

GAHC010113992021



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

Case No. : WP(C)/3917/2021

NARENDRA SAIKIA
S/O SRI DINESWAR SAIKIA, VILL-DARIAPARA, P.O.-RANGAMATI, P.S.-
MANGALDOI, DIST-DARRANG (ASSAM)

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY, WELFARE OF
MINORITIES AND DEVELOPMENT DEPARTMENT, DISPUR, GUWAHATI-
781006

2:THE COMMISSIONER AND SECRETARY
FINANCE DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-781006

3:THE COMMISSIONER AND SECRETARY
PERSONNEL (B) DEPARTMENT
DISPUR
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-781006

4:THE COMMISSIONER AND SECRETARY
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GOVT. OF ASSAM
GUWAHATI-781006

5:THE DIRECTOR
CHAR AREAS DEVELOPMENT

ASSAM
HENGRABARI ROAD
GUWAHATI-781006

6:THE DIRECTOR OF PANCHAYAT AND RURAL DEVELOPMENT
PANJABARI ROAD
JURIPAR
GUWAHATI-781037

7:THE PROJECT OFFICER
CHAR DEVELOPMENT PROJECT
DARRANG
MANGALDAI
PIN-78412

Advocate for the Petitioner : MD R ISLAM

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 01/09/2023

Heard Mr. R. Islam, learned senior counsel assisted by Mr. S.K. Das, learned counsel for the petitioner. Also heard Ms. M.D. Borah, learned counsel appears for the respondent Nos. 1, 5 and 7, Mr. B. Gogoi, learned counsel for respondent No.2 and Ms. J. Bora, learned counsel for respondent Nos. 4 and 6.

2. This writ petition is filed by the petitioner who is working as an LDA- cum- Typist under the Office of Project Officer No.3 Shyampur Char Development Project, Kharupetia, Darrang. The petitioner was initially appointed on 10.01.1990. Subsequently, he was regularized by order dated 30.01.2004. The grievance of the petitioner is that he is rendered more than 31 years of service but he has never been considered for promotion to the next higher post, which is UDA-Cum-Accountant.

3. It is the submission of the learned counsel that the said post had fallen vacant upon the superannuation of the incumbent on 31.12.2019. In the office in which the petitioner is working there is a single post of UDA-Cum-Accountant and a single post of Junior Assistant Cum Typist. The post of UDA-Cum-Accountant has been now re-nomenclatured as Senior Assistant Cum Accountant. It is submitted that there are presently no Service Rules governing the service conditions of the employees of the department. The Draft Service Rules have been sent for approval, but have not been approved till date. Under such circumstances the petitioner has contended that where any department has no Service Rules, then the Assam Public Services (Direct Recruitment to Class III and Class IV Posts) Rules, 1997, can be relied upon to consider the claims of the petitioner. The petitioner submits that in spite of his requests made before the competent authority, his claim for being promoted to the next higher post has not been considered. Being aggrieved, he has filed the present writ petition praying for appropriate writ, direction or order.

4. The respondent No.3, namely, the Commissioner and Secretary Department of Personnel (B) in their affidavit filed on 28.01.2022, has made an averment that the Assam Public Services (Direct Recruitment to Class III and Class IV Posts) Rules, 1997, which is referred to by the petitioner are meant for direct recruitment of candidates into the establishment where there are no service Rules. However, these rules do not prescribe any criteria for promotion.

5. The Director, Char Areas Development, Assam, Dispur, Guwahati has also filed an affidavit on 04.01.2022 stating that because of the pandemic, no step could be taken towards the prayers made by the writ petitioner. It is, however, stated that a petitioner had already received financial benefit under the Assured

Career Progression Scheme (ACPs) at the level of 10 years service and 20 years service.

6. The Welfare of Minorities and Development Department, which is the parent department under which the petitioner was appointed and is presently employed, has also filed an affidavit on 25.08.2023. By the said affidavit, it is stated that a proposal has been sent and is placed before the Personnel Department for their views. And once the views are received, the steps will be taken for processing the claims of the petitioner subject to fulfilment of all other required criteria.

7. Learned counsels for the parties have been heard. The pleadings have been carefully perused. In the affidavit, filed by the Welfare of Minorities and Development Department it is seen that a proposal has been put up before the Personnel (B) Department by the Joint Secretary of Welfare Minority Development Department to the effect that there are about 5 (five) vacant posts of UDA-Cum-Accountant under the Directorate of Char Areas Development Assam, Hengrabari Road, Guwahati and there is a requirement for filling up these posts. It is further stated in the proposal that since the department does not have Service Rules of its own, it intends to rely on and follow the Assam Directorate Establishment Ministerial Service Rules, 1973, till the draft service rules are approved by the competent authority. The proposal also indicates that the UDA-Cum-Accountant under the Directorate of Char Areas Development Authority draws the same grade pay as the UDA's of other Directorates. There is similarity of work between UDA-Cum-Accountant under the Directorate of Char Areas Development Assam and other UDA's under other Directorates. There is also no specific requirement of educational qualification for appointment of

UDA-Cum-Accountant to the Directorate of Char Areas Development Assam. And accordingly the views have been sought for from the Personnel (B) Department, Government of Assam.

8. Learned counsel appearing Welfare and Development of Minorities Department submits that the proposal has been sent for the views of the Personnel (B) Department on 21.08.2023 and their views are expected to be received back within a short date. Once the views are received, the steps will be taken for processing the claims of the petitioner and other similarly situated persons in as much as there is a requirement for filling up the vacant posts of UDA-Cum-Accountants under the Directorate of Char Areas Development, Assam.

9. Mr. R. Islam, learned counsel for the petitioner submits that he is due to retire on 31.03.2024 and therefore he submits that his case should be considered expeditiously by the Department. It is further submitted that he is officiating as UDA-Cum-Accountant with effect from 01.01.2020 and is performing all works pertaining to the said post. In this context, he refers to Annexure 10 of the writ petition.

10. Having heard the learned counsels for the parties, this court is of the view that since the department is not averse to the claims made by the petitioner that the posts of UDA-Cum-Accountant be filled up by promotion in view of the vacancies available and also in view of the requirement of filling up these posts as projected by the competent authority in their proposal forwarded to the personnel (B) Department, this court is of the view that the writ petition can be closed with a direction to the respondents to proceed with the steps for filling up the posts of UDA-Cum-Accountant by promotion from LDA-Cum-Typists. The

Department will consider the claims of the petitioner along with other similarly situated person as expeditiously as possible.

11. No dispute has been raised in the present proceedings by the Respondent Department that in the absence of the Service Rules of the Department, the proposal to rely on Assam Directorate Establishment Ministerial and Service Rules, 1973 is not permissible. Since, it is submitted by the learned counsel for the Minorities Development Department that the concurrence of the Personnel (B) Department is likely to be received on an early date, the Department is directed to proceed for filling up of the posts as expeditiously as possible considering the cases of the petitioner and other similarly situated persons.

12. Let the entire exercise be completed within a period of 90 (ninety) days from the date of receipt of certified copy of this order.

13. Writ petition is accordingly stands disposed of.

14. Interim order, if any, stands merged with the final order.

JUDGE

Comparing Assistant