

GAHC010221572019



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

Case No. : WP(C)/6803/2019

MITALI BHATTACHARJEE
W/O- MR. KAJAL BHATTACHARJEE, PRESENTLY SERVING AS ASSISTANT
ON AD-HOC BASIS, ASSAM UNIVERSITY, SILCHAR, R/O- HOUSE NO. 34,
NEAR MATRI MANDIR, CHAMDMARI ROAD, PO TARAPUR, SILCHAR,
DIST. CACHAR, ASSAM. PIN- 788003.

VERSUS

THE ASSAM UNIVERSITY AND ANR.
SILCHAR, REP. BY ITS VICE CHANCELLOR, CUM CHAIRPERSON,
EXECUTIVE COUNCIL, ASSAM UNIVERSITY, SILCHAR, CACHAR, ASSAM,
PIN- 788011.

2:THE REGISTRAR
ASSAM UNIVERSITY
SILCHAR
CACHAR ASSAM
PIN- 788011

Advocate for the Petitioner : MR. A K DUTTA
Advocate for the Respondent : SC, ASSAM UNIVERSITY

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

24/02/2023

Heard Mr. B Purkayastha, learned counsel for the petitioner. Also heard Ms. P Das, learned counsel appearing on behalf of Mr. S C Keyal, learned Standing counsel, Assam University for the respondent Nos. 1 & 2.

Pursuant to the appointment order dated 24.06.1995 issued by the authorities in the Assam University, the petitioner joined her service as a Lower Division Clerk (LDC) in the said University on 26.06.1995 and her service was confirmed by the said authority on 25.06.1997.

The authorities in the Assam University by order dated 01.09.2006 promoted her to the post of Upper Division Clerk (UDC) and in the combined seniority list of Upper Division Clerks of Assam University as on 20.10.2009. She was placed at serial No. 18.

The petitioner submitted that without considering her seniority, the respondent University promoted one Nabanita Langthasa belonging to Schedule Tribe category, whose seniority position was at serial No. 27 in the gradation list of UDC's of Assam University to the post of Assistant in the said University pursuant to which said Nabanita Langthasa joined as an Assistant in the Assam University on 29.12.2017 superseding the petitioner. Though, the petitioner was allowed to serve as an Assistant in the Assam University on adhoc basis, but she is yet to be promoted to the post of Assistant in spite of her eligibility and on the basis of her service as an UDC, for promotion to the post of Assistant in the said University.

Petitioner is apprehending that though the post of Assistant at point No. II/8 in the said University is for unreserved candidate, but in the Reservation Roster Register against the post at Point No. II/8 of Assistant under the Remarks column, it is earmarked for adjustment of shortfall category of post of Point II/7, that is Schedule Caste candidate.

By placing the Reservation Roster of Assistants of Assam University, petitioner placed before the Court that there is all together 16 posts in the cadre of Assistants in the Assam University, where the ratio of direct recruitment and promotion is 60:20 and under the categories of promotion for the post of Assistant out of those 16, 10 have been found for Seniority cum Fitness from amongst the UDCs.

The petitioner has also placed before the Court that said Nabanita Langthasa, who is much junior to the petitioner belonging to the Schedule Tribe category was promoted to the post of Assistant against the Roster Point II/7 that belongs to Schedule Caste category and that the respondent Assam University adjusted the said post of II/7 that belongs to Schedule Caste, by filling it up by the point I/14, that belongs to Schedule Tribe category.

Though, the petitioner submitted several representations before the respondent Assam University, it submitted that those have not yet been considered and are yet to be disposed of. The

last representation of the petitioner was of 29.05.2019 before the Registrar of Assam University respondent No. 2 to consider her promotion to the post of Assistant against the Roster Point II/8 earmarked for unreserved category and not to adjust any other candidates beyond the Rules.

Since the respondent authorities did not consider her representations, the petitioner has filed this writ petition on 09.09.2019 praying amongst others to (i) set aside and quash the impugned decision/remark of the Assam University authorities against the Roster Point No. II/8 meant for the cadre post of Assistant of Assam University, Silchar that is reserved for incumbents belonging to the Upper Division Clerk cadre under unreserved category for promotion to the post of Assistant under seniority cum fitness quota; (ii) direct the authorities of the Assam University to fill up the post of Assistant against the Roster Point No. II/8 by a candidate belonging to the unreserved category from the cadre UDC as per seniority cum fitness quota and (iii) direct the respondents authorities to consider the case of the petitioner for her promotion from the post of UDC to the post of Assistant as unreserved category against the Roster Point No. II/8 on the basis of her seniority and (iv) direct the authorities of the Assam University to regularize the period of her Ad-hoc service as an Assistant in the Assam University w.e.f. 13.11.2015 by treating her as regular Assistant with effect from the said date, i.e., 13.11.2015.

From the Annexures appended to this writ petition by the petitioner, it is seen that though the petitioner was earlier promoted to the post of Assistant on Ad-hoc basis by order dated 13.11.2015 (Annexure-5 to this petition), but in the said order No. 104/48/2011-Estt(Pt-I)/5189-95 dated 13.11.2015, the respondent University categorically stated that the Ad-hoc promotion shall not confer any right on the employees for a regular promotion.

However, it is seen that after reverting her back to the post of UDC from Ad-hoc appointment as Assistant by order dated 30.11.2018, the respondent Assam University by another office order dated 25.06.2019 promoted the petitioner again to the post of Assistant on Ad-hoc basis giving her the pay scale of an Assistant and she is still serving as an Assistant on the basis of her said Ad-hoc promotion.

Mr. Purkayastha, learned counsel for the petitioner, on instructions submitted that the respondent authorities regularly promoted her to the post of Assistant vide office order No. 104/48/2011-Estt(Pt-I)/5339-44 dated 16.12.2020 pursuant to which she joined the post of Assistant (Unreserved) on 17.12.2020 against the vacant post Code No. NTS-0054 in the Pay Matrix level-6 with the observation that the date of effect of promotion and related benefits attached to the post will be

effective from the date of joining to the post.

However, Mr. Purkayastha, learned counsel for the petitioner submitted that in the said office order dated 16.12.2020 promoting the petitioner to the post of regular Assistant, there is no mention about the relevant post under Roster point 16.

After hearing the learned counsels for the parties and considering the entire aspects of the matter, it is directed that if the petitioner has any grievances on her regular promotion to the post of Assistant vide order dated 16.12.2020 issued by the respondent Assistant University, she if so advised by way of filing a representation may submit the same before the Registrar of the Assam University, Silchar, District-Cachar respondent No. 2 on or before 20.03.2023 along with a certified copy of this order.

In the event of filing such representation by the petitioner within the time so specified, the respondent authorities in the Assam University shall dispose of the same, with a reasoned order, within a period of 90 (ninety) days from the date of its receipt, after giving an opportunity of hearing to her, intimating the petitioner about the outcome of her said representation.

Accordingly, this writ petition stands disposed of.

Copy of the office order No. 104/48/2011-Estt(Pt-I)/5339-44 dated 16.12.2020 issued by the authorities of the Assam University, Silchar, promoting the petitioner to the post of Assistant from post of UDC in the Assam University be kept as a part of the record.

JUDGE

Comparing Assistant