

GAHC010050092023



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

Case No. : WP(C)/1323/2023

BHARATI HAZARIKA
W/O- DR. NIBUL KUMAR GOGOI, R/O- H.NO. 4, BARAN PATH, LAKHIMI
NAGAR, HATIGAON, GUWAHATI, DIST.- KAMRUP (M), ASSAM, PIN- 781006

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, SECONDARY
EDUCATION DEPTT., DISPUR, GHY-06

2:THE SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF SCHOOL EDUCATION
DISPUR
GHY-06

3:THE DIRECTOR OF NON-FORMAL AND ADULT EDUCATION
ASSAM
JATIA
KAHILIPARA ROAD
GUWAHATI- 78101

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
ORDER

21-03-2023

Heard Mr. B. D. Das, learned Senior Counsel, assisted by Mr. H. R. Das, learned counsel for the petitioner and Mr. SMT Chistie, learned Standing Counsel, Department of School Education for the respondent Nos. 1 to 3.

2. Pursuant to the order dated 13.03.2023, the Director of Non-Formal & Adult Education, Assam vide communication dated 17.03.2023 through Mr. SMT Chistie, learned SC, Department of School Education apprised the Court that the petitioner was promoted to the post of Assistant Director on 21.01.2014 and since then, she has been rendering service in the said capacity till date.

3. It is also placed before the Court that the petitioner shall retire from service on 30.07.2023 as she is going to attain the age of superannuation at 60 years.

4. As per the provisions, in the month of January of every year, the cases of Government employees who have completed 10 years of service in the previous Calendar year is considered for one financial benefit and that the petitioner as an Assistant Director of Non-Formal & Adult Education, Assam will complete 10 years of continuous service on 20.01.2024. As such, on completion of continuous service for a period of 10 years in the post of Assistant Director, the petitioner will be eligible for such financial benefit as prescribed under the guidelines of Modified Assured Career Progress Scheme (MACPS) issued vide Government Notification No.FPC/12/2017 dated 19.03.2019.

5. Pertaining to her promotion to the post of Deputy Director of Non-Formal & Adult Education, Assam, the Director of Non-Formal & Adult Education, Assam by the said communication dated 17.03.2023 also apprised the Court that petitioner's said

prayer is to be considered at the Government level considering the length of her service in the same post of the petitioner as she is the senior most Assistant Director of the Department concerned.

6. It is submitted by Mr. Das, learned Senior Counsel for the petitioner that though there is no specific Rule for the Department of Non-Formal & Adult Education, Assam but pertaining to the Revisions of Pay Rules, for determining the salary of the persons rendering their services in the Department of Non-Formal & Adult Education, Assam, the Education Service Rules, 1982 is followed.

7. Assam Education Service Rules, 1982, is a statutory Rule framed under Article 309 of the Constitution of India regulates the recruitment and conditions of service of persons appointed to the Assam Education Service.

8. Rule 3 of said 1982 Rules relates to Class and Cadre.

9. Rule 3(1)(a)(xvi) of said 1982 Rules prescribes Assistant Director, Vocational Guidance.

10. Rule 3(1)(a)(viii) provides for Deputy Director of Public Instruction/Deputy Director, Elementary Education/Deputy Director of Adult Education/Inspector of Schools.

11. Rule 5 of said 1982 Rules provides for method of recruitment. Rule 5 (3) (a) of said 1982 Rules stipulates as follows:--

“(3) Recruitment to all other posts of the service shall be made :

(a) by direct recruitment up to 75 per cent with qualification prescribed? under Rule 8 in the cadre of Dy. Director and by promotion up to 25 per cent in the cadre of Dy. Director from the select list of Assistant Inspector/Assistant Inspectress of Schools and Assistant Directors, Vocational Guidance and Assistant Directors, Planning and Co-ordination having five years experience in the post and possessing at least Second Class Masters Degree.”

12. Mr. SMT Chistie, learned Standing Counsel, Department of School Education, on being enquired submitted that Non-Formal & Adult Education, Assam is under the

jurisdiction of the Secretary, Department of School (Secondary) Education.

13. After hearing the learned counsels for the parties, considering the entire aspect of the matter and the relevant communication dated 17.03.2023 of the Director of Non-Formal & Adult Education, Assam placed before the Court today by Mr. SMT Chistie, this writ petition is disposed of directing the petitioner to submit a representation along with a certified copy of this order, a copy of this writ petition including the annexures appended thereto and copy of the communication dated 17.03.2023 of the Director of Non-Formal & Adult Education, Assam with her full details including address, Phone/Mobile Number, E-mail address etc., before the Secretary, Department of School (Secondary) Education forthwith to consider her case for promotion to the post of Deputy Director in any of the concerned Directorate as per her eligibility and entitlement being the senior most Assistant Director of the Non-Formal & Adult Education, Assam obtaining necessary acknowledgement from the said authority in that regard.

14. In the event of filing such representation by the petitioner as directed above, the Secretary, Department of School (Secondary) Education shall do the needful and shall dispose of the said representation of the petitioner within a period of forty five days from the date of receipt of the same, to be submitted by the petitioner for her promotion to the post of Deputy Director in any of the concerned Directorate as per her entitlement in accordance with law, subject to fulfillment of the eligibility criteria for the post of Deputy Director in any of the Directorates under the Department of School Education considering the fact that the petitioner on attaining the age of superannuation at sixty years, shall retire from service on 31.07.2023.

15. The Secretary, Department of School (Secondary) Education shall intimate the petitioner about the outcome of her said representation.

16. With the above observation and directions, this writ petition stands disposed.

17. Copy of the communication dated 17.03.2023 placed before the Court by the

Director of Non-Formal & Adult Education, Assam through Mr. SMT Chistie, learned Standing Counsel, Department of School Education be kept as part of the record.

JUDGE

Comparing Assistant