

GAHC010139382022



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

Case No. : WP(C)/4687/2022

SURAT ALI SHEIKH
S/O- AMZAD ALI SK., R/O- NANKARGAON, P.O. DHANTALA BAZAR, DIST.
BONGAIGAON, ASSAM, PIN- 783372.

VERSUS

THE GAUHATI HIGH COURT AND 4 ORS
REPRESENTED BY THE REGISTRAR GENERAL, GAUHATI HIGH COURT,
GUWAHATI- 781001, ASSAM.

2:THE CENTRALIZED RECRUITMENT
REPRESENTED BY REGISTRAR (ADMINISTRATION)-CUM-IN-CHARGE
GAUHATI HIGH COURT
GUWAHATI
ASSAM.

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
JUDICIAL DEPARTMENT
DISPUR
GUWAHATI
ASSAM.

4:THE DISTRICT AND SESSIONS JUDGE
BONGAIGAON
DIST.- BONGAIGAON
ASSAM.

5:THE COMMISSIONER OF TRANSPORT
ASSAM
PARIBAHAN BHAWAN

JAWAHAR NAGAR
KHANAPARA
GUWAHATI-22

Advocate for the Petitioner : MR. B J MUKHERJEE

Advocate for the Respondent : SC, GHC

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

15-09-2023

Heard Shri B. J. Mukherjee, learned counsel for the petitioner. Also heard Shri U. K. Nair, learned Senior Counsel assisted by Shri M. P. Sarma, learned counsel for the respondent nos. 1, 2 & 4; Ms. M. D. Borah, learned Standing Counsel has appeared for the Transport Department whereas Ms. A. Talukdar, learned State Counsel.

2. The grievance of the petitioner is with regard to a Gradation List in which his name does not appear.

3. The projected case of the petitioner is that he was appointed as an LD Assistant in the establishment of the District and Sessions Judge, Bongaigaon in the year 1999 by means of a recruitment process in which 6 numbers of candidates were appointed in various posts. Incidentally, the post in which the petitioner was appointed was originally created by the Transport Department of the Govt. of Assam vide Memo No. TMV.222/92/135 dated 29.02.1996.

4. The respondent nos. 1, 2 & 4 have contended that since the post was originally created by the Transport Department, the name of the petitioner could not be placed in the seniority list under the establishment of the District and Sessions Judge, Bongaigaon.

5. The aforesaid position was directed to be clarified by the respective Departments.

6. Ms. Borah, the learned Standing Counsel, Transport Department upon instructions has submitted that though the posts was originally created by the Transport Department, for all practical purposes, the post is being utilized by the establishment of the District and Sessions Judge, Bongaigaon and there is no records in the Department with regard to the said post. However, the learned Standing Counsel has not denied the existence of the post which was created by the Transport Department.

7. Shri Nair, the learned Senior Counsel has submitted that the reasons assigned for not including the name of the petitioner in the Gradation List are relevant and cogent as the post in question was originally created by the Transport Department. The learned Senior Counsel has however taken instructions that the DDO in respect of the petitioner is the MACT, Bongaigaon under which the petitioner is presently serving. The learned Senior Counsel also points out that the confirmation of the petitioner in his services was also done by the orders of the District and Sessions Judge, Bongaigaon.

8. After hearing the parties and on perusal of the materials on record, though it is a fact that the post in which the petitioner was appointed in the year 1999 was originally created by the Transport Department, the petitioner has all along been serving in the establishment of the District and Sessions Judge, Bongaigaon and presently in the MACT, Bongaigaon. The recruitment being one for 6 numbers of posts in the said establishment in which incidentally the post allotted to the petitioner was one which was created by the Transport Department, it would not be reasonable at all not to include the name of the petitioner in the Gradation List under the establishment of the District and Sessions Judge, Bongaigaon. As stated above, there is no record in the

Transport Department with regard to the services of the petitioner and all his service records are in the custody of the establishment of the District and Sessions Judge, Bongaigaon.

9. In view of the aforesaid facts and circumstances, the instant writ petition is allowed by directing the respondents more particularly, the District and Sessions Judge, Bongaigaon to regard the petitioner as a regular employee under the establishment for the purpose of insertion of his name in the Gradation List according to his seniority which is required to be counted from the date of his appointment. The aforesaid exercise of inserting the name of the petitioner in the Gradation List according to the *inter se* seniority be done within a period of 45 days from the date of receipt of a certified copy of this order.

10. Writ Petition accordingly stands allowed.

JUDGE

Comparing Assistant