

GAHC010112602020



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

Case No. : WP(C)/3278/2020

ZENITH SARFORAZ
S/O MOZHARUL ISLAM,
RESIDENT OF 12 NO. WARD DHUBRI, PO AM CO. ROAD, DIST DHUBRI,
ASSAM 783323

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM , REVENUE RR AND DM DEPARTMENT DISPUR,
GUWAHATI 6

2:THE COMMISSIONER.
LOWER ASSAM DIVISION TO THE GOVERNMENT OF ASSAM
PANBAZAAR
GUWAHATI 1

3:THE DEPUTY COMMISSIONER
DHUBRI
ASSAM
783301

4:THE DEPUTY COMMISSIONER
SOUTH SALMARA MANKACHAR
ASSAM 783135

5:THE TAHSILDAR
MANKACHAR TAHSIL OFFICE
MANKACHAR
SOUTH SALMARA MANKACHAR
ASSAM 783135

6:THE CIRCLE OFFICER

SOUTH SALMARA REVENUE CIRCLE
DIST SOUTH SALMARA MANKACHAR
ASSAM 78312

Advocate for the Petitioner : MD H R AHMED

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 30/08/2023

Heard Mr. A. Islam, learned counsel for the petitioner. Also heard Mr. J. Handique, learned standing counsel, Revenue department and Ms. M. Bhattacharjee, learned counsel for respondent Nos. 2, 4, 5 and 6.

2. This writ petition has been filed by the petitioner aggrieved by the fact that his application for seeking option to be placed under the Dhubri District was not considered by the competent authorities at the time of the meeting between the Deputy Commissioners of the two districts during the bifurcation of South Salmara Mankachar District from the erstwhile Districts of Dhubri.

3. Learned counsel for the petitioner submits that on 07.09.2019 there was a joint meeting between the District Deputy Commissioners of Dhubri and South Salmara Mankachar District for bifurcation of all cadres of post and to fix the cadre strength in each category of post. By the said minutes the options were sought for from the staff working under Deputy Commissioner, South Salmara of their willingness to work under District establishment. The said employees submitted their respective options. Employees who had submitted their option for being posted under the District establishment of Dhubri were thereafter

posted under the District establishment of Dhubri in terms of the minutes of the meeting held on 07.09.2019.

4. Mr. A. Islam, learned Counsel for the petitioner submits that petitioner was posted in South Salmara which was earlier a part of the erstwhile Dhubri prior to the bifurcation of South Salmara Mankachar district from the district of Dhubri. Upon being informed about the meeting proposed to be held between the Deputy Commissioners of Dhubri and South Salmara, Mankachar district, petitioner submitted his application giving his option to be posted under the Deputy Commissioner, Dhubri's establishment. The petitioner is aggrieved by the fact that although the application for option was submitted, the same was not placed before the joint meeting and consequently his case was never considered. Subsequent thereto he had filed necessary application reviewing his prayer for being posted under Dhubri District establishment, before the South Salmara District establishment and copies thereof were forwarded to the office of the Deputy Commissioner, Dhubri. Learned counsel for the petitioner refers to the communication dated 13.09.2019 (Annexure 11 page 38), whereby the Additional Deputy Commissioner, South Salmara Mankachar District, Hatsingimari had forwarded an application to the office of the Deputy Commissioner, Dhubri enclosing the option preferred by two employees, who are working in the district of South Salmara.

5. The learned Counsel for the petitioner submits that inspite of the communication forwarded by the Additional Deputy Commissioner, South Salmara, Mankachar, Hatsingimari vide communication dated 13.09.2019, the same was not considered. Being aggrieved the present writ petition has been filed.

6. The Respondent Nos. 3 and 4, Deputy Commissioners, Dhubri has filed an affidavit, wherein an averment is made that the option in respect of the petitioner was not received in the office of the Deputy Commissioner, Dhubri in due time, which is fixed by the Office, and therefore, his name was not absorbed in the Gradation List prepared by the Deputy Commissioner, Dhubri after bifurcation. It is further stated that in view of the decision taken in the meeting held on 07.09.2019 in the office of the Deputy Commissioner, Dhubri, if the petitioner's case is now required to be taken into consideration for inclusion in the present Gradation List prepared after bifurcation, his name will be retained in the same position as it was in the Gradation List of 2016 i.e. before bifurcation of the erstwhile Dhubri District in the cadre of Junior Assistant.

7. It may be mentioned here that the petitioner in the meantime, has been promoted to the post of Senior Assistant. Upon perusal of the affidavit of the Deputy Commissioner, Dhubri it is revealed that the petitioner can be absorbed in the Dhubri District, but in the cadre of Junior Assistant in terms of the Gradation List of 2016, as it was then, when the joint meeting of the Deputy Commissioner's was held on 07.09.2019. The petitioner will lose his seniority and he will not be posted as a Senior Assistant, which post he is occupying presently under the new District of South Salmara, Mankachar.

8. The learned counsel for the petitioner has referred to the affidavit-in-reply, filed by the petitioner, wherein it is stated that the petitioner is willing to be absorbed in the district of Dhubri in the post of Junior Assistant by foregoing his claim for the higher post of Senior Assistant. The petitioner is willing and ready to accept his position as per the Gradation list of 2016 as a Junior Assistant, as was prepared before the bifurcation of the erstwhile Dhubri

District.

9. Under such circumstances, where the petitioner for reasons best known to him, is willing to forego his position in the higher cadre of Senior Assistant and is willing to be absorbed in the district of Dhubri in the post Junior Assistant as per the Gradation list of 2016, which was prepared for the erstwhile Dhubri District and in view of the categorical averments made in the affidavit filed by the Deputy Commissioner, Dhubri that the petitioner can be absorbed in the post of Junior Assistant in terms of the Gradation list dated 2016, this court is of the view that the writ petition can be disposed of with the direction to the respondent Nos. 3 and 4 to pass necessary orders releasing the petitioner from the district of South Salbara, Mankachar and permitting him to join in the district of Dhubri in the cadre of Junior Assistant and that his position will be reflected in the Gradation list as it stood in 2016 under the erstwhile district of Dhubri in the cadre of Junior Assistant. It is, however, made clear that the release order of the District of South Salmara, Mankachar is subject to no disciplinary proceeding being pending against the petitioner in the meantime and/or recovery of any amounts due from the petitioner in his official capacity and furnishing of all relevant documents and papers and files which may have been in custody during his tenure as Senior Assistant in the district of South Salmara, Mankachar. It is made clear that the seniority of the petitioner in the post of Senior Assistant in the District of South Salmara, Mankachar will not be available to him subject to such Rules permitting his absorption as a Senior Assistant in the District of Dhubri.

10. Writ petition stands disposed of in terms of the above. No order as to cost.

11. Interim order, if any, stands vacated.
12. The orders as directed will be passed by the competent Authority within a period of 60 (sixty) days from the date of receipt of certified copy of this order.

JUDGE

Comparing Assistant