

GAHC010162092022



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

Case No. : WP(C)/5381/2022

MUSTAFA JALAL LASKAR
S/O- LATE SIRAJUR RAHMAN LASKAR,
VILL. BORJURAI BAZAR,
P.O.- BOALIPAR BAZAR,
DIST.- HAILAKANDI (ASSAM).

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION (SECONDARY) DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE DIRECTOR
EDUCATION (SECONDARY) DEPARTMENT
ASSAM KAHILIPARA GUWAHATI-19.

3:THE INSPECTOR OF SCHOOLS
HAILAKANDI PIN- 788151

Advocate for the Petitioner : MR. A H M R CHOUDHURY

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 04.12.2023

Heard Mr. A. H. M. R. Choudhury, learned counsel appearing on behalf of the petitioner. Also heard Mr. D. Mushahari, learned standing counsel, Secondary

Education Department, Government of Assam, appearing on behalf of all the respondents.

The petitioner, by instituting the present writ petition, has raised a grievance against non-consideration of his case for promotion to the post of Head Assistant as available in the establishments of the Inspector of Schools/Government Schools in the State. The petitioner who had joined the service as a Lower Division Assistant(L.D. Assistant) on 01.02.1992, came to be promoted to the post of Senior Assistant w.e.f. 20.08.2004 and the next promotional avenue available is that of the post of Head Assistant.

The Government of Assam in the Secondary Education Department, vide communication, dated 10.12.2020(Annexure-1 to the writ petition), had prepared as Roster for the post involved including the post of Head Assistant and as revealed from the said communication, dated 10.12.2020; the cadre of Head Assistant consists of 20 posts, out of which, 4 posts have been reserved for the reserved community candidates.

The Government of Assam in the Secondary Education Department, had also prepared a Gradation List, dated 29.07.2021, of Senior Assistants serving in different establishments of Inspector of Schools and the Government Secondary Schools of Assam and therein, the name of the petitioner figures at Serial No. 14.

It is the stand of the petitioner that after preparation of the Roster and publication of the Gradation List, as above; a communication, dated 31.03.2022, was issued by the Government of Assam to the Director of Secondary Education,

Assam, to take forward the promotional exercise of the various cadres involved including the cadre of Head Assistant. However, no steps having been initiated for having the cases of the eligible incumbents considered for promotion in terms of the said communication, dated 31.03.2022; the petitioner is before this Court.

I have heard the learned counsels appearing for the parties as well as considered the materials placed on record.

It is a settled proposition of law that there is no legal vested right for an employee to claim for promotion but undisputedly, there is a right which is vested and a fundamental right for being considered for promotion.

The petitioner and the other incumbents in the cadre of Senior Assistant have been serving in such capacities since long, naturally, there exists a legitimate expectation for their cases to be considered for promotion to the next higher cadre for promotion. At this stage, it is to be noted that it was stated in the Bar that the rules governing the services of the petitioner do not provide for the manner and method for promotion to the cadre of Head Assistant but there exists a prescribed procedure for the same.

In view of the said position; the present writ petition need not be kept pending and can be disposed of, requiring the respondent authorities, more particularly, the Director of Secondary Education, Government of Assam(respondent No. 2) to carry forward the exercise for considering the eligible incumbents in the cadre of Senior Assistant for promotion to the cadre of Head Assistant in terms of the requirement as contained in the communication bearing No. ASE-655/2019/39, dated

31.03.2022(Annexure-3 to the writ petition).

The Director of Secondary Education, Government of Assam, shall set in motion the required exercise and consider the cases of the eligible incumbents by noticing the vacancy position in the cadre of Head Assistant and by applying the requisite criteria prescribed for promotion to the cadre of Head Assistant and in the event, the petitioner comes in the zone of consideration; his case also be considered for such promotion.

The above exercise in terms of the communication, dated 31.03.2022, be undertaken and concluded expeditiously and the petitioner and the other incumbents in the cadre of Senior Assistant be given a chance to have their respective cases considered for promotion to the cadre of Head Assistant.

With the above directions; the writ petition stands disposed of to the extent, as indicated above.

JUDGE

Comparing Assistant