

GAHC010199002023



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

Case No. : WP(C)/5252/2023

MRINAL KUMAR THAKURIA
S/O TARUN CHANDRA THAKURIA, R/O VILL-JENGARBORI, P.O.-
CHATIANTOLI, P.S.-LAHARIGHAT, DIST-MORIGAON, ASSAM, PIN-782127

VERSUS

THE STATE OF ASSAM AND 4 ORS
TO BE REPRESENTED BY THE PRINCIPAL SECRETARY TO THE
GOVERNMENT OF ASSAM, REVENUE AND DISASTER MANAGEMENT
DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DEPUTY COMMISSIONER
MORIGAON
ASSAM

3:THE ADDITIONAL DEPUTY COMMISSIONER (REVENUE)
MORIGAON
ASSAM

4:THE CIRCLE OFFICER
LAHARIGHAT REVENUE CIRCLE
LAHARIGHAT
MORIGAON

5:RUHUL AMIN
S/O LATE SAMED ALI
R/O CHATIANTOLI
P.O.-CHATIANTOLI
P.S.-LAHARIGHAT
DIST- MORIGAON
ASSAM
PIN-78212

Advocate for the Petitioner : MR A R BHUYAN

Advocate for the Respondent : SC, REVENUE

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

13.09.2023

Heard Shri A.R. Bhuyan, learned counsel for the petitioner. Also heard Ms. M. Bhattacharyya, learned Addl. Senior Government Advocate, Assam as well as Shri S. Dutta, learned Standing Counsel, Revenue Department.

The grievance of the petitioner is in connection with a recruitment process for the post of Gaon Pradhan for Amaraguri, Jengarbori and Chatiantoli kissam in Laharighat Mouza under Laharighat Revenue Circle, District Morigaon. The petitioner has alleged that by ignoring his candidature, the respondent no. 5 has been selected and appointed in violation of the guidelines contained in the Notification dated 07.07.2022. The petitioner has cited grounds of the respondent no. 5 that he is not eligible for such consideration as he is not a permanent resident of the village and also has five children. He submits that there is a requirement of an incumbent to be a resident of that village and the maximum number of children can be two.

Both Ms. Bhattacharyya and Shri Dutta, the learned counsel for the respondents have however raised the question of maintainability by submitting that the statute provides for an appeal and without exhausting the said remedy, the instant petition has been filed. Shri Bhuyan, the learned counsel for the petitioner has however responded by contending that the post of Divisional

Commissioner has been abolished. However, the learned counsel for the respondents have apprised this Court that vide Notification dated 17.07.2023, the powers earlier exercised by the Divisional Commissioner has now been vested with the Commissioner and Secretary / Principal Secretary, GAD. In fact a copy of the said Notification dated 17.07.2023 is placed before this Court.

In view of the above, this Court is of the opinion that instead of entering into the merits of the dispute, the petitioner may approach the Appellate Authority by filing an appeal.

At this stage, Shri Bhuyan, the learned counsel prays for an observation in view of the fact that such appeal ought to have been filed within the prescribed period of limitation which is 60 days.

Considering the peculiar facts and circumstances of the case, it is directed that if the appeal is preferred within 22.09.2023, the Appellate Authority shall not insist on the issue of limitation and decide the appeal on its own merits. Such consideration and disposal be made expeditiously and preferably within a period of 2 (two) months from the date of receipt of such appeal. It is needless to state that during such consideration, the stakeholders which would include the petitioner as well as the respondent no. 5 be afforded an opportunity of hearing.

A copy of the notification dated 17.07.2023 is made part of the records.

JUDGE

Comparing Assistant