

GAHC010055512018



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

Case No. : WP(C)/1689/2018

MANTU ROY
S/O. BHAKTI ROY, VILL. AMBARI, P.O. AMBARI, P.S. DHUPDHARA, DIST.
GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE LEGAL REMEMBRANCER AND SECRETARY, JUDICIAL
DEPTT., GOVT. OF ASSAM, DISPUR, GHY.

2:GAUHATI HIGH COURT

REP. BY THE REGISTRAR GENERAL
GAUHATI HIGH COURT
GUWAHATI

3:HERAMBA SINGHA
S/O. LAKSHMI KANTA SINGHA
VILL. MATIA P.O.. MATIA P.S. MATIA
DIST. GOALPARA
ASSAM

4:NIPUN KUMAR ROY

S/O. SRI PRAMOD ROY VILL. MANDALGRAM
P.O. DUDHNOI
P.S. DUDHNOI
DIST. GOALPARA
ASSA

Advocate for the Petitioner : MR. K SARMA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 30/01/2024

Heard Mr. K. Sarma, learned counsel for the writ petitioner. Also heard Mr. H.K. Das, learned Standing Counsel, Gauhati High Court, appearing for the respondent no. 2, Mr. J.K. Goswami, learned Additional Senior Government Advocate, Assam, appearing for the respondent no. 1 and Mr. N.J. Khataniar, learned counsel appearing for the respondent nos. 3 & 4.

On 07/09/2015, the Registrar (Admn) cum In-charge Centralised Recruitment Cell of the Gauhati High Court had issued an advertisement notice, inviting applications from eligible candidates for filling up 397 posts of Computer Typists in the district Judiciary of Assam, spread across 27 districts. In the advertisement notice dated 07/09/2015, district-wise break-up of the number of posts, had been furnished and it was also mentioned that each candidate would be entitled to submit only one application indicating any one of the district of his/her choice. In the advertisement notice dated 07/09/2015, it was further mentioned that posts would be reserved for OBC/MOBC/SC/ST/PwD category candidates.

In response to the advertisement dated 07/09/2015, the writ petitioner herein had submitted his application for the district of Goalpara by identifying himself as a candidate belonging to the Person with Disability (PwD) category.

Be it mentioned herein that there were altogether 11 posts ear-marked for the district of Goalpara. The petitioner participated in the selection process but when the final list was published, his name did not appear in the final select list of 11 candidates. Out of the aforesaid 11 candidates, 2 (two) candidates, viz. the respondent nos. 3 & 4 herein belong to the OBC category. The remaining candidates, who had secured higher marks than the writ petitioner, were all appointed as general category (unreserved category) candidates. According to the writ petitioner, he also belonged to the OBC category. Although the said fact was not originally mentioned in his application, yet, subsequently, in response to a telephone call received from the Registry, the writ petitioner had sent an e-mail enclosing a copy of his OBC certificate. As such, he ought to have been considered as an OBC category candidate, in which event he would have been appointed in place of respondent nos. 3

or 4 as an OBC candidate.

By referring to the materials available on record, Mr. Sarma, learned counsel for the writ petitioner has argued that the writ petitioner had scored 84 marks in total. Therefore, it is evident that he had scored higher marks than the respondent nos. 3 & 4, who were appointed as OBC category candidates. According to Mr. Sarma, since the advertisement notice initially mentions about the reservation of vacancies for the PwD category and considering the fact that the petitioner was holding a certificate of "Bench Mark" disability, he had applied as PwD category candidate and not as an OBC category candidate as the petitioner was under an impression that vacancies would be reserved for PwD category candidates, in which case, he would have a better chance of being selected. However, when the results were declared, no such vacancies were reserved for the PwD category. According to Mr. Sarma, even if no vacancies were available for PwD candidates, even then, since the petitioner belongs to the OBC category, he ought to have been selected ahead of the respondent nos. 3 & 4. Hence, this writ petition.

The respondent no. 2 has contested the stand of the petitioner by filing affidavit. The basic stand of the respondent no. 2 would appear from the statements made in para 11 of the counter affidavit. Therefore, the averments made in para 11 are reproduced herein below for ready reference :-

"11. That with regard to the statements made in para 11 and 12 of the writ petition, the answering deponent while denying the contentions made therein begs to state that the Recruitment Cell, Gauhati High Court has got no record pertaining to making call to the petitioner. However, it is a fact that in the e-mail dated 05/06/2017 the petitioner had mentioned that he applied as a PwD candidate and informed for the first time that he also belongs to OBC category. As there was no post reserved for PwD candidates in the district of Goalpara, the name of the petitioner was considered as a general candidate. In the merit list, the petitioner figured at Sl. No. 13 against total 9(nine) unreserved vacancies of which 5 (five) posts belong to establishment of District and Sessions Judge, 3 (three) posts in the establishment of Chief Judicial Magistrate and 1(one) post in the establishment of MACT. The petitioner could not be selected because of his lower merit position under unreserved category. However, it is denied that the Recruitment Cell of Gauhati High Court gave any assurance to the petitioner for consideration of his candidature for OBC category after receipt of OBC certificate."

Mr. Das has strenuously argued that the Registry had never made any phone call to the petitioner but the petitioner had voluntarily sent an e-mail informing that he was a OBC category candidate. However, since the e-mail was received on 05/06/2017 i.e. after the final select list was prepared and published, the respondents could not have acted on the said e-mail, sent by the petitioner. Mr. Das has further argued that although there were more than 2 OBC category candidates who were included in the final list of the 11 selected candidates for the Goalpara District, yet, save and except the respondent nos. 3 & 4, all others were selected as general category candidates based on their merit position.

In so far as the argument as regard reservation of PwD category posts are concerned, Mr. Das has argued that the advertisement itself had indicated that each district will have separate vacancy position. Since these are establishment based vacancies and considering the fact that there were only 11 vacancies in the district of Goalpara, hence it was not possible to make reservation of 3% of posts for being reserved for PwD candidate as per the statute. Under the circumstances, submits Mr. Das, no fault can be found with the authorities for selecting the respondent nos. 3 & 4 as OBC category candidates. Mr. Das, therefore, submits that the writ petition is devoid of any merit and deserves to be dismissed.

The arguments of Mr. H.K. Das, learned Standing Counsel, Gauhati High Court has been adopted by Mr. J.K. Goswami, learned Additional Senior Government Advocate, Assam, appearing for the respondent no. 1. Mr. N.J. Khataniar, learned counsel for the respondent nos. 3 & 4 has also supported the stand of the Department.

During the course of hearing of this case, the learned counsel for the respondent no. 2 has produced a copy of the original application submitted by the petitioner. A perusal of the said application clearly goes to show that in response to the advertisement notice dated 07/09/2015, the petitioner had applied for the post of Computer Typist in respect of Goalpara District but only as a PwD category candidate. There is no mention of "OBC" in his application. Under the circumstances, the respondents have rightly treated him as a general category candidate. Although the petitioner had applied as PwD category candidate, yet, since there was no vacancy reserved for the PwD category for the district of Goalpara, the petitioner was treated as an unreserved (general) category candidate.

The petitioner had admittedly and evidently scored lower marks than the 9 selected candidates belonging to the unreserved category. Therefore, it cannot be said that any right of the petitioner has been violated due to selection and/or appointment of any of the 9 un-reserved category candidates for Goalpara district.

In so far as the other arguments of Mr. Sarma as regards the claim of the petitioner being an OBC category is concerned, there is no dispute in this case about the fact that the petitioner had not applied as an OBC category candidate. If that be so, the question of considering him as an OBC category candidate would not arise in the eyes of law. The respondents have denied of having made any phone call to the petitioner calling for his OBC certificate. However, even assuming that any such call was actually made and the petitioner had, in fact, furnished such certificate subsequent to the last date of submission of the application, the same also could not have been taken into account by the authorities since it would amount to extending the last date of submission of application without following the due procedure prescribed under the law.

As such, it would not be necessary for this Court to enter into the disputed question of fact as to whether the Registry had, in fact, made a phone call to the petitioner and in response thereto, whether the petitioner had actually sent the e-mail forwarding his OBC certificate. The fact remains that the writ petitioner did not apply as an OBC candidate and, therefore, his candidature could not have been considered as OBC candidate.

After going through the materials on record and upon hearing the submission of learned counsel for both the sides, this Court is of the unhesitant view that there is no right of the petitioner which is capable of being enforced in this writ petition.

For the reasons stated herein above, this writ petition is held to be devoid of any merit. The same is accordingly dismissed.

Parties to bear their own costs.

JUDGE

sukhamay

Comparing Assistant