

GAHC010033312021



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

Case No. : WP(C)/1278/2021

RAJ KHAN
S/O- AYUB KHAN, R/O- RAWMARI (WARD NO. 1, ABHAYAPURI TOWN), P.O.
ABHAYAPURI, DIST.- BONGAIGAON (ASSAM)

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF
AGRICULTURE, DISPUR, GHY-6

2:THE COMM. AND SECY.
GOVT. OF ASSAM
DEPTT. OF FINANCE
DISPUR
GHY-6

3:THE DIRECTOR OF AGRICULTURE
ASSAM
KHANAPARA
GHY-22

4:THE DISTRICT AGRICULTURAL OFFICER
GOALPARA
PIN-

5:HEDAYATULLAH KHAN
S/O. LATE MOZIBOR RAHMAN KHAN
R/O. VILL. CHANDARIA PATHAR
P.O. BALADMARI
P.S. GOALPARA
DIST. GOALPARA
ASSAM

PIN-783121

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent : SC, AGRI. DEPARTMENT

Linked Case : WP(C)/2417/2021

HEDAYATULLAH KHAN
S/O- LT. MOZIBOR RAHMAN KHAN
R/O- VILL- CHANDARIA PATHAR
P.O. BALADMARI
P.S. GOALPARA
DIST.- GOALPARA
ASSAM
PIN- 783121

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF AGRICULTURE
DISPUR
GHY-6

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF AGRICULTURE

DISPUR
GHY-6

3:THE DIRECTOR OF AGRICULTURE

ASSAM
KHANAPARA
GHY-22

4:THE DISTRICT AGRICULTURAL OFFICER
GOALPARA

P.O. BALADMARI
P.S. GOALPARA

DIST.- GOALPARA
ASSAM
PIN- 783121

5:THE DISTRICT SELECTION COMMITTEE
REP. BY ITS CHAIRMAN
C/O- THE DISTRICT AGRICULTURAL OFFICER
GOALPARA
P.O. BALADMARI

P.S. GOALPARA
DIST.- GOALPARA
ASSAM
PIN- 783121

Advocate for : MR. A R SIKDAR
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT

Date : 28-03-2024

1. Heard Mr. A. R. Sikdar learned counsel for the petitioner in WP(C) No.2417/2021 and Ms. R. Choudhury learned counsel for petitioner in WP(C) No.1278/2021.
2. These two writ petitions are taken up together for final disposal as the dispute relates to the same selection process for appointment to the post of Grade-IV (UR) category under the District Agriculture Office, Goalpara.
3. The facts necessary for determination of these two writ petitions are as follows:
 - I. Pursuant to an advertisement dated 16.02.2018 issued by the District Agricultural Officer, Goalpara for filling up of amongst others, two numbers of grade-IV post (one reserved and one unreserved), the petitioner in both the writ petitions applied for the same.
 - II. An examination was held and subsequently, a merit list was published wherein the petitioner in WP(C) 1278/2021 (hereinafter referred to as Raj Khan) secured highest marks

i.e.48 marks, one Banjit Kalita also secured 48 marks and the petitioner in WP(C) No.2417/2021 (hereinafter referred to as Hedayatullah) secured 47 marks.

III. The Selection Committee recommended the name of Raj Khan for appointment against unreserved vacancies and sought for approval of Director.

IV. Thereafter, by a communication dated 18.12.2018, the Director returned the merit list and minutes of the selection committee for the reason that the Selection Committee recommended the name of Raj Khan ignoring the other candidate Banjit Kalita, who also secured equal marks as that of Raj Khan i.e, both the candidates obtained 48 marks. Accordingly, it was requested by the Director to review the proposal and resubmit with its comment.

V. The selected candidate Raj Khan preferred WP(C) 1278/2021 with a prayer to direct the respondents to issue appointment letters in terms of the select list dated 25.03.2018.

VI. Thereafter, the selection committee in its meeting held on 27.11.2020, decided to cancel the earlier Select list and to recheck 20 numbers of answer sheets of the candidates who were placed at serial No.1 to 20 of the merit list dtd.25.03.2018.

VII. After such revaluation, a merit list was published on the basis of a determination made in the selection committee meeting held on 18.01.2021.

VIII. In the re-evaluation, the petitioner in WP(C) 1278/2021 (Raj Khan) was placed at 20th position with 39 marks to his credit and Bonajit Kalita who earlier secured 47. The petitioner in WP(C) 2417/2021 (Hedayatullah Khan) was placed at serial no.1 with 47 marks to his credit.

IX. Thereafter by a communication dated 25.01.2021 the name of the petitioner in WP(C) 2417/2021 i.e., Hedayatullah Khan was forwarded for approval.

X. Thereafter, the Director of Agriculture Assam by its communication dated 03.03.2021 conveyed its decision not to approve the merit list and requested the District Selection Committee to take proper decision, even to the extent of conducting re-examination amongst the selected candidates.

XI. Being aggrieved, the petitioner Hedayatullah Khan preferred WP(C) No.2417/2021 for setting aside and quashing such a decision.

4. Mr. Sikdar learned counsel for the petitioner Raj Khan in WP(C) 1278/2021 argues that the petitioner was duly selected for the post in question having secured highest marks and after consideration of materials available on record, the selection committee in its wisdom has recommended his name for appointment and therefore, he is having a right for appointment. According to the learned Counsel, the Director could not have remitted the matter to the Selection Committee.

5. Ms. R Choudhury, learned counsel for the petitioner in WP(C) 2417/2021 Hedayatullah Khan contends that the course of

action adopted by selection committee for re-evaluation was the only option left for the selection committee and on such re-evaluation the petitioner has obtained highest marks and therefore, such recommendation after re-evaluation ought to have been acted upon.

6. Ms. R Bora, learned standing counsel for the Agricultural Department, submitted that when two persons obtained the same marks, the selection committee could have placed such material before the Director instead of picking one of them and therefore, the Director has rightly remitted back the matter to the Selection Committee. The Director has also rightly disapproved the course of action adopted by the selection committee to re-evaluate only first 20 candidates in the merit list as such course of action shall deprive the other candidates. Therefore, such a course of action of the Director cannot be said to be an arbitrary action.

7. Ms. Bora learned standing counsel on instructions further submitted that the department/directorate has in the meantime decided to go for a fresh selection for the post in question. Therefore, according to her, both the petitioners are not having any vested and concluded right for appointment and accordingly, in the given facts of the present case, both the writ petitions are liable to be dismissed.

8. This court has given anxious considerations to the arguments advanced by the learned counsel for the parties and perused the materials available on records.

9. Law is by now well settled that mere inclusion of a candidate in a select list does not confer upon him/her a vested right of appointment. It is sine-qua-non to issue a writ of mandamus that

the person seeking such a writ is having a vested right which have been violated or the respondents are having a legal duty to perform. In the case of **Punjab State Electricity Board Vs. Malkiat Singh** reported in **(2005) 9 SCC 22**, the hon'ble Apex Court held that mere inclusion of a candidate in a select list does not confer upon them a vested right to appointment.

10. In the case in hand and as recorded herein above, it is clear that the Director by its communication dated 18.12.2018 requested the Selection Committee to resubmit the recommendation made as out of two candidates who scored equal marks, name of one was only recommended. Obviously such a course of action of the Selection Committee is not permissible under law in as much as no reasons are discernible as to two equals are treated unequally . Therefore, the decision of the Director reflected in communication dated 18.12.2018 cannot be faulted with.

11. Even if it is assumed that the selection committee has the right for re-evaluation in the given fact of two candidates scoring equal marks against a single post they could have re-evaluated the candidature of the said two candidates, who secured equal and highest marks or re-examination of all the candidates, who participated in the selection process. The selection committee could have sent the proposal showing the position that these two persons secured the same marks, leaving the decision to be taken by the employer/Director.

12. However, the Selection Committee opted to have the re-evaluation amongst the first twenty candidates and the result is

reflected from the record that the person whose name was recommended for appointment with 48 marks obtained 20th position with 39 marks to his credit . The person who obtained 44 marks in the earlier selection and was placed at serial No.10, now obtains 47 marks and is placed at serial No.1 and the person who obtained 48 marks, equal with the recommended candidate now obtains 40 marks. If that is the result, probability also remains that if re-evaluation was extended to all the candidates in the select list dated 31.05.2018 (first Select List), any candidate could have obtained more marks than the first candidate in the second select list. Thus, the candidates who were empanelled in the first select list beyond 20th Position did not have the opportunity of re-examination. From perusal of both the Select Lists, it is clear that some candidates placed beyond 20th position in the First Select list obtained more marks than marks obtained by some of the first 20th candidates after re-evaluation.

13. Therefore, the action of the selection committee to go for re-examination only amongst first twenty candidates placed in the first select list, in the considered opinion of this court, is not only unreasonable but an arbitrary action and therefore, it is the further opinion of this court that the Director has rightly not approved such course of action taken by the selection committee.

14. In the aforesaid backdrop this court is of the view that both the petitioners are not having any vested right to get appointment and at the same time the employer, in the given facts of the present case, is within their competence and jurisdiction to

proceed with a fresh selection process. Accordingly, these two writ petitions stand dismissed.

JUDGE

Comparing Assistant