

GAHC010121192012



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

Case No. : WP(C)/2762/2012

RAKESH HAZARIKA
S/O- LT. HARI HAZARIKA, R/O- NORTH GUWAHATI, RAJADUAR, KAMRUP,
ASSAM, AND AT PRESENT COMPILER IN THE OFFICE OF THE REGISTRAR
OF THE CO-OP. SOCIETIES, ASSAM, GHY- 22, KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, CO-OPRATION DEPTT.,
ASSAM, DISPUR, GHY- 6.

2:THE REGISTRAR OF CO-OP. SOCIETIES
ASSAM
KHANAPARA
GHY- 22.

3:THE ADDL. REGISTRAR ADMN.
IN THE OFFICE OF THE REGISTRAR
CO-OP. SOCIETIES
ASSAM
GHY- 22.

4:THE ADDL. REGISTRAR GENL.
IN THE OFFICE OF THE REGISTRAR
CO-OP. SOCIETIES
ASSAM
GHY- 22

Advocate for the Petitioner : MRS.H KALITA

Advocate for the Respondent : SC, CO-OP.

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

13.10.2023

Heard Shri RK Malakar, learned counsel for the petitioner. Also heard Shri G. Bordoloi, learned Standing Counsel, Cooperation Department appearing for all the respondents.

2. The petitioner was appointed as a Compiler under the Cooperation Department in the year 1995. It is the contention of the petitioner that the aforesaid appointment was made pursuant to a common recruitment process for the post of LDA also. While the qualification required for being appointed as Compiler was Graduate, at the relevant point of time, the minimum qualification for being appointed as LDA was H.S. pass. The case of the petitioner is that there was no choice given while applying for the post and as a matter of chance, the petitioner was appointed as Compiler which was carrying the same scales of pay as that of LDA. The specific case of the petitioner is that while the persons who were appointed as LDA were given the benefit of promotions from time to time, the petitioner did not have any such benefit as there is no promotional post from the post of Compiler.

3. Shri Malakar, learned counsel for the petitioner has submitted that it was not by choice that the petitioner had opted to be appointed as Compiler as the recruitment process was one and the same pursuant to one advertisement and therefore he is entitled to benefits of promotion.

4. By referring to the affidavit-in-reply filed by the petitioner on 03.09.2018, the learned counsel for the petitioner has referred to the Report of the 7th

Assam Pay and Productivity Pay Commission along with the Assam Service (Revision of Pay) Rules, 2017. He submits that the cases of the present nature are also considered by the MACPs which would include grant of financial upgradation three times in the entire service period i.e., on completion of 10 years, 20 years and 30 years. The learned counsel accordingly submits that even if promotional post is not available, the petitioner should be granted the benefit of financial upgradation.

5. Shri Bordoloi, learned Standing Counsel, Cooperation Department has submitted that the affidavit-in-opposition has been filed on 01.12.2016. He has also placed before this Court certain orders to show that the recommendation of the 7th Assam Pay and Productivity Pay Commission with regard to the MACPs was given to the petitioner. He specifically contends that vide an order dated 26.10.2012, the first upgradation was given to the petitioner and the second upgradation was given in the year 2020 after completion of the prescribed period. He further submits that as and when the petitioner would be entitled for the third upgradation, the same would be given to the petitioner in accordance with law.

6. Shri Malakar, learned counsel for the petitioner submits that under the aforesaid circumstances, where no promotional avenues is available, a direction may be given for release of the further financial upgradation in accordance with the recommendation.

7. In view of the aforesaid facts and circumstances, this writ petition is closed on observing that two financial upgradation as per the Pay Commission Report have already been given to the petitioner and it is directed that as and when the petitioner is entitled for 3rd financial upgradation, the same be given to him by

following the due process of law.

8. The copies of the order showing the grant of financial upgradation to the petitioner on two occasions are made part of the records.

JUDGE

Comparing Assistant