

GAHC010010372015



2026:GAU-AS:4051

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

Case No. : WP(C)/1470/2015

MD. ABUL HUSSAIN
S/O LT. MD. BAHAR ALI, VILL. BADLA PATHAR, P.O. BADLA BAZAR, DIST-
KAMRUP, ASSAM

VERSUS

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

2:THE COMMISSIONER
LOWER ASSAM DIVISION
GHY-1

3:THE DY. COMMISSIONER
KAMRUP RURAL
GUWAHATI
AMINGAON
ASSAM

4:THE SUB DIVISIONAL OFFICER S
KAMRUP RURAL
P.O. and P.S. AMINGAON
GHY-01
ASSAM

5:THE CIRCLE OFFICER
NAGARBERA REVENUE CIRCLE
NAGARBERA
P.O. and P.S. NAGARBERA
DIST- KAMRUP RURAL
ASSAM

6:ALTAP HUSSAIN
S/O ABDUL HOQUE
VILL. BADLA PATHAR
P.O. BADLA BAZAR
P.S. NAGARBERA
DIST- KAMRUP RURAL
ASSAM

7:THE SELECTION BOARD FOR
SELECTION OF GAONBURAH OF VILL. BADLAPATHAR
REP. BY THE SUB- DIVISIONAL OFFICER SADAR OF KAMRUP RURAL
DISTRICT
P.O. AMINGAON
DIST- KAMRUP RURAL
ASSA

Advocate for the Petitioner : MR. M HUSSAIN, MR. K U AHMED,MR. M A SHEIKH,MS. A BEGUM,MS. F INTAZ

Advocate for the Respondent : GA, ASSAM (R1), MR. T C CHUTIA (R2-R5),MR. J.K. GOSWAMI, ADDL. SR. GA, ASSAM,,MS. S KAKATI (R6),MR. C CHAKRAVARTY (R6),MR. R HAZARIKA (R6),MR. J ROY (R6)

BEFORE
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR
ORDER

17/03/2026

Heard Mr. M A Sheikh, learned counsel for the petitioner. Also heard Mr. T C Chutia, learned Additional Senior Government Advocate, appearing for the respondent Nos. 1 to 5 & 7 and Mr. R Hazarika, learned counsel for the respondent No. 6.

2. The petitioner in the present writ petition has presented a challenge to the selection and appointment of the respondent No. 6, as the Gaonburha (Gaon Pradhan) in Village-Badlapathar under Nagarbera Mouza, vide an order dated 20.08.2009.

3. The facts in brief requisite for adjudication of the issues arising in the present writ

petition is noticed as under:

The petitioner in the present writ petition has projected that he belongs to a family of Gaonburhas. His grandfather was initially appointed as a Gaonburha of Badlapathar and thereafter, the said appointment was given to the father of the petitioner. Upon the death of the father of the petitioner, the post of Gaonburha becoming vacant, the petitioner was engaged for discharging the duties of the Gaonburha of the said village on adhoc basis.

With the said background, the petitioner in response to an advertisement dated 14.05.2008, issued by the office of the Deputy Commissioner, Kamrup, Guwahati, inviting applications from eligible candidates for recruitment to the post of Gaonburha of Village-Badlapathar under Nagarbera Mouza, had submitted his application. The respondent No. 6, herein, had also submitted his application for recruitment as Gaonburha against the post advertised vide the said advertisement dated 14.05.2008.

The Selection Committee as constituted in the matter, after considering the cases of the candidates appearing before it, including the petitioner and the respondent No. 6, proceeded to recommend the name of the respondent No. 6, for appointment as Gaonburha against the post so advertised vide the said advertisement dated 14.05.2008. The respondent No. 6, was subsequently appointed, in terms of his selection.

The petitioner, being aggrieved by the said appointment effected in respect of the respondent No. 6, herein, had assailed the same by way of instituting a writ petition, being WP(C) No. 3611/2008 before this Court. The said writ petition was permitted to be withdrawn by the learned counsel for the petitioner with liberty to approach the Appellate Authority by way of filing an appeal. The said order permitting the petitioner to withdraw the writ petition was so passed on 19.12.2008.

The petitioner, thereafter, instituted an appeal before the Appellate Authority, however, the said appeal came to be rejected vide order dated 18.08.2009. The petitioner, thereafter, submitted a further appeal before the Commissioner of Lower Assam Division, Guwahati. The same was rejected by the said authority vide an order dated 21.04.2010.

The petitioner, being aggrieved by the disposal of his appeal by the Commissioner, Lower Assam Division, Guwahatam proceeded to file a review petition before the Government of Assam in the Revenue & Disaster Management Department. The said review petition was rejected vide order dated 18.11.2014.

Being aggrieved, the petitioner has instituted the present writ petition.

4. At this stage, it is to be noted that the petitioner had filed an Interlocutory Application, being I.A. (Civil) No. 3153/2023, praying for amendment of the writ petition. The said Interlocutory Application has been dismissed by this Court by a separate order passed today, holding the amendments sought to be made in the present writ petition to be of no significance.

5. Mr. M A Sheikh, learned counsel for the petitioner, after reiterating the facts noticed, hereinabove, has submitted that in terms of the provisions of Clause-162 of the Executive Instructions under the Assam Land and Revenue Regulation, 1886 (as amended), the petitioner, herein, being a member of the family of the Gaonburhas is entitled to be extended with a preferential treatment with regard to appointment against the post of Gaonburha, which was earlier held by his predecessors.

Mr. Sheikh, learned counsel for the petitioner submits that the petitioner admittedly being the grandson and son of the erstwhile Gaonburhas of the same village, the respondent authorities by invoking the provisions of Clause-162(a) ought to have proceeded to appoint the petitioner against the post of Gaonburhan as advertised vide advertisement dated 14.05.2008, subject to the condition that the petitioner was not otherwise ineligible for such appointment.

Mr. Sheikh, learned counsel for the petitioner submits that the materials brought on record would reveal that the petitioner had the minimum requisite educational qualification for being considered for appointment as a Gaonburha in pursuance to the advertisement dated 14.05.2008 and there is no adverse material brought on record by the respondents, which would otherwise have the effect of rendering the petitioner, herein, ineligible for appointment as a Gaonburha.

Mr. Sheikh, learned counsel for the petitioner submits that a perusal of the materials brought on record would reveal that although, there was no mention of any minimum educational qualification in the advertisement issued, the consideration of the case of the petitioner for such appointment would reveal that he being a Class-IX passed candidate, the said qualification was within the minimum qualification, so mandated for consideration of the case of a candidate for appointment against the post of Gaonburha. He submits that the materials brought on record reveal that the Selection Committee only by construing the Graduate qualification possessed by the respondent No. 6 proceeded to recommend his case for appointment of Gaonburha against the post advertised vide advertisement dated 14.05.2008. He submits that there being no requirement of any qualification being prescribed in the advertisement in question, the respondent authorities could not have while carrying out the process of selection, introduced a fresh criteria of requiring candidates to have a Graduate qualification for being recommended for appointment against the post of Gaonburha, as advertised in the matter. He submits that the consideration extended to the respondent No. 6 basing on his Graduate qualification is a criteria introduced by the authorities after the advertisement in question was so issued, which is clearly impermissible.

6. Per contra, Mr. T C Chutia, learned Additional Senior Government Advocate, submits that the post of Gaonburha cannot be considered to be a hereditary one. He submits that even the member of the family of the Gaonburha is also required to participate in the selection process along with other candidates, whose predecessors were not Gaonburhas.

Mr. Chutia, learned Additional Senior Government Advocate submits that in the selection held, the Selection Committee had assigned 10 marks to candidates, whose family members were holding the post of Gaonburha earlier. He submits that the said 10 marks as assigned in the matter was awarded to the petitioner, herein, by construing that he was a member of the family of the erstwhile Gaonburha. Mr. Chutia, submits that the preference required to be extended to the family member of a Gaonburha for the purpose of his selection against the post of Gaonburha is mandated to be so extended only when such candidate, who is a family member of the Ex-Gaonburha and another candidate who is not a member of the family of an Ex-Gaonburha, scores equal marks and in such a situation, the

candidate, whose predecessors were Gaonburhas would be extended with a preference and he would be appointed in the matter.

Mr. Chutia, learned Additional Senior Government Advocate submits that in the present case, the petitioner and the respondent No. 6 had not scored equal marks, even after the petitioner was granted 10 bonus marks for being a member of the family of the Gaonburha. Mr. Chutia, with regard to the submissions made by Mr. Sheikh, learned counsel for the petitioner that the Selection Committee had proceeded to recommend the name of the respondent No. 6 solely by reckoning his Graduate qualification, has submitted that the said submission is clearly misplaced, inasmuch as, the Selection Committee during the interview process had for the purpose of judging the suitability of the respondent No. 6 also considered his higher qualification and thereafter, awarded marks in the matter to the respondent No. 6. He submits that no separate marking was done for the education qualification possessed by the candidates in the selection process.

Mr. Chutia, learned Additional Senior Government Advocate submits that the respondent No. 6 was not selected solely basing on his Graduate qualification, but was so selected after an overall assessment of his suitability was made by the Selection Committee, wherein, the educational qualification may also have been one of the factors that was considered by the Selection Committee members.

Mr. Chutia, learned Additional Senior Government Advocate submits that the Appellate Authority as well as the Reviewing Authority having rejected the same very pleas raised in the present writ petition by the petitioner, the claim made in the present writ petition would not mandate an acceptance.

7. Mr. R Hazarika, learned counsel for the respondent No. 6, by adopting the arguments advanced by Mr. T C Chutia, learned Additional Senior Government Advocate, has submitted that there is no irregularity committed in the recommendation made in favour of the respondent No. 6 by the Selection Committee and accordingly, his appointment as a Gaonburha, which was effected on 20.08.2009, would not mandate an interference in the matter. Accordingly, he prays that the present writ petition would mandate to be dismissed.

8. I have heard the learned counsels for the parties and perused the materials available on record.

9. The facts, as noticed, hereinabove, pertaining to the process of recruitment to the post of Gaonburha are not in dispute.

10. The petitioner not being appointed as a Gaonburha in pursuance to the selection held in terms of the advertisement dated 14.05.2008 after having withdrawn the proceedings instituted before this Court, had submitted initially an appeal in the matter before the Deputy Commissioner. The jurisdictional Deputy Commissioner, vide order dated 18.08.2009, proceeded to reject the appeal preferred by the petitioner by holding that there was no irregularity committed in the selection process for the post of Gaonburha in Village-Badlapathar, as advertised, vide the advertisement dated 14.05.2008. In the said order, it was also highlighted that the respondent No. 6, herein, had scored the highest marks, while the petitioner was placed in the 2nd position in the recommendations made by the Selection Committee in the matter.

11. The petitioner, being aggrieved by the said order dated 18.08.2009 had preferred a further appeal before the Commissioner, Lower Assam Division, Guwahati. The said appeal on consideration was rejected vide an order dated 21.04.2010 and the appointment of the respondent No. 6 was confirmed.

12. The petitioner, thereafter, instituted a review petition before the Government of Assam in the Revenue & Disaster Management Department against the order dated 21.04.2010 passed by the Commissioner, Lower Assam Division, Guwahati. The said review petition was given a final consideration vide an order dated 18.11.2014. On such consideration being made, the said review petition came to be rejected.

13. A perusal of the said order dated 18.11.2014 reveals that the petitioner as well as the respondent No. 6, were given a due opportunity for placing their respective stands in the matter, before the Reviewing Authority had passed the order dated 18.11.2014.

14. The first ground of challenge of the petitioner to the appointment of the respondent

No. 6 as a Gaonburha of the village, in question, is that such appointment was effected without considering the preferential treatment required to be extended to the petitioner, being a family member of the Ex-Gaonburha.

15. Mr. Sheikh, learned counsel for the petitioner in this connection has submitted that the provisions of Clause-162 and 162(A) of the Executive Instructions under the Assam Land and Revenue Regulation, 1886, clearly mandates extension of such preferential treatment to a candidate, who is from the family of an Ex-Gaonburha. It is a settled position of law that the preferential treatment as contemplated under the provisions of Clause-162(a) of the said Executive Instructions would be applicable, provided the candidate from the family of an Ex-Gaonburha and a candidate, who does not have any such relation appointed as a Gaonburha earlier, scores equal marks in the selection process for appointment against a post of Gaonburha. It is when the said two candidates score same marks, the candidate belonging to the family of the Ex-Gaoburha is given a preferential treatment and he is recommended for appointment as Gaonburha against the post, so advertised.

16. In the case on hand, this Court finds that the petitioner had scored marks lower than the respondent No. 6 in the selection process. The said contention as available in the matter in the orders dated 18.08.2009 and 18.11.2014 passed by the jurisdictional Deputy Commissioner as well as by the Government in the Revenue & Disaster Management Department respectively, have not been disputed by the petitioner in the writ petition.

17. The petitioner in the selection process is found to have been awarded 10 bonus marks for the fact that he was a member of the family of the Ex-Gaonburha. The petitioner, accordingly, started in the said selection process with an added advantage. However, with the said advantage also the petitioner could not score marks above the respondent No. 6, who in the final analysis was found to be more suitable on merit by the Selection Committee.

18. Accordingly, the claim of the petitioner that he was required to be appointed against the post of Gaonburha in pursuance to the advertisement dated 14.05.2008 by extending to him a preferential treatment in the considered view of this Court would not mandate an acceptance, inasmuch as, the said preferential treatment, as noticed hereinabove, would

come into play only when the petitioner had scored equal marks with the respondent No. 6, herein, which admittedly is not the position obtaining in the selection process, the petitioner, being placed in the 2nd position on merits below the respondent No. 6.

19. Having drawn the said conclusion, this Court would now examine the second contentions raised by Mr. Sheikh, learned counsel for the petitioner towards assailing the selection and appointment of the respondent No. 6, herein.

20. It is the contention of Mr. Sheikh, learned counsel for the petitioner that the advertisement having not laid down any minimum qualification as an eligibility criteria for applying against the post of Gaonburha, the Selection Committee ought not to have proceeded to recommend the case of the respondent No. 6, herein, only by reckoning his Graduate qualification.

21. This Court has perused the materials available on record for the purpose of appreciating the said contentions raised by the learned counsel for the petitioner.

22. On a perusal of the materials brought on record, this Court finds that there was admittedly no minimum educational qualification set out in the said advertisement dated 14.05.2008. The petitioner, being only a Class-IX passed candidate and he being found by the authorities to be eligible for consideration against the post of Gaonburha, this Court also finds that the educational qualification of Class-IX passed, insofar as, the recruitment process in question in the present proceeding is concerned, is also within the minimum educational qualification mandated for extension of such consideration to a candidate applying in pursuance to the advertisement dated 14.05.2008.

23. This Court from the materials available on record is of the considered view that the selection of the respondent No. 6 was not so made by solely reckoning his Graduate qualification. The said qualification of the respondent No. 6 may have been one of the factors considered by the Selection Committee, while evaluating the suitability of the respondent No. 6 for appointment as Gaonburha.

24. This Court in the facts and circumstances involved and also considering the nature of

duties required to be discharged by a Gaonburha does not find the approach of the Selection Committee in the matter to be erroneous in any manner. Accordingly, on the said count also, the challenge to the selection and appointment of the respondent No. 6 would not be sustainable.

25. In view of the conclusions reached by this Court, hereinabove, this Court is of the considered view that the challenge presented by the petitioner to the selection and appointment of the respondent No. 6, herein, would not mandate an acceptance and accordingly, the present writ petition is held to be devoid of any merit and consequently, the same stands dismissed. However, there would be no order as to cost.

JUDGE

Comparing Assistant