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

Case No. : WP(C)/7030/2022

DR. DIMPLE DOLEY
WIFE OF SRI MALIN PEGU,
RESIDENT OF PUBERUN PATH,
NA-ALI, JORHAT,
P.O. AND DISTRICT- JORHAT (ASSAM),
PIN- 785001.

VERSUS

THE DIBRUGARH UNIVERSITY AND 5 ORS
REPRESENTED BY ITS REGISTRAR,
DIBRUGARH UNIVERSITY,
DIBRUGARH, ASSAM,
PIN- 786004.

2:THE VICE CHANCELLOR
DIBRUGARH UNIVERSITY

DIBRUGARH
ASSAM

PIN- 786004.

3:THE EXECUTIVE COUNCIL
DIBRUGARH UNIVERSITY

DIBRUGARH
ASSAM

PIN- 786004.

4:THE SELECTION COMMITTEE
DIBRUGARH UNIVERSITY

DIBRUGARH
ASSAM

PIN- 786004.

5:THE HEAD
DEPARTMENT OF APPLIED GEOLOGY

DIBRUGARH UNIVERSITY

DIBRUGARH
ASSAM

PIN- 786004.

6:TINA SAIKIA
C/O- PRODIP SAIKIA

RESIDENT OF VILLAGE- GHUMIAL

P.O.- HATIBONDHA

DISTRICT- DIBRUGARH
(ASSAM)

PIN- 786004

Advocate for the Petitioner : MR K BHUYAN, MR N ISLAM,MS. A KALITA

Advocate for the Respondent : MR. R MAZUMDAR, P BORA (R-6),MR. U SARMA (R-6),K.
KALITA (R-6),MR H BEZBARUA

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 01-04-2025

Heard Mr. K. Bhuyan, learned counsel for the petitioner. Also heard Mr.

R. Mazumdar, learned Standing Counsel, Dibrugarh University for the respondents No. 1 to 5 and Mr. U. Sarma, learned counsel for the respondent No.6.

2. Challenge made in this writ petition is to the order No. DU/Estt-A/Appt./2017/1328/6153 dated 27.10.2022 issued by the Registrar, Dibrugarh University, whereby, the respondent No.6, namely Ms. Tina Saikia, has been appointed as Assistant Professor in the Department of Applied Geology, Dibrugarh University, on the ground that the respondent No.6, does not have the requisite qualification of Ph.D and Specialization for appointment as Assistant Professor in Applied Geology as required under the UGC Regulation, 2018 and the Advertisement dated 05.01.2022.

3. The case of the petitioner, in brief, is that she is B.Sc. and M.Sc. in Geology with 1st Class distinction from Gauhati University. The petitioner has also qualified in National Eligibility Test for Assistant Professor in the year 2019 in the subject Earth Science which covers the subject Geology for which, an electronic certificate dated 19.11.2019 with UGC Reference No.2629 (CSIR-UGC NET JUNE 2019) has been issued.

4. Pursuant to the Advertisement No.A-1/2022 dated 05.01.2022 issued by the Registrar, Dibrugarh University inviting applications from the eligible candidates as per the UGC regulations on minimum qualifications for appointment of teachers and other academic staff in universities and colleges and a measures for the maintenance of standard in higher education 2018 (hereinafter referred to as UGC Regulation, 2018 in short) for filling up of various posts including the Assistant Professor for Applied Geology, the

petitioner having eligible and requisite qualification has applied for the said post of Assistant Professor in Applied Geology.

5. The petitioner had participated in the interview held on 15.10.2022. There were only two candidates i.e. the petitioner and the respondent No.6, who have appeared in the interview for the post of Assistant Professor in Applied Geology.

6. It is the contention of the petitioner that she has successfully completed her Ph.D course work in 2015 and on partial fulfillment of Ph.D under Gauhati University, the Academic Registrar, Gauhati University has issued a certificate dated 26.04.2016, which indicates that the petitioner was doing Geochemistry and Metamorphic Petrology for Ph.D Course Work. The petitioner has also published a number of publications/Articles on Isotope Geochemistry & Geochronology as a part of her research work through reputed Geological Journal in 2021. Finally, she has obtained her Ph.D for which, the provisional certificate was issued in the year 2022, which clearly shows that the petitioner is eligible and qualified to be appointed as Assistant Professor in Applied Geology. She has her topic of research work/thesis as Petrology and Geochemistry of Grantitoids of the Mayong Area in Morigaon, Assam.

7. It is contended that The respondent authorities vide resolution dated 21.10.2022 has adopted in the Emergent Meeting of the Executive Council, Dibrugarh University and pursuant to the said resolution, the Registrar of the University issued the impugned appointment order dated 27.10.2022, whereby, the respondent No.6 has been appointed as Assistant Professor in the Department of Applied Geology in Dibrugarh University without considering that the respondent No.6 is not qualified to be appointed as Assistant Professor as

she does not have the requisite qualification of Ph.D and Specialization as required under the UGC Regulation, 2018 and the Specialization provided in the Advertisement dated 05.01.2022.

8. Mr. K. Bhuyan, learned counsel for the petitioner submits that the petitioner having been obtained his Ph.D degree on 31.01.2022 before the interview for the post of Assistant Professor in Applied Geology, having specialization in Geochemistry and Metamorphic Petrology ought to have considered for appointment in preference over the respondent No.6, inasmuch as, the respondent No.6 is not qualified in terms of the UGC Regulation, 2018 and the Specialization required as per the Advertisement dated 05.01.2022 as the respondent No.6 has not obtained Ph.D degree and does not have required Specialization. The respondent No.6 has not submitted the undergone research work of Specialization, not to talk of having Ph.D degree even before the interview and therefore, the respondent No.6, is not eligible and qualified at all. He submits that despite that the respondent authorities have illegally appointed the respondent No.6, ignoring the petitioner, who is qualified and eligible to be appointed as Assistant Professor in Applied Geology, therefore, the impugned order dated 27.10.2022 appointing the respondent No.6 as Assistant Professor in Applied Geology, may be set aside and quashed and a direction may be issued to the respondent authorities to appoint the petitioner in place of respondent No.6.

9. In support of his submissions, learned counsel for the petitioner has placed reliance on the judgments of the Hon'ble Supreme Court in the case of **Ashok Kumar Sonkar -vs- Union of India and Ors.,** reported in **(2007) 4 SCC 54** and **State of Gujarat and Others -vs- Arvindkumar T. Tiwari and Another** reported in **(2012) 9 SCC 545.**

10. Mr. R. Mazumdar, learned Standing Counsel, Dibrugarh University, on the other hand, submits that the respondent No.6 is eligible in all respects as she has all the requisite qualification of Specialization i.e. Ph.D registration notification, NET-GRF certificate. The respondent No.6 has also qualified in National Eligibility Test for Junior Researchers Fellowship and Assistant Professor in the subject of Earth Sciences.

11. He submits that the respondent No.6 has specialization in Isotope Geo Chemistry as reflected in her Ph.D topic i.e. Stable Carbon Isotope study which means Isotope Geochemistry. The Selection Committee after conducting the interview on 15.10.2022, found the respondent No.6 to be more meritorious than the petitioner for appointment to the post of Assistant Professor in the Department of Applied Geology.

12. Mr. R. Mazumdar, learned standing counsel, on the contention of the petitioner that the respondent No.6 does not have the Ph.D degree, by placing the copy of the letter dated 12.10.2021 issued by the Secretary, UGC addressed to the Vice Chancellor of all the Universities, submits that the UGC Regulations 2018, which stipulates that the Ph.D degree shall be mandatory qualification for direct recruitment to the post of Assistant Professor in Universities from 01.07.2021, has been modified in view of Covid-19 pandemic, wherein, it has been decided to exempt the date of applicability of Ph.D degree as mandatory qualification for direct recruitment of Assistant Professor from 01.07.2021 to 01.07.2023. By amending the said Regulation, the requirement of Ph.D degree has been done away, and the same was notified in Gazette on 11.10.2021. Therefore, he submits that there is no dispute to the qualification and eligibility

of both the petitioner and the respondent No.6. He submits that despite having the knowledge of such amendment, the petitioner chose not to bring on record, which amount to suppression of material fact, therefore, either on the ground of suppression of material fact or on merit, the writ petition is liable to be dismissed.

13. Mr. U. Sarma, learned counsel for the respondent No.6, while adopting the submissions of the learned Standing counsel, Mr. Mazumder, submits that by now the petitioner has also obtained the Ph.D degree. Since the requirement of Ph.D degree as per the UGC Regulation, 2018 has been done away and the petitioner was also not having the Ph.D degree on the last date of submission of application, both the petitioner and the respondent No.6 are eligible and qualified to sit in the interview and accordingly, they have been allowed to participate in the interview. Thereafter, having found the respondent No.6, more meritorious, she has been appointed, and therefore, there is no illegality in the appointment of the respondent No.6 as Assistant Professor in Applied Geology as the respondent No.6 is eligible and qualified in all respects.

14. I have considered the submissions of learned counsel for the parties and also perused the materials available on record.

15. Admittedly, the petitioner and the respondent No.6 were the candidates, who have participated in the interview held on 15.10.2022 pursuant to the advertisement dated 05.01.2022 for filling up the post of Assistant Professor in Applied Geology. The Selection Committee having found the respondent No.6

more meritorious has selected and appointed her as an Assistant Professor in Applied Geology vide impugned appointment order dated 27.10.2022.

16. On careful consideration of the matter, it is seen that the challenge to the appointment of the respondent No.6 as Assistant Professor in Applied Geology, essentially, are on two grounds- firstly, that the respondent No.6 does not have the requisite qualification of Ph.D in terms of the UGC Regulation 2018, wherein, it stipulates that the Ph.D degree shall be mandatory qualification for direct recruitment to the post of Assistant Professor in all Universities and secondly, that the respondent No.6 does not have the required Specialization as per the Advertisement dated 05.01.2022.

17. In order to appreciate the contention of the learned counsel for the petitioner, I have perused the Advertisement dated 05.01.2022 and on bare perusal of the said Advertisement, reflects that for Assistant Professor in Applied Geology, a candidate must have the specialization in Metamorphic Petrology/Geochronology/Isotope Geochemistry.

18. Indisputably, the petitioner has obtained her Ph.D degree on 31.01.2022 after the last date of submission of application in the Advertisement. She has the Specialization in her research work in Ph.D of Isotope Geochemistry & Geochronology, whereas the respondent No.6, has not obtained her Ph.D degree. However, her research work for Ph.D degree clearly shows the studies on Stable Carbon Isotope and Palynostratigraphy of Barail Group in parts of Fold-Thrust Belt of Nagaland. It is clarified by the respondent authorities that

the respondent No.6 has specialization in Isotope Geochemistry as reflected in her Ph.D topic i.e. Stable Carbon Isotope study, which means Isotope Geochemistry.

19. Having considered the categorical stand of the respondent authorities and the subject expert that the Ph.D topic of Stable Carbon Isotope means Geochemistry, it would not be appropriate for this Court to have a different view with regard to Specialization as the Court do not have the expertise on the subject. Therefore, this court is of the view that since both the petitioner and the respondent No.6 having been participated in the interview based on the respective accepted specialization and the qualification, the selection would be based on the merit in the interview. The selection committee has found the respondent No.6 more meritorious and accordingly, appointed the respondent No.6 as Assistant Professor in Applied Geology.

20. Regard being had to mandatory Ph.D degree, it is noticed that the UGC vide communication dated 12.10.2021 has clarified that in view of the Covic-19 pandemic, the UGC has decided to amend the mandatory requirement of Ph.D degree for direct recruitment of Assistant Professor by extending the date from 01.07.2021 to 01.07.2023 by amending the UGC Regulation 2018, which was notified in the Gazette on 11.10.2021. The advertisement having been issued on 05.01.2022 and the selection process having been concluded by issuing the appointment order dated 27.10.2022, the above exemption period of requirement of having Ph.D degree is clearly covers, therefore, the ground of challenge of not having Ph.D degree by the respondent No.6 falls flat. More so, the petitioner has also obtained her Ph.D degree on 30.01.2022 as she was also

not having the said Ph.D degree on the last date of submission of application as per the Advertisement dated 05.01.2022. Thus, the grounds set forth by the petitioner are unjustified and cannot be accepted and as such, no interference is called for either to the selection process or to the consequential appointment order of the respondent No.6 as Assistant Professor in Applied Geology.

21. In the case of **Ashok Kumar Sonkar** (supra), the Hon'ble Supreme Court has held that possession of requisite educational qualification is mandatory and the same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of candidates must be fixed. In the absence of any rule or any specific date having been fixed in the advertisement, the law would be the last date of filing application. The case pertains to determination of eligibility condition with regard to educational qualification qua the cut-off date, which is completely different from the present case.

22. In **Arvind Kumar T. Tiwari** (supra), Arvindkumar T. Tiwari did not meet the eligibility criteria for Class-IV post of peon, viz. passing of 10th standard but he has not passed even the 8th standard, therefore, he was not eligible to apply for the said post. In that context, the Hon'ble Supreme Court has held that a person who does not possess requisite qualification cannot even apply for recruitment since his appointment would be contrary to the statutory rules and therefore, would be void in law. It has further held that lack of eligibility for the post cannot be cured at any stage and appointing such a person would amount to a serious illegality and not mere irregularity.

23. On perusal of the above case laws relied upon by the learned counsel for the petitioner referred to hereinabove, I am of the view that same would not come to the aid of the petitioner as the above decision pertains to determination of eligibility condition with regard to educational qualification qua the cut-off date, wherein, it has been held that in the absence of any cut-off date specified in the Advertisement or in Rules, the last date of submission of the application must be considered as the cut-off date and if a person who does not possess requisite qualification cannot even apply for the recruitment for the reason that his appointment is contrary to the statutory rules and therefore, would be void in law. Thus, same are settled propositions of law and same are not at all applicable in the present case.

24. In the present case, the petitioner has challenged appointment on the ground of not having Ph.D degree, which appears to be ignorant of the amendment of the UGC Regulation, 2018, wherein, the requirement of mandatory Ph.D degree has been exempted in view of the Covid-19 Pandemic, therefore, the above case laws relied upon by the learned counsel for the petitioner, is clearly distinguishable on facts and law. The other ground, as held herein above, is also unacceptable in view of the fact that the respondent authorities/subject expert have clarified that the Ph.D topic of Stable Carbon Isotope would mean Geochemistry, it would not be appropriate for this Court to have a different view with regard to Specialization as the Courts do not have the expertise on the subject.

25. In view of the discussion made hereinabove, this Court finds no infirmity in the selection process and consequential appointment of the respondent No.6 as Assistant Professor in Applied Geology.

26. Accordingly, the writ petition stands dismissed being devoid of any merit.
No order as to costs.

JUDGE

Comparing Assistant