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Case Status :: Disposed
Case No :: WP(C) 4086/2016

Petitioner Name **DIPEN DAS**
:: S/O- THANESWAR DAS, VILL.- NOTUN CHIRIN GAON, P.O.- C.R. BUILDING, DIST.- DIBRUGARH, ASSAM.

Respondent Name **THE STATE OF ASSAM & 5 ORS.**
:: BEING REP. BY COMMISSIONER & SECY. TO THE GOVT. OF ASSAM, EDUCATION (HIGHER) DEPTT., DISPUR, GHY- 6.

Category Code :: 10020 (Other service matters with respect to Service of Teachers of Provincialized Schools.)

District :: Karbi Anglong

Case Summary ::

Registration Date :: 14/07/2016

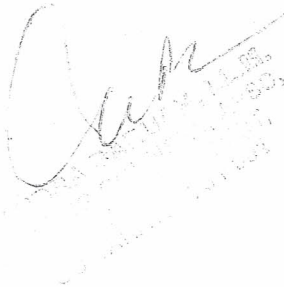
Last Date of Listing :: 24/08/2016

Last Stage of Listing :: MOTION

Last Court No :: 5

Last Date of Disposal :: 24/08/2016

Last Order :: Disposed Of

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Judgement Date : 24/08/2016

Case No : WP(C) 4086/2016

BEFORE

HON'BLE MR. JUSTICE UJJAL BHUYAN

Heard Mr. M. Biswas, learned counsel for the petitioner, Mr. K. Gogoi, learned Standing Counsel, Higher Education Department and Mr. R. M. Das, learned Standing Counsel, Karbi Anglong Autonomous Council. Also heard Mr. C. Baruah, learned Standing Counsel, Assam Public Service Commission (APSC).

Petitioner was appointed as Assistant Professor of Philosophy in the Diphu Government College, Diphu on contract basis pursuant to which he joined on 01.09.2010. It is stated that such contractual appointment was preceded by holding of a selection process. It is stated that though initial appointment of the petitioner was for a period of 1 month, such contractual appointment was extended from time to time. An advertisement bearing No. 6/2015 was issued by the Assam Public Service Commission (APSC) on 23.03.2015 to fill up 17 numbers of vacancies in the post of Assistant Professor in the Diphu Government College, Diphu which included one vacancy in the post of Assistant Professor of Philosophy in the said college which is being held by the petitioner on contractual basis. It is stated that out of the 17 vacancies 7 have been subsequently withdrawn from the aforesaid advertisement following regularization of service of the incumbents by the Government on 03.03.2016. Therefore, the selection process pursuant to the advertisement dated 23.03.2015 would now be confined to 10 vacancies.

Learned counsel for the petitioner submits that he is similarly placed like the 7 (seven) contractual Assistant Professors of Diphu Government College whose services have been regularized necessitating withdrawal of such posts from the advertisement. He therefore submits that similar protection is required to be granted to the petitioner by regularizing his service and consequently withdrawing the post held by him from the above advertisement.

I am afraid, such submission of learned counsel for the petitioner can be accepted. Initial appointment of the petitioner was on contractual basis for a limited period. There cannot be regularization of service following such contractual appointment because such regularization is not recognized or contemplated under the Assam Education Service Rules, 1982 which provides for direct recruitment to the post of Assistant Professor in Government Colleges. In so far submission of learned counsel for the petitioner that petitioner should be extended similar benefit as the 7 contractual appointees whose services have been regularized whereafter their posts have been excluded from the advertisement is concerned, a perusal of the regularization order dated 03.03.2016 would go to show that such regularization was made on the basis of a Cabinet decision with the clarification that it would not be treated as a precedent for future. Since the said order dated 03.03.2016 is not under challenge, Court would refrain from expressing any opinion on merit.

However, reverting back to the petitioner's prayer for regularization of service, as already noticed above, such regularization is not a mode of recruitment having regard to the mandate of the Assam Education Service Rules, 1982.

Suffice it to say, concept of equality under the law as enshrined in Article 14 of the Constitution, which is sought to be invoked by the petitioner, is a positive concept and cannot be enforced in a negative manner. Article 14 does not envisage negative equality. The High Court while exercising its power of judicial review under Article 226 of the Constitution would not issue any writ or direction to perpetuate an illegality.

In that view of the matter, Court finds no good ground to entertain this writ petition, which is accordingly dismissed.