

GAHC010174342018



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

**Case No. : WP(C)/5399/2018**

JUGEN GOHAIN  
S/O LT. SARUNATH GOHAIN  
R/O CHIRING CHAPARI, THANA ROAD,  
P.O. DIBARUGARH, DIST. DIBRUGARH, PIN - 786001, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT.OF ASSAM,  
DEPARTMENT OF AGRICULTURE DISPUR, GUWAHATI-6, DIST. KAMRUP,  
ASSAM

2:THE DIRECTOR DEPARTMENT OF AGRICULTURE

KHANAPARA  
GUWAHATI-22

DIST. KAMRUP  
ASSAM

3:THE DISTRICT AGRICULTURAL OFFICER

DIBRUGARH  
DIST. DIBRUGARH  
ASSAM  
PIN - 786001.

4:THE DEPUTY COMMISSIONER DIBRUGARH

DIST. DIBRUGARH  
PIN - 786001.

5:FARUK HUSSAIN  
C/O DISTRICT AGRICULTURE OFFICE

DIST. DIBARUGARH  
ASSAM  
PIN - 786001.

6:MD. FORIDUR RAHMAN  
C/O DISTRICT AGRICULTURE OFFICE  
DIST. DIBRUGARH  
ASSAM- 786001

**Advocate for the Petitioner** : MRS N SAIKIA

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

**BEFORE**  
**HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**ORDER**

**Date : 08/09/2023**

Heard Ms. N. Saikia, learned counsel appearing for the petitioner. Also heard Ms. R. Borah, learned standing counsel, Agriculture representing respondent Nos. 1, 2 and 3, Mr. N. Ahmed, learned counsel appears for respondent Nos. 5 and 6 and Ms. M. Bhattacharjee, learned Additional Senior Government Advocate appears for respondent Nos. 4.

2. This writ petition has been filed by the petitioner praying for a direction to the respondent authority to promote the petitioner to the post of Senior Assistant and a further direction to correct the Gradation List dated 27.07.2017 restoring the seniority position of the petitioner with retrospective effect from the date of his officiating services as LDA-Cum-Typist with effect from 07.06.1997.

3. The petitioner was initially appointed as a Grade IV employee on

15.10.1992 under the Office of District Agricultural Officer, Dibrugarh. The petitioner in the course of his service was allowed to work as LDA-Cum-Typist since 07.06.1997 in the same office. Although he continued to render his services as LDA-Cum-Typist, his services were regularized only in the year 2006. The petitioner is aggrieved that the private respondent Nos. 5 and 6, were appointed /promoted to the post of LDA overlooking the claim of the petitioner and also without fulfilling the criteria necessary for being considered for the post of LDA. The petitioner had earlier challenged their promotion/appointment to the post of LDA-Cum-Typist by filing W.P(C) No. 4810/2022. This writ petition however, subsequently came to be dismissed and no further appeal was preferred.

4. Meanwhile, the petitioner approached the Concerned Authority staking his claim for being promoted to the post of LDA, in which he was allowed to work since 07.06.1997. Considering the grievances of the petitioner, the competent authorities passed necessary orders upgrading the petitioner to the post of Junior Assistant in the year 2006. The petitioner, however, claims that his promotion to the post of Junior Assistant will be with effect from 1998. In view of the fact that the petitioner's claim for promotion was not considered with effect from 1998, his position, according to the petitioner, in the provisional Gradation List, which was published, was shown at serial number 5. The respondent No. 5 and 6 were shown to be senior to the petitioner at serial number 2 and 3.

5. Being aggrieved, he had filed an application before the competent authority and the competent authority considered his claim for being considered for promotion to the next higher post and the District Agricultural Officer,

Dibrugarh was directed to arrange for reviewing the matter, for preparing the Gradation List and to make arrangements for promotion of the petitioner to the next higher post when the opportunity arises.

6. It is submitted that during the pendency of the writ petition the respondent Nos. 5 and 6 were promoted to the post of Senior Assistant.

7. This court, while issuing notice by order dated 13.08.2018 directed the respondent authorities not to fill up the post of Senior Assistant without the leave of the court. Notwithstanding that the Department had however proceeded to fill up the posts of Senior Assistant by giving promotion to the respondent Nos. 5 and 6.

8. Be that as it may, the final Gradation List was published in the year 2022 and the name of the petitioner is shown at serial number 4. Name of the respondents Nos. 5 and 6 were shown at serial number numbers 1 and 2, respectively.

9. The learned counsel for the petitioner submits that although initially her grievance as urged in the present writ petition was to interfere with the promotions granted to the respondent Nos. 5 and 6, as they do not meet the requirements prescribed under the Rules and that they do not have the required educational qualifications, however, considering the fact that several years have passed by and in the meantime, notwithstanding the interim order granted by this court, the Department had proceeded to fill up the posts of Senior Assistants by giving promotion to the respondent Nos. 5 and 6; the learned counsel for the petitioner submits that she would not like to press her claim seeking interference with the promotions granted to respondent Nos. 5 and 6.

The learned counsel for the petitioner submits that as per information available, at present there are two clear vacant posts of Senior Assistant yet to be filled up. As per the final Gradation List of Junior Assistants, since the name of the petitioner is shown at serial number four and as the persons at serial number 1 and 2 namely, the respondent Nos. 5 and 6 have already been promoted, the petitioner will be within the zone of consideration for being promoted to the next higher post of Senior Assistant as there are two clear vacancies.

10. The learned counsel for the petitioner submits that the writ petition be allowed, directing the respondents to proceed with the process for promoting the petitioner to the next higher post of Senior Assistant and pass necessary orders. It is submitted that the petitioner will superannuate by 31<sup>st</sup> December, 2023 and therefore, there is an urgency that the claims of the petitioner for consideration or for promotion to the next higher post be considered expeditiously by the department.

11. The learned counsel for the petitioner has also submitted that an Interlocutory Application being I.A.(C) No. 2958/2022 has been filed, praying for due consideration of the claims of the petitioner to appoint him in the vacant post of Senior Assistant under the District Agricultural Officer, Dibrugarh. It is submitted that this I.A has been filed as the petitioner presently does not wish to challenge the promotions of private respondent Nos. 5 and 6.

12. The learned Govt. counsel appearing for the department submits on the basis of the affidavit filed and also on the basis of an instruction available with her from the District Agricultural Officer, Dibrugarh that as per the instructions, there are two posts lying vacant in the cadre of Senior Assistant, Grade III. She,

however, submits that these instructions were issued sometime back and she does not have the up-to-date instructions. She however, submits that since the petitioner's position is shown at serial number 4 in the final Gradation List, there is every likelihood of the petitioner being considered for promotion to the next higher post as and when the process begins. It is also submitted by the learned counsel appearing for the department that the final Gradation List published dated 12.05.2022, whereby the petitioner was shown at serial number 4 of the final Gradation List has not been challenged by the petitioner.

13. Mr. N. Ahmed, learned counsel appearing for respondent Nos. 5 and 6, however, on the basis of the affidavits filed submits that the claims made by the petitioner challenging their promotion is unfounded and their promotions were made as per the Rules and therefore, there is no occasion for this court to interfere with the promotions made to the post of Junior Assistant. It is, however, submitted by the learned counsel for the private respondents that since vacant posts are shown to be available, the petitioner can always be considered in respect of the vacant posts of Senior Assistant available.

14. The learned counsels for the parties have been heard. Pleadings on record have been carefully perused. It is seen that by order dated 13.08.2018, this Court while issuing notice, had directed the respondents not to fill up the post of Senior Assistant without leave of the Court. This interim order was extended on several dates. In spite of such clear interim order being passed by this court, it appears that the respondents have proceeded to fill up the post of Senior Assistant by promoting respondents Nos. 5 and 6. No application seeking vacation or modification of the interim order passed is found in the records and the learned counsels for the respondents have also submitted that no such

application has been filed. Such action on the part of the respondent without taking leave of the court is not considered appropriate and this court does not consider such actions to be appropriate, more particularly, when the respondents are represented by their respective counsels. Such action of the respondent authority is severely deprecated. Considering the fact that the petitioner has now abandoned her earlier claims putting to challenge the promotions of the respondent Nos. 5 and 6 and in view of the prayers made in the I.A.(C) No. 2958/2022, this court does not wish to proceed any further in respect of the conduct of the respondent authorities violating the interim orders passed by this court.

15. After a careful perusal of the pleadings and upon hearing the counsels of the parties, it is seen that in the final Gradation List dated 12.05.2022, the name of the petitioner is reflected at serial number 4, whereas the names of the respondents Nos. 5 and 6 are reflected in serial numbers 1 and 2, respectively. It is submitted by the respective counsels for the respondents that the respondent Nos. 5 and 6 have in the meantime been promoted to the next higher post of Senior Assistant. Consequently, at this stage, the petitioner would be at serial number 2 of the final Gradation List reflected for the post of Junior Assistant with one more candidate above the petitioner. That apart the communication dated 12.05.2022, which was addressed to the Director Agriculture by the Office of District Agricultural Officer, reflects that there are 2 (two) numbers of vacant posts in the cadre of Senior Assistant Grade III lying vacant for the last three years. The communication is dated 12.05.2022. Although the learned counsel for the department submits that she has no clear instructions of the vacancy position, considering the fact that the interim order dated 13.08.2018 passed by this court was never vacated. This

court directs the respondent authorities to consider the claim of the petitioner for promotion to the next higher post of Senior Assistant stated to be lying vacant in the office of the District Agricultural Officer, Dibrugarh, as per the provisions of law. The respondent authority will proceed for taking necessary steps for initiating the promotion to the next higher post of Senior Assistant. It is expected that the authorities concerned will expeditiously pass appropriate orders and consider the case of the petitioner for promotion to the next higher post of Senior Assistant under the Office of District Agricultural Officer, Dibrugarh. This order is passed by the court upon arriving at a finding that the claim for promotion to the post of Senior Assistant made by the petitioner is not unjustified. The departmental authorities have also accepted the claim made by the petitioner for promotion to the next higher post.

16. Under such circumstances, the court is unable to understand as to why the case of the petitioner has not been considered expeditiously, although the Department of Authorities have categorically upheld the claim of the petitioner, in the minutes of the meeting held on 27.07.2017 of the District Selection Committee for selection of Senior Assistant under the District Agricultural Officer, Dibrugarh. Further there is an appeal preferred by the petitioner dated 13.12.2017, the Joint Director, Agriculture as the appellate authority upheld the claims of the petitioner and directed District Agricultural Officer, Dibrugarh to arrange for reviewing the matter of preparation of Gradation List.

17. In terms of the above findings, this writ petition is allowed directing the respondent authorities to forthwith consider the case of the petitioner and pass appropriate orders for promotion to the next higher post of Senior Assistant in the Office of District Agricultural Officer, Dibrugarh.

18. The orders required to be passed by the departmental authorities will be passed expeditiously and not later than the outer limit of 60 (sixty) days from the date of receipt of a certificate copy of this order.
19. Writ petition accordingly stands allowed and disposed of in terms of the above.
20. No order as to cost.

**JUDGE**

**Comparing Assistant**