

GAHC010097782022



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

Case No. : WP(C)/3408/2022

DIPAK HAZARIKA
S/O- JOGEN HAZARIKA
R/O- MAZGAON, NORTH GUWAHATI,
P.S-NORTH GUWAHATI
DIST- KAMRUP (R), ASSAM,
PIN-781030

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, FINANCE (TAXATION)
DEPARTMENT, DISPUR, GUWAHATI-6

2:THE COMMISSIONER OF TAXES
ASSAM
KAR BHAWAN
DISPUR
GUWAHATI-781006

3:ASSISTANT COMMISSIONER OF TAXES
GUWAHATI
UNIT-B
KAR BHAWAN
GUWAHATI-781006

4:SUPERINTENDENT OF TAXES CUM CHAIRMAN OF SELECTION
COMMITTEE
UNIT-B
KAR BHAWAN
GUWAHATI-78100

Advocate for the Petitioner : MS. B BHUYAN

Advocate for the Respondent : SC, FINANCE

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 11-12-2023

Heard Ms. B. Bhuyan, learned Sr. counsel assisted by Ms. R.S. Deuri, learned counsel for the writ petitioner. Also heard Mr. B. Gogoi, learned standing counsel, Finance and Taxation Department, Assam appearing for the respondents.

The writ petitioner herein is working in the establishment of the Asstt. Commissioner of Taxes, Unit- II Branch in a Gr-IV post. The petitioner is a graduate and has competed more than 07 (seven) years of continuous service in the Gr-IV category.

According to Ms. Bhuyan, learned Sr. counsel for the petitioner, her client is not only eligible for being promoted to a Gr-III post but there are vacancies available in the department in Gr-III category. Notwithstanding the same, the respondents have not considered the case of the petitioner for promotion to Gr-III category, i.e. to the post of Junior Assistant. Hence, this writ petition.

The learned Sr. counsel for the petitioner has invited the attention of this Court to the provision of Sub-Rule 6 of Rule 6 of the Assam Ministerial District Establishment Service Rules, 1967 to submit that since the petitioner is a graduate and he fulfills the criteria of educational qualification for being promoted to the Gr-III post, he would come within the zone of consideration for being promoted.

Mr. B. Gogoi, learned standing counsel, Finance Department, Assam, on the other hand, submits that if there are promotional vacancies available and if the petitioner fulfills the requirement of the Rules and comes within the zone of consideration, then his case will certainly be considered for promotion.

Law is firmly settled that right to be considered for promotion is a facet of fundamental right. Therefore, if the petitioner is indeed eligible for being considered for promotion and if there are vacant posts in the promotional category available in the department, then denial of consideration to the petitioner for being promoted would undoubtedly amount to violation of his fundamental right.

In view of the above, without expressing any opinion on the merit of the claim of the petitioner, this writ petition stands disposed of with a direction upon the authorities to examine the case of the petitioner for promotion and in case, it is found that there is promotional vacancy available in the Gr-III/ Junior Assistant category of posts and the petitioner comes within the zone of consideration, having fulfilled the requirement of the Rules, his case be considered for promotion to the post of Junior Assistant by following the due process.

The aforesaid exercise shall be carried out and completed as expeditiously as possible, but not later than 60 days from the date of receipt of a certified copy of this order.

The writ petition stands allowed to the above extent.

No order as to cost.

JUDGE

GS

Comparing Assistant