

GAHC010028752019



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

Case No. : RSA/72/2019

MD. ABDUL JINNA PRODHANI
S/O- MD. ABDUL JALIL PRODHANI, VILL.- KALDOBA PART-1, P.O. AND P.S.
AGOMONI, DIST.- DHUBRI, ASSAM, PIN- 783335.

VERSUS

THE PRINCIPAL/SECRETARY, AGOMONI HIGHER SECONDARY SCHOOL
AND 12 ORS.
AGOMONI, P.O. AND P.S. AGOMONI, DIST.- DHUBRI, ASSAM.

2:AGOMONI HIGHER SECONDARY SCHOOL

REP. BY ITS PRINCIPAL/SECRETARY
AGOMONI
P.O. AND P.S. AGOMONI
DIST.- DHUBRI
ASSAM.

3:MOTLEB HUSSAIN
S/O- LATE MOSIRUDDIN MUNSHI
PRESIDENT OF THE SCHOOL SELECTION COMMITTEE OF AGOMONI
HIGHER SECONDARY SCHOOL
VILL.- SER NAGAR
P.O. AND P.S. AGOMONI
DIST.- DHUBRI
ASSAM
PIN- 783335.

4:MOTIUR RAHMAN MONDAL

S/O- LATE MOFIZ UDDIN MONDAL
MEMBER OF THE SCHOOL SELECTION COMMITTEE OF AGOMONI

HIGHER SECONDARY SCHOOL
VILL.- SER NAGAR
P.O. AND P.S. AGOMONI
DIST.- DHUBRI
ASSAM
PIN- 783335.

5:GANESH SARKAR

S/O- DHARANI SARKAR
MEMBER OF THE SCHOOL SELECTION COMMITTEE OF AGOMONI
HIGHER SECONDARY SCHOOL
VILL.- SER NAGAR
P.O. AND P.S. AGOMONI
DIST.- DHUBRI
ASSAM
PIN- 783335.

6:ABDUS SAMAD SK.

S/O- AINUDDIN SK
VILL.- TOLLI PART-1
P.O. BELGURI
P.S. AGOMONI
DIST.- DHUBRI
ASSAM
PIN- 783334.

7:THE INSPECTOR OF SCHOOLS

DHUBRI DISTRICT CIRCLE
P.O.
P.S. AND DIST.- DHUBRI
ASSAM
PIN- 783301.

8:AMINUR RAHMAN
S/O- ABDUS SARNAD SK
VILL.- TOLLI PART-1
P.O. BELGURI
P.S. AGOMONI
DIST.- DHUBRI
ASSAM
PIN- 783334.

9:SHAHADAT ALI
S/O- AIJUDDIN
VILL.- SHERNAGAR

P.O. AND P.S. AGOMONI
DIST.- DHUBRI
ASSAM
PIN- 783335.

10:MADER ALI
S/O- LATE ASKAR ALI
VILL.- SHERNAGAR
P.O. AND P.S. AGOMONI
DIST.- DHUBRI
ASSAM
PIN- 783335.

11:JAHANGIR ALI

S/O- JAHIRUL ISLAM

VILL.- SHERNAGAR
P.O. AND P.S. AGOMONI
DIST.- DHUBRI
ASSAM
PIN- 783335.

12:JAHANGIR ALOM SARKAR

S/O- AFZAL ALI SARKAR
VILL.- SHERNAGAR
P.O. AND P.S. AGOMONI
DIST.- DHUBRI
ASSAM
PIN- 783335.

13:BISHNU CH. ROY
S/O- SURENDRA NATH ROY
VILL.- KALDOBA
P.O. AND P.S. AGOMONI
DIST.- DHUBRI
ASSAM
PIN- 783335

Advocate for the Petitioner : MR. J AHMED

Advocate for the Respondent : MR. S MUKTAR

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant	:	Mr. J. Ahmed, Advocate.
For the Respondents	:	Mr. A.U. Choudhury, Advocate.
Date of Hearing	:	27.02.2024.
Date of Judgment	:	01.03.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. J. Ahmed, learned counsel appearing for the appellant as well as Mr. A.U. Choudhury, learned counsel representing the respondents.

2. This is a Regular Second Appeal under Section 100 of the Civil Procedure Code (CPC) where the judgment and decree dated 12.11.2018 passed by the learned Civil Judge, Dhubri in Title Appeal No.32/2016 upholding the judgment and decree dated 18.08.2016 passed by the Munsiff No.1, Dhubri in T.S. No.236/2013, is under challenge.

3. On 20.10.2012, an Advertisement was published whereby applications were invited for filling up a vacancy in Grade-IV service in Agomoni Higher Secondary School. The last date of submission of applications was fixed on 30.10.2012 and the date of interview was fixed

on 04.07.2012.

4. As many as 27 applications were filed. The appellant Md. Abdul Jinna Prodhani and another person named Abdus Samad Sk. were amongst those applicants.

5. On 01.07.2013, the Selection Committee selected 7 persons for viva-voce. The list was like this–

- | | | | |
|----|----------------------|---|-------------|
| 1. | Abdul Jinna Prodhani | - | Roll No.03. |
| 2. | Momedar Ali | - | Roll No.02. |
| 3. | Aminur Rahman | - | Roll No.08. |
| 4. | Bishnu Chandra Roy | - | Roll No.13. |
| 5. | Jahangir Ali | - | Roll No.14. |
| 6. | Jaghangir Alom | - | Roll No.17. |
| 7. | Shahadat Ali | - | Roll No.20. |

6. This selection list did not have the name of Abdus Samad Sk. because he was found over-aged. At the time of application, he was 40 years 2 months 5 days as on 01.01.2012, which was more than the maximum age limit of 38 years.

7. The interview was not held on 04.07.2012. Rather, a written interview was held on 29.06.2013.

8. Before the viva-voce was held, on 03.07.2013, without holding any viva-voce examination, the Selection Committee selected Abdus Samad Sk. for appointment as Grade-IV employee in the said school.

9. Therefore, the appellant Abdul Jinna Prodhani filed the suit before the trial court seeking a declaration that the selection of Abdus Samad Sk. is illegal.

10. Agomoni Higher Secondary School contested the case by filing a written statement. It is admitted that 27 candidates filed applications for the Grade-IV post and out of those 27 applications, 2 were rejected. According to the defendant, only 13 candidates appeared in the written test and 7 candidates were selected for viva-voce. The said list is like this

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- | | | | |
|----|----------------------|---|-------------|
| 1. | Abdus Samad Sk. | - | Roll No.08. |
| 2. | Monowar Hussain | - | Roll No.20. |
| 3. | Abdul Jinna Prodhani | - | Roll No.03. |
| 4. | Momedar Ali | - | Roll No.02. |
| 5. | Raju Rabidas | - | Roll No.14. |
| 6. | Ramvaras Rabidas | - | Roll No.17. |
| 7. | Jahangir Ali | - | Roll No.13. |

11. The defendant admitted that Abdus Samad Sk. was over-aged at the time of application but his age was relaxed by 5 years by the Inspector of Schools, DDC, Dhubri as per the order of Assistant Director of Secondary Education, which made him eligible to apply for the post.

12. The defendant further submitted that viva-voce was held on 07.07.2013 and it was attended by Abdul Jinna Prodhani.

13. It is further claimed that Abdus Samad Sk. had secured highest marks in the written test as well as in the viva-voce.

14. On the basis of the pleadings, the trial court framed the following issues:

1. Whether suit is maintainable in law and facts?
2. Whether there is any cause of action for the suit?

3. Whether appointment of defendant no.6 in the grade-IV post of Agomoni Higher Secondary School is illegal?
4. Whether the plaintiff is entitled to get any relief, as prayed for?
5. To what relief, parties are entitled to?

15. During the trial of the case Md. Abdul Jinna Prodhani examined two witnesses and exhibited some documents. The defendants examined three witnesses. On the basis of the evidence on record, the trial court dismissed the suit of Abdul Jinna Prodhani.

16. He preferred an appeal and the appeal was also dismissed.

17. The present second appeal was admitted for hearing upon the following substantial question of law—

1. Whether the findings of the court below in upholding the action of the selection committee in accepting the age relaxation certificate of the respondent no.6 which are admittedly procured after the recruitment process are in accordance with law?

18. I have considered the submissions made by the learned counsels of both sides.

19. There is no denial of the fact that the Advertisement asking for applications to fill up a post in Grade-IV of Agomoni Higher Secondary School was published on 20.10.2012 wherein, the last date of submission of application was fixed on 30.10.2012. Even the date of interview was mentioned as 04.07.2012.

20. It is an admitted fact that at the time of application, Abdus Samad

Sk. was more than 38 years of age.

21. Now, the question arises how Abdus Samad Sk. was selected?

22. His selection is based on a Certificate (Exhibit-A) issued by Inspector of Schools, DDC, Dhubri on 06.11.2012. The age of Abdus Samad Sk. was relaxed for 5 years for applying to the post of Grade-IV in provincialised Secondary Schools.

23. So, it is clear that the age of Abdus Samad Sk. was relaxed after the last date fixed for accepting application i.e. on 30.10.2012. Therefore, on 30.10.2012, Abdus Samad Sk. was not eligible to apply for the post of Grade-IV of Agomoni Higher Secondary School.

24. Even then, Abdus Samad Sk. was allowed to appear in the written examination as well as in the viva-voce and ultimately, he was selected.

25. Now, this Court is of the opinion that the selection of Abdus Samad Sk. (respondent no.6) is illegal. His appointment is liable to be set aside.

26. Accordingly, the impugned first appellate court judgment affirming the judgment of the trial court is set aside.

27. The appeal is allowed. The suit of Abdul Jinna Prodhani is decreed accordingly.

28. The appointment of Abdus Samad Sk. as a Grade-IV employee in Agomoni Higher Secondary School is set aside. The respondent no.1, the Principal/Secretary, Agomoni Higher Secondary School shall hold a fresh selection process to fill up the vacant post of Grade-IV employee in Agomoni Higher Secondary School.

29. The substantial question of law is answered accordingly.

Send back the LCR.

JUDGE

Comparing Assistant