

GAHC010024092016



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

Case No. : WP(C)/5242/2016

CHANDAN URIA and ANR.
S/O. SRI MOHENDRA URIA, VILL. PABHOI TEA ESTATE, DIST. SONITPUR,
ASSAM, PIN. 784174.

2: SRI ANUK SING
S/O. ARJUN SING
VILL. PABHOI TEA ESTATE
DIST. SONITPUR
ASSAM
PIN. 784174

VERSUS

THE CHAIRMAN, ASSAM POWER DISTRIBUTION COMPANY LTD. and 14
ORS
BIJULI BHAWAN, PALTAN BAZAR, GUWAHATI-781001.

2:THE MANAGING DIRECTOR
ASSAM ELECTRICITY GRID CORPORATION LIMITED
BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI-781001.

3:THE DEPUTY GENERAL MANAGER
TEZPUR T 7 T CIRCLE
ASSAM ELECTRICITY GRID CORPORATION LIMITED
TEZPUR
DHANUANAGAR
DIST. SONITPUR
ASSAM
PIN. 784001.

4:THE ASSISTANT GENERAL MANAGER
132 KV DEPOTA GRID SUB STATION

ASSAM ELECTRICITY GRID CORPORATION LIMITED
TEZPUR
DIST. SONITPUR
PIN. 784001.

5:THE SENIOR MANAGER
132 KV DEPOTA GRID SUB STATION
ASSAM POWER GRID CORPORATION LIMITED
TEZPUR
DIST. SONITPUR
PIN. 784001.

6:RANDHEER KUMAR
S/O. SUBASH KUMAR
VILL. DUFFALAGHAR T.E.
P.O. GOHPUR
DIST. SONITPUR
ASSAM.

7:SRI TRIKESWAR MORANG
S/O. BIRAT MARANG
VILL. BAMUN DOLONI
P.O. PAHUNARA
DIST. NORTH LAKHIMPUR
ASSAM.

8:SRI DIPAL HAZARIKA
S/O. BHUTAN HAZARIKA
VILL. CHARAIDALANI
P.O. MADHABPUR
DIST. NORTH LAKHIMPUR
ASSAM.

9:SRI GONESH CHANDRA BORO
S/O. LT. NAGEN CH. BORO
VILL. MAJ ROWMARI KACHARIGAON
P.O. MAJ ROWMARI
DIST. SONITPUR
ASSAM.

10:SRI NITUMONI BORTHAKUR
S/O. SUREN BORTHAKUR
VILL. NO. 2 BORBALI
P.O. BORBIL
DIST. NORTH LAKHIMPUR
ASSAM.

11:SRI ANJAN HAZARIKA

S/O. DURGESWAR HAZARIKA
VILL. HATISHAL
P.O. PAVOI
DIST. SONITPUR
ASSAM.

12:SRI ANANDA SARKAR
S/O. LT. GHATI SARKAR
VILL ALICHIGA
P.O. KUHIABARI
DIST. NORTH LAKHIMPUR
ASSAM.

13:SRI PRANAB GOGOI
S/O. BHUGESWAR GOGOI
VILL. NALKATA
P.O. BAGAILJAN
DIST. NORTH LAKHIMPUR
ASSAM.

14:SRI DHANTIMONI KATAKI
S/O. SIMBESWAR PHUKAN
VILL. RANGAMURI
P.O. PAVOI
DIST. SONITPUR
ASSAM.

15:SRI JUGAL CH. PHUKAN
S/O. DIMBESWAR PHUKAN
VILL. and P.O. JORABARI
DIST. NORTH LAKHIMPUR
ASSAM

Advocate for the Petitioner : MS.A DEVI

Advocate for the Respondent : SC, APDCL

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Ms. A. Devi

Advocate for the respondents : Ms. K. Phukan, SC-AEGCL
Shri B. Goswami, R-11
Shri YS Mannan, R-12, 14
Shri UJ Saikia, R-7, 13, 15

Date of hearing : **18.07.2024**
Date of Judgment : **18.07.2024**

JUDGMENT & ORDER

The instant writ petition has been filed challenging a recruitment process initiated by the AEGCL which had culminated in Office Order Nos. 71 dated 12.06.2010 and 25 dated 14.02.2011 issued by the authorities of the AEGCL, Depota in the district of Sonitpur whereby 8 numbers of Sahayak and one Peon were appointed.

2. The petitioners were aspirants in the said recruitment process initiated in the year 2008. While the petitioner no. 1 had applied for the post of Sahayak, the petitioner no. 2 had applied for the post of Peon. It is the case of the petitioners that in the appointments of the private respondent no. 6 to 15, there have been gross illegalities and irregularities. Allegation has been made that the respondent no. 15, who was appointed as a Sahayak, was not medically fit and he had placed an erroneous medical fitness certificate. There is specific allegation that so far as the post of Peon is concerned, out of 7 nos. of examiners, the examiner nos. 6 and 7 did not allot marks to 17 nos. of candidates including the petitioner no. 2, as a result of which, the said petitioner no. 2 has suffered prejudice and was denied of a fair opportunity in the selection process. It has been contended that the private respondents were favoured and the anomalies and irregularities in their certificates were overlooked.

3. I have heard Ms. A. Devi, learned counsel for the petitioners. I have also

heard Ms. K. Phukan, learned Standing Counsel, AEGCL for the official respondents; Shri B. Goswami, learned counsel for the respondent no. 11; Shri YS Mannan, learned counsel for the respondent nos. 12 and 14 and Shri UJ Saikia, learned counsel for the respondent nos. 7, 13 and 15.

4. Ms. Devi, learned counsel for the petitioners has submitted that there are specific allegations against the respondent no. 15 regarding his medical fitness. Specific allegations regarding the testimonials of the respondent nos. 11 and 12 have also been made, more particularly, the testimonials pertaining to their date of birth. It is submitted that the petitioners were local candidates who were temporarily working and they have been ignored in the selection process.

5. By drawing the attention to the testimonials pertaining to the respondent no. 11, the learned counsel for the petitioners has submitted that there are anomalies in his date of birth inasmuch as, as per one certificate, such date of birth has been stated to be 01.12.1974 and in another, it has been stated to be 01.01.1974. So far as the respondent no. 12 is concerned, it has been pointed out that his date of birth has been stated in one of the document as 31.06.1984 and in another document as 30.06.1984. It is submitted that such date of birth as 31.06.1984 is apparently erroneous as such date does not exist. The learned counsel has also highlighted the aspect that the certificates would indicate that there has been gross manipulation in stating the date of birth and therefore, the candidatures should have been rejected. On the aspect of no marks being allotted by the examiner nos. 6 and 7, the learned counsel has drawn the attention of this Court to the marks sheet for the post of Peon and has contended that the said examiners nos. 6 and 7 did not allot marks to 17 nos. of candidates including the petitioner no. 2 who was allotted roll no. P-15. It is submitted that such anomalies would vitiate the entire selection process and

accordingly, the same is liable to be set aside.

6. The learned counsel for the petitioners has also relied upon the documents annexed by the authorities in the additional affidavit filed on 23.09.2022. In the said affidavit, a complaint has been annexed by one of the retired personnel whereby allegations were made against few of the selected candidates including the respondent no. 15 on his medical fitness. It is submitted that when such anomalies were detected by a personnel of the Corporation itself, the selection is liable to be interfered with.

7. *Per contra*, Ms. Phukan, learned Standing Counsel of the Corporation has submitted that the allegations are vague and the selection was done strictly in accordance with law. It is submitted that the antecedents of all the candidates who were selected were duly verified and found to be in order and the selection was done strictly on the basis of the marks obtained in the selection. The learned Standing Counsel for the Corporation has highlighted the aspect of an enquiry being done at the Corporation level itself wherein the anomalies were looked into by making field verifications and none of the allegations were found to be substantiated. By referring to the additional affidavit dated 23.09.2022, learned Standing Counsel has drawn the attention of this Court to the enquiry report dated 21.03.2022 whereby each and every allegations made by the petitioners as well as by the retired officer were looked into and found not to be substantiated. It is submitted that in view of the aforesaid conclusions arrived at by the Corporation, there is no merit in this case of the petitioners which would require any interference by this Court. The learned Standing Counsel has also raised the issue of delay and *laches* in approaching the Court and has submitted that in the meantime, a long period has elapsed and the selected candidates have been discharging their duties in accordance with law.

8. Supporting the submission of the learned Standing Counsel for the Department, Shri Goswami, learned counsel for the respondent no. 11 has submitted that the anomaly sought to be raised in the writ petition regarding the date of birth will have no consequence inasmuch as, it is in the context of the eligibility of the candidates with regard to the age limit which would be crucial. In any case, his client was eligible in all respects. Denying the allegation of any anomalies, the learned counsel has submitted that the allegation is unfounded as would be evident from the materials on records including the enquiry report.

9. Shri Mannan, the learned counsel for the respondent nos. 12 and 14 while endorsing the submissions of the learned Standing Counsel for the Corporation as well as Shri Goswami, learned counsel for the respondent no. 11 has reiterated that apparently there was an error in reflecting the date of birth of the respondent no. 12 as 31.06.1984 as such date does not exist. He has clarified that the date should be 30.06.1984 and the said aspect was verified and found to be authentic. He submits that in any case, his client comes within the zone of consideration so far as the aspect of age is concerned. He has also submitted that there is no specific allegation against the respondent no. 14 who has just been made a party respondent. By referring to the affidavit-in-opposition filed by the Corporation on 18.01.2019, the learned counsel has drawn the attention of this Court to the averments made in paragraph 9 of the affidavit that though as a matter of fact in respect of few candidates, the examiner nos. 6 and 7 did not allot marks, the average marks were calculated and therefore no prejudice was caused to any of the candidates. The learned counsel has relied upon the decision of the Hon'ble Supreme Court in the case of ***Buddi Nath Chaudhary Vs. Abahi Kumar*** reported in **(2001) 3 SCC 328**

wherein the issue of long lapse of time has been highlighted with an observation that appointments are not required to be interfered after such long lapse of time if no serious allegations are substantiated.

10. Shri Saikia, learned counsel has appeared for the respondent nos. 7, 13 and 15. He has also endorsed the submission made on behalf of the Corporation and the learned counsel for the private respondents. He has denied the allegation that the respondent no. 15 is medically unfit. The learned counsel has submitted that at the time of his appointment, his medical fitness was examined and the certificate has been verified again in the enquiry made which had culminated in the report dated 21.03.2022.

11. Ms. Devi, the learned counsel for the petitioners in her rejoinder has submitted that though the recruitment was concluded in the year 2010, information was sought for by taking recourse to the RTI which was received only in October, 2013 and thereafter, further complaints were lodged and only thereafter, the writ petition could be filed. The aspect of financial constraints to approach this Court has also been highlighted to justify the delay in approaching the Court.

12. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

13. The present challenge is made by two candidates who were aspirants in the recruitment process made by the AEGCL in the year 2008. While the petitioner no. 1 had aspired to be a Sahayak, the petitioner no. 2 had applied for the post of Peon. Though the selected candidates have been made parties, it is seen that no specific allegations have been made so far as respondent no. 14 is concerned who was appointed in the sole post of Peon. The only allegation

which may be required to be examined so far as the petitioner no. 2 is concerned is on the aspect that no marks were given by the examiners nos. 6 and 7 so far as the post of Peon is concerned. On the own admission of the petitioners, which is also substantiated by the connected documents, namely, the calculation sheet that it is not only with regard to the petitioner no. 2 where the said examiners have not granted marks but also in case of 17 nos. of other candidates. The explanation which has been given in the affidavit-in-opposition is that at certain stage, the said examiners were not available to allot marks and therefore the average marks were taken. Since the said instance is not only confined to the petitioner no. 2 but to a number of other candidates and admittedly the average marks been taken, this Court is of the opinion that based on the said ground alone, an interference would not be justified. This Court has also noticed that while the selected candidate for the post of Peon, namely, the respondent no. 14 has obtained average marks of 36.0, the petitioner no. 2 had obtained average marks of 29.8 and there is a substantial difference in the marks obtained.

14. This brings us to the case of the petitioner no. 1 who was an aspirant for the post of Sahayak wherein 8 nos. of candidates have been appointed. The petitioners have made specific allegations only against respondent nos. 11, 12 and 15. So far as respondent nos. 11 and 12 are concerned, this Court has noticed that the allegations were with regard to the anomalies in date of birth. This Court has also noticed that the said allegations have been categorically denied by the respondents. That apart, this Court has noticed that irrespective of the allegations, there will be no substantial change so far as the eligibility concerning the age factor of the candidates are concerned for the same post of Sahayak. The explanations given in the affidavit-in-opposition also appears to be

acceptable.

15. So far as the allegation against the respondent no. 15 is concerned of being medically unfit, the said respondent no. 15 has appeared, who however has not filed any affidavit-in-opposition. This brings us to a position to examine as to whether the allegations made appear to be substantiated by the materials of the Court. The petitioners has not annexed any document towards the allegation of medical unfitness of the respondent no. 15 but has made allegations as a part of the pleadings. The said aspect being factually in nature, this Court has to fall back upon the fact finding enquiry made by the Corporation itself during the pendency of the writ petition. The said enquiry was propelled not only by the allegations made in the writ petition but also by a letter made by a retired officer of the Corporation. The enquiry report dated 21.03.2022 has taken into consideration the aspect of medical unfitness of the respondent no. 15 and has made a field verification by seeking a report from the concerned Joint Director of Health Services, Lakhimpur who had issued a verification letter dated 09.03.2022. By the said letter, the medical fitness of the respondent no. 15 was reiterated. Unless such report is specifically challenged, this Court would not be in a position to discard such report and go by the pleaded version of the petitioners making an allegation on the medical unfitness of the respondent no. 15.

16. This Court also cannot be oblivious of the aspect of delay and *laches* in approaching this Court. Admittedly, the recruitment process was initiated in the year 2008 and the appointments were made in the year 2010 and 2011. The writ petition has been instituted in the year 2016 and the only explanation is of financial constraint, which is not acceptable. This Court has also noticed that the first complaint was lodged in February, 2013 and the reply under the RTI was

obtained in October, 2013 followed by another complaint after about 2 years and only thereafter the writ petition has been filed on 30.08.2016. This Court being the Court of equity, the due diligence of a party approaching this Court is of equal importance. In this case, such due diligence appears to be missing.

17. In view of the aforesaid discussions, this Court is of the opinion that no interference is called for and accordingly the writ petition is dismissed.

JUDGE

Comparing Assistant