

GAHC010159502023



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

**Case No. : WP(C)/4135/2023**

SACHIN DEKA  
SR. ASSISTANT, OFFICE OF THE DISTRICT COMMISSIONER  
AMALGAMATED ESTABLISHMENT KOKRAJHAR,  
PRESENTLY WORKING IN OFFICE OF THE SDO (CIVIL),  
PARBATJHORA,  
KAZIGAON, DIST.- KOKRAJHAR,  
KOKRAJHAR- 783370

VERSUS

STATE OF ASSAM AND 2 ORS.  
REPRESENTED BY PRINCIPAL SECRETARY,  
GENERAL ADMINISTRATION DEPARTMENT,  
DISPUR- 781006

2:DISTRICT COMMISSIONER  
KOKRAJHAR- 783370

3:COMMISSIONER LOWER ASSAM DIVISION  
PAN BAZAR  
GUWAHATI- 78100

**Advocate for the Petitioner : MR SISHIR DUTTA**

**Advocate for the Respondent : GA, ASSAM**

**BEFORE  
HONOURABLE MR. JUSTICE SUMAN SHYAM**

**ORDER**

**Date : 19-12-2023**

Heard Mr. S. Dutta, learned counsel appearing for the writ petitioner. Also heard Mr. A. Phukan, learned Standing Counsel, General Administration Department (GAD), Government of Assam, appearing for respondent No. 1 and Ms. A. Talukdar, learned Junior Government Advocate, Assam, appearing for respondent No. 2. None has appeared for respondent No. 3 since the post of Commissioner, Lower Assam Division, has since been abolished.

The petitioner herein is serving as a Senior Assistant/Upper Division Assistant (UDA) in the establishment of District Commissioner, Kokrajhar. He was initially appointed on 20.07.1990 as a Lower Division Assistant (LDA) against a vacant sanctioned post. Thereafter, the petitioner was promoted to the post of Senior Assistant vide order dated 17.12.2007. Since then he is serving in the aforesaid post. The grievance of the petitioner is on account of the fact that his case has not been considered for promotion to the next higher post of Head Assistant although vacancies are available and under the Service Rules he is also eligible for being considered for regular promotion to the said post.

Mr. Dutta submits that the Assam Ministerial District Establishment Service Rules, 1967 (hereinafter referred as "the Rules") governs the conditions of service of the petitioner and as per Rule 6(2) of the Rules, the petitioner is eligible and duly qualified for being considered for promotion to the post of Head Assistant. But he has not been considered for promotion to the post of Head Assistant for no valid reason.

Ms. Talukdar, learned Junior Government Advocate, Assam, has invited the attention of this Court to the counter-affidavit filed in this case on behalf of the respondent No. 2 to submit that due to circumstances beyond the control of the authorities, no DPC meeting for considering the departmental candidates for

promotion to the post of Head Assistant could be held earlier. The learned Government Advocate, however, assures this Court that necessary steps in the matter, as per the Rules would be taken and if the petitioner is found to be eligible for being considered for promotion, his case will be duly considered. Similar is the stand of Mr. A. Phukan, learned Standing Counsel, GAD, who also submits that it is for the District Administration, Kokrajhar, to take appropriate steps in the matter and the GAD would have no opinion to render in this regard.

Law is fairly well settled by a long line of judgments pronounced by the Apex Court that the right to be considered for promotion is a fundamental right. If a candidate comes within the zone of consideration and fulfils the eligibility norms for being considered for promotion as per the Rules, he/she cannot be denied proper consideration for promotion, more so, when vacancies are available for being filled up by way of promotion. In the present case, nothing has been cited by the respondents to show that the petitioner is not eligible for being considered for promotion, nor is it the stand of the respondents that vacancies are not available. It appears from the submission of the learned Government Advocate, Assam, that due to the outbreak of COVID pandemic, no DPC meeting could be held during the relevant period for considering the cases of the eligible departmental candidates for being promoted to the post of Head Assistant. If that be so, there is no discernible reason as to why such exercise should not be conducted by the concerned authorities now, since the COVID phase is practically over.

As such, without expressing any opinion on the merit of the claim of the petitioner for being promoted to the post of Head Assistant, this writ petition stands disposed of with a direction upon the respondent No. 2 to initiate appropriate measures for holding Departmental Promotion Committee meeting for consideration of the candidatures of eligible candidates for being promoted to the post of Head Assistant. The aforesaid exercise be carried out, as expeditiously as possible, but not later than 3 (three) months from the date of receipt of a certified copy of this order.

The aforesaid direction would, however, be subject to the condition that the petitioner is eligible to be considered for promotion under the Rules.

With the above observations and directions, the writ petition stands disposed of.

**JUDGE**

**Comparing Assistant**