

GAHC010009112023



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

Case No. : WP(C)/420/2023

VIKRAMJEET DUTTA

VERSUS

UNION OF INDIA AND 5 ORS
REP. BY SECRETARY TO THE MNISTRY OF HEALTH AND FAMILY
WELFARE ROOM NO. 348 A WING NIRMAN BHAVAN NEW DELHI-110011

2:THE ALL INDIA INSTITUTE OF MEDICAL SCIENCES
REP. BY ITS DIRECTOR GUWAHATI CHANGSARI ASSAM PIN-781101

3:THE DIRECTOR
ALL INDIA INSTITUTE OF MEDICAL SCIENCES GUWAHATI CHANGSARI
ASSAM PIN-781101

4:THE STANDING SELECTION COMMITTEE
ALL INDIA INSTITUTE OF MEDICAL SCIENCES REP. BY ITS CHAIRMAN
GUWAHATI CHANGSARI ASSAM PIN-781101

5:KAUSALYA RAGHURAMAN
ASSITSTANT PROFESSOR DEPTT. OF MICROBIOLOGY (AIIMS) GUWAHATI
CHANGSARI ASSAM PIN-781101

6:RAJESWARIE S
ASSISTANT PROFESSOR DEPTT. OF MICROBIOLOGY AIIMS GUWAHATI
CHANGSARI ASSAM PIN-78110

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : DY.S.G.I.

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri U. K. Nair, Sr. Advocate.

**Advocate for the respondents : Ms. R. Devi, CGC (R-1 to 4).
Shri B. Gogoi, Advocate, (R-5 & 6).**

Dates of hearing : 12.10.2023 & 13.10.2023.

Date of judgment : 06.11.2023.

JUDGMENT & ORDER

The selection and appointment of the respondent nos. 5 and 6 as Assistant Professor in the Department of Microbiology in the All India Institute of Medical Science, Guwahati (hereafter AIIMS, Guwahati) is the subject matter of challenge in this writ petition. It is the case of the petitioner that in a common interview held for the post of Associate Professor as well as Assistant Professor, two assessments were made. While in the assessment for the post of Associate Professor, the petitioner had secured higher marks than that of the respondent nos. 5 and 6, on the other hand, a different assessment was made based on the same interview for the post of Assistant Professor in which the respondent nos. 5 and 6 were given more marks than that of the petitioner and were ultimately given the appointments.

- 2.** Before going to the issue which has arisen for determination, it would be beneficial if the facts of the case are narrated in brief.
- 3.** An advertisement was published on 05.10.2021 for filling up of various posts in the AIIMS, Guwahati, amongst others, posts of Associate Professor and Assistant Professor in the Department of Microbiology. The petitioner, who has claimed to have fulfilled the eligibility criteria, had applied for both the posts of Associate Professor and Assistant Professor in the Department of Microbiology. It is the case of the petitioner that a common interview was held for both the posts on 23.04.2022. The schedule of the interview was also referred to as per which, the time fixed on 23.04.2022 was at 9:00 am for both the posts. The advertisement further makes it clear that the interviews were scheduled department-wise and not post wise and as stated above, 23.04.2022 was the date fixed for the interview for the Department of Microbiology. It is the case of the petitioner that he had fared well in the interview.
- 4.** Upon publication of the results, while the petitioner had secured 67.3% of marks in the selection held for the post of Associate Professor, the respondent no. 5 had secured 66.8% and the respondent no. 6 had secured 62%. It is the case of the petitioner that based on the same interview, another assessment was made for the post of Assistant Professor. In the marks allotted for the said post of Assistant Professor, while the petitioner was given marks of 63.1%, the respondent no. 5 was allotted 68.2% and the respondent no. 6 was allotted 67%. Accordingly, both the respondent nos. 5 and 6 were given appointment as Assistant Professor. The petitioner contends that when there was only one interview for both the posts, different assessments could not have been made

and since in the higher category of Associate Professor, the petitioner had secured more marks than the respondent nos. 5 and 6, they could not have been given marks more than the petitioner in the category of Assistant Professor.

5. I have heard Shri U. K. Nair, learned Senior Counsel for the petitioner. Also heard Ms. R. Devi, learned CGC appearing for the respondent nos. 1, 2, 3 and 4 as well as Shri B. Gogoi, learned counsel appearing for the respondent nos. 5 and 6. The materials placed before this Court have also been carefully perused.

6. Shri Nair, the learned Senior Counsel for the petitioner, in support of his contention has drawn the attention of this Court to the affidavit-in-opposition filed by AIIMS on 05.06.2023. By referring to the averments made in paragraph 7 of the same, it is contended that the AIIMS itself has admitted that the interview for both the posts was conducted together. In paragraph 17, it has also been admitted that while the interview was held in a single session on 23.04.2022, separate assessments were made. Attention of this Court has also been drawn to the Attendance Sheet as per which the interview for both the posts were held on 23.04.2022 at 9:00 a.m. While for the post of Associate Professor, the petitioner was placed against Wait List No. 1, the respondent no. 5 was placed against Wait List No. 2. It is the contention of the petitioner that for one set of questions which were asked in the interview, two assessments could not have been made. It is submitted that when the petitioner was assessed to be better than the respondent nos. 5 and 6 in the higher post of Associate Professor, the petitioner could not have been held to be inferior in a lower post of Assistant Professor than the private respondents based on the

same interview. The petitioner, accordingly prays for interference with the process of selection and appointment of the respondent nos. 5 and 6 as Assistant Professor and to pass a consequential direction for appointment of the petitioner on the basis of the marks allotted to him in the higher post of Associate Professor.

7. *Per contra*, Ms. R. Devi, the learned CGC appearing for the AIIMS has submitted that no case for interference is made out. While she admits that the date of interview was fixed department-wise and the interview for the Department of Microbiology was held on 23.04.2022, the assessment was based on subjective satisfaction. It is submitted that there is very little scope for interference in matters wherein subjective satisfaction is involved. She further submits that the selection process, as a whole is not the subject matter of challenge and it is only the selection of the respondent nos. 5 and 6 which have been challenged. The issue of delay has also been raised by contending that the writ petition was filed after 6 months from the date of publication of the results.

8. Appearing on behalf of the private respondent nos. 5 and 6, Shri B. Gogoi, learned counsel has submitted that the petitioner has not raised any issue with regard to the eligibility of his clients. He submits that though the contention of the petitioner that there was one interview has not been denied by the authorities, the entire premises on which the writ petition has been structured is based on presumption. It is submitted that in the higher post of Associate Professor, the petitioner might have been assessed to be better than his clients. However, for the lower post of Assistant Professor, his clients have been assessed to be better than the petitioner and both the posts being different,

separate assessment is permissible. He submits that in the category of Assistant Professor, the petitioner is not even in the Wait List.

9. Shri Gogoi, the learned counsel has also raised the issue of estoppel by submitting that since the petitioner had participated in the selection process without any demur, he is not permitted to challenge the same only because of the fact that he was unsuccessful in the selection process. In support of his submission, the learned counsel has relied upon the following case laws:-

(i) ***Dhananjay Malik & Ors. Vs. State of Uttaranchal & Ors., (2008) 4 SCC 171;***

(ii) ***Pradeep Kumar Rai & Ors. Vs. Dinesh Kumar Pandey & Ors., (2015) 11 SCC 493;***

(iii) ***Madras Institute of Development Studies & Anr. Vs. K. Sivasubramaniyan & Ors.; (2016) 1 SCC 454.***

10. In the case of ***Dhananjay Malik & Ors. (supra)***, it has been laid down that having participated in a selection process without a demur, a candidate is not allowed to challenge the same after declaration of results. In paragraph 7 of the said judgement however, the Hon'ble Supreme Court has observed that in the said case, the challenge was based on the fact that there were certain inconsistencies in the advertisement and the Rules and it was further observed that the educational qualification was clearly indicated in the advertisement itself and therefore, the unsuccessful candidate was fully aware of the same and took a chance.

11. In the case of *Pradeep Kumar Rai & Ors. (supra)*, a similar principle was laid down that after participation in a selection process and waiting for the results for about four months, a challenge cannot be successfully made. The underlying reason for not granting the relief was that the incumbent had participated in the process of interview and had waited till the results were declared when he had found out that he was unsuccessful.

12. In the case of *Madras Institute of Development Studies & Anr. (supra)*, a similar principle has been laid down. In paragraph 13 of the said case, however the Hon'ble Supreme Court has made observation of the facts of the case that there was allegation of variations in the Advertisement and the Rules and under such circumstances, it was held that since such variation was within the knowledge of the incumbent, he could not have waited till the culmination of the selection process.

13. Shri Gogoi, the learned counsel for the private respondents has submitted that the petitioner was fully aware that there would be one interview and he having participated in the said interview without any demur, he would be estopped in law from raising any issues with regard to the validity of the said selection process.

14. Rejoining his submission, Shri Nair, the learned Senior Counsel for the petitioner has reiterated that when admittedly, one interview was held with one set of questions, two assessments could not have been made and under the facts and circumstances, the respondent no. 6 has to give way to accommodate

the petitioner as the petitioner had secured more marks than both the private respondents in the higher category of Associate Professor and in the category of Assistant Professor, the respondent no. 6, who is one of the selected candidates, was placed below the respondent no. 5. He has submitted that on 10.06.2022, the appointments of the respondent nos. 5 and 6 were made and those are required to be interfered with.

15. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

16. After hearing the learned counsel for the parties and on examination of the materials on record placed before this Court, certain undisputed aspects are noted in the following manner:

- i) The interview for the post of Associate Professor as well as Assistant Professor in the Department of Microbiology, AIIMS was fixed on 23.04.2022 at 9:00 a.m.;
- ii) For both the posts of Associate Professor as well as Assistant Professor, only one interview was held;
- iii) For the common interview held for both the posts, there was one set of questions;
- iv) While for the post of Associate Professor, the petitioner was allotted 67.3%, the respondent nos. 5 and 6 were allotted 66.8% and

62% respectively;

vi) For the assessment made for the post of Assistant Professor, while the petitioner was allotted marks of 63.1%, the respondent nos. 5 and 6 were allotted marks of 68.2% and 67%;

vii) On the basis of the assessment made, on 10.06.2022, the respondent nos. 5 and 6 were appointed as Assistant professor in the AIIMS, Guwahati.

17. When admittedly, only one interview with one set of questions was there for the candidates, including the petitioner and the private respondents who had applied for both the posts of Associate Professor and Assistant Professor in the Department of Microbiology, it is failed to be understood as to how two assessments could have been made. If in the assessment made for the higher post of Associate Professor, the petitioner was assessed to be better than the private respondents by allotting him more marks, it cannot be reasonably conceived that for a lower post of Assistant Professor, the petitioner could be assessed as inferior to the private respondents.

18. The learned counsel for the respondents have strenuously argued that the petitioner is estopped from making a challenge after he had participated in the interview without any demur and only because of the fact that he has turned out to be unsuccessful, the challenge has been made. In this connection, the aforesaid case laws have also been cited. This Court is, however of the view that the cause of action in the instant case is not on the manner of holding the

recruitment process by means of one interview. The challenge is, rather on making two assessments in a common interview and such action could be revealed only after publication of the results and upon obtaining the necessary information with regard to the marks secured. This Court, upon examination has found that the grievance of the petitioner is not related to holding a common interview but only on making two assessments in a common interview and such a course of action adopted by the authorities could be revealed only after publication of the results of the selection and obtaining the details of the marks secured by the incumbents.

19. An objection was also raised on the ground of delay in making the present challenge. It is true that the writ petition was filed on 23.01.2023 and the appointments of the respondent nos.5 and 6 were made on 10.06.2022. However, the delay would have been relevant only for the purpose of considering the prayer for interim order and not for final consideration of the challenge projected. The proceedings of this case would also reveal that the records of the selection were also directed to be produced. Such observation is definitely with a view to examine the challenge made in this petition. This Court is of the view that the initial delay of about 6 months would not preclude the petitioner to have the challenge considered on merits.

20. On the facts and circumstances of the case and also the admitted position, this Court is of the opinion that offering appointment to the respondent nos. 5 and 6 to the post of Assistant Professor by allotting them more marks in a selection process consisting of one interview, including the post of Associate Professor which is admittedly a higher post and in which the petitioner was

allotted more marks, appointment to the said respondent nos. 5 and 6 by depriving the petitioner cannot be held to be justified. One objection was also raised that in the category of Assistant Professor, between the petitioner and the private respondents, there are other candidates also. This Court is, however of the view that the petition is based on the fact that it is the petitioner who had obtained more marks in the category of Associate Professor than the respondent nos. 5 and 6 and it is the respondent nos. 5 and 6 who have been given appointment in the post of Assistant Professor and therefore, the aforesaid objection will not stand.

21. It is seen that while in the appointment made to the post of Assistant Professor, the first nominee is the respondent no. 5 and the second nominee is the respondent no. 6. Since the petitioner was assessed to be better than the aforesaid two respondents in the higher category of Associate Professor, the petitioner has to be given the benefit of appointment as Assistant Professor as being assessed as better than the said respondent nos. 5 and 6. Consequently, the respondent no. 6 has to give way to the petitioner to be appointed as Assistant Professor in AIIMS, Guwahati. The appointment of the respondent no. 6 is, accordingly interfered with and the petitioner is directed to be offered the appointment as Assistant Professor in AIIMS, Guwahati pursuant to the advertisement dated 05.10.2021.

22. Notwithstanding the aforesaid direction, the AIIMS, Guwahati is still given liberty to make an arrangement to the effect that without disturbing the appointments of the private respondents, if the petitioner can be appointed as Assistant Professor, that option can be explored. It is further directed that the

appointment to the petitioner as Assistant Professor has to be given effect from the same date of appointment of the private respondent nos. 5 and 6 by giving him notional benefits. It is further made clear that in such a case, wherein the petitioner can be accommodated without disturbing the private respondents, the same would not be a precedent for any other appointments.

23. Writ petition accordingly stands allowed.

24. No order as to cost.

JUDGE

Comparing Assistant