

GAHC010008362016



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

Case No. : WP(C)/771/2016

MD. GOLENUR HUSSAIN
S/O. MD. TAFAZZUL HUSSAIN, VILL. KANAICHUBA, P.O. HOWLY
MOHANPUR, DIST. DARRANG, ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM EDUCATION
SECONDARY, DEPTT., DISPUR, GHY.-06.

2:THE DIRECTOR

SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY.-19.

3:THE INSPECTOR OF SCHOOLS

DARRANG DIST. CIRCLE
DIST. DARRANG
ASSAM.

4:THE DY. COMMISSIONER

DARRANG
DIST. DARRANG
ASSAM.

5:THE HEAD MASTER-CUM-MEMBER SECY.

DIGHIRPAR HIGH SCHOOL AND IT SELECTION COMMITTEE

VILL. DIGHIRPAR
P.O. DIGHIRPAR
DIST. DARRANG
ASSAM
PIN-784144.

6:THE SELECTION COMMITTEE

DIGHIRPAR HIGH SCHOOL
REP. BY ITS PRESIDENT NAMELY MONAHAR DUTTA
C/O. HEAD MASTER
DIGHIRPAR HIGH SCHOOL
VILL. DIGHIRPAR
P.O. DIGHIRPAR
DIST. DARRANG
ASSAM
PIN-784144.

7:RAHUL HAZARIKA

S/O. KUHIRAM HAZARIKA
VILL. NO. 1
CHANGAPARA
P.O. PATHARIGHAT
DIST. DARRANG
ASSAM
PIN-784144

Advocate for the Petitioner : MR. M A I HUSSAIN, MR A R BHUYAN

Advocate for the Respondent : SC, SECONDARY EDUCATION, GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

19.09.2024.

Heard Shri AR Bhuyan, learned counsel for the petitioner. Also heard Shri NJ Khataniar, learned Standing Counsel, Secondary Education Department, Assam.

2. The challenge in this writ petition is with regard to a recruitment process for the post of Lower Division Assistant (LDA), amongst others, for the Dighirpar High School

in the district of Darrang. As per the facts projected, in the year 2015, an advertisement was issued for filling up of various posts, including the post of LDA in the Dighirpar High School against the Sl. No. 2. The petitioner along with others had applied and was issued Admit Card with Roll No. DHS-128. It is the case of the petitioner that he had qualified in the written test and was called for the computer test. However, in the final list, the respondent no. 7 was found to be selected.

3. Shri Bhuyan, learned counsel for the petitioner has structured the writ petition on the principal ground that the selection was held in violation of the Assam Secondary Education (Provincialised) Service Rules 2003 (Rules of 2003), more particularly, Rule 4 thereof. He has also relied on the concerned office memoranda on the said selection procedure. By referring to Rule 4, it is submitted that a detailed method of recruitment is laid down which envisages type writing test. However, in the instant recruitment process instead of type writing test, computer test was incorporated. He submits that even in the said computer test, the procedure adopted was wholly unfair and lacks transparency as the data was not revealed and had scope for manipulation. The learned counsel has also submitted that as per information received, the private respondent no. 7 has opted for some other jobs.

4. *Per contra*, Shri Khataniar, learned Standing Counsel has raised a preliminary objection that having submitted to the selection process, a challenge cannot be structured on the procedure adopted for such selection. He submits that in any case, the allegation of not following the Rules of 2003 is wholly without any substance. It is submitted that Rule 4 of the aforesaid Rules of 2003 has been substantially followed. As regards the requirement of having a type writing test, he has submitted that in view of the present day developments, a conscious decision was taken to have such test in the form of computer which cannot be held to be unreasonable. The learned Standing Counsel, by referring to the notice dated 24.01.2016 has also submitted that

when the results of the written test was published, including the roll number of the petitioner, the candidates were fully aware that they would have to appear for a computer test and therefore, the grounds relating to type writer would not be available to the petitioner. He has referred to the explanations given in the affidavit-in-opposition filed by the Direction of Secondary Education on 06.03.2019. By drawing the attention of the Court to the averments made in paragraphs 7 and 8 of the said affidavit-in-opposition, he has submitted that even the details of the marks secured have been given. The learned Standing Counsel also placed on records photo copies of the minutes of the meeting concerning the present recruitment. For ready reference, paragraphs 7 and 8 are extracted hereinbelow:

“7. That the deponent further states that the selection committee was constituted in terms of Rules and Govt. Guidelines. The Government earmarked 80 marks for written test and 30 marks for computer skill and 10 marks for viva voce. In written test the petitioner secured 64 marks and the respondent No. 7 secured 60 marks out of 80 marks. Out of total 16 Nos. of school, Computer skill test was held on 27.1.2016 for 8 Nos. of school and respect 8 Nos. of schools on 28.1.2016 at Govt. H.S. School. Mangaldoi under a committee constituted by the Deputy Commissioner, Darrang vide order dated 25.1.2016. As the type writers are not available and in all official works are done in computer and as the Headmasters of concerned school proposed to held computer skill test only and therefore, Computer skill test was done. It is to be stated here that the respondent No. 7 has diploma on type writing in both English and Assamese.

8. That the deponent states that the interview was held against 17 Nos. of posts of 16 Nos. of Schools in Darrang District and the same way the written test, Computer skill test and viva voce were also held. No complaint/objection was received from any candidate during the selection

process. The Government guideline was strictly followed while conducting the selection process. The petitioner could not show his efficiency in Computer Skill Test for which he did not come to top position. The selection was made strictly on merit and the selection committee of respective schools prepared the select lists and the same was published by the Inspector of Schools, Mangaldoi centrally. The top selected candidates selected by the school selection committee were appointed vide order dated 4.2.2016.”

5. The rival submissions have been duly considered and the materials placed on records have also been carefully examined.

6. The writ petition is based on a ground that there has been violation of the Rules of 2003 in conducting the present recruitment for the post of LDA. The specific allegation is having incorporated computer test instead of type writing test. Apart from the said aspect of having a computer test instead of a type writing test being disclosed to the candidates, as would be disclosed in the notice dated 24.01.2016, the adoption of a computer test in the present day context cannot be held to be unreasonable. Whether a candidate is proficient in typing in a type writer or in a computer will not make any difference. Ultimately, the post is of LDA wherein typing in a computer would be of utmost necessity.

7. Regarding the allegation that there is scope of manipulation as the computer test was not done in a fair and transparent manner, apart from the said allegation lacking in details, this Court has looked into the records, including the minutes of the selection wherein the marks obtained by the respective candidates have been given. It appears that while the petitioner had secured 72.90 marks, the respondent no. 7 had secured 85.60 marks. It also appears that between the petitioner and the respondent no. 7,

there are at least five more candidates who have not been made parties.

8. Though there is no strict embargo for an unsuccessful candidate to challenge a selection, such challenge has to be examined on the grounds taken for such selection. It is only on very limited grounds such a challenge would be maintained. In this connection, the restrictions laid down by the Hon'ble Supreme Court in the case of ***Om Prakash Shukla Vs. Akhilesh Kumar Shukla***, reported in **1986 Supp SCC 285** would be handy wherein it has been held that when a party participating in a recruitment process without protest and is held unsuccessful cannot be allowed to challenge the same.

9. In the instant case, the adoption of computer test instead of having a type writing test cannot be held to be unreasonable and rather, this Court is of the opinion that such adoption is in sync with the present day requirement. This Court, after consideration of the aforesaid facts and circumstances, is of the opinion that no case for interference is made out and accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant