

GAHC010047362023



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

Case No. : WP(C)/1250/2023

TAPAN KUMAR DAS
C/O- RUDRA KANTA DAS ,
R/O- VILLAGE PACHIM DIGHALDARI,
DIST- NAGAON, PIN-782103, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HIGHER EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DIRECTOR
OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI
PIN-781019

3:THE PRINCIPAL
RAHA COLLEGE
RAHA
DIST- NAGAON
ASSAM

4:THE SECRETARY TO THE GOVT. OF ASSAM
WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES (WPT AND BC)
DEPARTMENT
DISPUR
GUWAHATI-781006

Advocate for the Petitioner : MR. I CHOUDHURY, MS N GUPTA,MS K BORAH,R L CHUTIA

Advocate for the Respondent : SC, HIGHER EDU, MR. A J SARMA (R-3),MR G ALAM (R-3),MR. H ROHMAN (R-3),MR. P D NAIR (R-3),MR. R DHAR, SC, (WPT&BC)

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 30.10.2024

Heard Mr. I. Choudhury, learned counsel for the petitioner. Also heard Mr. D. Upamanya, learned standing counsel for the Higher Education Department, representing respondent nos.1 and 2; Mr. P.D. Nair, learned counsel for the respondent no.3; and Ms. A. Longkumer, learned counsel appearing on behalf of Mr. R. Dhar, learned standing counsel for the respondent no.4.

2. In brief, the case of the practitioner is that he has the requisite qualification and belongs to the SC category. He was initially appointed temporarily as a Library Bearer in Raha College at Raha, District- Nagaon on contractual basis on 17.09.2016 and since then, he is serving the said college. One Bipul Chandra Das, who was serving as the Library Bearer in the said college, had superannuated on 31.12.2022. Accordingly, an advertisement was published on 08.02.2023 for filling up the post of Library Bearer, wherein it was indicated that the post was reserved for OBC/MOBC category candidates. Accordingly, it is projected that the respondent authorities did not accept the application submitted by the petitioner. Accordingly, by filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for setting aside the advertisement dated 08.02.2023 in respect of the post of Library Bearer at Raha College; to set aside the selection/recruitment process and for direction of the respondent authorities to fill up the post of Library

Bearer as per the terms of the Assam Scheduled Castes and Scheduled Tribes (Reservation of Posts in Services) Act, 1978 with a further prayer to direct the respondent authorities not to hold the interview and conclude the process.

3. The learned counsel for the petitioner has submitted that Bipul Chandra Das, who had superannuated as Library Bearer, though belonged to Scheduled Castes category, was appointed in the Unreserved category. Accordingly, it is submitted that as per the roster point, for a replacement recruitment, the resultant vacant post should be reserved for Scheduled Castes category. Accordingly, it is submitted that the authorities of respondent no.3 intend to appoint persons of their own choice and therefore they are proceeding with the advertisement, which is illegal and that the post cannot be reserved for OBC/MOBC.

4. It is also submitted that the respondent authorities are wrongly interpreting the provisions for reservation and that the post of Library Bearer should be filled up from Scheduled Castes category and not OBC/MOBC category.

5. Per contra, the learned counsel for respondent no.3 has submitted that the petitioner is disentitled for applying for the post of Library Bearer of Raha College, *inter alia*, on three grounds, being (1) that the vacancy is earmarked for OBC category candidate and therefore, the petitioner being a candidate belonging to SC category is not entitled to apply or for being appointed; and (2) that the petitioner has surpassed the maximum age for recruitment of the post of Library Bearer and therefore, the petitioner is otherwise disentitled even for relaxation of the maximum age for such recruitment.

6. It is also submitted that Raha College was initially a venture institution and the said college was provincialized in the year 2007. At that time, Bipul Chandra Das was the senior most Grade-IV staff and though he was a Scheduled Caste category employee, he was placed in the first roster point, which was for Unreserved category as there was no Unreserved category person amongst the then existing Grade-IV staff. It is further submitted in the said context that the cadre strength of Grade-IV staff in the said college is 5 (five) and accordingly, the 5 (five) then existing Grade-IV staff were placed in the 5 roster points in the following manner, viz. (a) Bipul Chandra Das was placed at roster point no.1 as unreserved category; (b) Rudra Kanta Nath was placed at roster point no.2, which was reserved for OBC category; (c) Prasanta Konwar, the third senior most Grade-IV staff, who belong to Scheduled Tribe (Plains) was placed at roster point no.3, which was also for Unreserved category as there was no Unreserved category person among the Grade-IV staff; (d) Rabin Deoraja, the fourth senior most Grade-IV staff belonging to Scheduled Tribe (Plains) category was placed at roster point no.5, which was reserved for ST(P) category and (e) Shri Asom Das, the fifth senior most Grade-IV staff belonging to Scheduled Caste category was placed at roster point no.4, which was for Unreserved category as there was no Unreserved category staff in the then existing Grade-IV staff.

7. In continuation, it is further submitted that the "roster register" was thereafter sent to the Directorate of Higher Education, Assam for approval and accordingly, the approval was granted by the WPT&BT Department vide endorsement dated 02.05.2019, which was intimated to the Director of Higher Education vide communication dated 16.05.2019. Accordingly, it is submitted

that in light of the roster register, the recruitment for the replacement of Library Bearer on direct recruitment is in accordance with law as the replacement can only be of an OBC/MOBC category candidate under roster point no.6.

8. Considered the submissions made at the bar and also considered all the pleadings and documents on record.

9. The respondent no.3 in its affidavit-in-opposition filed on 28.11.2023 has annexed a copy of the OM dated 04.11.2013, which indicates the 13 point roster, which indicates that the roster point nos.2, 6 and 10 would be OBC/MOBC and accordingly, for the direct recruitment of replacement category, the post would be available only for the roster point no.6 under OBC category, which is subsequently made available for OBC/MOBC category under roster point no.6 under 100 point roster. The said fact has not been controverted and thus, admitted by the petitioner.

10. Accordingly, the Court is of the considered opinion that the post of Library Bearer, which was advertised for recruitment would be a vacancy available under the roster point no.6, which is earmarked for OBC/MOBC category. Therefore, as the petitioner belongs to SC category, he is disentitled for applying or for being selected or appointed to the post reserved for OBC/MOBC category.

11. Moreover, it is not in dispute that the petitioner has crossed the maximum age for recruitment and there is no application pending before the competent authority for relaxation of age. Hence, the petitioner is otherwise ineligible for applying for the said post of Library Bearer at Raha College at Raha, District- Nagaon.

12. Accordingly, this writ petition fails and the same is dismissed.
13. There shall be no order as to cost.
14. Interim order passed on 10.03.2023 stands vacated.

JUDGE

Comparing Assistant