
(2016) 09 GAU CK 0023
In the Gauhati High Court
Case No : WP(C) No. 5622 of 2015

Lalparmoi Hmar

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 06-09-2016

Acts Referred:

Citation : (2017) 1 GauLT 202

Hon'ble Judges : Mr. Michael Zothankhuma, J.

Bench : Single Bench

Advocate : Mr. M. Biswas, Advocate, for the Petitioner; Mr. G. Pegu and Mr. S. Borthakur, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Mr. Michael Zothankhuma, J. (Oral) - Heard Mr. M. Biswas, learned counsel for the petitioner. Also heard Mr. G. Pegu, learned counsel for the respondent Nos. 1 to 4 as well as Mr. S. Borthakur, learned counsel appearing for the respondent No. 7.

2. As per the order dated 20.05.2016, notice to the respondent No. 5 has been deemed to be completed.

3. As per the proceedings of the Lawazima Court dated 07.04.2016, notice to the respondent Nos. 6, 8, 9 and 10 were received by the family members of the respondents concerned and the Lawazima Court held that the service was complete.

4. Accordingly, service is complete against all the respondents.

5. No one appears for the respondent Nos. 5, 6, 8, 9 and 10. The matter is being heard as ex-parte against the respondent Nos. 5, 6, 8, 9 and 10.

6. The advertisement dated 24.12.2014 was issued by the Police Recruitment Board to fill up 6748 vacancies in the post of AB Constable in Assam Police. The vacancies were notified district wise and in respect of Hamren Police District, 66

(sixty six) vacancies were notified.

7. Mr. M. Biswas, learned counsel for the petitioner submits that out of the 66 (sixty six) vacancies notified for Hamren Police district, 10% were reserved for women. As per the calculation made by the respondents, seven seats were reserved for woman. Out of the seven seats, no posts could be reserved for SC and ST (H) candidates. For ST(P) candidates, one post was reserved and for the OBC/MOBC, two posts were reserved. Thus out of the total 7 (seven) vacancies for women, 4 (four) vacancies were for the General candidates and 3 (three) vacancies were for the reserved candidates.

8. Learned counsel for the petitioner submits that the petitioner is a female candidate belonging to the ST(H) category of Hamren Police district. She participated in the selection process and secured 61.50 marks. Learned counsel for the petitioner submits that though the petitioner had secured the highest marks among in the woman category, the petitioner was not selected and appointed to any of the 7 (seven) vacant posts reserved for women and instead the respondent Nos. 5 to 11, who had secured lower marks than the petitioner have been appointed.

9. In view of the above, learned counsel for the petitioner submits that the final recommended list of candidates (ALL) in respect of the recruitment test held in 2015 should be set aside in so far as it relates to recommendation of the respondent Nos. 5 to 11 and a direction should be issued to appoint the petitioner to the post of Constable (AB) in Hamren Police district.

10. Mr. G. Pegu, learned counsel for the respondent Nos. 1 to 4 submits that the petitioner had availed of the benefits of reservation provided to ST(H) female candidates, inasmuch as, the petitioner had availed of the relaxation in height as allowed as per the advertisement. The petitioner having already availed of the eligibility criteria in respect of relaxation of her height, the petitioner cannot be considered for a post other than a post reserved for ST(H) candidates. He further submits that there was no reserved post for ST(H) category and as such there is no question of petitioner being given an appointment order.

11. Mr. S. Borthakur, learned counsel for the respondent No. 7 submits that he has no comments to offer in the present case as a direction for appointment of the petitioner to one of the 7 (seven) post of Constable (AB) in Hamren Police district in pursuance to the selection process would not effect the respondent No. 7.

12. I have heard the learned counsels for the parties.

13. The chart, which is a part of the affidavit-in-opposition filed on behalf of the respondent No. 3 is reproduced below:-

Respondent No.

Name as recorded

Sex as per record
Height in cm as per records
Caste/community as recorded
Total marks obtained in final as recorded
Remarks

5

Pushpanjali Bordoloi

F

160.5

ST(P)

61.00

Selected against unreserved post

6

Sabita Goyari

F

156.6

ST(P)

58.50

Selected against unreserved post

7

Priyanka Hukai

F

155.8

ST(H)

58.00

Selected against unreserved post

8

Lalita Kumari

F

155.1

OBC

56.00

Selected against unreserved post

9

Nirmala Chauhan

F

155

OBC

51.00

Selected against OBC/MOBC post

10

Sunita Chetry

F

159.4

OBC

48.00

Selected against OBC/MOBC post

11

Sabita Boro

F

155.3

ST(P)

55.50

Selected against ST(P) post

14. The question in the present case is whether the petitioner should have been considered for appointment to a General Category vacancy after she had availed of the eligibility criteria in qualification regarding her height. The advertisement dated 24.12.2014 issued by the respondents for filling up the vacant post of Constable (AB) gives the standard height for female as follows:-

"Physical standards:

i. Height (Minimum)

Male

Female

Gen/OBC/MOBC/SC

162.56 cm

154.94 cm

ST(H)/ST(P)

160.02 cm

152.40 cm"

15. The petitioner's height being 153.20, the petitioner availed of the eligibility criteria with regard to the minimum height required. The petitioner had all the other essential qualifications required for taking part in the selection process. The petitioner has been denied appointment to the vacant post of police constable only on the ground that, as she had availed of the relaxation clause for ST(H) candidates with regard to the eligibility criteria in height, the petitioner could not be considered for any other reserved post, except for the post reserved for ST(H) candidates. This contention of the State respondents cannot be accepted for the simple reason that the respondents should not have allowed the petitioner to participate in the selection process if there was no post reserved for ST(H) candidates. It is the respondents' case that no post was reserved for ST(H) candidates as has been stated in paragraph 4 of the affidavit-in-opposition submitted by the respondent No. 3.

16. The question as to whether the petitioner, who had availed of the relaxation in respect of the eligibility criteria in height, on the basis of being an ST(H) candidates, could have been denied consideration for appointment to a General Category post has been decided by the Apex Court in the case of Jitendra Kumar Singh & Anr. v. State of Uttar Pradesh & Ors., reported in (2010) 3 SCC 119. Paragraph 75 of the judgment given by the Apex Court in Jitendra Kumar Singh (supra) is reproduced below:

"75. In our opinion, the relaxation in age does not in any manner upset the "level playing field". It is not possible to accept the submission of the learned counsel for the appellants that relaxation in age or the concession in fee would in any manner be infringement of Article 16 (1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfill the eligibility conditions, namely, qualifications, age, preliminary written test and physical test are permitted to sit in the main written examination. With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in

the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated in the Preliminary Test as also in the Physical Test. It is only thereafter that successful candidates have been permitted to participate in the open competition."

17. The law laid down by the Apex Court in *Jitendra Kumar Singh (supra)* has also been followed by this Court in WP(C) No. 4920/2015, in which this Court by its order dated 09.08.2016, has held as follows:-

"By taking recourse to the law laid down by the Apex Court in the case referred to above, it is clear that the petitioner having taken advantage of the relaxation clause with respect to his age and height, the same does not mean that the petitioner could be considered only for a post reserved for an ST(P). The selection process for appointment to the post of constable (AB) commenced after the concession available in the relaxation clause was availed by the petitioner. As such there was no change to the level playing field at the time of the actual selection process for appointment to a general category post.

Due to the fact that the petitioner had received the aggregate marks of 64.5, as compared to the marks of respondent No.5, who had got 64 marks, it is quite clear that the petitioner is more meritorious than the respondent No.5. As such, if the respondent No. 5 could have been appointed to a general category post on the basis of her marks, there is no reason to deny the same to the petitioner who has got higher marks."

18. The decision of the Apex Court in the case of *Jitendra Kumar Singh (supra)* and this Court in WP(C) No. 4920/2015 makes it amply clear that the relaxation availed of by the petitioner with regard to her height has no relevance to the determination of her merit in the physical test or written test. It is not the case of the respondents that the petitioner had to go through a different written test and physical test as compared to the private respondents. Thus, the ratio of the aforesaid judgments permitted reserved category candidates to be included for selection/consideration in the General Category candidates vacancies on the basis of merit.

19. In the present case, the petitioner having secured 61.50 marks as compared to the private respondents, whose highest mark was 61, the State respondents have committed a gross illegality in not recommending and appointing the petitioner to one of the seven posts of AB Hamren Police Constable reserved for women.

20. In view of the above reasons, it is made clear that out of the seven private respondents, one of them will have to make way for the petitioner. In view of the fact that the respondent No. 10 has got the lowest mark, i.e. 48 among all the other candidates selected and as she is the person, who has occupied the second reserved post of OBC, the respondent No. 10 would have to give way to accommodate the other private respondents and the petitioner. This is due to the fact that out of the seven selected candidates, the respondent Nos. 8 and 9, who

are both OBC candidates will have to be adjusted against the two reserved category posts for OBC's and thereby the respondent No. 10, who has secured the lowest marks amongst the three OBC candidates will have to give way to the others.

21. In view of the above, the final recommendation list of candidates (as reflected in Annexure-8 of the writ petition) is set aside to the extent that it includes the respondent No. 10 only. Consequently, any appointment order of the respondent No. 10 as AB Police Constable is also accordingly set aside. In view of the fact that the petitioner has secured the highest marks among all the candidates in Hamren Police district, the respondent Nos. 1 to 4 are directed to consider the appointment of the petitioner to the General category vacant post of Constable (AB) in the Hamren Police district within a period of 1 (one) month from the date of receipt of a certified copy of this order.

22. The adjustment to be made with regard to the appointment of the private respondent Nos. 6 to 9 and 11 to the various general category and reserved category posts shall be done by them immediately. Accordingly, it is made clear that the appointment of the petitioner shall be made due to the vacancy that has been created by the setting aside of the appointment of the respondent No. 10.

23. Writ petition is allowed.

24. The interim order passed earlier stands vacated and there will be no bar to the appointment of the respondent No. 7 as (AB) Constable Police in Hamren District.