

GAHC010143622023



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

Case No. : WP(C)/3839/2023

KUSHAL HAZARIKA
S/O DINANATH HAZARIKA R/O VILL. KAPAHUWA MAKORA CHUCK P.O.
AND P.S. DHAKUAKHANA DIST. LAKHIMPUR ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE ESTABLISHMENT (B) DEPTT. DISPUR GUWAHATI 6

2:THE ACCOUNTANT GENERAL AUDIT
ASSAM
MAIDAMGAON BELTOLA GUWAHATI 29 ASSAM

3:THE DIRECTOR OF ACCOUNTS AND TREASURIES
ASSAM
KARBHAWAN DISPUR GUWAHATI 6 ASSAM

4:THE DEPUTY COMMISSIONER
TREASURY ESTABLISHMENT LAKHIMPUR DIST.

5:THE TREASURY OFFICER
LAKHIMPUR
NORTH LAKHIMPUR ASSAM PIN 787001

6:THE TREASURY OFFICER
SUB TREASURY DHAKUAKHANA
DIST LAKHIMPUR PIN 787055 ASSAM

7:DIPANKAR BORAH
R/O VILL. MOLONG GAON P.O. CHAMAHIYA ATI DIST. MAJULI ASSAM PIN

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Advocate for the Petitioner : MR DEBA SARMAH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 08.08.2023

Heard Mr. D. Sarma, learned counsel for the petitioner; Also Mr. D. Rabha, learned counsel for respondent No. 2 and Mr. C.S. Hazarika, learned Government Advocate, Assam.

2. This writ petition has been filed by the petitioner who is serving as a peon in the Office of the Dhakuakhana Sub-Treasury. The petitioner was appointed as the Grade-IV employee on 12.08.1991. Since then, he has discharged his duties without any blame or blemish to the satisfaction of all concerned. The petitioner contends that he was primarily engaged to discharge the duties of the Lower Division Assistant as well as the Junior Division Assistant in the Office of the Sub-Treasury, Dhakuakhana. The grievance of the petitioner is that the petitioner in spite of rendering more than 31 years of service was neither granted any additional pay for discharging his duties as Lower Division Assistant as well as Junior Accountant Assistant nor was he considered for promotion to the post of LDA. Being aggrieved, he approached this Court by filing WP(C) No. 2111/2022. This Court by its order dated 19.05.2023 disposed of the writ petition with the following directions:

“What would be significant to note herein is that as per provisions of Rule 5 (3) of the Rules of 1993, only 20% of the posts of LDA out of the total cadre strength can be filled up by way of

promotion and therefore, as submitted by the learned Government Advocate, if the total number of post of LDA is four, then it is not understood, as to how, as many as three persons could have been promoted to the posts of LDA. The said aspect of the matter is not clear from the pleadings available on record. It is also not clear as to whether, all the three candidates to the post of LDA presently serving under the respondent No. 6 are promotes or any of them, is a direct recruitee.

Since law is firmly settled that right to be considered for promotion is a fundamental right and considering the fact that the petitioner has rendered more than three decades of service without any promotional avenue and also in view of the fact that he is due for retirement in the month of December, 2023, this Court is of the opinion that instead of keeping this writ petition pending any further, a direction should be issued to the authorities to examine the claim of the petitioner, in the light of the provisions of the Rules of 1993 and take appropriate action in the matter, as may be permissible under law.

In view of the above, this writ petition is being disposed of with a direction upon the respondent Nos. 4, 5 and 6 to examine the claim of the petitioner for promotion to the post of LDA and on such examination, if it is found that the petitioner is entitled to be considered for promotion as per the provisions of the Rules of 1993 and that there is a vacant post of LDA and on such examination, if it is found that the petitioner is entitled to be considered for promotion as per the provisions of the Rules of 1993 and that there is a vacant

post of LDA in the establishment of the respondent No. 6, then in that event, appropriate steps be taken for consideration of the case of the petitioner for promotion to the post of LDA, along with other eligible departmental candidates, by a duly constituted selection committee”.

3. The petitioner thereafter represented before the authorities concerned requesting them to pass appropriate orders in terms with the directions issued by the Court vide order dated 19.05.2023 passed in WP(C) No. 2111/2022. Thereafter, since no order were passed inspite of repeated requests and representations, the petitioner approach this Court for the second time praying for appropriate writ/directions to the respondent authorities to promote the petitioner to the post of LDA or to a suitable post equivalent and pass other appropriate orders. The grievance of the petitioner is that there are specific findings by the writ Court in the earlier round of litigation that there was one vacant post of LDA available under the respondent No. 6 and that the petitioner's case was to be considered if that vacant post was found to be available and the respondents were directed to promote the petitioner to the said vacant post. In spite of such specific directions, the respondents authorities have neglected or failed to pass consequential orders.

4. Mr. Hazarika, the learned counsel appearing for the respondents, submits that no affidavit has been filed but he has received a copy of communication dated 05.07.2023, issued by the Treasury Officer to the Director of Accounts and Treasury explaining the vacancy position in respect of post of LDA in the office of the Treasury Officer, Dhakuakhana Sub-Treasury. By the said communication, it is stated that since as per record already three numbers of Grade-IV employee of the Treasury Establishment have been promoted to the post of LDA on rotation basis in the year 1997, 2002 and 2008 as such, the promotional quota of the LDA has been filled up and the post has been kept reserved for direct recruitment. Under such

circumstances, the case of the petitioner namely, Sri Kushal Hazarika, Grade-IV, Dhakuakhana Sub-Treasury, cannot be considered for promotion. Although, the learned Government Counsel has renewed this prayer for filing necessary affidavit considering the issues involved in the matter and more particularly, the fact that this is the second round of litigation by the petitioner claiming promotion to vacant post of LDA stated to be available under the office of Treasury Officer, Dhakuakhana Sub-Treasury, this Court is of the view that the matter requires urgent disposal, more particularly, since it is submitted that the petitioner will retire towards the end of year 2023.

5. The learned counsels for the parties have been heard. The pleading on record have been carefully perused. The Rules which govern the Service of the petitioner as submitted by the counsels at the bar are the *Assam Treasury (Establishment) Service Rules 1993*. As per *Rule 5 (3)*, the method of recruitment to the cadre of Lower Division Assistant shall be made in the following manner:

“5 (3) Recruitment to the cadre of Lower Division Assistant shall be made:

(a) by direct recruitment, and

(b) by promotion against 20 percent of the strength of the cadre in accordance with rules 11 and 12.

Provided that the deficiencies in the percentage under this clause due to dearth of adequate number of suitable candidates may be filled up under clause (a) above and in that case the deficiency under clause (b) shall be carried forward to subsequent years(s)”.

6. As per Rule 6 of the said Rules there is a provision for direct recruitment to the post of Lower Division Assistant inter-alia and the procedure is prescribed under said Rule 6(1). As per Schedule-1 appended to the Rules the number of Posts to the Lower Division Assistant are shown to be 25 (2 permanent and 23 temporary).

7. This Court by the earlier order dated 19.05.2023, recorded the findings that

from the pleadings filed by the department the number of posts available in the department was not clear. It is also recorded that it is not clear that whether all three persons reflected in the pleadings were promotees or direct recruitees.

8. What is evident from the order is that the co-ordinate bench had returned that there is one clear vacancy under the office of the Treasury Officer, Dhakuakhana, Sub-Treasury. In that view of the matter, the writ petition was disposed of directing the respondents to examine the claim of the petitioner for promotion to the post of Lower Division Assistant and on such examination, if it is found that the petitioner is entitled to be considered for promotion as per provision of Rules 1993 and that there is vacant post of Lower Division Assistant in the Establishment of Treasury Officer then, in that event, the appropriate steps were directed to be taken up for consideration of the case of the petitioner for promotion to the post of LDA along with other eligible departmental candidates by duly constituted selection committee.

9. This Court has carefully perused the order as well as the communication dated 05.07.2023, issued by the Treasury Officer to the Director of Accounts & Treasuries. The said communication reads as under:

“To,

The Director of Accounts & Treasuries

5th Floor, Kar Bhawan, Dispur, Guwahati

Assam- 781006.

Sub: Regarding Court Case No. WP(C) /2111/2022 Vs. State of Assam.

Ref: Your officer letter No. DA. 376/2023/4 Dtd.12./06/2023

Sir,

With reference to the subject cited above, I have the honour to inform you that in pursuance of the Honorable Guwahati High Court Case No. WP(C) 2111/2022 it is to be informed that as per Rule 5 (3) of

the Assam Treasury (Establishment) Service Rule, 1993, The promotion of Gd. IV to the cadre of LDA is to be made by direct recruitment and by promotion in the ratio of 80:20. Here, it is to be mentioned that there is 1 (one) No. of LDA post under Lakhimpur District Treasury Establishment.

As per our office records, it seems that already 3 (three) Nos. of Gd. IV employees of the Treasury Establishment had been promoted to the post of LDA on rotation basis in the year 1997, 2002 and 2008. So, the promotional quota of LDA has already been filed up and the post was kept reserved for Direct Recruitment.

Subsequently, the vacancy position was send to your good office for direct recruitment and accordingly, the selection process has been completed by the Assam Direct Recruitment Commission and the candidate was been appointed who joined in the post on 01.06.2023. Hence, there is no vacancy in this establishment at present. Moreover, it is to be mentioned that there is no any sanctioned post of LDA in the Office of the Respondent No. 6 i.e The Treasury Officer, Dhakuakhana Sub- Treasury.

Hence, the case of Sri Kushal Hazarika, Gd. IV, Dhakuakhana Sub-Treasury could not be considered for promotion as on date.

This is for favour of your kind information and necessary action.

*Yours faithfully,
Treasury Officer,
Lakhimpur, North Lakhimpur”.*

10. Upon careful perusal of the said communication, it is seen that the direction of the Court was to consider the case of the petitioner as per Provisions of the Rules of 1993 and thereafter, upon due examination, if it was found that the petitioner was entitled to promotion under the Rules of 1993 and that there is vacant post of LDA, then appropriate steps were to be taken for consideration of the case of the petitioner to the post of LDA along with other eligible departmental candidates by duly constitute selection committee. A bare perusal of the said communication reveals that the manner in which the case of the petitioner was directed to be considered was certainly not considered by the departmental authorities. There is no reference in the said communication as to the cadre strength in respect of LDA available under the Office of the Treasury Officer of the districts as well as to how the post(s) in the cadre of LDA available under the office of the Treasury Officer are required to be filled up as per the Provisions of the Rules of 1993 and whether the case of the petitioner was considered in terms of the said Rules of 1993 and if so, whether the same was done by duly constituted selection committee are not discernable from the contents of the communication dated 05.07.2023.

11. Under such circumstances, this Court is of the view that the respondents are liable to be directed to proceed with the examination and consideration of the case of the petitioner in terms of the direction issued by this Court vide order dated 19.05.2023, in WP(C) No. 2111/2022. The case of the petitioner will be considered by the competent respondent authorities by duly constituted selection committee and thereupon, the case of the petitioner along with other eligible candidates will be considered for promotion to any vacant post available in the cadre of LDA in terms of the Provisions of Rules of 1993. Upon such consideration, if it is found that the petitioner is entitled to be promoted then the consequential orders promoting the petitioner to the said post of LDA be issued by the department

expeditiously.

12. This direction is issued keeping in view of the fact that the learned counsel for the petitioner submits that the petitioner is due to retire within the year of 2023 and it is not disputed by the learned Government Advocate, Assam.

13. In terms of the above, the writ petition stands disposed of.

14. The entire exercise is directed to be completed within a period of 30 (Thirty) days from the date of receipt of the certified copy of this order.

JUDGE

Comparing Assistant