

GAHC010036772017



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

Case No. : WP(C)/5195/2017

KUSHAL DEV SARMAH
S/O. SRI JOGENDRA DEV SARMAH,
VILL. NO.1 FASIA, P.O. AMBAGAN, DIST. UDALGURI, BTC, ASSAM.

VERSUS

1: THE STATE OF ASSAM and 4 ORS. REP. BY THE COMM. and SECY. TO THE
GOVT. OF ASSAM, EDUCATION DEPTT., DISPUR, GHY.-06.

2:THE SECRETARY EDUCATION ELEMENTARY DEPTT.
BODOLAND AUTONOMOUS COUNCIL KOKRAJHAR ASSAM-784509.

3:THE DIRECTOR ELEMENTARY EDUCATION DEE
BTC KOKRAJHAR ASSAM.

4:THE DIST. ELEMENTARY EDUCATION OFFICER DEEO
UDALGURI BTAD KOKRAJHAR ASSAM.

5:THE CHAIRMAN CUM PRINCIPAL SECY.
DIST. LEVEL SELECTION COMMITTEE UDALGURI BTAD ASSAM

Advocate for the Petitioner : MRS.R DEVI

Advocate for the Respondent : SC, BTC

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 05-01-2024

Heard Mrs. R. Devi, learned counsel for the petitioner. Also heard Mr. S.M.T. Chistie, learned standing counsel, Education (Elementary) Department,

representing the respondent No.1 and Ms. P. Das, learned standing counsel, BTC, representing the respondent Nos.2 to 5.

The issue arising in the present writ petition pertains to claim of the petitioner for appointment to the post of Assistant Teacher in a Primary School under 10% quota Scheme brought into effect vide a Notification dated 23.07.1999 issued by the Secretary to the Government of Assam, Education Department.

It is the case of the petitioner that his father Shri Jogendra Dev Sarmah retired from his services on medical ground on 31.03.1999. The petitioner's father, at that relevant point of time, was working as a Headmaster of Jhakara L.P. School, Udalguri. Thereafter, the petitioner submitted an application on 03.04.1999 before the Director of Bodoland Autonomous Council (BAC) for considering his case for appointment on compassionate ground. It is reflected from the records of the writ petition that such application of the petitioner was approved by the Bodoland Autonomous Council vide its communication dated 09.08.2000 (Annexure-B to the writ petition). The appointment of the petitioner as an Assistant Teacher not materializing, he had instituted WP(C) No.7430/2013.

This Court, vide order dated 18.02.2016, while permitting the petitioner to withdraw the said writ petition, granted liberty to pursue the option given in the Communication dated 03.12.2014 of the District Elementary Education Officer, Udalguri, wherein the petitioner was directed to submit document for submission before the District Level Selection Committee constituted for appointment on compassionate grounds. The District Level Selection Committee for appointment on compassionate grounds in its meeting held on 11.12.2014 rejected the case of the petitioner by holding that the claim of the petitioner is not for an appointment on compassionate ground against the death of a Government servant in die in harness scheme.

It may be mentioned here that on non-consideration of the case of the

petitioner in terms of the liberty granted to him vide order dated 18.02.2016, the petitioner had instituted a contempt proceeding being Cont. Case (C) No.33/2017 before this Court. This Court, vide an order dated 23.05.2017, disposed of the said contempt petition with the following observations:-

“It is settled in law that son and daughter of retired teachers are not entitled for the benefit of 10% reserved quota for appointment in the post of teachers automatically but subject to their merit position, after due advertisement and selection under the said quota.

Considering such aspects, the Court is of the view that respondent authorities have not committed any illegality in terms of order dated 18.02.2016 passed in said WP(C) No.7430/20136 and accordingly this Contempt petition stands closed.

Notice issued to the contemner/respondent is hereby recalled.”

The case of the petitioner is with regard to an appointment under the Scheme formulated vide Notification dated 23.07.1999 for appointment under 10% quota.

A Division Bench of this Court in the case of ***Shahejul Hussain Saikia -Vs- State of Assam & Ors.***, reported in ***2005 (2) GLT 241*** had considered the right of a person for being considered against the said 10% quota Scheme. On consideration of the provisions of the said Scheme, this Court concluded that the wards of retired primary to secondary level teachers are entitled to be considered against 10% quota vacancies reserved for them only on assessment of their merit. It was further held that the appointment under the said Scheme mandates a selection, in other words, the provision made for reservation of the wards of retired primary to secondary level teachers would come into effect only after the wards have participated in a due selection process, wherein their merits are to be assessed.

Accordingly, the petitioner is not entitled to automatic appointment under the 10% quota Scheme without any selection. It is clear from the pleadings

available on record that the petitioner had never participated in any selection process and accordingly, the approvals granted by the Bodoland Territorial Council for his appointment as an Assistant Teacher of any L.P. School is of no significance inasmuch as such approval was not so granted after the petitioner had subjected himself to a process of selection.

At this stage, it is to be noted that the Government of Assam in the Secondary Education Department, vide Notification dated 04.07.2016, had withdrawn the Notifications/Circulars issued providing for a 10% reservation quota against the vacancies in L.P. Schools for sons and unmarried daughters of retired teachers of primary to secondary level.

In view of the decision of this Court in the case of ***Shahejul Hussain Saikia*** (supra), the petitioner not having been selected in a due process initiated for filling up posts in L.P. School, his claim for appointment against 10% quota cannot be acceded to. Further, after 04.07.2016, the very Scheme against which the appointment is sought for by the petitioner having been withdrawn, the right of the petitioner for a direction to be considered under the said Scheme no longer exists.

In view of the said position, the present writ petition is bereft of merit and accordingly, the same stands dismissed. However, there will be no order as to cost.

JUDGE

Comparing Assistant