

## Dr. (Mrs.) Tulika Dey Vs The State of Assam

**Court:** Gauhati High Court

**Date of Decision:** Feb. 24, 2011

**Acts Referred:** Assam Non-Government College Management Rules, 2001 – Rule 18

**Hon'ble Judges:** Hrishikesh Roy, J

**Bench:** Single Bench

**Advocate:** I. Choudhury, S. Das and G. Rahul, for the Appellant; A. Deka, for the Respondent

**Final Decision:** Allowed

### Judgement

Hrishikesh Roy, J.

Heard Mr. I. Choudhury, learned Counsel appearing for the Petitioner. Also heard Mr. A. Deka, learned standing

counsel appearing for the Respondent Nos. 1 and 2.

2. The Petitioner who applied for the post of lecturer in Geology advertised by the Principal of Arya Vidyapeeth College on 20th February 2000

(Annexure-C) is aggrieved by the order of the Director of Higher Education, Assam (DHE), whereby the recommendation for appointment of the

Petitioner made by the college was disapproved.

3. In the advertisement issued for the post of lecturer in Geology, specialization in the field of "Metamorphic petrology and structure" was specified

and the Petitioner on the date of interview i.e. on 29th May 2000 had successfully completed her Ph.D. viva-voce on 6th May 2000 on the topic,

Structural and Metamorphic Evolution of the Precambrian rocks of Chandrapur-Narengi area, Guwahati, Kamrup district, Assam", as is certified

by her guide on 27th May 2000 (Annexure-D).

4. However although the Petitioner furnished information about successful completion of Ph.D. to the Selection Committee, her Ph.D. qualification

was not considered and accordingly the Selection Committee recommended the Petitioner in the third position in order of merit, after Ms. Sangita

Pathak and Dr. Tapan Kr. Bharali as the first and second nominee respectively.

5. The Petitioner made a representation to the college authorities for giving weightage to her Ph.D. qualification but the same was not granted.

However in respect of the first nominee, the Governing Body reconsidered its earlier recommendation and by resolution No. 6(a) declared that the

qualification of the first nominee Mr. Sangita Pathak does not satisfy the required specialization specified in the advertisement. Accordingly the

name of Ms. Sangita Pathak was dropped from the list of recommended candidates and the select list was revised with Dr. Tapan Kr. Bharali as

the first and the Petitioner as the second nominee in order of merit and the Director of Higher Education was requested to accord approval for

appointment.

6. While the matter was pending consideration, the first nominee Dr. Tapan Kr. Bharali withdrew his candidature and accordingly the only person

who remained in the fray was the Petitioner. Considering the withdrawal of his candidature by Dr. Bharali, the Governing Body of the College

resolved on 27th May 2003 to recommend appointment of the Petitioner and requested approval of the Director of Higher Education for her

appointment to the post.

7. The decision of the Governing Body was preceded by an order passed by this Court on 14th May 2002 in WP(C) No. 294/2001 filed by the

Petitioner, where the Court took note of the withdrawal of his candidature by Dr. Tapan Kr. Bharali and directed the College Authorities to take

an appropriate decision in the matter of appointment and to move the DPI for approval of appointment.

8. While considering the recommendation of the College Authorities, the Director of Higher Education examined the qualification of Ms. Sangita

Pathak and on the basis of suo moto clarification sought by the DHE from the Delhi University, it was held that the decision of the Governing Body

to cancel the candidature of Ms. Sangita Pathak is untenable and accordingly the DHE declared that approval to the appointment of the Petitioner

(as recommended by the Governing Body's resolution dated 27th May 2003) cannot be granted.

9.1. Challenging the decision of the Director of Higher Education, Mr. I. Choudhury, learned Counsel for the Petitioner refers to the clarification

given by the Delhi University on 18th August 2008 (Annexure-J) to point out that Ms. Sangita Pathak did not have the requisite qualification

specified in the advertisement in the field of "Metamorphic petrology and structure". The learned Counsel contends that the compulsory paper of

Ms. Sangita Pathak in her M.Sc. course was "Metamorphic petrology" and not "Metamorphic petrology and structure" and since her specialization

does not satisfy the requirement of the Geology Department of the College, the Director of Higher Education was totally unjustified in not

considering the recommendation made in favour of the Petitioner.

9.2. It is also contended by the Petitioner that Ms. Sangita Pathak herself has never questioned the rejection of her candidature and/or had

contested the proceeding in WP(C) No. 294/2001 and the unusual zeal displayed by the Director of Higher Education in favour of Ms. Pathak,

was wholly unwarranted in the facts of the present case.

9.3. Mr. Choudhury has referred to the instances of approval being granted by the Director of Higher Education for appointment of the second

nominee in other colleges post of lecturer and contends that after the withdrawal of candidature by the first nominee (Dr. Tapan Kr. Bharali), there

is no reason for not approving the appointment of the Petitioner, who satisfy the UGC criteria and had also obtained her Ph.D. in the required field

of specialization. The counsel points out that ability of the Petitioner to deal with the requirement of the department and its students is beyond

dispute as she is teaching on the same specialized field for last several years in her capacity as an ad-hoc lectures.

10. Appearing for the departmental authorities, Mr. A. Deka, learned standing counsel contends that the College could not have considered Ms.

Sangita Pathak to be not in possession of the required specialization in the field of ""Metamorphic petrology and structure"" merely because, she had

not opted for specialization paper in her Master Course in the said field. The learned Counsel submits that since the said candidate had the

compulsory paper-I on ""Structure"" and had ""Metamorphic petrology"" as an elective paper, she should have been considered qualified as per the

requirement specified in the advertisement.

11. Although none is appearing from the side of the College Authorities, from the resolution of the Governing Body adopted on 19.9.2005, it is

apparent that they stand by their earlier recommendation for appointment of the Petitioner.

12. I have considered the rival submissions of the learned Counsels and have also considered the requirement of the post specified in the

advertisement. From the information furnished by the Delhi University it is apparent that Ms. Sangita Pathak who was initially recommended for

appointment had specialization only in ""Metamorphic petrology"" and not in ""Metamorphic petrology and structure"", which was the requirement of

the college. This candidate did not have ""Structural Geology"" as her specialized paper. More importantly the candidate herself never questioned the

decision of the college on her lack of qualification to be appointed to the advertised post.

13. In such circumstances, it is difficult to comprehend as to how the Director of Higher Education could have passed the impugned order, refusing

to accord approval to the recommendation made by the College Authorities on the ground that Ms. Sangita Pathak should have been considered

qualified for being appointed to the advertised post of lecturer in Geology. In the matter of specialized qualification for the post, the college is the

best judge of their own requirement and intervention by the DHE on the stated ground is found to be unjustified. Since this was the only reason for

not according approval for appointment to the Petitioner, I hold that the impugned decision dated 20th August 2003 (Annexure-K) is unsustainable

and the same is quashed.

14. Consequently the Respondent No. 2 (Director of Higher Education) is directed to consider afresh the recommendation made by the Governing

Body of Arya Vidyapeeth College on 27th May 2003 (Annexure-I) and take an appropriate decision thereon in accordance with Rule 18 of the

Assam Non Government College Management Rules, 2001. As the matter is much delayed, necessary decision be taken within 6 weeks from the

date of receipt of this Court's order.

15. The petition is allowed accordingly without any order on cost.