

GAHC010014202015



2024:GAU-AS:8164

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

Case No. : WP(C)/3014/2015

JAKIR HOSSAIN and 11 ORS
S/O SAMSUL HOQUE, VILL. KISMATHASDAHA PART-III, P.O.
KISMATHASDAHA, P.S. AND DIST- DHUBRI, ASSAM, PIN-783334

2: HITESH CH. ROY
S/O. HARENDRA NATH ROY
VILL. KISMATHASDAHA PART-IV
P.O. KISMATHASDAHA
P.S. AND DIST- DHUBRI
ASSAM, PIN-783334

3: BALBAHADUR THAPA
R/O DHUBRI WARD NO. 10
P.O. AND DIST. DHUBRI
ASSAM. PIN-783301

4: SANJAY KUMAR ROY
S/O JITENDRA NATH ROY
VILL. KHUDIMARI PART-II
P.O. KHUDIMARI
P.S. GAURIPUR
DIST. DHUBRI
ASSAM, PIN-783331

5: PARTHADEEP CHOUDHURY
S/O LATE NIKHIL NARAYAN CHOUDHURY
R/O BIDYAPARA
P.O. BIDYAPARA
DIST. DHUBRI
ASSAM. PIN-783324

6: EUSUF ALI AHMED
S/O EYAKUB ALI
VILL. KISMATHASDAHA PART-I
P.O. KACHARIHAT
P.S. AND DIST- DHUBRI

ASSAM, PIN-783334

7: BIKASHINDU KOCH
S/O LATE CHANDRA KANTA KOCH
VILL. GAURIPUR TOWN
P.O. GAURIPUR
DIST. DHUBRI
ASSAM, PIN-783331

8: NUR ALOM SK
S/O BIHITULAH SK.
VILL. BHUTIADANGA
P.O. SUKCHAR
P.S. SOUTH SALMARA
DIST. DHUBRI
ASSAM, PIN-783128

9: MOHBUB ALOM
S/O EKRAMUL HOQUE
VILL. MADHUSOULMARI PART-II
P.O. MADHUSOULMARI
P.S. GAURIPUR
DIST. DHUBRI
ASSAM, PIN-783331

10: ANIRBAN KARMAKAR
R/O GAURIPUR WARD NO.1 (MISTRI PARA)
P.O. AND P.S. GAURIPUR
DIST. DHUBRI
ASSAM, PIN-783331

11: MANTU PRASAD BHATTARAJ
S/O HARI PRASAD BHATTARAJ
VILL. SOUTH RAIPUR PART-I
P.O. GOLOKGANJ
DIST. DHUBRI
ASSAM, PIN-783334

12: ANIL CHANDRA RAY
S/O HARENDRA NATH RAY
VILL. DEBOTTAR HASDAHA PART-IV
P.O. DEBOTTAR HASDAHA
DIST. DHUBRI
ASSAM, PIN-78333

VERSUS

THE STATE OF ASSAM AND 69 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, DEPTT.

OF POWER ELECTRICITY, DISPUR, GHY-6

2:8) MRINAL CHANDRA ROY
S/O ROMESH CH. ROY
VILL. DEBOTTAR HASDAHA PT-I
P.O. DEBOTTAR HASDAHA
P.S.GOLOKGANJ
DIST. DHUBRI
ASSAM, PIN-783334.

3:11) SARAT CH. ROY
S/O SRI SASHIMOHAN ROY
VILL. KEDAR PART-III
P.O. DIMAKURI
DIST. DHUBRI
ASSAM, PIN-783334.

4:12) SANJIT DEBNATH
S/O NARESWAR DEBNATH
VILL AND P.O. KHALILPUR
DIST. DHUBRI
ASSAM, PIN-783324.

5:13. HOREN CH. NATH @ HORENDRA CH. NATH
S/O LATE BHUBAN CH. NATH
VILL NOONMATI
P.O. HATIPUTA
P.S.CHAPOR
DIST. DHUBRI
ASSAM, PIN-783348.

6:14) BIPIN ROY
S/O LATE KAMALA KANTA ROY
VILL. DEOBHANGI
P.O. RUPSHI
DIST. DHUBRI
ASSAM, PIN-783331

7:15) PABITRA KR. ROY
S/O BAISHAK CH. ROY
VILL AND P.O. DEBOTTAR HASDAHA
P.S.GOLOKGANJ
DIST. DHUBRI
ASSAM, PIN-783334

8:16) LAKHI KANTA ROY
S/O BEPARI ROY
VILL. GAIKHOWA GANGADHAR(GANDHIGRAM PART-II)
P.O. AND P.S. GOLOKGANJ

DIST. DHUBRI
ASSAM, PIN- 783334

9:17) DHIREN ROY
S/O LATE SASHI MOHAN ROYVILL. KISMIT HASDAHA PART-II
P.O. KISMAT HASDAHA
DIST. DHUBRI
ASSAM, PIN-783334

10:18) DIPJYOTI NATH
S/O DIGAMBAR NATH
VILL. NATHPARA
P.O. BOHOLPUR
P.S. CHAPAR
DIST. DHUBRI
ASSAM, PIN-783371

11:19) BISNU CH. NATH
S/O ROBINDRA CH. NATH
VILL. BIDYAPARA PART-II
P.O. BIDYAPARA
DIST. DHUBRI
ASSAM, PIN-783334

12:20) JAYANTA NATH
S/O SONATON NATH
VILL AND P.O. BOHOLPUR
P.S. CHAPOR
DIST. DHUBRI
ASSAM, PIN- 783371

14:22) RAJU ROY
S/O SUKARU ROY
VILL DARCHOWKA
P.O. SHILAIRPAR
P.S. GAURIPUR
DIST. DHUBRI
ASSAM, PIN- 783331

15:26) SANKAR CH. DAS
S/O SRI HARI NATH DAS
VILL. WARD NO. 3
BOROGRAM(BILASIPARA)
P.O. AND P.S. BILASIPARA
DIST. DHUBRI
ASSAM, PIN- 783348

16:30) JIBEN BRAHMA
S/O LATE RATESH CH. BRAHMA @ RAKESH BRAHMA

VILL. HATGIMATHA WARD NO. 8
P.O. AND DIST. KOKRAJHAR
BTAD
ASSAM, PIN-783370

17:31) DHAJEN KR. BOSUMATARI
S/O BIDYUT BOKASH BOSUMATARI
VILL. BELGURI
P.O. RAINADABRI
DIST. KOKRAJHAR
BTAD
ASSAM, PIN-783370

18:33) DILIP BARMAN
S/O LATE KAMALA KANTA BARMAN
VILL. NALDUBA
P.O. BIDYAPUR
DIST. BONGAIGAON
ASSAM, PIN-783372

19:35) GOPAL SINGHA
S/O LATE SOROBINDU SINGHA
VILL. BHAKATGAON
P.O. AND P.S. CHAPOR
DIST. DHUBRI
ASSAM, PIN-783571

20:36) JIBDHAN NATH
S/O LATE NEPAL CH. NATH
VILL. NATHPARA (BAHALPUR)
P.O. BAHALPUR
P.S. CHAPOR
DIST. DHUBRI
ASSAM, PIN-783571

21:37) UKIL ROY
S/O BHOGARI ROY
VILL KHERAJGAONBHANGI
P.O. RUPSHI
P.S. GAURIPUR
DIST. DHUBRI
ASSAM, PIN-783331

22:38) ARJUN DAS
S/O ANIL CH. DAS
VILL. NORTH PAIPUR PT- I
(NEAR BAGMARI LP SCHOOL)
P.O. AND P.S. GOLOKGANJ
DIST. DHUBRI

ASSAM, PIN-783334

23:40) SATYAJIT THAKURIA
S/O DHARMESWAR THAKURIA
VILL CHAIBARI SIV MANDIR
P.O. CHOIBARI
P.S. CHAPOR
DIST. DHUBRI
ASSAM, PIN-783376

24:41) KAMALESH CH. ROY
S/O KAMINI KR. ROY
VILL AND P.O. MOTERJHAR
P.S. GOLOKGANJ
DIST. DHUBRI
ASSAM, PIN-783334

25:42) DIBOSH ROY
S/O LATE KHOKA ROY
VILL KHUDIMARI PT- II
P.O.KHUDIMAR
P.S. GAURIPUR
DIST. DHUBRI
ASSAM, PIN-783331

26:43) MAGRI LOHAR
S/O SATRUGHANA LOHAR
VILL FALIMARI
P.O.AND P.S. CHAPOR
DIST. DHUBRI
ASSAM, PIN-783571

27:44) DIPEN CH. ROY
S/O ROBINDRA NATH ROY
VILL. UTTARBAND
P.O.DEBOTTAR HASDOHA
P.S. GOLOKGANJ
DIST. DHUBRI
ASSAM, PIN-783334

28:46) BISNUPADA ROY
S/O LALIT ROY
VILL BISANDOI PART- II
P.O.BARUNDANGA
P.S. GOLOKGANJ
DIST. DHUBRI
ASSAM, PIN-783334

29:49)SAMBHU CH. NATH

S/O RAMKAMAL CH. NATH
VILL BIDYAPARA PT- II (NATHPARA)
P.O.KHALILPUR
P.S. GAURIPUR
DIST. DHUBRI
ASSAM, PIN-783324

30:50) JOYNAL HOQUE
S/O BONDAY ALI SHEIKH
VILL ADABARI PT- II
P.O.CHAGALCHARA
DIST. DHUBRI
ASSAM, PIN-783324

31:52) NUR HUSSAIN
S/O HANIF ALI
VILL ANAND NAGAR WARD NO. 3
P.O.BILASIPARA
DIST. DHUBRI
ASSAM, PIN-783348

32:53) ANISUR ISLAM
S/O AJIMUDDIN AHMED
VILL GAURIPUR WARD NO. 4
P.O. GAURIPUR
DIST. DHUBRI
ASSAM, PIN-783331

33:54) BHANULAL DAS
S/O LATE MOHAN LAL DAS
VILL KRISHNA NAGAR
P.O.BILASIPARA
DIST. DHUBRI
ASSAM, PIN-783348

34:55) SOMIR KR. DAS
S/O HORINATH DAS
VILL BOROGRAM DIMATALA WARD NO. 3
P.O.BILASIPARA
DIST. DHUBRI
ASSAM, PIN-783348

35:56) PURNABASHI PAUL
S/O GONESH CH. PAUL
VILL BAHAKATI
P.O.PAGLAHAT
DIST. DHUBRI
ASSAM, PIN-783334

36:57) SAHABUDDIN SHEIKH
S/O KABUL SHEIKH
VILL KHUDIMARI PT- II
P.O.KHUDIMAR
P.S. GAURIPUR
DIST. DHUBRI
ASSAM, PIN-783331

37:58) MONINDRA NATH ROY
S/O NONKISHORE ROY
VILL BATHUATALI
P.O.BALAJAN
P.S. GOLOKGANJ
DIST. DHUBRI
ASSAM, PIN-783331

38:59) NIRMAL CH. ROY
S/O KAMINI KUMAR ROY@ KAMINI KT. ROY
VILL AND P.O.MOTERJHAR
P.S. GOLOKGANJ
DIST. DHUBRI
ASSAM, PIN-783334

39:61) TARAK CH. SARKAR
S/O LATE JOGAT CH. SARKAR
VILL JHAPUSABARI PARTT- III
P.O.SOUTH JHAPUSABARI
P.S. AGOMONI
DIST. DHUBRI
ASSAM, PIN-783335

40:62)SANJOY KR. ROY
S/O PRANESHWAR ROY
VILL BOWMARI
P.O.AND P.S. CHAPOR
DIST. DHUBRI
ASSAM, PIN-783371

41:69) SANJIT NATH
S/O LATE LOLIT MOHAN NATH
P.O.AND P.S. KOKRAJHAR
PIN-783331
DIST. KOKRAJHAR
BTAD
ASSAM

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 nos. 23, 29, 45 & 69
: Mrs. R. Choudhury, Advocate
For other respondents : 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 nos. 23, 29, 45, 69. None appears for the remaining private respondent nos. 8 to 22, 24 to 28, 30 to 44, 46 to 68 and 70, although notices were duly served.

2. By filing this writ petition under Article 226 of the Constitution of India, 12 (twelve) petitioners, having common cause of action, have assailed the engagement of the private respondent nos. 8 to 70 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 12 (twelve) petitioners, the petitioner nos. 2, 3 and 12 belong to OBC category, the petitioner no. 7 belongs to ST category and the remaining petitioner nos. 1 and 4 to 6 and 8 to 11 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 filing up of 1064 posts of *Sahayak* under APDCL. In this case, the petitioners are concerned with posts earmarked for the Kokrajhar and Bongaigaon Electrical Circle. Out of 1064 posts, 73 posts were under Kokrajhar Electrical Circle and 46 posts were under Bongaigaon Electrical Circle. Accordingly, the petitioner nos. 1 to 7 and 9 to 12 had submitted their respective applications in Kokrajhar Electrical Circle and the petitioner no. 8 had submitted his application in Bongaigaon Electrical Circle. Pursuant to call letters received, the petitioner nos. 1 to 7 and 9 to 12 appeared for the physical fitness test held on 22.07.2013 and 23.07.2013 at Dwimalu Field, near Kokrajhar S.P. Office, Kokrajhar. The petitioner no.8 had appeared for the physical fitness test on 21.08.2013 at 132 KV Grid Sub-Station Playground, AEGCL, Dhaligaon. After successful completion of the test, the petitioner nos. 1 to 7 and 9 to 12 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. The petitioner no. 8 was called to appear before the Director, Training, APDCL on 29.08.2013.

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 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 from the RTI disclosure received by the petitioner no. 9, the experience certificate of respondent nos. 8, 9, 11 to 22, 26 to 29, 32, 34, 36 to 42, 47, 49, 50, 52 to 57, 59, 61 to 63 and 65 were issued by the concerned Sub-Divisional Engineer (SDE for short), APDCL and therefore, invalid. It was further submitted that the experience certificate of private respondent nos. 23, 33, 44 to 46, 48, 51, 60, 64 and 66 were issued by the Deputy Manager, APDCL and the experience certificate of respondent no. 67 was issued by the Manager, Kokrajhar Electrical Division, APDCL and the experience certificate for respondent no. 43 and 58 were issued by the contractor and therefore, invalid. It was also submitted that in the experience certificate for respondent nos. 9 and 53, the length of experience is not shown,

and in respect of respondent no. 11, experience of 9 months was shown for which those certificates were also invalid.

8. It was also submitted that the respondent nos. 12 and 28 had not passed out Class-VIII and therefore, they were not having the requisite educational qualification. It was also submitted that as per the date of birth disclosed, the respondent nos. 18, 43 and 56 were minor on the date from when experience certificates were issued to them and therefore, it was submitted that the period when the said respondents were minor, had to be excluded and if so, they would not have the requisite experience.

9. It was submitted that the last date for submission of application forms was 30.04.2013, but the experience certificate was issued to respondent nos. 23, 52 and 54 on 29.05.2013 and 22.05.2013. Moreover, the qualification certificate of the respondent nos. 54 and 57 were issued on 02.05.2013 and 16.05.2013 respectively. It was also submitted that the admit card of respondent nos. 9 and 63 were attested on 08.05.2013 and 03.05.2013 respectively. Moreover, it was submitted that the experience certificate of respondent nos. 8, 17, 18, 22, 23, 26, 28, 29, 37, 52, 55 to 59 and 66 were counter-signed by the Assistant General Manager after the last date of applying. It was also submitted that the experience certificate issued to respondent nos. 25, 30 and 31 did not contain the dates from when the said respondents were working. Accordingly, it was submitted that the applications submitted by the said respondent nos. 8, 9, 17, 18, 22, 23, 25, 26, 28 to 31, 37, 52, 54 to 59, 63 and 66 were invalid.

10. It was submitted that despite submitting RTI application, the officers of APDCL could not provide copy of experience certificate of respondent nos. 10, 24, 35, 68, 69 and 70, submitted along with their application forms.

11. It was also submitted that the experience certificate of respondent nos. 8, 9, 11 to 14, 17 to 21, 23, 25 to 29, 32, 36, 37, 39, 40, 42, 43, 45, 47, 49, 50 to 52, 54, 55, 57, 58, 60 to 64, 66 and 67 disclose that the said respondents were working under contractor, society, NGO, etc., but not under power utility company.

12. It was also submitted that the employment advertisement did not contain any clause permitting counter-signature on experience certificates, but the requirement was that the experience certificates were to be issued by the competent authority i.e. by the Assistant General Manager of the concerned Electrical Division. Accordingly, it was submitted that the experience certificate of respondent nos. 8 to 70 were illegally accepted though they were invalid and therefore, it is prayed that the selection and appointment of the private respondent nos. 8 to 70 was liable to be set aside.

13. In their affidavit-in-opposition, the respondent nos. 2 to 7 have stated that as per employment advertisement dated 09.03.2013, appointment of *Sahayak* were under two categories. Category-A was for candidates having ITI certificate and Category-B was for candidates having been engaged in any Power Utility Company. Accordingly, it has been submitted that as the petitioners claim to have passed ITI in the Trade of Wireman/ Electrician and had applied for appointment against Category-A post of *Sahayak*, they had no *locus standi* to challenge the selection of the respondent nos. 8 to 70, who have been selected for Category-B post.

14. 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.

15. The learned counsel for the respondent nos.2 to 7 has submitted that as per the employment advertisement, it was provided that two categories of candidates were eligible to apply, being (1) Category-A: for candidates having ITI certificate, and (2) Category-B: temporary workers engaged in any power utility to work as *Sahayak*. It is submitted that the APDCL had out-sourced the repairs and maintenance work to third party vendors. Hence, the persons selected and appointed under Category-B had gathered sufficient experience so as to entitle them to apply for being appointed as *Sahayak*. It is submitted that the petitioners are holders of ITI certificate and belong to Category-A, as such, they cannot challenge the appointment made to the private respondents under Category-B.

16. 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.

17. The private respondent nos.23, 29, 45 and 69 have not filed their affidavit-in-opposition.

18. 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 (D&S), Lower Assam Region, APDCL and affidavit-in-reply by the petitioners, and affidavit filed by the petitioners on 04.08.2022 regarding service of notice

on respondent no.69 through respondent no.5.

19. 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 nos. 23, 29, 45, 69 have received due consideration.

20. In the present case in hand, the petitioners have impleaded the private respondent nos. 8 to 70, whose selection and appointment have been specifically challenge for reasons as stated hereinbefore. As stated hereinbefore, by an advertisement, the APDCL authorities had invited applications for filing 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 70. Accordingly, it is held that the present writ petition is maintainable and is not hit by non- joinder of proper and necessary parties.

21. 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 70, 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.

22. 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.

23. In the present case in hand, the selection of the private respondent nos. 8 to 70 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.

24. The learned counsel for the petitioners has submitted that the certificate of experience of respondent nos. 8, 9, 11 to 23, 26 to 29, 32 to 34, 36 to 42, 44 to 49, 50 to 52 to 57, 59 to 61 to 67 were issued by authorities

other than the Assistant General Manager and therefore, invalid. Moreover, the experience certificate of respondent no. 43 and 58 were issued by the contractor and therefore, invalid. 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. In this regard, 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 are duly attested by the prescribed authority i.e. Assistant General Manager. Moreover, in terms of the advertisement, the experience certificates must have been issued and/ or attested prior to the last date of submission of application forms.

25. In respect of respondent nos. 18, 43 and 56, it is required that the APDCL authorities would have to examine the date of birth of the said respondents and if they are minor on the dates covered by the experience certificates, the period of minority is required to be excluded from their total experience because neither the APDCL nor its contractors could have engaged minors in hazardous work in electricity lines.

26. As regards the point urged by the learned counsel for the respondent nos. 2 to 7 that the petitioners are holders of ITI certificate and belonging to Category-A, as such, they cannot challenge the appointment made to the private respondents under Category-B, is taken up first. In this connection it is seen from the employment advertisement dated 09.04.2013 that it does not mention how many of the vacant posts of *Sahayak* was ear-marked for Category-A and Category-B. Therefore, it is plausible that any number of

applicants in either category could have been selected for appointment to the 1064 posts of *Sahayak* including 73 posts within Kokrajhar Electrical Circle. This position is fortified by the fact that the impugned select list approved on 21.02.2014 contains names of candidates of Category-A and Category-B. Therefore, as vacancy was not determined separately for Category-A and Category-B, this writ petition would be maintainable because it is quite possible that the vacant posts could have been filled up in order of merit from either Category-A or Category-B. Therefore, if selection and appointment of any person from Category-B is interfered with, there is a possibility that in order of merit, the person from Category-A might get an opportunity to be appointed, as such the present writ petition is found to be maintainable in view of the facts peculiar to the present case in hand.

27. The selection of private respondent nos. 8 to 70 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. All the certificates of experience are found to have been counter signed by the Assistant General Manager. Moreover, as regards the projection made in this writ petition that some of the private respondents had submitted their qualifications/ experience certificates after the last date of submission of applications. 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."*

28. 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.

29. 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 if in course of verification conducted in terms of the aforesaid order, if any of the private respondent nos. 8 to 70 are found to have 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 any such certificates, those private respondents out of the private respondent nos. 8 to 70 would be identified by the respondent nos. 2 to 7 and their service would be liable to be terminated as their appointment shall be *void ab initio*, after giving them a notice to terminate their service as *Sahayak*. Similarly, if on enquiry, the respondent nos. 9 and 53 are found to be invalid because of their minority during the period mentioned in the experience certificate, such experience gathered during their minority is also liable to be excluded from their experience because they were minors and could not have been employed in hazardous work. The resultant vacant posts shall be filled up from amongst the remaining other candidates as per the merit 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.

30. 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