
(2023) 11 GAU CK 0045
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 535 Of 2021

Jahirul Ahmed Mazumder

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 30-11-2023

Acts Referred:

Citation : (2023) 11 GAU CK 0045

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : F Z Mazumder

Final Decision : Disposed Of

Judgement

1. Heard Mr. FA Mazumder, learned counsel for the petitioner, Mr. K Gogoi, learned counsel for the respondents in the Higher Education Department, Government of Assam, Mr. FU Barbhuiya, learned counsel for the authorities in the Patharkandi College, Ms. B Devi, learned counsel for the respondent No. 6 Amorendranath Choudhury, Mr. SC Keyal, learned counsel for the authorities in the Assam University and Ms. K Borpujari, learned counsel for the authorities in the University Grants Commission.

2. The petitioner offered his candidature pursuant to the advertisement dated 7.08.2020, issued by the Principal of Patharkandi College, amongst others, for the three posts of Assistant Professor in Zoology, wherein one post is stated to be reserved for OBC, one post for UR EWS and the other post is for UR. In the remarks column in the advertisement, it is stated as extracted:-

"One/two of the candidates in each subject having specialization in Bio-chemistry/ Ecology and Environmental science/fishery/physiology will be given preference."

3. The petitioner has the qualification of masters in Bio-chemistry and he has offered his candidature which was rejected by the selection committee of the Patharkandi college. On the other hand, in the selection process, the respondent

No. 6 Amorendranath Choudhury was selected. Being aggrieved by the rejection of his candidature on the ground that he has the qualification of a Master degree in Bio-chemistry and not in Zoology, this writ petition is instituted.

4. Mr. FZ Mazumder, learned counsel for the petitioner relies upon the remarks in the advertisement as indicated above, wherein it is also provided that one or two of the candidates in each subject having specialization in Bio-chemistry/Ecology and Environmental science/fishery/ physiology will be given preference. As the expression 'Bio-chemistry' also appears in the remarks column, Mr. FZ Mazumder, learned counsel for the petitioner makes a submission that a Master degree in Bio-chemistry is also relevant as prescribed in the advertisement.

5. Mr. K Gogoi, learned counsel for the respondents in the Higher Education Department as well as Mr. SC Keyal, learned counsel for the Assam University under whom the Patharkandi college is affiliated as well as Mr. FU Barbhuiya, learned counsel for the authorities in the Patharkandi college make a submission that the required qualification as per the advertisement is a Master degree in Zoology itself and what is provided is that in the event a person has the qualification of Zoology and has a specialization paper in Zoolozy, amongst others, in Bio-chemistry, such candidate would be given a preference.

6. A plain reading of the provision in the remarks column in the advertisement leads us to accept the interpretation given by the learned counsel for the Higher Education Department, Assam University as well as the Patharkandi college and when a specialization in Bio-chemistry would be given preference is provided in the remarks column, it would be construed that Zoology which is stated to be an independent subject would also be the required qualification in the advertisement. But, however, Mr. FZ Mazumder, learned counsel for the petitioner relies upon an Office Memorandum dated 08.11.2018 of the Higher Education Department of the Government of Assam, wherein for the purpose of selection for the post of Assistant Professor, it is provided that the candidate should have good academic record as defined by the concerned university with at least 55 percent marks or an equivalent grade at the master degree level in a relevant subject from a university or equivalent degree from an accredited foreign university. Further reliance is placed on the draft UGC Regulation on minimum qualification, 2018, wherein in clause-4.1, it is also provided that the eligibility for the post of Assistant Professor in a given subject would be Master's degree with 55% marks in a relevant/allied subject. Placing reliance on the expression 'allied subject' of the draft Regulation of the UGC, it is the submission of the learned counsel for the petitioner that even an allied subject would be acceptable to be the required qualification for the given post and accordingly, submits that Bio-chemistry is an allied subject of the subject Zoology and therefore, a person having qualification in Bio-chemistry would also be duly equivalent.

7. Reliance is also placed on an answer given by the UGC in respect of a question as to whether in recruitment for any commerce subject, an MBA qualification would also be relevant, wherein the UGC had given a reply that the relevance of

subject on inter disciplinary nature is required to be decided by the concerned university/appointing authority, meaning thereby even the UGC has not answered the said question.

8. Reliance is also placed upon a list of allied subjects issued by the Gauhati University, which is available at page 33 of the writ petition, wherein at serial No. 45 in respect of the subject Zoology, allied subject is explained to be all science subjects having application in zoology.

9. The materials produced and relied upon by Mr. FZ Mazumder, learned counsel for the petitioner does not enable the Court to arrive at any conclusion as to whether the qualification for the subject Bio-chemistry would also be a required qualification for the post of Assistant Professor in the subject Zoology. However, we also take note of an earlier judgment of this Court dated 22.02.2021 rendered in WP(C) No. 1034/2021, wherein an issue had arisen as to whether the subject Bio-Technology would also be an acceptable qualification for recruitment to the post of Assistant Professor in the subject Botany or Zoology. In paragraph 13 of the said judgment, it has been provided as extracted:-

"13. Accordingly, this writ petition stands disposed of by directing the respective Academic Councils of the Universities i.e. Gauhati University, Dibrugarh University, Tezpur University and Assam University to take the aforesaid decision as regards the eligibility of M.Sc. in Bio-Technology to participate in any recruitment for the post of Assistant Professor in Botany and Zoology within a period of six weeks from the date of receipt of certified copy of this order."

10. A reading of the afore-extracted provision of the order dated 22.02.2021 makes it discernible that a writ Court instead of taking a decision as to whether the subject Bio-Technology can also be construed to be the required qualification for the post of Assistant Professor in Botany and Zoology, the matter was referred back to the respective University to take a decision on the said question. Such view taken would also be in conformity with the answer given by the UGC in respect of the question as to whether a qualification in MBA would also be suitable for a qualification in a commerce subject, wherein the UGC itself provided that in the event the relevance of a subject on inter-disciplinary nature of subject, it is required to be decided by the concerned university or the appointing authority.

11. Accordingly, we direct the authorities in the Assam University through their Academic Council to take a decision as to whether the subject Bio-chemistry would also be accepted to be a due qualification for the post of Assistant Professor in Zoology in the college affiliated under the University. The decision be taken within a period of one month from the date of receipt of a certified copy of this order and the petitioner may be informed accordingly.

12. Any decision that may be taken by the Academic Council would guide the petitioner as regards his participation in any future selection process to the subject Zoology.

The writ petition is disposed of as indicated above.