

GAHC010038652021



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

Case No. : WP(C)/1580/2021

MIHIR RANJAN DHAR
S/O LATE MNORANJAN DHAR,
RESIDENT OF PUSHPA BIHAR APARTMENT, HOUSE NO 71, PO MEHERPUR,
DIST CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
P AND R D DEPARTMENT, DISPUR GUWAHATI 06

2:THE COMMISSIONER

P AND R D
ASSAM PANJABARI
JURIPAR
GUWAHATI 37

3:BLOCK DEVELOPMENT OFFICER

SOUTH KARIMGANJ DEVELOPMENT BLOCK
KARIMGAN

Advocate for the Petitioner : MR. B J TALUKDAR

Advocate for the Respondent : SC, PNRD

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

08-09-2023

Heard Mr. S. Biswas, learned counsel for the petitioner. Also heard Mr. K. Konwar, learned Additional AG, Assam.

2. This writ petition is filed by the petitioner who is aggrieved by non-consideration of his case for promotion to the post of Accounts Officer under the P&RD Department. The petitioner was initially appointed as a Lower Division Assistant cum Typist in the year 1988 under the amalgamated establishment of Deputy Commissioner, Cachar and he was posted in Block Level Office. After about eight years of service, the petitioner was promoted to the post of Accountant-cum-Store Keeper and was posted in Karimganj Mahkuma Parisad under the Panchayat & Rural Development (P&RD) Department. Subsequently, the petitioner was transferred to Patharkandi Development Block and thereafter, to the Cachar Zilla Parisad. The petitioner was again transferred back from Cachar Zilla Parisad to Patharkandi on 21.09.2011. It is stated by the learned counsel for the petitioner that the post of Accountant-cum-Store Keeper to which the petitioner was promoted was drawing a pay scale equivalent to the pay scale of Accountant under the District Rural Development Agency (DRDA).

The accountants who were working under DRDA were promoted to the post of Senior Accountants and subsequently, they were also further promoted to the post of Accounts Officer. The grievance of the petitioner is that although the Accountants under DRDA were drawing the same scale of pay with the same educational qualification and were promoted initially to the post of Senior Accountants and thereafter, to the post of Accounts Officer way back in the year 2011 but the petitioner has been stagnating in the post of Accountants-cum-Store Keeper for more than 25 years and without any promotional avenues. Being situated thus, he filed a representation dated 09.06.2013 before the Principal Secretary, P&RD Department with a prayer to upgrade him to the post of Accounts Officer. In response to the representation furnished by the petitioner, the government requested the Block Development Officer, Patharkandi Development Block under which the petitioner is serving to furnish copies of his service book, appointment order and other related documents. However, pursuant to that no such order has been passed by the competent authority on the representation preferred by the petitioner.

3. Since, no information was forthcoming from the competent authority, the petitioner filed an RTI application. From the documents made available in response to the RTI application, the petitioner came to be aware that a proposal to consider the case of the petitioner is going on at the Government level, but,

the same was to be considered only upon amalgamation of DRDAs to Zilla Parisads. Accordingly, the Joint Secretary to the Government of Assam (RD) by his letter dated 27.01.2014 informed the petitioner that his prayer for promotion to the rank of Accounts Officer may be considered only after amalgamation of DRDAs to Zilla Parisad. Thereafter, vide Government notification dated 29.07.2017 the DRDAs were eventually merged with Zilla Parisad. In terms of the communications made available to the petitioner under RTI as well as in view of the Government notification dated 29.07.2017, the petitioner was expecting that his case for promotion will be now considered by the competent department as the DRDAs have finally been amalgamated with Zilla Parisads. However, the case of the petitioner has still not been considered till date. It has been submitted that although he was initially was shown to have been promoted to the post of Accounts Officer, however, in reality the post in which he was promoted was to the post of "*Assistant Accounts Officer*" which was re-designated as "*Accounts Officer*".

3.1 Be that as it may, the petitioner came to be aware that the Department has awarded approval for creation of 24 numbers of posts of Accounts Officer in the Zilla Parisad and DRDAs under the 6th Scheduled District. It is further submitted by the learned Counsel for the petitioner that in so far as the 6th

Scheduled Districts are concerned, the DRDA is functioning under the 6th Scheduled Districts which have not yet been amalgamated with Zilla Parisads.

3.2. Mr. S. Biswas, learned counsel for the petitioner submits that as on date although the posts have been sanctioned, none of the posts has been filled up. However, the matter is under active consideration at the appropriate level in the competent department. He, therefore, submits that the case of the petitioner be considered to be considered for promotion to the post of Accounts Officer in the newly sanctioned posts under the Zilla Parisad and DRDAs under the 6th Scheduled Districts and in this regard, appropriate direction may be given to the competent authority.

5. Mr. K. Konwar, learned Additional AG relying on the affidavit filed by the Department submits that the petitioner's case has been duly considered and he has been given promotion due to him in the post of Assistant Accounts Officer. Referring to the averments made in the affidavit, Mr. Konwar submits that the DRDA is a registered society under the Society Registration Act, 1860 and it is an autonomous body and governed by the DRDA Administration Guidelines provided by the Government of India. The employees under the DRDA are appointed under a particular scheme applicable to the DRDA. In so far as the petitioner is concerned, he is a Government employee holding a permanent post under the Government of Assam. Mr. K. Konwar, however, submits that at

present there are no Service Rules which governs the service conditions of the employees like the petitioner. However, the draft Service Rules being Assam Panchayat and Rural Development Non-Gazetted (Class-III and Class-IV) Employees Service Rules, 2020 have been prepared but the same are pending approval from the competent authority of the Government. As on date, the service conditions of the employees are governed by executive instructions in the absence of any specific Service Rules. Mr. Konwar further submits that the benefits given to employees under DRDA cannot be given to the petitioner inasmuch as the petitioner is a government employee and he holds a civil post which is also pensionable. However, those employees under DRDA are employed under a particular scheme and are not employees under the Government. They are not entitled to pension like the petitioner. As such, unless the Rules are finalized, no specific claim for promotion as such can be made by the petitioner as the nature and class of service of the petitioner and the employees of DRDA are distinct and separate.

6. Learned counsels for the parties have been heard and pleadings on the record have been carefully perused.

7. The grievance of the petitioner is with regard to the lack of promotional avenues after rendering several years of service. There is no dispute of the fact that as on date, there are no Service Rules and the draft Service Rules are

pending for approval before the Government. There is also no dispute that till the Rules are approved, there is no bar for the Department to proceed on the draft Service Rules also and make available the avenues for promotion to the employees like the petitioner, if they are otherwise entitled. It is needless to say that the Government as a model employer is required to provide avenues for service in order to remove stagnation. These kind of issues require due consideration by the Government keeping in view the provisions of the draft Rules which are stated to be pending before the competent authority. Since the representation has already been filed by the petitioner before the authorities concerned and no specific order has been passed on the said representation, this Court is of the considered opinion that the writ petition can be closed with a direction to the competent authority, more particularly, the respondent no.1 to consider the claim of the petitioner seeking promotional avenues in his service as an Accounts Officer under Patharkandi Zilla Parisad. The Department will give due consideration to the claims of the petitioner and thereupon, pass appropriate orders. If there are avenues available for promoting the petitioner, then immediate steps be taken to process the case of the petitioner along with other similarly situated candidates for passing appropriate orders.

8. As discussed above, there is no bar for the Department to place reliance of the *Draft Rules* if any decision to that effect has been taken by the Department

as the same are approved by the competent authority.

9. The directions of this Court given above shall be complied with within a period of 60 (sixty) days of the date of receipt of a certified copy of this order. However, the authorities at the time of considering such cases will also take note of all the relevant Government notifications, including the notification dated 16.02.2021 by which 24 numbers of posts of Accounts Officer were created under Zilla Parishads and DRDAs.

10. Writ petition stands disposed of in terms of the above directions.

Interim order passed, if any, stands merged.

JUDGE

Comparing Assistant