

GAHC010021962019



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

Case No. : WP(C)/758/2019

SAIDUR RAHMAN

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
ANIMAL HUSBANDRY AND VETERINARY DEPTT., JANATA BHAWAN,
DISPUR, GHY-06.

2:CHAIRMAN
ASSAM PUBLIC SERVICE COMMISSION

JAWAHAR NAGAR
KHANAPARA
GHY-22
ASSAM.

3:SECRETARY
ASSAM PUBLIC SERVICE COMMISSION
JAWAHAR NAGAR
KHANAPARA
GHY-22
ASSAM

Advocate for the Petitioner : MR. J KALITA

Advocate for the Respondent : SC, APSC

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

JUDGMENT & ORDER (CAV)

Date : 14-02-2022

Heard Mr. K.N. Choudhury, learned Sr. counsel assisted by Mr. J. Kalita, learned counsel for the writ petitioner. Also heard Mr. P.N. Goswami, learned Addl. Advocate General, Assam appearing on behalf of respondent No. 1 as well as Mr. K. Konwar, learned standing counsel, APSC representing the respondent Nos. 2 and 3.

2. Aggrieved by non-inclusion of the petitioner's name in the select list prepared for appointment in the post of Veterinary Officer/ Block Veterinary Officer, the instant writ petition has been filed seeking a writ of mandamus directing the respondents to appoint him against the quota reserved for the Person With Disabilities (PWD) category candidates.

3. The facts of the case, giving rise to filing this writ petition, briefly stated, are as follows. The Assam Public Service Commission (APSC) had issued an advertisement notice dated 17-02-2018 inviting applications for filling up number of posts in different departments under the Government of Assam including 113 posts of Veterinary Officer/ Block Veterinary Officer in Class- II, Gazetted (Jr. Grade) under the Assam Animal Husbandry & Veterinary Department. In the advertisement notice 17-02-2018 it has been mentioned that 4 (four) posts of Veterinary Officer/ Block Veterinary Officer have been kept reserved for PWD candidates with Locomotor, Low vision and Hearing handicapped category. The writ petitioner herein is a general category candidate but he is suffering from hearing impairment to the extent of more than 60%. As such, he had submitted his candidatures as PWD candidate belonging to the General Category. Upon completion of the selection process the APSC had

published select list dated 03-10-2018 containing the names of as many as 110 candidates belonging to various categories for filling up the advertised posts of Veterinary Officer/ Block Veterinary Officer. The said select list, however, had mentioned that there were no candidates belonging to low vision and hearing handicapped in the PWD category and hence, no recommendation could be made for the said categories.

4. Aggrieved by non-inclusion of his name in the aforesaid select list as a PWD category candidate, the petitioner had earlier approached this Court by filing W.P.(C) No. 7275/2018 *inter-alia* contending that the respondents have arbitrarily refused to consider his case for appointment as a candidate belonging to PWD category. Taking note of the grievance of the writ petitioner, the learned Single Judge had disposed of the aforesaid writ petition by order dated 31-10-2018 passed in W.P.(C) No. 7275/2018 by directing the respondent Nos. 2 and 3 to assign reasons as to why the petitioner was not recommended for appointment, within 04 weeks from the date of the order. In terms of the directions contained in the order dated 31-10-2018, the respondent No. 3 has issued the order dated 30-11-2018 disposing of the claim of the petitioner. In the order dated 30-11-2018, it has been mentioned that there was only one PWD candidate belonging to locomotor category and OBC(F) and she was recommended at Sl. No. 103. However, since there was no other candidate belonging to low vision and hearing handicapped category coming under the OBC/ MOBC and ST(H) category, hence, no recommendation could be made in respect of the other three reserved posts of PWD category. Insofar as the grievance of the petitioner is concerned the same was specifically dealt with in paragraph 3 of the order dated 30-11-2018, which is reproduced here-in-below for ready reference:

“3. Furthermore, Mr. Saidur Rahman belongs to a general category candidate with hearing handicapped, bearing Sl. No. 00158 is not entitled to PWD reservation as per

advertisement No. 01/2018 as all 4 (four) posts earmarked for PWD category candidates were reserved as 3 (three) posts for OBC/ MOBC candidates and 1 (one) post for STH candidate. Furthermore, it is also noteworthy to mention that the petitioner being a general category male candidate was not eligible for any reservation what so ever and even though he might have performed well based on his personal assessment, yet there is always scope of someone else performing better than the petitioner, such being the nature of competitive examinations. The posts were earmarked for OBC/ MOBC and ST(H) candidates. Hence, the petitioner's name could not be recommended by the Commission."

5. Aggrieved thereby, the petitioner has approached this Court for the second time by filing the instant writ petition seeking a writ of mandamus directing the authorities to consider his case for appointment.

6. By placing reliance on the decision of the Hon'ble Supreme Court rendered in the case of ***Mahesh Gupta & Ors. Vs. Yashwant Kumar Ahirwar & Ors.*** reported in **(2007) 8 SCC 621**, Mr. K.N. Choudhury, learned Sr. counsel for the petitioner has argued that law is firmly settled that further reservation amongst the disabled on the basis of caste, creed or religion would be impermissible. According to Mr. Choudhury, the petitioner fulfills the requisite criteria laid down in the advertisement notice and therefore, regardless of the caste to which petitioner belongs to, the respondents ought to have considered his case as a PWD category candidate which has not been done in this case. As such, submits Mr. Choudhury the present is a fit case where this Court may issue a writ of mandamus directing the respondent to consider the case of the petitioner for appointment as a PWD candidate. In support of his aforesaid argument Mr. Choudhury has also placed reliance on two other decisions of the Supreme Court rendered in the case of ***Raminder Singh Vs. State of Punjab & Anr.*** reported in **(2016) 16 SCC 95** and ***UoI & Ors. Vs. M. Selvakumar & Anr.*** reported in **(2017) 3 SCC 504**.

7. Responding to the above argument Mr. P.N. Goswami, learned Addl. Advocate General,

Assam submits that in the advertisement notice itself the respondents have mentioned that out of the four vacancies reserved for PWD candidates three of them were meant for OBC/ MOBC category and one post for ST(H) category. Thus, it is evident from the advertisement notice dated 17-02-2018 itself that even amongst the PWD candidates, there was further classification of the reserve category posts by confining those four posts only for the benefit of OBC/ MOBC and ST(H) candidates. Mr. Goswami has, however, submitted in his usual fairness that in view of the law laid down by the Supreme Court such further classification amongst the vacancies reserved for PWD candidates was not permissible.

8. Mr. K. Konwar, learned standing counsel, APSC appearing for the respondent Nos. 2 and 3 submits that APSC has proceeded on the basis of the criteria mentioned in the advertisement notice and therefore, his clients do not have any independent stand in the matter.

9. I have considered the submission advanced by learned counsel appearing for both the parties. There is no wrangle at the bar that as many as 4 (four) posts of Veterinary Officer/ Block Veterinary Officer were reserved for being filled up by candidates belonging to PWD category. However, as per the advertisement notice, these four posts were meant only for candidates with physical disability belonging to OBC/ MOBC and ST(H) category. Therefore, the core issue that arises for consideration in this case is as to whether, the respondents were justified in further reserving those four posts meant for PWD candidates to be filled up only by candidates belonging to OBC/ MOBC/ ST(H) candidates.

10. From the advertisement notice, it is clear that the recruitment process was not a special drive for intake of only reserved categories candidates belonging to OBC/ MOBC/ ST(H) category but the same was meant for General Category candidates as well. As a matter

of fact, out of the 113 posts as many as 16 posts were meant for the general category candidates. There is also no doubt or dispute about the fact that the petitioner in fact suffers from disability being a person suffering from hearing handicap. As such, he would be entitled to the benefit of reservation meant for the PWD hearing handicap category.

11. It is also the admitted position of fact that out of the 110 candidates, whose names appear in the select list, only one candidate, viz. Pranita Konwar was selected against PWD locomotor category since she belonged to the OBC category but no other candidate was recommended against the remaining three vacancies coming under PWD category notwithstanding the fact that petitioner was one of the applicant from PWD category.

12. In the case of **Mahesh Gupta (Supra)** referred to by the learned counsel for the petitioner, the Hon'ble Supreme Court has categorically held that a disabled is a disabled and therefore, the question of making further reservation on the basis of cast, creed and religion would not ordinarily arise. Such a view has been expressed by observing that disabled are by themselves a special class and to that extent their further classification may not be justified. Similar is the view expressed in the case of **M. Selvakumar & Anr. (Supra)** wherein it has been observed that physically handicapped category is a category in itself and the persons who are physically handicapped have to be treated alike in extending the relaxation and concession regardless of the fact whether they belong to a general category or OBC category.

13. Applying the ratio laid down in the case of **Mahesh Gupta (Supra)** and **M. Selvakumar & Anr. (Supra)**, this Court is of the unhesitant opinion that having reserved four vacancies to be filled up by PWD candidates and having permitted the General Category candidates to participate in the recruitment process, there was no scope for the authorities to further reserve those four vacancies in PWD category to be filled up only by candidates

belonging to OBC/ MOBC or ST(H) category.

14. Having held as above, it is also to be noted herein that out of the 04 (four) vacancies reserved for PWD, as many as 03 (three) vacancies could not be filled up since no candidate belonging to PWD category coming from OBC/ MOBC/ ST(H) was available. It was on such count that no name could be recommended by the APSC for filling up the remaining three vacancies. If that be so, it is evident that even if the petitioner was recommended as PWD candidate against one of the three vacancies, even then, the same would not cause prejudice to any candidate belonging to OBC/MOBC/ ST (H). The learned departmental counsel also could not offer any reason as to why such a recourse could not have been adopted by the departmental authorities in case of the writ petitioner.

15. It is also to be borne in mind that India is a signatory to the Beijing proclamation which aims at providing equal opportunities to persons with disabilities. In fulfillment of India's commitment as a signatory to the Beijing proclamation the Parliament had enacted the "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" (in short Act of 1995). The Act of 1995 casts a duty upon the State and its instrumentalities to reserve posts for being filled up by persons with disabilities. The Act of 1995 does not make any discrimination amongst the persons with disabilities on the basis of caste, creed and religion in the matter of opportunities of employment.

16. As per Section 32 of the Act of 1995, the appropriate Government, which in this case is the State Government of Assam, is required to *inter-alia* identify posts in every establishment that can be reserved for persons with disability. Section 33 of the Act of 1995 provides that those posts are required to be reserved for recruitment of persons with disability coming under three different categories. Section 33 of the Act of 1995 is reproduced here-in-below

for ready reference:

“33. Reservation of posts. – Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from –

(i) blindness or low vision;

(ii) hearing impairment;

(iii) locomotor disability or cerebral palsy,

In the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from provisions of this section.”

17. From the above it is clear that the Government would not only have a statutory obligation to identify posts which can be reserved for persons with disability but would also have to earmark such vacancies, not less than 3%, for being filled up only by persons with disability. Such mandate of the statute is de hors any sub-classification and over and above any reservation based on caste, creed and religion. Therefore, viewed from that angle also, the respondents could not have refused to consider the candidature of the petitioner as a candidate belonging to the PWD category against one of the three vacant posts reserved for PWD candidates, more particularly when there was no other contender for those posts.

18. For the reasons stated hereinabove, the order dated 30-11-2018 issued by the respondent No. 3 is held to be un-sustainable in law and the same is accordingly set aside.

19. In the result, this writ petition succeeds and is hereby allowed.

The respondent No. 1 is directed to consider the case of the petitioner for appointment in the post of Veterinary Officer/ Block Veterinary Officer against one of the three vacancies reserved for being filled up by PWD category candidates.

The exercise, as directed by this Court, be carried out and completed as expeditiously possible but not later than 60 days from the date of receipt of a certified copy of this order.

Writ petition stands disposed of accordingly.
Parties to bear their own cost.

JUDGE

GS

Comparing Assistant