

GAHC010084922023



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

Case No. : WP(C)/2143/2023

PINUMANI KALITA
D/O- RABIRAM DEKA,
VILL- CHHAYGAON, P.O- CHHAYGAON, PIN-781124,
P.S - CHHAYGAON, DIST- KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY, TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF HIGHER EDUCATION, ASSAM
SECRETARIAT, DISPUR, GUWAHATI, ASSAM, PIN- 781006.

2:THE DIRECTOR OF HIGHER EDUCATION
DIRECTORATE OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI
ASSAM. PIN- 781019.

3:THE PRINCIPAL
CHHAYGAON COLLEGE
P.O- CHHAYGAON
PIN-781124
DIST- KAMRUP
ASSAM

4:THE MANAGEMENT COMMITTEE
CHHAYGAON COLLEGE
REP. BY THE CHAIRMAN OF THE MANAGEMENT COMMITTEE
P.O- CHHAYGAON
PIN-781124
DIST- KAMRUP
ASSA

Advocate for the Petitioner : MR. P K DEKA
Advocate for the Respondent : SC, HIGHER EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

20-04-2023

Heard Mr. P. K. Deka, learned counsel for the petitioner and Mr. A. R. Tahabildar, learned Standing Counsel, Higher Education Department for the respondent Nos. 1 and 2.

2. Matter pertains to selection and appointment to the post of Library Assistant, Grade-III at Chhaygaon College, Chhaygaon, Kamrup as advertised on 29.11.2022.

3. It is stated that pursuant to her selection by the authorities of Chhaygaon College, Chhaygaon, and on the recommendation of the Governing Body of the said College, the Director of Higher Education, Assam by order dated 24.01.2003 approved the recommendation of the appointment of the petitioner as a Library Bearer. Accordingly, the Principal-cum-Secretary of Chhaygaon College, Chhaygaon by an order dated 25.01.2003 appointed the petitioner as a Library Bearer of the said College, while said College was under deficit grants-in-aid system.

4. Pursuant to her said appointment, the petitioner on 24.01.2003 joined her service as a Library Bearer in said Chhaygaon College and till date she is serving in it.

5. Chhaygaon College, Chhaygaon was provincialised under the provisions of the Assam College Employees (Provincialisation) Act, 2005 w.e.f., 01.12.2005.

6. The Assam College Employees (Provincialisation) Rules, 2010 framed under Section 12 (1) of the said 2005 Act, being a statutory Rule at its Rule 5 provides for method of Recruitment wherein at Sub Rule (5) of Rule 5 it is clearly laid down 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.

7. Further Sub Rule (2) of Rule 5 of said 2010 Rules provides that the list of candidates for Grade-III and Grade-IV posts is required to be collected from the local employment exchange/Advertisement in newspaper and should be filled up through direct recruitment by advertisement in newspapers.

8. Moreover, Sub Rule (7) of Rule 5 of said 2010 Rules provides that in all these cases, the Governing Body shall conduct the selection process and recommend to the Director, who shall issue orders of appointment.

9. Rule 7 of said 2010 Rules relates to direct recruitment and stipulates as follows:--

(a) All appointment either by direct recruitment or by promotion shall be made by the Director on the basis of recommendations of the Governing Body based on the recommendations of the Selection Committee/Departmental Promotion Committee duly constituted;

(b) The Director shall communicate his orders within thirty days;

(c) The Selection Committee may hold such test of interview for all posts as may be considered necessary. For posts for which UGC has prescribed norms, no candidate shall be recruited without having the required norms;

(d) All fresh appointments shall be made on receipt of police verification report;

10. Petitioner is a Graduate in Arts and considering her eligibility and length of service as Library Bearer since 24.01.2003, she was expecting her promotion to the post of Library Assistant in the said College that fell vacant in the later part of 2022. However, the authorities of Chhaygaon College, Chhaygaon i.e., its Principal on 29.11.2022 amongst others issued advertisement for filling up of a post of Library Assistant Grade-III reserved for OBC/MOBC category at Roster Point No.10.

11. The petitioner immediately on 12.12.2022 submitted a representation before the Principal of said College praying before the authorities concerned to promote her to the post of Grade-III Library Assistant, as she served for about 20 years as a Library Bearer in that College stating that she being a Graduate in Arts and having the requisite qualification as well as sufficient length of experience, she is entitled for her promotion to the post of Library Assistant in that College.

12. It is stated that said representation of the petitioner dated 12.12.2022 for her promotion to the post of Library Assistant Grade-III in Chhaygaon College, Chhaygaon is yet to be disposed of as she has not been informed about the outcome of her said representation.

13. Petitioner stated that earlier the Director of Higher Education, Assam, pursuant to the direction of the State Government in the Higher Education Department freezed/stopped all advertisements of the posts until further order. However, very recently, the Director of Higher Education, Assam by its communication dated 10.04.2023 informed all the Principals of provincialised Colleges of the State requesting them to follow the Government instruction mentioned in the letter No. ECF No.287361/2023/1 dated 10.04.2023 requesting the Principals of provincialised Colleges of Assam to submit the proposal on or before 24.04.2023 for approval of appointment of teaching and non-teaching staff of the respective Colleges for which advertisement had already been published.

14. As such, the petitioner has filed this writ petition on 19.04.2023 praying amongst others, to set aside the said advertisement dated 29.11.2022 issued by the Principal of Chhaygaon College, Chhaygaon with regard to the vacant post of Library Assistant Grade-III in said Chhaygaon College as well as to quash the letter dated 10.04.2023 issued by the Director of Higher Education, Assam informing all the Principals of provincialised Colleges of the State to submit proposal on or before 24.04.2023 pertaining to the appointment of teaching and non-teaching staff of the Colleges for which advertisement had already been issued and to promote the petitioner to the post of Library Assistant Grade-III and further to dispose of the representation of the petitioner submitted before the Principal of Chhaygaon College, Chhaygaon on 12.12.2022 praying for her promotion to the post of Library Assistant that is lying vacant in said Chhaygaon College, Chhaygaon for which advertisement was issued on 29.11.2022.

15. It is already noted that Rule 5 (7) of 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.

16. Though the petitioner claimed for her promotion to the post of Library Assistant Grade-III in Chhaygaon College, Chhaygaon that fell vacant, as she been serving as a Library Bearer in Grade-IV in the said College since 24.01.2003 having requisite qualification and sufficient length of experience, but on being enquired, the petitioner failed to establish her claim for promotion as she is not aware with regard to the numbers of posts of Library Assistant in that College, for which the direct recruitment and promotion at the ratio of 75:25 is to be followed from amongst the Grade-IV staff of the said College having, requisite criteria and experience.

17. At this stage Mr. Deka, learned counsel for the petitioner on instruction submitted that the petitioner is not pressing her prayer Nos.(i), (ii) and (iii) and only prays for disposal of her representation dated 12.12.2022 submitted before the Principal of Chhaygaon College, Chhaygaon for her promotion to the post of Library Assistant in Chhaygaon College for which advertisement was issued on 29.11.2022, noted above.

18. After hearing the learned counsels for the parties and considering the entire aspect of the matter, this writ petition is disposed of directing the authorities of the Chhaygaon College, Chhaygaon to dispose of the representation of the petitioner dated 12.12.2022 pertaining to her claim for promotion to the post of Library Assistant in said College that was received by the Principal of the said College on 12.12.2022 itself, in accordance with law, within a period of 45 (forty five) days from the date of submission of certified copy of this order to be submitted by the petitioner, intimating about the outcome of her said representation.

19. The petitioner shall submit a certified copy of this order along with a copy of this writ petition including the annexures appended thereto before the Principal of Chhaygaon College, Chhaygaon with her detail address, including Phone/Mobile No. and E-mail id etc., obtaining necessary acknowledgement from the said authority in that regard.

20. With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant