

GAHC010057542022



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

Case No. : WP(C)/2111/2022

KUSHAL HAZARIKA
S/O- DINANATH HAZARIKA, R/O- VILL- KAPAHUWA, MAKORA CHUK, P.O.
AND P.S. DHAKUAKHANA, DIST.- LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, FINANCE ESTABLISHMENT (B) DEPARTMENT, DISPUR,
GUWAHATI-06.

2:THE ACCOUNTANT GENERAL AUDIT
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-29
ASSAM

3:THE DIRECTOR OF ACCOUNTS AND TREASURIES
ASSAM
KARBHAWAN
DISPUR
GUWAHATI-06
ASSAM

4:THE DEPUTY COMMISSIONER

TREASURY ESTABLISHMENT
LAKHIMPUR DISTRICT.

5:THE TREASURY OFFICER
LAKHIMPUR
NORTH LAKHIMPUR
ASSAM

PIN- 787001.

6:THE TREASURY OFFICER
SUB-TREASURY DHAKUAKHANA
DHAKUAKHANA
DIST. LAKHIMPUR
ASSAM
PIN- 787055
ASSAM

Advocate for the Petitioner : MR DEBA SARMAH

Advocate for the Respondent : SC, AG

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

19.05.2023

Heard Mr. D. Sarmah, learned counsel for the petitioner. Also heard Mr. H. Sarma, learned Addl. Senior Govt. Advocate, Assam appearing for the respondent No.4. Mr. A. Chaliha, learned Standing Counsel, Finance Department, Assam has appeared for the respondent Nos.1, 3, 5 and 6 and Ms. Tinlung, learned counsel has appeared for the respondent No.2.

The writ petitioner herein claims to have been appointed as a Peon under the Dhakuakhana Sub-Treasury in the district of Lakhimpur on 12.08.1991 and since then, he has been working in the said post without any blemish to his reputation. It is also the claim of the petitioner that although he was appointed in the substantive post of Peon, yet, due to shortage of manpower, the petitioner has often been asked to discharge the duties of Lower Division Assistant (LDA) and/or as Junior Accounts Assistant in the office of the Treasury Officer i.e. the respondent No.6. According to the petitioner, he is entitled to be considered for regular promotion to the post of LDA as per the provisions of Assam Treasury

(Establishment) Service Rules, 1993 (for short, the Rules of 1993). However, despite the availability of vacancy in the post of LDA, the petitioner's case has not been considered favourably for promotion although he has been working in the post of Peon for more than 31 years.

Mr. Sarmah submits that the petitioner is a graduate (B.A. pass) and fulfils the requisite qualification norms to hold the post of LDA. Notwithstanding the same and despite the fact that his client is due for retirement on attaining the age of superannuation in the month of December, 2023, no action has been taken by the authorities to promote the petitioner to the post of LDA. Hence, this writ petition.

Mr. H. Sarma, learned Addl. Sr. Govt. Advocate, Assam, on the other hand, has invited the attention of this Court to the pleadings contained in paragraph 4 of the counter-affidavit filed on behalf of the respondent No.5 to submit that as against the four posts of LDA, three persons are already working as LDA and the one vacant post is meant for direct recruitment. Therefore, the case of the petitioner could not be considered for promotion to the post of LDA due to want of vacancy.

What would be significant to note herein is that as per provisions of Rule 5(3) of the Rules of 1993, only 20% of the posts of LDA out of the total cadre strength can be filled up by way of promotion and therefore, as submitted by the learned Government Advocate, if the total number of post of LDA is four, then it is not understood, as to how, as many as three persons could have been promoted to the posts of LDA. The said aspect of the matter is not clear from the pleadings available on record. It is also not clear as to whether, all the three candidates to the post of LDA presently serving under the respondent No.6 are

promotees or any of them, is a direct recruit.

Since law is firmly settled that right to be considered for promotion is a fundamental right and considering the fact that the petitioner has rendered more than three decades of service without any promotional avenue and also in view of the fact that he is due for retirement in the month of December, 2023, this Court is of the opinion that instead of keeping this writ petition pending any further, a direction should be issued to the authorities to examine the claim of the petitioner, in the light of the provisions of the Rules of 1993 and take appropriate action in the matter, as may be permissible under the law.

In view of the above, this writ petition is being disposed of with a direction upon the respondent Nos.4, 5 and 6 to examine the claim of the petitioner for promotion to the post of LDA and on such examination, if it is found that the petitioner is entitled to be considered for promotion as per the provisions of the Rules of 1993 and that there is a vacant post of LDA in the establishment of the respondent No.6, then in that event, appropriate steps be taken for consideration of the case of the petitioner for promotion to the post of LDA, along with other eligible departmental candidates, by a duly constituted selection committee.

The aforesaid exercise be carried out and completed within a period of three months from the date of receipt of a certified copy of this order.

Writ petition stands disposed of accordingly.

JUDGE

Comparing Assistant