

GAHC010014202015



2024:GAU-AS:8164

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

Case No. : WP(C)/5454/2017

MAYNAL HOQUE and 10 ORS.
S/O MD. RAJAB ALI
VILL and PO-SALAKATI
DIST. KOKRAJHAR
ASSAM
PIN-783369

2: HUSSAIN ALI

S/O JOSIMUDDIN SHEIKH
VILL-SIMLABARI PART-I
PO-CHAPAR
DISTRICT-DHUBRI
ASSAM
PIN-783371

3: MD. ISMAIL MONDAL

S/O MD. SAHA ALI MONDAL
VILLAGE-AREARJHAR PART-2 DHIRGHATPO and PS-CHAPOR
DIST. DHUBRI
ASSAM
PIN-783371

4: NIL KAMAL BORGOYARY
S/O-LT. BASANTA BORGOYARY
VILL-DOGOR PARA
PO and PS-SALAKATI
DIST. KOKRAJHAR
ASSAM
PIN-783369

5: SUNSWARNG NARZARY

S/O LT. BIJENDRA NARZARY
VILL- MALGAON
PO-SILGARA
DIST. KOKRAJHAR
ASSAM
PIN-783348

6: MANILAL KOCHARY
S/O KRISHNA KOCHARY
VILL-UMANGAR
PO-DHUMARIGURI
DIST. KOKRAJHAR
ASSAM
PIN-783347

7: JWNGMA BORGOYARY
S/O LT. BASANTA BORGORYARY
VILL-DOGOR PARA
PO-SALAKATI
DISTRICT-KOKRAJHAR
ASSAM
PIN-783369

8: SANTU MANI ROY
VILLAGE and PO- KASHIPARA
BHOTGAON
DIST. KOKRAJHAR
ASSAM
PIN-783370

9: MANINDAR ROY
S/O PARAMANANDA ROY
VILL-BHALPUR NATH PARA
PO-BHALPUR
PS-CHAPOR
DIST. DHUBRI
ASSAM
PIN-783371

10: SANJAY BASUMATARY
S/O TRISANGKAR BASUMATARY
VILL-JALPAIGURI
PO- SALAKATI
DIST. KOKRAJHAR
ASSAM
PIN-783369

11: BILIFANG BASUMATARY
S/O JAGENDRA BASUMATARY
VILL-JALPAIGURI
PO-SALAKATI
DIST. KOKRAJHR
ASSAM
PIN-783369
VERSUS

THE STATE OF ASSAM and 18 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF POWER ELECTRICITY DISPUR
GUWAHATI-6

2:THE ASSAM STATE ELECTRICITY BOARD
REP. BY ITS CHAIRMAN
BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI-01
DIST. KAMRUP M
ASSAM

3:THE CHIEF GENERAL MANAGER HR
ASSAM POWER DISTRIBUTION CO. LTD.
BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI-01
DIST-KAMRUP M
ASSAM

4:THE GENERAL MANAGER
GUWAHATI ZONE-APDCL LAZ
SIX MILE
GUWAHATI-22
DIST. KAMRUP M
ASSAM

5:THE DEPUTY GENERAL MANAGER
KOKRAJHR ELECTRICAL CIRCLE
APDCL
KOKRAJHR
PO and DIST. KOKRAJHR
ASSAM
PIN-783370

6:THE CHIEF EXECUTIVE OFFICER
KOKRAJHR ELECTRICAL CIRCLE

APDCL
KOKRAJHAR
PO
PS and DIST. KOKRAJHAR
ASSAM
PIN-783370

7:THE DIRECTOR
TRAINING
ASSAM POWER DISTRIBUTION CO. LTD.
NARENGI
GUWAHATI-781026
DIST. KAMRUP M
ASSAM

8:SANJIT DEBNATH

S/O NARESWAR DEBNATH
VILL and PO-KHLIL PUR
DIST. DHUBRI
ASSAM
PIN-783324

9:MANORANJAN BASUMATARY
S/O MOSTO BASUMATARY
VILLAGE- TOKTARA
PO-RANCHADHAM
DIST. CHIRNAG
BTAD
ASSAM
PIN-783372

10:MAHESH CH. ROY
S/O KANAK CHANDRA ROY
VILL-MAYANAGURI
PO-FAKIRAGRAM
DIST. KOKRAJHAR
BTAD
ASSAM
PIN-783345

11:DIPAK CH. NATH
S/O-PRATUL NATH VILLAGE- KAMARPARA
PO-GOBARDHANPARA DISTRICT-DHUBRI
ASSAM
PIN-783348

12:HARENDRA NARZARY

S/O LT. AKENDRA NARZARY
VILLAGE-UNKNOWN
PO-MAGURMARI
DIST. KOKRAJHAR
ASSAM
PIN-783370

13:SANJIT NATH
S/O LT. LALIT MOHAN NATH
PO and PS-KOKRAJHAR
DIST. KOKRAJHAR
BTAD
ASSAM
PIN-783370

14:LAKSMAN BASUMATARY
S/O MONGAL SINGH BASUMATARY
VILLAGE and PO-BASHBARI
PS-KAZIGAON
DIST. KOKRAJHAR
BTAD
ASSAM
PIN-784370

15:RAJU DEY
S/O NIKHIL CH. DEY @ NIKIL CH. DEY
VILLAGE-CHAPOR WARD NO. 3
PO and PS- CHAPOR
DIST. DHUBRI
ASSAM
PIN-783371

16:NUR HUSSAIN
S/O LATE HANIF ALI
VILLAGE- ANANDA NAGAR
WARD NO. 3
PO-BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783348

17:SUNARAM TERON
S/O LONKI TERON
VILLAGE-AMBARI
PO-DEBITOLA AMBARI
PS-KAZIGAON
DIST. KOKRAJHAR
ASSAM

PIN-783339

18:DHIREN ROY
S/O LATE SASHI MOHAN ROY
VILLAGE-KISMAT HASDAHA PART-II
PO-KISMAT HASDAHA
DIST. DHUBRI
ASSAM
PIN-783334

19:SARAT CH. ROY
S/O SRI SASHI MOHAN ROY
VILLAGE-KEDAR PART-III
PO-DIMAKURI
DIST. DHUBRI
ASSAM
PIN-783334

Advocate for : MR. M A SHEIKH
Advocate for : SC
APDCL appearing for THE STATE OF ASSAM and 18 ORS.

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the appellant : Mr. M. Hossain, Advocate.
For the respondent no.1 : Mr. C.S. Hazarika, G.A., Assam.
For respondent nos. 2 to 7 : Mr. S.P. Sarma, S.C.
For respondent no.9 : Mrs. R. Choudhury, Advocate
For respondent nos.8 and 10 to 18
: None.
Date of hearing : 04.06.2024.
Date of judgment & order : 19.08.2024.

JUDGMENT AND ORDER

(CAV)

Heard Mr. M. Hossain, learned counsel for the petitioners.
Also heard Mr. C.S. Hazarika, learned Government Advocate appearing for the
State respondent no.1 and Mr. S.P. Sarma, learned standing counsel for

respondent nos. 2 to 7. Mrs. R. Choudhury, learned counsel for the private respondent no. 9. None appears for the remaining private respondent nos. 8 and 10 to 19 although notices were duly served.

2. By filing this writ petition under Article 226 of the Constitution of India, 11 (eleven) petitioners, having common cause of action, have assailed the engagement of the private respondent nos. 8 to 19 as *Trainee Sahayak*. They have also prayed for a direction to the APDCL authorities, i.e. respondent nos.2 to 7 to select and appoint the petitioners as *Trainee Sahayak*.

3. The case of the petitioners, in brief, is that they had successfully completed the course of Industrial Training Institute of Government of Assam (ITI for short) and had passed out the prescribed test in the Trade of Electrician and therefore, the petitioners project that they are eligible for being appointed as *Trainee Sahayak* in APDCL.

4. It is projected that out of 11 (eleven) petitioners, the petitioner no. 8 belongs to OBC category, the petitioner no.9 belongs to MOBC category, the petitioner nos. 4 to 7, 10 and 11 belongs to ST category and the remaining petitioner nos. 1, 2 and 3 are General and/or unreserved category candidates.

5. The respondent no.3 had issued an employment advertisement no.EA/2013/46, which was published in newspapers on 09.04.2013. By the said advertisement, applications were invited from eligible candidates for filling up of 1064 posts of *Sahayak* under APDCL. In this case, the petitioners are concerned with posts earmarked for the Kokrajhar Electrical Circle. Out of 1064 posts, 73 posts were under Kokrajhar Electrical Circle. Accordingly, the petitioners had submitted their respective applications in Kokrajhar Electrical Circle. Pursuant to call letters received, the petitioners appeared for the physical fitness test held

on 22.07.2013 and 23.07.2013 at Dwimalu Field, near Kokrajhar S.P. Office, Kokrajhar. After successful completion of the test, the petitioners had appeared before the General Manager, Guwahati Zone, APDCL (LAZ) (respondent no.4) for interview for engagement as *Trainee Sahayak* on 25.07.2013 and 26.07.2013.

6. However, without publishing any selection list and without assigning any reasons, the interview was cancelled and the authorities issued another re-examination call letters, directing the candidates to again appear for physical fitness test on 04.10.2013 (*sic.* ought to be 03.10.2013) and for interview on 04.10.2013 at ASEB Complex, Narengi. Thereafter, by virtue of an advertisement, the respondent no.4 had published a selection list dated 21.02.2014 of the candidates for *Training Sahayak* (*sic.* ought to be *Trainee Sahayak*) selected for engagement in the seven Electrical Circles under the Guwahati Zone, viz., Guwahati Electrical Circle-I, Guwahati Electrical Circle-II, Rangia Electrical Circle, Mangaldoi Electrical Circle, Barpeta Electrical Circle, Bongaigaon Electrical Circle and Kokrajhar Electrical Circle. As per the said Select List, out of 73 selected candidates in respect of Kokrajhar Electrical Circle, category-wise selection was as follows, viz., 33 (unreserved), 20 (OBC), 7 [ST(P)], 5 (SC), 1 [ST(H)] and none (PH).

7. The learned counsel for the petitioners has submitted that except for petitioner nos. 6 and 7, all other petitioners had secured more marks than respondent nos. 12 to 19. As per the employment advertisement, the 'B' category candidates were required to submit certificate regarding their engagement for 3 (three) years from the concerned Assistant General Manager, but in the experience certificate for respondent no. 19, the length of experience is shown as 9 months only, for which the said certificates was invalid.

8. It was submitted that the last date for submission of application

forms was 30.04.2013, but the experience certificate was issued to respondent no. 16 on 22.05.2013, which was after the last date of submission of form. Moreover, the qualification certificate of the respondent no. 18 was attested on 27.05.2013, which was after the last date of applying. Accordingly, it was submitted that the application forms of the said respondent nos. 16, 18 and 19 were invalid.

9. It was submitted that the names of respondent nos. 12, 13 and 14 was placed under unreserved category though they belonged to ST and OBC category, which is in violation of the reservation policy and therefore, the selection and appointment of respondent nos. 12, 13 and 14 was illegal.

10. In their affidavit-in-opposition, the respondent nos. 2 to 7 have denied the allegations made in the writ petition that the respondent nos. 8 to 11 has secured less marks or that the respondent nos. 12 to 19 were not placed in the merit list. It was further stated that the merit list annexed by the petitioners as Annexure-8 and 8A to the writ petition was not an authentic one and no such list was published by the respondent authorities at any point of time. It was also stated that pursuant to fresh test and interview held on 03.10.2013 and 04.10.2013, the merit list was prepared and the final select list was prepared considering the reservation roster category wise. It was stated that 37 candidates were selected in general category, 20 candidates were selected in OBC/ MOBC category, 7 candidates were selected in ST(P) category and 5 candidates were selected in SC category. It was Also stated that although 4 posts was reserved for ST(H) category but only 1 candidate was available and therefore, 3 vacancy earmarked for ST(H) category was treated as unreserved and 3 unreserved category candidates were selected on the basis of merit. It was stated that the respondent nos. 8 to 14, 18 and 19, who belonged to

reserved category (being OBC, ST, OBC, SC, ST, OBC, ST, OBC, OBC respectively) were treated as unreserved considering higher marks secured by them. The marks secured by the petitioners were as follows, viz., (1) petitioner no.1 belonging to General Category secured 47.25 marks and was placed at sl. No. 201 in the merit list; (2) petitioner no.2 belonging to General Category secured 56.25 marks and was placed at sl. No. 127 in the merit list; (3) petitioner no.3 belonging to General Category secured 47.25 marks and was placed at sl. No. 202 in the merit list; (4) petitioner no.4 belonging to ST Category secured 53.5 marks and was placed at sl. No. 145 in the merit list; (5) petitioner no.5 belonging to ST Category secured 52.25 marks and was placed at sl. No. 149 in the merit list; (6) petitioner no.6 belonging to ST Category secured 46.25 marks and was placed at sl. No. 207 in the merit list; (7) petitioner no.7 belonging to ST Category secured 42.25 marks and was placed at sl. No. 263 in the merit list; (8) petitioner no.8 belonging to OBC Category secured 56.75 marks and was placed at sl. No. 123 in the merit list; (9) petitioner no.9 belonging to OBC Category secured 55.5 marks and was placed at sl. No. 132 in the merit list; (10) petitioner no.10 belonging to ST Category secured 57.75 marks and was placed at sl. No. 117 in the merit list; (11) petitioner no.11 belonging to ST Category secured 64.25 marks and was placed at sl. No. 79 in the merit list.

11. The marks secured by the respondent nos. 8 to 19 stated as follows, viz., (1) respondent no.8 belonging to OBC Category secured 80 marks and was treated as unreserved; (2) respondent no.9 belonging to ST Category secured 68.5 marks and was treated as unreserved; (3) respondent no.10 belonging to OBC Category secured 58.75 marks and was treated as unreserved; (4) respondent no.11 belonging to SC Category secured 66.25

marks and was treated as unreserved; (5) respondent no.12 belonging to ST Category secured 80 marks and was treated as unreserved; (6) respondent no.13 belonging to OBC Category secured 80 marks and was treated as unreserved; (7) respondent no.14 belonging to ST Category secured 71.5 marks and was treated as unreserved; (8) respondent no.15 belonging to General Category secured 70.25 marks; (9) respondent no.16 belonging to General Category secured 67.75 marks; (10) respondent no.17 belonging to ST(H) Category secured 38 marks; (11) respondent no.18 belonging to OBC Category secured 67.75 marks and was treated as unreserved; (12) respondent no.19 belonging to OBC Category secured 67 marks and was treated as unreserved.

12. It has been stated that initially the fitness test and interview was held on 25.07.2013 and 26.07.2013, but the process was cancelled by the Chief General Manager, APDCL (LAR) at that stage due to some allegations and complaints. Subsequently, physical fitness test was held on 03.10.2013 and interview was held on 04.10.2013, where the petitioner had also participated. The select list was published on 21.02.2014.

13. In support of his submission the learned counsel for the respondent nos.2 to 7 places reliance on the following cases, viz. (1) *Public service Commission, Uttaranchal v. Mamta Bisht & Ors. (2010) 12 SCC 204*, (para-9), (2) *Bikash Sarma v. Dharitri Kalita & Ors. (2020) 2 GLR 473*, and (3) *Rantu Dutta & Ors. v. APDCL & Ors. 2019 (2) GLT 1048*.

14. The private respondent no. 9 has filed his affidavit-in-opposition, but other respondent nos. 8 and 10 to 19 have not filed their affidavit-in-opposition.

15. Perused the writ petition, additional affidavit filed by the

petitioners regarding service of notice on private respondents, affidavit-in-opposition on behalf of respondent nos.2 to 7 by the Chief General Manager (HRA), APDCL and affidavit-in-reply by the petitioners, and affidavit filed by the petitioners on 03.08.2022 regarding service of notice on respondent nos.16 to 19 through respondent no.5.

16. Submissions made by the learned counsel for the petitioners, learned Govt. Advocate, the learned standing counsel for the respondent nos. 2 to 7, and the submissions made by the learned counsel for the respondent no. 9 has received due consideration.

17. In the present case in hand, the petitioners have impleaded the private respondent nos. 8 to 19, whose selection and appointment have been specifically challenged. As stated hereinbefore, by an advertisement, the APDCL authorities had invited applications for filling up of 1064 vacant posts of *Sahayak* in 17 (seventeen) Electrical Circles of APDCL. After completion of selection process, 339 candidates were selected in seven circles under Guwahati Zone. Hence, the Court does not find that it was necessary for the petitioners to implead all the selected candidates, when they have assailed appointment of specific persons, arrayed as respondent nos. 8 to 19. Accordingly, it is held that the present writ petition is maintainable and is not hit by non-joinder of proper and necessary parties.

18. On the issue of maintainability, the learned counsel for the respondent nos. 2 to 7 had placed reliance on the case of *Rantu Dutta (supra)*. Although the said case also relates to same selection process as in the present case, but the said case was decided on another point. In that case, the selection and appointment of respondent nos. 6 to 9 had been challenged as they were not residents of Sivasagar District and had less experience than the petitioners

in that case. Accordingly, in that context, it was held that there was no bar in applying for the post of *Sahayak* in APDCL office situated outside the district of their permanent residence. Moreover, in that case, prayer was made to interfere with the selection list, but out of 93 selected candidates only respondent nos. 6 to 9 were impleaded and, as such, the writ petition was held to be not maintainable because if the select list was interfered with, the interest of non-parties to the writ petition would be adversely affected. In the present case in hand, the petitioners have arrayed private respondent nos. 8 to 19, who are all necessary parties for which the present writ petition does not suffer from non-joinder of necessary parties. Thus, on the aforesaid distinguishing facts, the ratio of the case of *Rantu Dutta (supra)* is not applicable in the present case.

19. In the case of *Bikash Sarma (supra)*, pursuant to selection as per notification dated 25.06.2015, the appellant therein was issued appointment letter dated 25.06.2015 and accordingly he had joined on 29.06.2015. The writ petition was filed by respondent no.1 on 01.10.2015 to challenge the appointment on the ground that requirement of the Assam Women (Reservation of Vacancies in Services and Posts) Act, 2005 and Rules framed thereunder was not followed. The employment advertisement was issued without providing for reservation and the respondent no.1 had participated without assailing the advertisement. Accordingly, on facts, it was held that the respondent no.1 had allowed the appellant to join and work for four months, as such, the appeal was allowed by dismissing the writ petition on ground of delay and laches.

20. In the present case in hand, the selection of the private respondent nos. 8 to 19 as *Sahayak* have been assailed on specific grounds, which is the factor that distinguishes the present case from the cited case of *Bikash Sarma (supra)*. Hence, the Court is of the considered opinion that the

petitioners cannot be non-suited in the case on the ground of delay and laches.

21. By filing affidavit-in-reply, the petitioners have projected that the certificate of experience of respondent nos.8, 15 and 17 to 19 disclose that they were working under Contractor, Society, NGO etc., but not working under any Power Utility Company. Moreover, their experience certificates were issued by Sub-Divisional Engineer and not by Assistant General Manager for which those certificates were invalid. It was stated that the respondent no.8 does not passed class-VIII and therefore, he did not possess the requisite qualification. It was also stated that the certificate of respondent nos. 10 and 12 to 14 was not supplied to the petitioners despite making RTI application and therefore, it is apprehended that the said respondents have not submitted their certificates at the time of applying.

22. In respect of the certificate of experience of respondent no.8 is concerned, we find that although the said certificate was issued by the Sub-Divisional Engineer, Dhubri Electrical Sub-Division, but the said certificate has been attested by the Assistant General Manager, Dhubri Electrical Division. Therefore, in respect of the private respondent nos.8 and 15 to 19, whose certificates were issued by authorities other than Assistant General Manager, but are found to have duly attested by the Assistant General Manager concerned, the Court is inclined to hold that those experience certificates cannot be invalidated merely because the prescribed authorities in the advertisement i.e. Assistant General Manager did not issue the experience certificates, provided that those experience certificates must have been issued and/ or attested prior to the last date of submission of application forms. It may be stated that Annexure-D-1 appended to the affidavit-in-reply of the petitioner is the experience certificate of one Raju Ray S/o Sri Sukaru Ray. However, the said

person is not arrayed as private respondent in this writ petition.

23. The selection of private respondent nos. 16 to 19 has been assailed on the ground that their experience certificates were invalid. We have perused all the experience certificates that have been annexed to this writ petition. The experience certificate of respondent no.19 is of nine months whereas the requirement of experience of three years. The private respondent nos. 16 and 18 appears to have submitted their qualifications/ experience certificates after the last date of submission of applications because the experience certificate of respondent no.16 was issued on 22.05.2013 and the experience certificate of respondent no.18 is shown to have been attested on 27.05.2013.

24. In this regard, the Division Bench of this Court, by an order dated 24.01.2023, passed in WA 274/2021 and other connected appeals had passed the following order:

“Heard Mr. M.R. Khandakar, learned counsel for the appellant in WA No.274/2021 and Mr. F.K.R. Ahmed, learned counsel appearing for the appellants in WA Nos. 308/2021, 287/2021, 288/2021, 289/2021. Also heard Mr. U.K. Nair, learned Senior counsel assisted by Mr. S.P. Sharma, appearing for the respondent APDCL.

2. The only issue raised in these appeals is as to whether the private respondents satisfy the eligibility criteria as on the last date of submission of applications for appointment to the post of Sahayak in the Assam Power Distribution Company Limited (APDCL). It is the contention of the writ appellants that these private respondents did not possess the same. It is now well settled that if any candidate does not possess the requisite qualification as on the last date of submission of application or on the date as may be fixed by the authorities, any selection or appointment of such person to a public post will be in violation of Article 14 of the Constitution of India.

3. Mr. Nair, learned Senior counsel appearing for the respondent APDCL has fairly submitted that on verification of the records it was found that some of the candidates who were appointed, submitted their requisite qualification certificates after the last date of submission of application or did not submit the requisite certificates, in which event, their selection perhaps cannot be sustained in law.

4. *Under the aforesaid circumstances, we direct the respondent APDCL to conduct a verification exercise of all the persons who were appointed to the posts of Sahayak and if it is found that if any of them had submitted his/her requisite/ essential certificates/documents after the last date of submission of application or the date fixed by the authorities concerned or did not submit such certificate, such persons may be identified and their services will be liable to be terminated, however, only after giving a notice to them. After completing the aforesaid exercise of terminating the services of such ineligible candidates by giving due notice to them, the vacant posts shall be filled up from amongst the remaining other candidates as per the merit and if any of the writ appellants come within that zone of meritorious candidates, they certainly shall be accommodated as per merit to the said vacant posts on termination of service as mentioned above.*

5. *With the above observations and direction, the present appeals stand disposed of."*

25. Therefore, from the herein before quoted order, as there is already a direction by the Division Bench of this Court to the APDCL to conduct a verification exercise of all those persons who were appointed to the post of *Sahayak*, the Court is of the considered opinion that in view of the said judgment dated 24.01.2023, passed by the Division Bench of this Court in WA 274/2021, no further order is required in this case.

26. In terms of paragraph 4 of the said order dated 24.01.2023 passed by the Division Bench of this Court in WA 274/2021, this Court is inclined to provide that in course of verification conducted in terms of the aforesaid order, if any of the private respondent nos. 8 to 19 are found not to be possessing the requisite three years experience, or are found to have submitted their requisite/ essential certificates/ documents after the last date of submission of application or the date fixed by the authorities concerned, their service would be liable to be terminated as their appointment shall be *void ab initio*, which shall be done after giving them a notice as to why their services as *Sahayak* should not be terminated. The resultant vacant posts shall be filled up

from amongst the remaining other candidates as per the merit/ select list, and if any of the petitioners come within that zone of meritorious candidates, they shall be accommodated as per merit to the said vacant posts on termination of service as mentioned above.

27. Therefore, in light of the directions contained in the order dated 24.01.2023 passed by the Division Bench of this Court in WA 274/2021, by which this Court is bound, this writ petition stands partially allowed to the extent as indicated above.

JUDGE

Comparing Assistant