

GAHC010002872011



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

Case No. : WP(C)/33/2011

ABU NESAR AZIZUL HUSSAIN and 2 ORS
S/O LT. AZFAR HUSSAIN, R/O ALI AHMED NAGAR, SIX MILE, HOUSE NO.
30, GHY-37, DIST KAMRUP METRO, ASSAM

2: HASAN ALI

S/O LT. MOMIN ALI
R/O ANANDA NAGAR
BYE LANE NO. 2
HOUSE NO. 26
NOONMATI
GHY-20
DIST KAMRUP
METRO
ASSAM

3: BHAGABAN CH.MENA

S/O LT. HOMESWAR MENA
KHARGHULI LUITPUR HOUSE NO. 113
DIST KAMRUP
METRO
ASSA

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE PRINCIPAL SECY., LABOUR AND EMPLOYMENT DEPTT,
DISPUR, GHY-6

2:THE DY. SECY.
LABOUR AND EMPLOYMENT DEPTT
GOVT. OF ASSAM
DISPUR

GHY-6

3:THE LABOUR COMMISSIONER
GOVT.OF ASSAM
ASSAM
GHY-1

Advocate for the Petitioner : MR.R P SARMAH

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 16-06-2023

Heard Mr. A.R. Tahbildar, learned counsel for the writ petitioners. Also heard Mr. R. Dhar, learned Addl. Sr. Govt. Advocate, Assam appearing for the respondents.

The three writ petitioners herein were initially appointed as Lower Division Assistant (LDA) in the office of the Labour Commissioner, Assam. Subsequently, they were promoted to the post of Labour Inspector. According to the petitioners, after serving for more than 13/14 years they were entitled to be considered for promotion to the next higher rank of Labour Officer. However, their candidature were not considered by the authorities on the ground that the petitioners had not passed the departmental examination as required under Rules 12 and 14 of the Assam Labour Service Rules, 1970 (hereinafter referred to as "the Rules of 1970"), which fact was communicated to them vide letter dated 15-12-1999.

By referring to Rules 12 and 14, Mr. Tahbildar submits that the said provisions of

the rules applies in case of probationer at the stage of their initial entry into the service. The writ petitioners had all been confirmed in the post of LDA. As such, Rules of 12 and 14 of the Rules of 1970 did not have any application in the matter of consideration of these cases for promotion to the posts of Labour Officer. Notwithstanding the same, the request made by the petitioners for consideration of their candidature for promotion to the post of Labour Officer had been wrongly rejected by the authorities. In support of his above argument. Mr. Tahbildar has produced copies of the notifications dated 27-12-1983 and 30-12-1983 pertaining to petitioner Nos. 1 and 3 to submit that both these writ petitioners had been confirmed as LDA. However, those notifications are not a part of the record. Be that as it may, from a plain reading of the provision of Rules 12 and 14 of the Rules of 1970, it appears that Rule 12 is applicable in case of probationer whose services are yet to be confirmed. Likewise, Rule 14 applies in case of probationers who are required to pass departmental examination for their confirmation. If that be so, I find force in the submission of Mr. Tahbildar that having been confirmed in the post of LDA, the petitioner Nos. 1 and 3 were not required to appear again in the departmental examination. However, there is no material before this Court to draw a similar conclusion with regard to the petitioner No. 2.

Since all the writ petitioners have already retired from service on attaining the age of superannuation and considering the nature of grievance expressed by them, more particularly, the relief prayed by the petitioners for giving them notional benefit in terms of pay/ pension in the post of Labour Officer, having regard to the facts and circumstances of the case, this writ petition is disposed of by granting liberty to the

petitioners to submit appropriate representations before the Commissioner and Secretary to the Govt. of Assam, Labour Department by enclosing a copy of this order, seeking redressal of their grievances.

If such representation(s) is/are submitted by annexing supporting documents then in that event, the grievance of the petitioners be looked into in the light of the provisions of Rules of 1970 and thereafter, a speaking order be passed addressing the issue.

With the above observation, the writ petition stands disposed of.

JUDGE

GS

Comparing Assistant