



GAHC010194592022

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

**Case No. : WP(C)/6381/2022**

RABINDRA SAHARIAH  
S/O- LATE UPENDRA SAHARIAH,  
R/O- CHAMATIA PARA,  
P.O.- CHAMATIA PARA,  
P.S.- SIPAJHAR,  
DISTRICT- DARRANG,  
ASSAM, PIN- 784147.

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY,  
DEPARTMENT OF EDUCATION (SECONDARY),  
GOVERNMENT OF ASSAM,  
DISPUR, GUWAHATI-06.

2:THE PRINCIPAL SECRETARY AND CHAIRMAN OF BTC LEVEL  
SELECTION COMMITTEE  
B.T.C.  
KOKRAJHAR.

3:THE DIRECTOR OF EDUCATION  
BTC  
KOKRAJHAR.



4:THE INSPECTOR OF SCHOOLS  
UDC  
UDALGURI.

5:BASANTA SAIKIA  
PRINCIPAL OF KALAIGAON SENIOR SECONDARY SCHOOL

P.O- KALAIGAON

DISTRICT- UDALGURI (BTAD)

ASSAM- 784525

**Advocate for the Petitioner** : MS N SAIKIA

**Advocate for the Respondent** : SC, SEC. EDU.

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

Date of hearing : 05.10.2023

Date of judgment : 10.10.2023

**JUDGMENT & ORDER**

The subject matter of the instant writ petition is with regard to recruitment process for the post of Principal in the Kalaigaon Senior Secondary School, Udalguri. The petitioner, who is working as a Post Graduate Teacher in the said school is aggrieved by the selection and appointment of the private respondent no. 5 as the Principal by contending that the said respondent no. 5 is inferior to the petitioner in the relevant criteria and there is also procedural violation in the selection process.

2. Before going to the issue which has arisen for determination, it would be convenient if the facts of the case are stated briefly.

3. On 12.11.2021, an advertisement was published for appointment of 14 numbers of vacant posts of Principal in various Junior Colleges / Senior Secondary Schools in different districts of the BTC. In the said advertisement, the name of the institution in question, namely, the Kalaigaon Senior Secondary School was placed against serial no. 14. The petitioner, who claims to be working as a Subject Teacher and eligible in all respects applied for the said post. It is the contention of the petitioner that the selection is held as per revised guidelines. Marks are given on different Heads and in the instant case, the relevant Heads are marks on Administrative Ability for which 3 marks are allotted and marks on Integrity and Personality for which again 3 marks are allotted. It is the contention of the petitioner that the respondent no.5 was allotted marks which he did not deserve in both the Heads. In the said recruitment, while the petitioner had secured 16 marks, the respondent no. 5 had secured 18 marks. It is the case of the petitioner that the respondent no.5 should not have been granted 18 marks and it is the petitioner, who should have been selected and appointed. The contention of the respondents, on the other hand, is that there is no violation of procedure and no injustice has been caused to any incumbents including the petitioner. The question of maintainability of the writ petition has also been raised on behalf of the private respondent.

4. I have heard Ms. N. Saikia, learned counsel for the petitioner. I have also heard Shri SR Rabha, learned Standing Counsel, BTC whereas Shri P. Bhardwaj, learned counsel has appeared for the private respondent no. 5. Shri Rabha, the learned Standing Counsel has also placed before this Court the scanned copies of the records of the selection. The same have been duly perused.

5. Ms. Saikia, the learned counsel for the petitioner has submitted that marks have been unduly given to the respondent no. 5 on the aforesaid two Heads of Administrative Ability and Integrity and Personality. She submits that though 1 mark has been allotted to the respondent no. 5 under the said Head of Administrative Ability, the said respondent no. 5 was not given any Award whether National, State or District so as to entitle himself for 1 mark each. On the Head of Integrity and Personality, while as per the guidelines, marks are to be granted on the basis of the Gradings in the ACR, the respondent no.5 does not have any Gradings in the ACR, and the only remark given is that:

“He can be considered for next promotion”.

6. The learned counsel accordingly submits that if the 2 marks are deducted from the marks obtained by the respondent no. 5, the petitioner will be appointed.

7. *Per contra*, Shri Rabha, the learned Standing Counsel, BTC, by referring to the affidavit-in-opposition filed on 12.09.2023 has submitted that the petition and the present challenge have been structured on a misconceived notion. He submits that the selection was held for different districts under the BTC and the present Senior Secondary School was in the district of Udalguri for which there were 05 numbers of vacancies and a common selection was held for all the vacancies. By referring to the comparative statement and evaluation sheet, the learned Standing Counsel has submitted that while the petitioner got 16 marks, there are many other persons, who got more marks than the petitioner apart from the 05 number of selected candidates. It is submitted that those persons have not been made parties and therefore no effective relief can be given to the petitioner. He has also submitted that as per the norms, in case the marks secured is the same, the senior person by date of birth would be given

preference.

8. By referring to the records, the learned Standing Counsel submits that even on facts, the submissions of the petitioner are incorrect as there is an Award given by the BTC to the respondent no. 5 which carries 1 mark. He further submits that though it is a fact that in the ACRs of the respondent no. 5, no Gradings, as such have been given, his promotion has been recommended and therefore marks have been allotted. He further submits that if marks were not allotted only on the ground that no standard Gradings were given to the respondent no.5, there would be serious miscarriage of justice as an incumbent cannot be made to suffer because of not following the procedure in giving the Gradings. In any case, from the recommendations made, it can be substantially concluded that the Gradings given to the petitioner was favourable. He accordingly prays for dismissal of the writ petition.

9. Shri P. Bhardwaj, learned counsel for the respondent no.5 has endorsed the submission of Shri Rabha, the learned Standing Counsel, BTC. He additionally submits that the petitioner has wrongly projected that the selection was only for the Kalaigaon Senior Secondary School. Shri Bhardwaj was also questions the *locus* of the petitioner to maintain the present challenge without making the candidates obtaining more marks than the petitioner as respondents and by choosing only the respondent no.5 to be a party. He accordingly submits that the writ petition be dismissed.

10. In her brief rejoinder, Ms. Saikia, the learned counsel for the petitioner has submitted that in the application made pursuant to the advertisement dated 12.11.2021, the name of the School was mentioned and therefore it cannot be contended that the selection was a common one.

11. The rival contentions have been duly considered.

12. After hearing the parties, it is clear that the advertisement dated 12.11.2021 was for filling up the posts of Principal of various Junior Colleges / Senior Secondary Schools in the BTC having a number of districts, including the district of Udalguri. In the said district of Udalguri, there were 5(five) numbers of vacancies, including the vacancy in the Kalaigaon Senior Secondary School. The records reveal that the selection was a common one and therefore even if the petitioner had mentioned the name of a particular School, he was to compete at least for the 5(five) vacancies in the district of Udalguri, if not for the entire 14 numbers of vacancies. The records including the evaluation sheet would also reveal that apart from the five numbers of incumbents, including the respondent no. 5, who have been selected for appointment, there are many other persons, who had got more or equal marks than the petitioner and those incumbents have not been made parties in this writ petition. To be more specific, the evaluation sheet reveals that apart from the selected candidates, the following candidates had secured more marks than the petitioner:

| Sl. No. | Name              | Marks |
|---------|-------------------|-------|
| 17.     | Durlav Baruah     | 17    |
| 19.     | Dibyajyoti Nath   | 17    |
| 20.     | Bhupen Kumar Nath | 17    |

Further the following candidates got equal marks with the petitioner and, as stated above, in such cases, the Date of Birth would govern the selection.

| Sl. No. | Name                | Marks |
|---------|---------------------|-------|
| 1.      | Subhash Dey         | 16    |
| 8.      | Bipin Baglari       | 16    |
| 12.     | Rejia Begum         | 16    |
| 15.     | Christofer Daimari  | 16    |
| 18.     | Shailendra Sahariah | 16    |

13. Under those circumstances, this Court is of the view that even assuming that a case for interference is made out, no effective relief can be granted to the petitioner as there are many other incumbents who have secured more or equal marks and are not made parties and that aspect of the matter has to be kept in mind while examining the present challenge.

14. With regard to the allegations against the respondent no. 5, this Court upon examination of the records has noticed that there is an Award by the BTC and therefore, it cannot be said that the marks given under the criteria of 'Administrative Ability' is erroneous. The marks under the said Head given to the respondent no. 5 is 1.

15. So far as the marks allotted under the Head of 'Integrity and Personality' is concerned, it is a fact that in the ACR of the respondent no. 5 no Gradings by use of expression "Outstanding", "Very Good", "Good" etc. have been given. However the remark given is that "he can be considered for next promotion". Such a remark cannot be termed as adverse or unfavourable remark. Further, an

incumbent cannot be made to suffer any prejudice because of non-following of the procedure while giving Gradings in an ACR. Under those circumstances, this Court cannot find fault on the part of the Selection Committee in allotting 3 marks under the said Head. Therefore, even on merits, this Court is of the view that there is no case for any interference.

16. The Hon'ble Supreme Court in the case of **Basavaiah (Dr.) v. Dr. H.L. Ramesh** reported in **(2010) 8 SCC 372** has laid down as follows:

*“21. It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, the experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the recommendations made by the country's leading experts in the field of Sericulture.”*

17. A similar view was taken by the Hon'ble Supreme Court in the case of **Sridip Chatterjee v. Gopa Chakraborty**, reported in **(2019) 15 SCC 59** wherein the observation was with regard to certain eligibility criteria in a selection process, which reads as follows:

*“15. ... Therefore, once the experts have taken a decision that the appellant meets the eligibility conditions of the advertisement, the Court could not have interfered with and set aside the appointment of the appellant.”*

18. Under the aforesaid facts and circumstances, this Court is of the considered view that no case for interference is made out and accordingly the





writ petition is dismissed.

19. No order as to cost.

20. The scanned copies of the records are returned back to the learned Standing Counsel, BTC.

**JUDGE**

**Comparing Assistant**