by the Director on the basis of recommendation of Governing Body.

The Governing Body is to make such recommendation on the basis of Selection Committee duly constituted.

The said Rule further mandates that Selection Committee to follow the procedure as recommended by the University Grant Commission (U.G.C.). It further provides that fresh appointment can be made on receipt of police verification report.

Rule 5 (7) also provides that in case of Assistant Professor/Lecturer, the order of appointment is to be issued by the Director on the basis of recommendation of



the Selection Committee.

16. Therefore, it is clear that the Director shall have a right to verify the recommendation to ascertain whether selection has acted as per mandate of Rules, 2010 and also to ascertain whether the norms of U.G.C. is followed and also to verify whether the procedure mandated and guideline issued under O.M. dated 08.11.2018 is followed.

17. The power to issue appointment order on the recommendation of the Governing Body based on Selection Committee's recommendation, cannot be an empty formality and the Director shall have to do a re-verification as discussed herein above, in the scheme of the Act.2005 and the Rules'2010.

18. In the case in hand, while the matter was pending for approval before the Director, the petitioner approached this Court and obtained an order of stay.

19. In view of the forgoing discussion, this Court is of the considered opinion that as the selection process has not yet been concluded, this Court should not entertain the present petition so far relating to the question of allotment of mark and the Director be allowed to exercise his power under Rule, 2010.

20. Accordingly, it is directed that the Director of Higher Education, Assam shall consider the commendation in question and pass an order and communicate his order to all concerned within a period of 30 days inasmuch as Rule 7 (b) mandates that the Director shall communicate his order of appointment within 30 days from the date receipt of the recommendation of the Governing Body.

21. The learned counsel for the petitioner raised yet another issue regarding



interpretation of "experience". According to the learned counsel for the petitioner, the teaching experience of the respondent No. 6 in the Engineering Institute cannot be treated as an experience for the reason that experience should relate to the subject as provided under Clause 2 (vii).

22. Reading of Clause-2(vii), it is clear that experience required in teaching must be in the concerned subject, in this case it is Physics and 1 mark is allotted for each completed year of service. Service needs to be counted from the date after acquiring required U.G.C. norms. Such experience should be in provincialized/ Government/ Affiliated Degree Colleges subject to maximum of 3 marks.
23. Without commenting whether the Selection Committee has rightly granted mark to the respondent No. 6 under Clause-2(vii), which shall be determined by the Director of Higher Education, Assam, this Court holds that the requirements to award marks against teaching experience are, firstly, teaching experience in the concerned subject, physics in the present case. Secondly, the institution should be a degree College. Degree College is not defined in the Guideline. Therefore, it shall mean a college which is imparting education for acquiring a degree. Thirdly, such institution, either should provincialized degree College or a Government degree College or an Affiliated Degree College. Fourthly, such experience shall be counted when the candidate had acquired UGC Norms. While holding so, this Court clarifies that it has not commented on the entitlement of mark by the respondent No. 6 and this Court has only interpreted the Clause-2(vii) as the same has vehemently been urged by the learned counsel for the petitioner.



24. Accordingly, this writ petition is disposed of with a direction to the Director of Higher Education, Assam to take a decision on the recommendation of the Selection Committee of Guwahati College which is under challenge in the present writ petition and such decision should be taken within a period of 30 days from today. While taking such a decision, the director shall take note of the grievances raised by the petitioner herein and pass a speaking order, in terms of the determination made in the present litigation. The interim order passed earlier stand vacated.
25. A copy of this order is directed to be furnished to Mr. K. Gogoi, learned Standing Counsel for the Higher Education Department for forwarding the same to the Director of Higher Education, Assam.
26. The record is returned back to Mr. K. Gogoi, learned Standing Counsel for the Higher Education, Assam.

JUDGE

Comparing Assistant