
(2018) 07 GAU CK 0030
In the Gauhati High Court
Case No : Writ Appeal No. 145 Of 2018

Sri Diganta Sarma

APPELLANT

Vs

Miss Chaitali Siddhanta And 6 Ors

RESPONDENT

Date of Decision : 13-07-2018

Acts Referred:

Citation : (2018) 07 GAU CK 0030

Hon'ble Judges : AJIT SINGH, CJ;ACHINTYA MALLA BUJOR BARUA, J

Bench : Division Bench

Advocate : K N Choudhury, C.P. Sarma

Final Decision : Disposed Off

Judgement

AM Bujor Barua, J

1. Heard Mr. KN Choudhury, learned Senior Counsel for the appellant, Mr. C.P. Sarma and Mr. A. Chamuah, learned counsel for the respondent

No.1 and Mr. R.K.D Choudhury, learned Senior Government Advocate, Assam for the respondent Nos. 2, 3 and 4.

2.Â The appellant, being duly qualified, had offered his candidature to an advertisement dated 03.09.2013 issued by the Director General of Civil

Defence and Commandant General of Home Guards, Assam, by which, applications were invited amongst others, for 05(five) posts of Assistant

Deputy Controller of Civil Defence (Junior). It is stated that as per the advertisement, two posts were for the Unreserved (UR) Category, where

02(two) posts were for Other Backward Class (OBC) and 01(one) post for Schedule Tribe (Plain) [ST (P)]. The appellant, on being selected on

merit, was appointed against one of the two vacant posts in the UR category.

3.Â The said appointment of the appellant was assailed by the respondent No.1

in WP(C) No.5252/2014 on the ground that while undertaking the selection process, due consideration was not given to the provisions of the Assam Women (Reservation of Vacancies in Service and Posts) Act, 2005 (in short Act of 2005), which requires that 30% of the posts be reserved for woman. According to the respondent No.1, by applying 30% reservation for woman as provided in the Act of 2005, at least one of the post ought to have been reserved for woman.

4.Â In the writ petition, although the appellant was arrayed as a respondent, but on the advice of the department, he had refrained from appearing before the Court on the premises that his interest would be taken care of by the State respondents. But, be that as it may, by the judgment and order dated 26.04.2018, the appointment of the appellant as a Assistant Deputy Controller of Civil Defence (Junior) was interfered for the reason that the last candidate appointed against the UR category would have to make way for the woman candidate. Accordingly, a direction was issued that the respondent No.1 be appointed against the post, in which the appellant was appointed. Being aggrieved, the present writ appeal has been preferred.

5.Â In course of the hearing, the appellant has raised an issue that in the department, a total of 13 (thirteen) posts are available in the cadre of Assistant Deputy Controller of Civil Defence (Junior) and the relevant Rules provide that 50% of the available posts are to be filled up by direct recruitment and the remaining 50% by promotion. Accordingly, on being worked out, the department was required to fill up 06(six) of the posts through direct recruitment and the remaining 07(seven) posts by promotion. The appellant has raised a contention that on facts, the advertisement dated 03.09.2013 ought to have been against 06(six) available vacant posts and not 05(five) posts as advertised. It is the further contention that in spite of the recruitment being made against 05(five) posts, one post of Assistant Deputy Controller of Civil Defence (Junior) still remains vacant in the department.

6.Â On the requirement of the State respondents to respond to the aforesaid contention, the Court is informed that in fact, 06(six) vacant posts were available for the recruitment in the cadre of Assistant Deputy Controller of Civil Defence (Junior) and one post still remains vacant as on today. The learned Senior Government Advocate also informs the Court that the department

has no objection, if there is a direction that the services of the appellant be adjusted against the vacant post that is still available.

7.Â On the basis of the aforesaid concession and given the peculiar factual situation of the present matter, more so, by taking into consideration that the petitioner was appointed as an Assistant Deputy Controller of Civil Defence (Junior) for which, no fault can be attributed to him, this Court is of

the view that the ends of justice will be met, if a direction is issued to the respondent authorities to allow the appellant to continue with his appointment

as an Assistant Deputy Controller of Civil Defence (Junior) and his service be adjusted against the available vacant post.

8.Â The aforesaid direction will also be in conformity with the view taken by the Supreme Court in *Vikas Pratap Singh and others* vs- State of

Chattisgarh and others, reported in (2013) 14 SCC 494, wherein in paragraph-27, it has been held as follows:-

27. Admittedly, in the instant case the error committed by the respondent Board in the matter of evaluation of the answer scripts could not be

attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list

nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have

justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.â??

9.Â In the instant case also, as indicated above, the appellant was appointed as an Assistant Deputy Controller of Civil Defence (Junior) on being

duly selected on merit and it was not his fault that the respondent authorities had not applied the provisions of the Act of 2005, which otherwise would

have entitled the respondent No.1 to be appointed.

10.Â In such view of the matter and as agreed by the parties, the appeal stands disposed of by directing the respondent authorities No.2 to 4 to allow

the appellant to continue in his service as an Assistant Deputy Controller of Civil Defence (Junior) by adjusting his service against the available vacant

post of Assistant Deputy Controller of Civil Defence (Junior) and Respondent No.1 be appointed in terms of the order passed by the learned Single

Judge.

11.Â The aforesaid direction has been issued in the prevailing facts and

circumstance of the present case and shall not be construed to be a precedent for any other matter.

In terms of the above, the appeal stands disposed of.