

GAHC010000882021



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

Case No. : WP(C)/116/2021

DHANESWAR BISWAS AND ANR
S/O LATE MAHENDRA BISWAS, R/O HOUSE NO. 6, BYE LANE-4, SEUJ
NAGAR, P.O. NARENGI, P.S. NOONMATI, GUWAHATI 26, DIST. KAMRUP (M),
ASSAM.

2: DHRUBAJYOTI BISWAS
S/O SRI DHANESWAR BISWAS
R/O HOUSE NO. 6
BYE LANE 4
SEUJ NAGAR
P.O. NARENGI
P.S. NOONMATI
GUWAHATI 26
DIST. KAMRUP (M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, REVENUE DEPTT., DISPUR, GUWAHATI 06

2:THE COMMISSIONER OF TAXES

ASSAM KAR BHAWAN
DISPUR
GUWAHATI 06

3:AYBUR RAHMAN (CTDR0211)
S/O LATE AFAZ UDDIN
THROUGH THE COMMISSIONER OF TAXES
ASSAM
KAR BHAWAN
DISPUR

GUWAHATI 06

4:BISHAL DAS (CTDR 0340)
S/O KALPANA DAS
THROUGH THE COMMISSIONER OF TAXES
ASSAM KAR BHAWAN
DISPUR
GUWAHATI 06

5:KAPIL DEV BARUAH (CTDR0404)
S/O LATE BHUBANESWAR BARUAH
THROUGH THE COMMISSIONER OF TAXES
ASSAM KAR BHAWAN
DISPUR
GUWAHATI 0

Advocate for the Petitioner : MR. M A ISLAM

Advocate for the Respondent : MR. R BARPUJARI

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

ORDER

01.05.2024

Heard Shri MA Islam, learned counsel for the petitioners. Also heard Shri H. Baruah, learned counsel appearing on instructions of Shri B. Gogoi, learned Standing Counsel, Finance (Taxation) Department.

2. Considering the subject matter involved and the fact that the affidavit-in-opposition has been filed by the Department –respondent no. 2 on 14.08.2023, this writ petition is taken up for disposal at the admission stage.

3. Two petitioners have approached this Court in this writ petition with the grievance connected with a recruitment process for the post of Driver under the Commissioner of Taxes, Government of Assam. As per the facts projected, a notice of recruitment was issued on 03.09.2020 for filling up three posts of

Driver out of which one was under the reserved category and two for unreserved category. The petitioners, who had offered their candidatures, had appeared in the written test and were allotted the following Roll Nos. CTDR0081 AND CTDR0151 and in this connection, they were also issued call letters. On 01.12.2020, a list of candidates who had qualified in the written test was published which included the names of the petitioners. The said candidates were called for a driving test. It is the contention of the petitioners that thereafter appointments were done without publication of a select list.

4. Shri Islam, learned counsel for the petitioners has submitted that they had performed extremely well in the written test and have expected to secure around 97% of the marks. As regards their driving experience, both the petitioners have claimed to be highly qualified and having the experience of driving vehicles of high dignitaries of the State. The learned counsel has submitted that a selection procedure has to be carried out in a fair and transparent manner which is found lacking in this case.

5. In support of his submissions, reliance has been placed on a decision of the Hon'ble Supreme Court in the case of ***State of Bihar Vs. Kaushal Kishore Singh and Ors.*** reported in ***AIR 1997 SC 2643***. In the said case, the Hon'ble Supreme Court have emphasized on the requirement of a proper selection before appointing persons in post under the various branches of the State.

6. *Per contra*, it is contended on behalf of the Department that the entire basis of formulating the present challenge is both factually and legally untenable. It is submitted that the petition has been presented on a stipulation that the petitioners had secured high marks in the written test and therefore should have been amongst the selected candidates. By referring to the affidavit-

in-opposition filed on 14.08.2023 by the respondent no. 2, it is submitted that the stand of the Department has been made clear wherein it has been stated that both the petitioners had secured 90 marks out of 100 and were placed at Sl. Nos. 8 and 9 in the merit list. Specific reference has been made to the averments in paragraph 4 which is extracted hereinbelow-

“4. That with regard to the statements made in paragraph 7 and 8 of the writ petition, the deponent begs to state that though the petitioners were expected 97.5 marks out of 100 as stated, however, both the petitioner only scored 90 marks only out of 100 and was placed at Serial No. 8 and 9 in the merit list. Hence the selection process for the post of driver was genuine and conducted purely on merits.”

The learned counsel for the Department accordingly submits that the writ petition ought to be dismissed.

7. At this stage, this Court has noticed that though the selected candidates have been made parties, they have chosen not to contest this proceeding. In fact, vide an order dated 26.06.2023, this Court has passed an order that service upon the respondent no. 5 is deemed to be complete.

8. This Court has also noticed that vide an order dated 15.09.2023, a direction was issued for filling necessary affidavit on the basis of the instructions placed on record to show the marks obtained by the various short listed candidates which has accordingly been done.

9. The contention of the petitioners is that they had performed extremely well and had expected marks of 97%. The said submission is based on stipulation as the marks allotted are within the domain of the Evaluators. In the instance case, as per the affidavit filed by the Department, the petitioners were

placed in Sl. Nos. 8 and 9 in the final select list and had secured the 90 marks in the written test. The aforesaid stand of the Department being placed on affidavit and there being no rejoinder affidavit to that aspect, this Court is of the opinion that on the basis of the present allegation, no relief can be granted to the petitioners.

10. As regards the case law cited, there is absolutely no dispute with the proposition of maintaining fairness and transparency in the selection process. However, in the instant case, the order dated 15.09.2023 passed by this Court would reveal that the instructions showing the marks obtained by various short listed candidates were produced and further, the affidavit-in-opposition has been filed on 14.08.2023 based on the said instructions.

11. In view of the above, this Court is of the considered opinion that no case for interference is made out and accordingly the writ petition is dismissed.

JUDGE

Comparing Assistant