

GAHC010016472023



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

Case No. : WP(C)/751/2023

PHANI DHAR BASUMATARI
SON OF SRI ANADI BASUMATARI,
R/O- KHAGARIJAN, P.O.- SILIKHABARI,
DISTRICT- SONITPUR, ASSAM,
PIN- 784149.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY,
HIGHER EDUCATION DEPARTMENT,
ASSAM SECRETARIAT, BLOCK-C,
GROUND FLOOR.

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE PRINCIPAL
LOKNAYAK OMEO KUMAR DAS COLLEGE
DHEKIAJULI
SONITPUR

ASSAM- 784110.

4:THE GOVERNING BODY OF LOKNAYAK OMEO KUMAR DAS COLLEGE
REPRESENTED BY ITS PRESIDENT

DHEKIAJULI
SONITPUR

ASSAM- 784110.

5:THE COMMISSIONER AND SECRETARY
PERSONNEL (B) DEPARTMENT
GOVT. OF ASSAM
DISPUR
GUWAHATI-06

Advocate for the Petitioner : MR. P MAHANTA

Advocate for the Respondent : SC, HIGHER EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

13-02-2023

Heard Mr. P. Mahanta, learned counsel for the petitioner and Mr. A.R. Tahbildar, learned Standing counsel, Higher Education Department, Assam for the respondent Nos. 1 & 2 as well as Ms. D.D.Barman, learned Government Advocate, Assam for the respondent No. 5.

Pursuant to the advertisement dated 23.03.2022 issued by the Principal of Loknayak Omeo Kumar Das College, Dhekiajuli, District-Sonitpur, though the petitioner possessed the requisite academic qualification, but he crossed the maximum age limit for which he was barred to file his application in terms of the said advertisement dated 23.03.2022.

As such, the petitioner preferred a writ petition being WP(C) No. 2346/2022 praying for directions to the respondent authorities therein, more particularly, the authorities of said college to accept his application for the post of Assistant Professor in the Department of Bodo Language in said college as advertised on 23.03.2022 and to the State respondents to condone his overage.

In that petition, the petitioner stated that the maximum age limit for the post of Assistant Professor of Bodo Language as advertised on 23.03.2022 was 40 years, there was relaxation of 5 years for reserved category ST(P). Since he belongs to ST(P) category and has already attained the age of 48 years, as such, there was a requirement for condoning of his overage of 3 years.

The Court by order dated 01.04.2022 disposed of said WP(C) No. 2346/2021 with certain directions. It is stated that on receipt of the certified copy of said order, the petitioner shall submit his application/representation before the Director of Higher Education (DHE), Assam along with the copy of said order.

By placing the communication No. DHE/CE/Misc/134/2020/55 dated 12.04.2022 of the DHE, Assam annexed to this petition as Annexure-10, the petitioner submitted that the DHE, Assam forwarded his application to the Principal of said Loknayak Omeo Kumar Das College, District-Sonitpur requesting the said authority to comply with the direction of the Court dated 01.04.2022 passed in said WP(C) No. 2346/2021.

On receipt of the recommendation dated 29.04.2022 that pertains to the selection of the petitioner to the post of Assistant Professor in the Department of Bodo recommended by the concerned Selection Committee as well as by the Governing Body of said College, the DHE, Assam vide No. DHE/CE/AC/NET/SLET/436/2022/73 dated 23.09.2022 appointed him as an Assistant Professor of Bodo in said Loknayak Omeo Kumar Das college in the regular U.G.C. Scale of pay of Rs. 57,700/- -1,82,400/- with other allowances as per rules as admissible. Accordingly, the petitioner joined the said college on 24.09.2022.

However, the DHE, Assam on 19.12.2022 issued a show cause notice to the petitioner stating that as on 01.01.2022, he was 48 years 1 month 5 days old, that was beyond the prescribed norms of appointment in Public post that too without condoning his overage, the appointment order that was issued to him on 23.09.2022 is bad in law and needs to be cancelled.

In terms of the said show cause notice dated 19.12.2022, noted above, and considering the reply of the petitioner submitted against said show cause, the DHE, Assam vide No. DHE/CE/AC/NET/SLET/436/2022/93 dated 30.12.2022 issued a Speaking Order whereby the said authority cancelled and withdrawn the appointment order of the petitioner dated 23.09.2022.

Being aggrieved with the said Speaking Order dated 30.12.2022 of the DHE, Assam, the petitioner on 07.02.2023 has filed this writ petition.

The petitioner contended that the DHE, Assam is the competent authority to condone his overage, as such, he filed an application before the DHE, Assam in terms of the order dated 01.04.2022 passed in said WP(C) No. 2346/2021.

Issue notice, returnable by **8 (eight) weeks**.

As Mr. A.R. Tahbildar, learned Standing counsel, Higher Education Department, Assam and Ms. D.D.Barman, learned Government Advocate, Assam have accepted the notices on behalf of the respondent Nos. 1 & 2 and 5 respectively, no formal notice need to be issued to those respondents.

Petitioner shall serve requisite extra copies of this writ petition including the annexures appended thereto to Mr. A.R. Tahbildar, learned Standing counsel, Higher Education Department, Assam and Ms. D.D.Barman, learned Government Advocate, Assam by tomorrow, i.e., 14.02.2023 obtaining necessary acknowledgment from them in that regard.

Petitioner shall take steps for service of notices on the respondent Nos. 3 & 4 by registered post with A/D by tomorrow, i.e., 14.02.2023, providing their correct and proper addresses with requisite postal stamps.

In addition to the above, the petitioner shall also take steps on the respondent Nos. 3 & 4 by dasti/personal service to be routed through the Registry of this court. Such dasti/personal service shall be made on the respondent Nos. 3 & 4 by serving copies of this writ petition including the annexures appended thereto by tomorrow, i.e., 14.02.2023 obtaining their signatures with date in presence of one or more witnesses. Thereafter, the petitioner shall file an affidavit towards completion of such dasti/personal service on those respondents.

List accordingly.

JUDGE

Comparing Assistant