

(2018) 04 GAU CK 0018
In the Gauhati High Court
Case No : WP(C) 6597 of 2016

MD. SAIFUL HUSSAIN

APPELLANT

Vs

THE STATE OF ASSAM AND 6 ORS

RESPONDENT

Date of Decision : 09-04-2018

Acts Referred:

Citation : (2018) 04 GAU CK 0018

Hon'ble Judges : MICHAEL ZOTHANKHUMA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. S Islam, learned counsel for the petitioner and Ms. H Teranpi, learned counsel for the SSA. Also heard Ms. RB Bora, learned

Government Advocate, Assam. The petitioner's case in brief is that the petitioner being a TET qualified candidate, he applied for the post of

Assistant Teacher in primary schools under the Physically Handicapped category. The petitioner gave the names of three districts, i.e. Golaghat,

Dhubri and Dibrugarh in order of preference. The petitioner had appeared in the selection process for filling up the post of Assistant Teachers in

pursuance to the Advertisement dated 14.02.2012 and Corrigendum dated 17.02.2012. As the petitioner's name did not appear in the final

selection list dated 17.02.2014, the petitioner made enquiry into the same and found that persons with lesser marks in the TET examination had been

appointed as Assistant Teachers in the Golaghat district, under the Physically Handicapped quota.

The petitioner being aggrieved filed WP (C) No. 2137 of 2014, which was disposed of on 07.08.2015, directing the respondent No. 3 to refer the case

of the petitioner to the District Level Screening and Verification Committee, Golaghat for re-examination of the petitioner's case. The order dated 07.08.2015 passed by this Court in WP (C) No. 2137 of 2014 also gave a direction that if the petitioner was found to be a physically handicapped person whose disability was to the extent of 45 %, an appropriate order should be passed by the respondent No.3 for appointment of the petitioner against one vacant post of Assistant Teacher, against the Physically Handicapped quota in the appropriate district, wherever such vacancy is available.

The petitioner submits that in pursuance to the order dated 07.08.2015 passed by this Court in WP (C) No.2137 of 2014, the District Level Screening and Verification Committee, Golaghat district submitted a report dated 11.01.2016, that showed the petitioner was found to be suffering from locomotor impairment with 45 %disability. The petitioner submits that despite the above report, the petitioner has not been appointed to the post of Assistant Teacher, against one vacant post being available in the Golaghat district. The counsel for the SSA prays for time to obtain instructions in the matter. Ms. RB Bora, learned State counsel submits that she has got no comments to make in the matter as she has also not received instructions till date. I have heard the counsel for the parties.

The present writ petition had been filed in the year 2016 and even till today, the respondents have not filed any affidavit and have also not given any instructions to their counsels till date. This Court cannot keep on waiting for the respondents to give instructions to their counsels. Further, on a perusal of the order dated 07.08.2015 passed by this Court in WP (C) No.2137 of 2014 and the report made by the District Level Screening and Verification Committee, Golaghat, this Court does not find any reason to keep the case pending any longer. The operative portion of the order dated 07.08.2015 passed in WP (C) No. 2137 of 2014 states as follows:

“3.This writ petition is, therefore, disposed of by directing the respondent No. 3 to refer the case of the petitioner to the District Level Screening and Verification Committee, Golaghat District for re-examining the case of the petitioner in the light of the said physically disability certificate dated 29.3.2004 issued by the Joint Director of Health Services, Golaghat, and if the Committee finds the petitioner to be a physically handicapped person

whose disability is to the extent of 45 percentage, an appropriate order shall be passed by the respondent No.3 for the appointment of the petitioner

against one of the vacant posts of Assistant Teacher against the physically handicapped quota in the appropriate District wherever such vacancy is

available. This exercise shall be completed without further loss of time and, at any rate, within a period of two months from the date of receipt of this

order. The personal appearance of the petitioner stands dispensed with. â??

The report of the Golaghat District Level Screening and Verification Committee dated 11.01.2016 states as follows:

â??Sub: Verification of documents of Md. Saiful Hussain

Ref No.GP/9/2012/Pt-1/Â Â Â Â Â Â Â Â Â Dated the 08/10/2015

Sir

With reference to the subject cited above, I have the honour to state that we have verified the documents submitted by Md. Saiful Hussain during

scrutiny of documents in the district for engagement of TET teacher. The candidates was found locomotorim Pairment disability as per the certificate

issued by the Joint Director, Health Services cum Chairman, District Medical Board, Golaghat with 45 % disability. The detain documents which was

submitted by the candidate is also enclosed herewith. â??

The said report dated 11.01.2016 has been forwarded to the Additional Deputy Commissioner (Education), Golaghat. However, nothing has been done

by the respondents till date This Court, vide order dated 04.11.2016, had directed that one post of Assistant Teacher in the Upper Primary School in

the district of Golaghat shall not be filled up.

In view of the counsels for the respondents not having received any instructions till date, with regard to the above matter, this Court is of the view that

the State respondents do not intend to controvert the statements made by the writ petitioner in the present writ petition. Accordingly, in view of the

law laid down by the Apex Court in the case of Nasim Bano -vs- State of Uttar Pradesh reported in (1993) Suppl 4 SCC 46, the averments made by

the petitioners are deemed to be admitted as they have not been controverted till date.

Golaghat District Level Screening and Verification Committee has complied with the direction passed by this Court in its order dated 07.08.2015 in

WP (C) No.2137 of 2014, and as the petitioner has been found to be a physically handicapped person with 45 % disability, the only thing that remains to be done in compliance with the above Court order, is for the respondent No.3 to appoint the petitioner against the vacant post of Assistant Teacher in the appropriate district i.e. Golaghat. Accordingly, the respondent No.3 is directed to appoint the petitioner to the vacant post of Assistant Teacher, Golaghat district within a period of 1(one) month from the date of receipt of a certified copy of this order. This positive direction has been passed by this Court on account of the fact that there can be only one outcome of the writ petition, keeping in view the order dated 07.08.2015 passed in WP (C) No. 2137 of 2014. Writ petition is accordingly allowed and disposed of.