

GAHC010122362012



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

Case No. : WP(C)/4730/2012

SMTI MINAKSHI MEDHI

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
HEALTH and FAMILY WELFARE DEPTT., DISPUR, GHY- 6.

2:THE DIRECTOR OF MEDICAL OFFICER
ASSAM
KHANAPARA
GHY- 37.

3:THE REGISTRAR
SRIMANTA SANKARDEV UNIVERSITY OF HEALTH SCIENCES
ASSAM
NARAKASUR HILL TOP
GHY- 32.

4:THE PRINCIPAL CUM CHEIF SUPERINTENDENT
GUWAHATI MEDICAL COLLEGE
BHANGAGARH
GHY- 5.

5:THE CHAIRMAN
SELECTION BOARD
WARD BOYS AND GIRLS
GUWAHATI MEDICAL COLLEGE and HOSPITAL
BHANGAGARH

GHY- 5.

6:MOUSUMI ROY

B E F O R E

Hon'ble MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri Z. Hussain, Advocate.

Advocate for the respondents : Ms. D. Borah, SC,
Health & Family Welfare Department,

Date of hearing : 28.08.2023

Date of judgment : 28.08.2023

JUDGMENT & ORDER

Heard Shri Z. Hussain, learned counsel for the petitioner. Also heard Ms. D. Borah, learned Standing Counsel, Health and Family Welfare Department.

2. The issue involved is with regard to the assertion made by the petitioner that she belongs to the Schedule Caste Community and had participated in a recruitment process initiated vide an advertisement dated 21.10.2011 for appointment as Ward Girls in the Gauhati Medical College. The grievance precisely is that one candidate securing less marks have been given the benefit of the appointment and the petitioner who had got more marks has been denied the said benefit by terming her to be a General Category Candidate.

3. When this matter had come up for consideration on 24.08.2023, this Court had

noticed that the petition was pending for more than a decade in spite of which, the records of the case was not produced. Accordingly, this Court had granted a final opportunity to the learned Standing Counsel of the Department to produce the records.

4. Ms. Borah, the learned Standing Counsel has submitted that the records, as such could not be traced out. However, whatever documents was available has been transmitted to her which have accordingly being placed before this Court.

5. Shri Hussain, the learned counsel for the petitioner has submitted that a recruitment process was initiated for filling up certain numbers of posts in the Gauhati Medical College which included 15 numbers of posts of Ward Girls. The petitioner who claims to be belonging to the Schedule Caste (SC) Community (*Kaibortta*) and have the requisite qualification had participated in the said process. The grievance of the petitioner is that though she had applied under the category of SC, she was treated as a General (Unreserved) category candidate and in the said process, was deprived from appointment in the selection process. The petitioner had also arrayed the candidate, who was appointed in the category of SC as respondent no. 6 subsequently as allowed by this Court vide order dated 09.03.2018 passed in IA(C) No. 748/2018. It is the categorical case of the petitioner that the marks obtained by the petitioner in the SC category is more than the marks of the respondent no. 6. By referring to the merit list which has been annexed as Annexure-C, it is submitted that while the respondent no. 6 had secured 102.5 marks, the petitioner at Sl. No. 48 had secured 111.5. The learned counsel accordingly submits that because of certain error whereby the petitioner has been treated to be a General (Unreserved) category, she has been deprived of the appointment.

6. Ms. Borah, the learned Standing Counsel of the Department however submits that the appointments were made in the year 2012 and more than a decade has

passed and therefore the same may not be interfered with. It is also submitted on behalf of the Department that the category of the private respondent as SC is not disputed.

7. The issue which has fallen for determination is with regard to the action of the respondents in treating the petitioner as a General (Un-reserved) category candidate *qua* the selection process for filling up amongst others, 15 numbers of posts of Ward Girls in the Gauhati Medical College Hospital. In paragraph-3 of the writ petition, the petitioner has clearly stated that she belongs to the SC community and the certificate has also been annexed as Annexure-6 to the writ petition. A *prima facie* look at the said certificate demonstrates that the same has been issued by the competent authority, namely, the Deputy Commissioner, Lakhimpur in the year 1997, i.e. much prior to the recruitment process. The said statement made in paragraph 3 has not been denied by the respondent authorities in the affidavit-in-opposition dated 01.02.2013 filed through the respondent no. 4. A further statement has been made by the petitioner in paragraph 3 of the additional affidavit dated 04.02.2018.

8. For ready reference, the relevant pleadings mentioned above are extracted herein below:

Paragraph 3 of the writ petition

“3. That the petitioner begs to state that she belong to the schedule caste (Kaibortta) community under Constitution order 1950, as amended by the schedule caste list modified order 1970. The Deputy Commissioner, North Lakhimpur issued a SC certificate in the name of petitioner on 25.7.1979.”

Paragraph 3 of the affidavit-in-opposition of the respondent:

“3. That as regards to the statements made in paragraphs 1 to 5 of the writ

petition, the deponent has no comments to offer.”

Paragraph 3 of the additional affidavit of the petitioner:

“3. That the petitioner begs to state that she belongs to the schedule cast (Kaibortha) community under constitution order 1950, as amended by the schedule caste list modified order 1970. The Deputy Commissioner, North Lakhimpur issued a SC certificate in the name of petitioner on 25.07.1979 (Annexure- 6 of the writ petition). As per advertisement the petitioner had submitted an application in standard form of application alongwith the schedule caste certificate with all documents relating to the advertisement for the post of ward girl as a SC candidate under the establishment of superintendent of Gauhati Medical College Hospital, Guwahati.”

9. By going through the pleadings, it appears that there is no dispute with regard to the category of the petitioner which is SC. However, from the select list annexed to the writ petition, it is clear that the petitioner has been treated to be a General (Unreserved) Category candidate and therefore in spite of securing more marks (111.5) than the SC candidate who was selected she did not get the benefit of appointment.

10. This Court is also of the view that when the petitioner was belonging to the SC category which is granted several relaxation and benefits, there is no reason to assume that she had applied as a General Category candidate. There is also no rebuttal of the fact that the petitioner is an SC candidate and there is also no assertion in the affidavit-in-opposition that she had applied as the General Category candidate.

11. In view of the above, this Court is of the unhesitant opinion that categorization of the petitioner as a General Category candidate (Unreserved) is an error apparent on

the face of the records. This Court is therefore of the opinion that a case for interference is made out.

12. At this stage, this Court is also of the view that the private respondent, who was appointed in the year 2012 has been rendering her service for more than a decade and no fault can be attributed to her for the error committed by the authorities. Therefore, without disturbing the services of the private respondents, it is directed that the petitioner be considered and appointed in any existing vacancy of Ward Girl or in any vacancies which would occur in the immediate future. Such appointment would be on the strength of her selection in the duly conducted recruitment process. It is further made clear that the age bar would not apply in the present case as the petitioner was wrongfully denied of her appointment in spite of securing marks which would lead to an appointment if she was properly categorized as an SC category.

13. Writ petition accordingly stands allowed.

14. Copy of the written instructions along with the annexures are made part of the records.

JUDGE

Comparing Assistant