

GAHC010015062014



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

Case No. : WP(C)/4720/2014

GANESH DAS
S/OLT. HAREKRISHNA DAS P.O. and P.S. BIJNI, DIST. CHIRANG, PIN- 783390,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE SECRETARY TOT HE GOVT. OF ASSAM, PUBLIC WORKS
DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE CHIEF ENGINEER PWD ROADS

ASSAM
CHANDMARI
GUWAHATI-3.

3:ADDL. CHIEF ENGINEER
P.W.D.
ROADS
ASSAM
CHANDMARI
GUWAHATI-3.

4:THE EXECUTIVE ENGINEER ABHAYAPURI
PWD ROADS and BUILDING MECHANICAL DIVISION
P.O. ABHAYAPURI
DIST. BONGAIGAON
ASSAM

Advocate for the Petitioner : MR.K C ROY

Advocate for the Respondent : MR.A CHAKRABORTY

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. K. R. Patgiri. Advocate.
For the Respondents : Mr. R. Dhar, Standing Counsel, PWD.
Date of Hearing : 07.12.2023
Date of Judgement : 07.12.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. K. R. Patgiri, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned Standing Counsel for the PWD.
2. The petitioner was appointed as Roller Handyman under the Public Works Department which is a Grade-IV post. It is the contention of the learned counsel for the petitioner that in terms of the Assam Ministerial Establishment Service Rules, 1967 (hereinafter referred to as 1967 Rules), 10% post of Section Assistant (Grade-III) can be filled up by way of promotion from persons holding the Grade-IV post and having the qualification of HSSLC as well as 7 years of continuous service in the Grade.
3. In the aforesaid backdrop, the case of the petitioner was forwarded for promotion by a communication dated 26.10.2009 by the Executive Engineer PWD (R&B), Mechanical Division, Abhayapuri, however, such proposal was rejected by the higher authority i.e. the respondent No. 2, the Chief Engineer, PWD (Roads), Assam, Chandmari, Guwahati by its communication dated 15.07.2013 on the ground that the next promotional post of Rollar

Handyman is a post of Driver and prayer for appointment as Section Assistant, which is a technical post cannot be considered for up-gradation.

4. Thereafter, the petitioner filed this present writ petition with a prayer seeking promotion to the post of Section Assistant.
5. The rejection order dated 15.07.2013 is not under challenge in the present writ petition inasmuch as it is the case of the petitioner that his case should be considered for promotion to the next higher Grade in terms of the extant rule to the post of Driver.
6. Mr. R. Dhar, learned Standing Counsel for the PWD submits that by stress of no imagination, the petitioner can be promoted to the post of Section Assistant. According to him, not only the order dated 15.07.2013 has been passed taking note of the relevant consideration but subsequently a rule namely, All Assam Section Assistant and Subordinate Engineers PWD (Road Wings) Services Rules, 2018 was enacted, which mandates that the recruitment to the post of Section Assistant be made through direct recruitment. Therefore, the petitioner even now cannot be considered for promotion to the post of Section Assistant.
7. The aforesaid position has not been disputed by the learned counsel for the petitioner. This Court has also perused the Rules, 2018. In terms of the Rules, 2018, the post of Section Assistant is required to be made through direct recruitment. That being the position, no writ of mandamus can be issued directing the respondent authorities to consider the case of the petitioner for promotion to the post of Section Assistant. However, law is equally well settled that right for consideration for promotion is a valuable

right. The communication dated 15.07.2013 also reflects that the promotional post for the petitioner is "Driver" not "Section Assistant".

8. Therefore, the present writ petition stands closed with a direction that the petitioner may file a fresh representation before his employer for his promotion to the next higher Grade in terms of the extant Service Rule governing the service of the petitioner. The petitioner may file such representation along with a certified copy of the present order before the respondent No. 4. In the event of such application is filed, the respondent No. 4 shall consider the case of the petitioner in terms of the extant rule. However, while parting with this record, it is made clear that this Court has not determined the claim of the petitioner for promotion. It is now the respondent No. 4, who is to apply its own mind and pass a reasoned order after considering the case of the petitioner in terms of the extant Service Rule. Such exercise may be carried out within a period of six months from the date of receipt of the certified copy of this order.

9. With the aforesaid observations, this writ petition stands disposed of. Parties to bear their own cost.

JUDGE

Comparing Assistant