

GAHC010008862023



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

Case No. : WP(C)/311/2023

DILIP BAHADUR DHAMAI
S/O- LT. BISHNU BAHADUR DHAMAI, R/O- COLLEGE ROAD, WARD NO.13,
P.O. AND P.S. HAILAKANDI, DIST.- HAILAKANDI, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
TO BE REP. BY COMM. AND SECY. TO THE GOVT. OF ASSAM, HIGHER
EDUCATION DEPTT., DISPUR, GHY-06

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE DY. DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE PRINCIPAL SRIKISHAN SARDA COLLEGE
HAILAKANDI
P.O. P.S. HAILAKANDI
DIST.- HAILAKANDI
ASSAM
PIN- 788151

5:THE GOVERNING BODY OF SRIKISHAN SARDA COLLEGE
HAILAKANDI TO BE REP. BY ITS PRESIDENT C/O PRINCIPAL CUM
SECRETARY
S.S. COLLEGE
P.O. HAILAKANDI

P.S. AND DIST.- HAILAKANDI
ASSAM
PIN- 78815

Advocate for the Petitioner : MR M J QUADIR

Advocate for the Respondent : SC, HIGHER EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

25/01/2023

Heard Mr. M J Quadir, learned counsel for the petitioner and Mr. S Das, learned Standing counsel, Higher Education Department for the respondent Nos. 1 to 3.

2. The Principal-cum-Secretary of Srikishan Sarada College, Hailakandi appointed the petitioner, who belongs to the Other Backward Communities (OBC), as a Grade-IV employee in the said college pursuant to which he joined his service on 29.12.2004 itself as a Laboratory Bearer in the Department of Zoology of said college. Pursuant to the resolution dated 18.04.2005 of the Governing Body of said college, the Director of Higher Education, Assam on 16.06.2008 provisionally approved the said appointment of the petitioner. In terms of the order of the Director of Higher Education, Assam dated 06.06.2009, the petitioner and the other staff of said Srikishan Sarada College, Hailakandi received regular scale of pay w.e.f. 01.05.2009. It is to be noted herein that said S.S. College, Hailakandi is a provincialised college of the State provincialised under the provisions of the Assam College Employees (Provincialisation) Act, 2005.

3. Though, the petitioner approached the Principal of said S.S. College for his promotion to the post of Lower Division Assistant (LDA) in that college, instead of considering his case, the Principal of the college forwarded the matter to the Director of Higher Education, Assam for filling up the vacant post of LDA in the said college through direct recruitment.

4. Being aggrieved, the petitioner preferred a writ petition being WP(C) No. 2621/2017 that was disposed of on 24.01.2020, whereby the Court directed the respondents therein, more particularly, the Principal of said S.S. College, Hailakandi to consider the case of the petitioner along with other eligible

candidates for filling up the vacant post of LDA in that college in accordance with law, if the said post falls under the promotional quota as per the Rules.

5. After the order of the Court dated 24.01.2020 passed in WP(C) No. 2621/2017, with regard to the promotion of the petitioner to the post of Junior Assistant (LDA) of said S.S. College, Hailakandi, its Departmental Promotion Committee, consisting of the President of the Governing Body of the college, the Principal of the college and the Head of the Department of History of college, in its meeting held on 20.02.2021 considered and recommended the name of the petitioner for filling up the quota of promotion to the post of Junior Assistant (LDA) under OBC/MOBC category at Roster Point 6.

6. While seeking administrative approval for filling up the vacant non-teaching post of said S.S. College, its Principal on 02.08.2021, informed the Director of Higher Education, Assam, that as on said date, two posts out of six posts of Junior Assistants are lying vacant in said college.

7. The Principal of said S.S. College vide letter dated 08.10.2021 forwarded the said recommendation of the petitioner to the Director of Higher Education, Assam for necessary approval and his appointment as Junior Assistant in that college and also submitted reminders on 08.04.2022 and 04.07.2022 in that regard.

8. The Director of Higher Education, Assam by communication No. DHE/CE/ACN/65/2021/96 dated 15.12.2022 expressed its regret regarding the recommendation of the said college relating to promotion of the petitioner to the post of Junior Assistant from the post of Laboratory Bearer in the said college on the ground that the petitioner does not possesses the requisite qualification.

9. Being aggrieved, the petitioner has preferred this writ petition praying amongst others to set aside the impugned communication dated 15.12.2022 of the Director of Higher Education, Assam, noted above and to direct the respondent authorities to pass necessary order to promote him to the post of Junior Assistant in said S.S. College by issuing a necessary appointment order of promotion to the petitioner on the basis of the recommendation of the Departmental Promotion Committee as well as the Governing Body of the said college.

10. The *Assam College Employees (Provincialisation) Rules, 2010*, having statutory force being framed under Section 12 (1) of said 2005 Act, have been framed for carrying out the purposes of the said 2005 Act.

11. Rule 5 of said 2010 Rules very specifically provides that *appointment to the post of Head*

Assistant in the college shall be made by promotion from the cadre of Upper Division Assistants on the basis of seniority-cum-merit and that the appointment to the post of Upper Division Assistant shall be made on promotion from Lower Division Assistants/Laboratory Assistants/Library Assistants on the basis of seniority-cum-merit.

12. Rule 5 (5) of the said 2010 Rules provides that *the post of Lower Division Assistant, Laboratory Assistant, Library Assistant shall be filled up by direct recruitment and from Laboratory Bearers/Library Bearers/Grade-IV having qualification as prescribed in the ratio of 75:25.*

13. However, the said 2010 Rules is silent pertaining to the eligibility criterion regarding filling up the post of Lower Division Assistant/Laboratory Assistant/Library Assistant neither for direct recruitment nor for promotion from the relevant categories of Grade-IV. But at the same time, the said 2010 Rules did not state about any such automatic promotion to the post of Lower Division Assistant/Laboratory Assistant/Library Assistant from amongst Grade-IV/ Laboratory Bearers/Library Bearers etc., except stipulating that the post of Lower Division Assistant/Laboratory Assistant and Library Assistant shall be filled up by direct recruitment at the ratio of 75% and the remaining 25% shall be filled up by the same process as that of direct recruitment from Laboratory Bearers, Library Bearers and Grade-IV, having the requisite qualification.

14. On perusal of the minutes of the Departmental Promotion Committee of said S.S. College dated 20.02.2021 annexed to this petition as a part of Annexure - 14 at page-50, it is seen that the said meeting of the Departmental Promotion Committee of the college was held for the purpose of promotion to the post of Junior Assistant (LDA) in that college in respect of the petitioner as per the direction of the Court dated 24.01.2020 passed in WP(C) No. 2621/2017.

15. It is already noted above that the Court in the said order dated 24.01.2020 passed in WP(C) No. 2621/2017, preferred by the petitioner, annexed to this petition as Annexure-4, directed the respondent authorities therein, more particularly, the Principal of said S.S. College to consider the case of the petitioner along with the other eligible candidates for filling up the vacant post of LDA in the college, *in accordance with law, if the aforesaid posts falls under promotional quota as per Rules.*

16. On perusal of the order of the Director of Higher Education, Assam dated 06.06.2009 annexed to this petition as Annexure-3 provincialising the services of teaching and non-teaching staff of said S.S. College, it can be seen that service of the petitioner was provincialised as a Laboratory

Bearer and further services of two Grade-IV employees of the said college, namely, Raj Kumar Singhchetry and Projesh Deb were also provincialised along with the petitioner in terms of said provincialisation order dated 06.06.2009.

17. Petitioner did not state as to when the six numbers of posts of Junior Assistants were sanctioned in the said college and how many of those posts were filled up by direct recruitment, who are occupying those posts, whether any other regular employee of said college serving as Laboratory Bearer/Library Bearer/ Grade-IV were also eligible for promotion to the post of Junior Assistant in the said college or not. If any post is required to be filled up by promotion as provided in the said 2010 Rules, there is a requirement to prepare a Gradation List of the employees serving in their respective cadres by the Principal-cum-Member Secretary of the said college as provided in Rule 18 of said 2010 Rules.

18. It is already noted above that as per the order of the Court dated 24.01.2020 passed in WP(C) No. 2621/2017, the Principal of said S.S. College is required to consider the case of the petitioner along with other eligible candidates for filling up the vacant post of LDA in that college in accordance with law, only if the said vacant posts of Junior Assistant falls under the promotional quota as per Rules. But it is seen that without determining the same, the Departmental Promotion Committee of said college on 20.02.2021 considered the case of the petitioner only and not of other eligible candidates of the said college having the requisite qualification. Petitioner also did not state that he was the only Grade-IV candidate of the college eligible for promotion under 25% quota and there was no other Grade-IV/Laboratory Bearer/Library Bearer eligible candidate in the said college for their promotion to the vacant posts of Junior Assistant.

19. The Director of Higher Education, Assam vide No. DHE/CE/Misc./341/ 2016/49 dated 09.02.2017 issued a Guidelines for selection to the Grade-III post in provincialised colleges of the State. By filing an additional affidavit, the petitioner has brought to the notice of the Court about the said Guidelines dated 09.02.2017. In the said Guidelines dated 09.02.2017, noted above, the eligibility criteria including the educational qualification of a candidate for such post of LDA (Junior Assistant)/Laboratory Assistant/Library Assistant in a provincialised college of the State is prescribed as — Graduate in Science/Arts/Commerce with a Diploma or Certificate Course of Computer Operation of minimum of three months duration; the candidate should have the working knowledge of Assamese and English Typing in Words and simple Excel; reservation of post is to be indicated as per Roster of Grade-III post in the college. The petitioner submitted that the eligibility criteria prescribed in the said

Guidelines dated 09.02.2017 of the DHE, Assam is applicable only for the purpose of selection to the post of such Lower Division Assistant/Laboratory Assistant/Library Assistant by way of direct recruitment and not for the purpose of the candidates for their promotion to the Grade-III post from Grade-IV post in the college.

20. Even assuming that the post of Lower Division Assistant/Laboratory Assistant/Library Assistant in a provincialised college to be filled up in the ratio of 75:25 by direct recruitment and promotion, respectively, from Laboratory Bearers/Library Bearers/Grade-IV, but even in that case, the candidate seeking promotion to the post of Lower Division Assistant/Laboratory Assistant/Library Assistant in the Grade-III cadre from Grade-IV cadre must be a graduate in Science/Arts/Commerce, a minimum of three months duration of Diploma or Certificate Course in Computer Operation and the working knowledge of Assamese and English Typing in Words and simple Excel. But the petitioner herein has the educational qualification of Higher Secondary passed only.

21. It is well settled that the requisite eligibility criteria relating to minimum requirements of qualifications and experience cannot be relaxed regarding any selection, appointment, promotion to a post. It is to be noted herein that neither the said 2005 Act nor the said 2010 Rules prescribe any relaxation clause. Further, Rule 5(5) of said 2010 Rules also clearly stipulates that only the candidates having qualification as prescribed can be considered for promotion to Grade-III post in the college in the ratio of 25% from amongst Laboratory Bearers/Library Bearers/Grade-IV of the said college. The order dated 24.01.2020 passed in WP(C) No. 2621/2017 also clearly stipulated that while considering the case of the petitioner along with the other eligible candidates in filling up the vacant post of LDA in said college, if it falls under promotional quota, then it should be done in accordance with law and as per Rules.

22. It is an admitted position that the petitioner does not possess the requisite eligibility criteria relating to his educational qualification, experience and Computer Typing etc. as required for the post of Grade-III cadre of Lower Division Assistant/Laboratory Assistant/Library Assistant as provided in the said Guidelines dated 09.02.2017.

23. It is to be noted herein that even for a provincialised or a Government Secondary and Higher Secondary School of the State as per provisions of the Assam Secondary Education (Provincialised Schools) Rules, 2018 that came into force w.e.f. 10.10.2019, the Grade-III post/Junior Assistant and Library Assistant, a candidate must be a Graduate and must have Computer knowledge. Further, like the provincialised colleges, in provincialised Secondary and Higher Secondary School of the State with

regard to the post of Grade-III, there is provision for promotion in the quota of 5% from amongst Grade-IV incumbents serving in such schools.

24. After hearing the learned counsels for the parties and considering the entire aspects of the matter, the Court is of the opinion that the impugned communication No. DHE/CE/ACN/65/2021/96 dated 15.12.2022 of the Director of Higher Education, Assam rejecting the case of the petitioner for his promotion in the cadre of Grade-III Junior Assistant in said Srikishan Sarada College, Hailakandi from the Grade-IV post of Laboratory Bearer does not call for any interference.

25. Accordingly, this writ petition, being devoid of any merit, stands rejected.

JUDGE

Comparing Assistant