

GAHC010080442020



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

Case No. : WP(C) 2439/2020

1:ABDUL MANNAN
S/O. ABDUL SALAM, R/O. BORIGAON, P.O. DANDUA, DIST. MORIGAON,
ASSAM, PIN-782104.

VERSUS

1:ASSAM PUBLIC SERVICE COMMISSION AND 4 ORS.
REP. HEREIN BY ITS CHAIRMAN, JAWAHAR NAGAR, KHANAPARA,
GUWAHATI, KAMRUP (M), ASSAM-781006.

2:SELECTION COMMITTEE (APSC)
(FORMED FOR THE PURPOSE OF APPOINTMENT OF FISHERY
DEVELOPMENT OFFICER)
JAWAHAR NAGAR
KHANAPARA
GUWAHATI KAMRUP (M)
ASSAM
PIN-781006.

3:COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
DEPTT. OF FISHERIES (GOVT. OF ASSAM)
DISPUR JANATA BHAWAN
DISPUR
PIN-781006
GUWAHATI (M)
ASSAM.

4:ABDUL AZIZ
S/O. MOINUL HOQUE
BHAKATGAON
P.O. SHILLONGONI
PIN-782002 NAGAON
ASSAM.

5:UTPAL KALITA
MS FISHERIES
DIRECTORATE OF FISHERIES
APART CELL
MEEN BHAWAN
GUWAHATI
KAMRUP (M)
PIN-781006 ASSAM

Advocate for the Petitioner : MR. S CHAMARIA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

Date : 19-06-2020

Heard Mr. S. Chamaria, learned counsel for the petitioner and Mr. C. Baruah, learned Standing Counsel, Assam Public Service Commission for the respondent Nos. 1 and 2. Also heard Mr. S. S. Roy, learned Government Advocate, Assam for the respondent No. 3.

The respondent APSC under No. 08/2019 dated 30.12.2019 issued an advertisement for 12 (twelve) numbers of posts of Fishery Development Officer (FDO), wherein 2 (two) posts under the category of Persons with Disability (PWD) were reserved for Locomotor Disability. The matter relates to selection and appointment to those two posts of PWD.

It is contended by the petitioner that following a road traffic accident, he is having 40% disability in his left ankle (bimalleolan fracture dislocation of left ankle) and the District Level Medical Board, Morigaon on 17.06.2010 issued necessary certificate to him in that regard. Petitioner stated that though he participated in the selection process of FDO under the quota of Locomotor Disability in terms of said advertisement dated 30.12.2019 and performed well in it, the respondents selected the respondent Nos. 4 and 5 without considering his candidature in proper perspective.

Pursuant to the order dated 16.06.2020, Mr. Baruah, learned Standing Counsel,

APSC, has placed the relevant records pertaining to the selection of candidates for those 12 posts of FDOs pursuant to the advertisement dated 30.12.2019 and showed that in the selection, the respondent Nos. 4 and 5 scored higher marks than the petitioner for which they have been considered for the two posts reserved for Locomotor Disability under the category of PWD.

Mr. Baruah further submitted that only three numbers of candidates including the petitioner and the respondent Nos. 4 and 5 applied under the PWD - Locomotor Disability.

From the records placed before the Court by the APSC, it is seen that 10 (ten) marks was allotted for High School Leaving Certificate (Class-10 passed examination), 15 marks for Higher Secondary School Leaving Certificate (10+2 passed examination), 25 marks for Bachelor of Fishery Science/DFS/MFS, 25 marks for General BA and 25 marks for Knowledge of Subjects and in the said process of selection, the respondent No. 4 secured 71.70 marks out of 100 total marks, the respondent No. 5 secured 75.49 marks out of 100 total marks, whereas the petitioner secured 65.6 marks out of 100 total marks.

Mr. Baruah submitted that for such reason, the respondent APSC selected the respondent Nos. 4 and 5 to the post of FDOs reserved for PWD (Locomotor Disability) amongst the three candidates under the said category.

Mr. Baruah, learned Standing Counsel, relying on the decision of the Hon'ble Apex Court in the cases of *Hc Pradeep Kr. Rai and others -Vs- Dinesh Kumar Pandey and others*, reported in (2015) 11 SCC 493 and *Karnati Ravi and others -Vs- Commissioner Survey Settlements and Land Records and others*, reported in (2018) 12 SCC 635, submitted that since the petitioner has participated in the selection process that took place on 21.03.2020, who did not challenge the candidature of the respondent Nos. 4 and 5 at the relevant time, now being not selected, has filed this writ petition on 05.06.2020 challenging their selection. As such Mr. Baruah submitted that the prayer of the petitioner, made in this writ petition, being not enabled in law, cannot be considered, as it is well settled that a candidate cannot approbate and reprobate at the same time.

Mr. Baruah further submitted that as the respondent Nos. 4 and 5 have been selected by the APSC, their applications along with the testimonials have already been

forwarded to the respondents in the Fishery Development Department of the State.

Issue notice, returnable by **28.07.2020**.

As Mr. C. Baruah, learned Standing Counsel, APSC and Mr. S. S. Roy, learned Government Advocate, Assam, have accepted notices on behalf of the respondent Nos. 1 and 2, and 3 respectively, no formal notices need be issued to those respondents. However, the petitioner shall serve requisite extra copies of this petition including the Annexures appended thereto to Mr. Baruah and Mr. Roy on or before 22.06.2020.

The petitioner shall take steps for service of notice on the respondent Nos. 4 and 5 by registered post with A/D, on or before 22.06.2020, providing their correct and proper addresses with requisite postal stamps.

Considering the materials placed before the Court by the respondent APSC, the Court is not inclined to pass any such interim order as prayed for by the petitioner, as balance of convenience is not in his favour. Accordingly, interim prayer of the petitioner stands rejected.

However, the selection of the respondent Nos. 4 and 5 to the post of FDO pursuant to the advertisement No. 08/2019 dated 30.12.2019 shall be subject to the outcome of this writ petition.

On the next date fixed, the respondent No. 3 in a sealed cover shall submit the original applications of the petitioner as well as the respondent Nos. 4 and 5, including their testimonials other certificates submitted by them at the time of filing their applications.

Copies of this order be furnished to Mr. C. Baruah, learned Standing Counsel, APSC and Mr. S. S. Roy, learned Government Advocate, Assam, for their necessary use.

List accordingly.

JUDGE

Comparing Assistant