

GAHC010021582024



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

Case No. : WP(C)/665/2024

NURAL ALAM MONDAL
S/O- NASIMUDDIN, VILL- SONALUGURI, P.O- RANIGANJ,
SAPATGRAM, DIST- DHUBRI, ASSAM, PIN-783345

VERSUS

1: THE STATE OF ASSAM AND 2 ORS REP. BY THE CHIEF SECRETARY TO
THE GOVERNMENT OF ASSAM, DISPUR, GHY-06

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
EDUCATION DEPPARTMENT DISPUR GHY-06

3:THE DIRECTOR ELEMENTARY EDUCATION
ASSAM KAHILIPARA GHY-1

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 23-04-2024

Heard Mr. M.U. Mondal, learned counsel for the petitioner. Also heard Mr. B. Deori, learned Junior Government Advocate, Assam, appearing for the respondent No.1 and Mr. P.K. Bora, learned standing counsel, Education (Elementary) Department, appearing for the respondent Nos.2 & 3.

The grievance raised by the petitioner in the present proceedings pertains to denial of an appointment to him in pursuance to a selection process as initiated vide advertisement dated 01.01.2024 against the post of Assistant Teacher in Upper Primary Schools reserved for Persons with Disability (PWD). The petitioner in the present petition has projected that he is suffering from 50% Loco motor Disability and the disability as suffered by the petitioner was certified by the competent authority.

The Director of Elementary Education, Assam had issued an advertisement on 17.02.2023 inviting applications from eligible candidates for filling up of posts of Assistant Teachers in Lower Primary Schools and Upper Primary Schools situated in different districts of the State of Assam. In respect of the vacancies so identified for the posts of Assistant Teachers of Upper Primary Schools in the district of Golaghat, 5(five) posts were reserved for persons with benchmark disability.

The petitioner having satisfied the eligibility criteria as specified in the said advertisement and being a person suffering from benchmark disability, submitted his application for the post of Assistant Teacher in Upper Primary Schools as advertised for the district of Golaghat along with all requisite documents. It is contended by the petitioner that upon a verification being carried out with regard to the certificates including the certificate pertaining to the physical disability as submitted by the candidates, a list of candidates came to be published on 01.04.2023 and therein the name of the petitioner was reflected at Serial No.65. It is the further case of the petitioner that on 06.06.2023, he had appeared before the Medical Board as constituted by the respondent authorities for examining the percentage of physical disability suffered by him. After the examination of various documents as well as the

examination carried out in respect of candidates suffering from physical disability, a provisional merit list was published on 07.09.2023 and therein the name of the petitioner did not figure against the post so advertised for the district of Golaghat.

The petitioner contends that given the marks scored by him in the different examinations pertaining to his educational career, the petitioner was entitled to be offered an appointment against the post as reserved for Persons with Disability candidates in the district of Golaghat against the post of Assistant Teachers in the Upper Primary Schools. It is the further contention of the petitioner that without taking the matter pertaining to his appointment against the post so advertised for the district of Golaghat to its logical conclusion, the respondent authorities, more particularly, the Director of Elementary Education, Assam, on 01.01.2024 published a fresh advertisement for recruitment, amongst others, for the post of Assistant Teachers available in various districts in Upper Primary Schools. The petitioner has contended that 1(one) post as reserved for Persons with Disability in the district of Golaghat against the post of Assistant Teacher in Upper Primary School was not filled up inasmuch as one of the candidate so appointed had not accepted such appointment inasmuch he was already appointed as a Teacher in Lower Primary School. The petitioner has also contended that the marks that he had scored in the selection process would naturally result in an appointment being offered to him. However, on account of the findings as arrived at with regard to his physical disablement and on having found that he suffers from such disability below the benchmark prescribed, the respondent authorities have not considered his case for appointment against the post of Assistant Teacher in Upper Primary Schools available for candidates belonging to the Persons with Disability category in

Golaghat district. Accordingly, the petitioner has instituted the present proceedings.

The learned counsel for the petitioner has made his submissions in tune with the contentions as made in the writ petition and accordingly, the same is not being reiterated.

This Court on noticing the contentions made by the petitioner in the matter had required the learned Standing Counsel, Education (Elementary) Department to receive his instructions in the matter and to apprise this Court as to why the petitioner was not afforded with an appointment in the matter.

In terms of the directions as passed by this Court, the Director of Elementary Education, Assam, vide communication dated 23.04.2024, addressed to the learned Standing Counsel, Education (Elementary) Department, had contended that although as per the initial medical report received with regard to the physical disability of the petitioner, he was denoted to suffer from 20% disability, which being below the benchmark prescribed, his case was not taken up for consideration against the vacant post of Assistant Teacher in Upper Primary Schools as reserved for Persons with Disability in the district of Golaghat. However, it was contended in the said communication dated 23.04.2024 that subsequently the disability status of the petitioner was verified by the Medical Board constituted in the Gauhati Medical College & Hospital, which Board, on examination of the petitioner, had concluded that he suffered from 40% disability, i.e. within the benchmark as prescribed. It is further contended that on account of the earlier assessment made with regard to the disability of the petitioner and the same being quantified as 20%, his candidature was not considered and subsequently due to oversight on account of processing huge data of the candidates, the name of the petitioner was not

considered to be included in the final list for the post of Assistant Teachers of Upper Primary Schools as prepared in pursuance to the advertisement dated on 11.02.2023.

In view of the revelations as made by the Director of Elementary Education, Assam in the communication dated 23.04.2024, the issue as arising in the present proceedings need not detain this Court any further. Accordingly, in view of the said revelations made in the communication dated 23.04.2024, this Court hereby directs the petitioner herein to submit a representation before the Director of Elementary Education, Assam staking a claim for being appointed against the post advertised vide advertisement dated 11.02.2023 and available in the district of Golaghat in the cadre of Assistant Teacher of Upper Primary Schools as advertised vide the advertisement dated 11.02.2023 along with the requisite certificate pertaining to his disability. The Director of Elementary Education, Assam, on receipt of such representation from the petitioner, shall immediately process the same and taking note of the disclosure as made in the communication dated 23.04.2024 issued by the Director of Elementary Education, Assam, as noticed hereinabove, proceed to examine the marks as scored by the petitioner in the selection held in pursuance to the advertisement dated 11.02.2023 and thereafter, if it is found that in view of the marks secured by the petitioner, he is entitled for an appointment against any of the post of Assistant Teacher of Upper Primary Schools in Golaghat district as reserved for Persons with Disability, shall proceed to issue orders towards appointing the petitioner against such available vacant post advertised vide the advertisement dated 17.02.2023. It is also provided that in the event any vacant post of Assistant Teacher in Upper Primary Schools exists in Golaghat district as advertised vide the advertisement dated 17.02.2023, the case of the petitioner

shall be considered against the same notwithstanding the issuance of the fresh advertisement on 01.01.2024.

The above exercise as now required to be carried out by the Director of Elementary Education, Assam shall be so initiated and concluded within a period of 2(two) months from the date of receipt of a representation from the petitioner herein.

The petitioner shall submit a certified copy of this order along with the representation as now required to be submitted by him in the matter before the Director of Elementary Education, Assam for taking the matter forward.

With the above observations and directions, the writ petition stands disposed of.

J U D G E

Comparing Assistant