

GAHC010223782023



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

Case No. : WP(C)/5857/2023

RANJIT KUMAR PEGU
SON OF LATE ARDH SING PEGU, RESIDENT OF SONAIGULI, NIJARAPAR,
HOUSE NO. 146, P.O. SAUKUCHI, HERAMBAPUR PATH, BASISTHA,
GUWAHATI- 781040, IN THE DISTRICT OF KAMRUP (METRO), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM, TRANSFORMATION AND DEVELOPMENT
DEPARTMENT, DISPUR, GUWAHATI- 781006

2:THE PRINCIPAL SECRETARY
GOVERNMENT OF ASSAM
TRANSFORMATION AND DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI- 781006

3:THE DEPUTY SECRETARY
GOVERNMENT OF ASSAM
TRANSFORMATION AND DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI- 781006

4:THE SECRETARY
ASSAM PUBLIC SERVICE COMMISSION
JAHWARNAGAR KHANAPARA
GAUHATI- 781022

5:THE DIRECTOR
ECONOMIC AND STATISTIC
ASSAM

TRANSFORMATION AND DEVELOPMENT DEPARTMENT
GUWAHATI- 78102

Advocate for the Petitioner : MR. M TALUKDAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

04.10.2023

Heard Shri M. Talukdar, learned counsel for the petitioner. Also heard Shri TC Chutia, learned Additional Senior Government Advocate for the State respondents as well as Shri TJ Mahanta, learned Senior Counsel for the respondent - APSC.

2. The petitioner was appointed as Statistical Officer in the year 1992 in the erstwhile Directorate of Economic and Statistics, Assam. The petitioner has now claimed to be eligible to be promoted to the post of Director as presently he is holding the post of Joint Director vide order dated 17.06.2019. The petitioner has a Master Degree in Commerce from Gauhati University. It is the case of the petitioner that by the impugned advertisement dated 25.08.2023 published in the Assam Tribune whereby the post of the Director of the Department which has been renamed as Transformation and Development Department is sought to be filled up, the qualification has been stated to be at least 2nd Class Master Degree in Statistics, Mathematics, Economics from a recognized University or its equivalent. It is the case of the petitioner that in the initial Service Rules, the subject of Commerce was also included and therefore the present advertisement by excluding Commerce is unsustainable in law. The petitioner has also submitted a representation.

3. Shri Talukdar, learned counsel for the petitioner has drawn the attention of this Court to a communication dated 22.11.2022 by which representation submitted by few of the incumbents including the petitioner was forwarded in which there was some favourable recommendation. The learned counsel has also drawn the attention of the Amended Rules published in the Official Gazette on 24.02.1995 as per which, the subjects for the post of Director were confined to Economics, Statistics and Mathematics.
4. Shri Mahanta, learned Senior Counsel for the APSC however raises a preliminary objection that unless the Amended Rules of 1995 are put to challenge, the present challenge would not be maintainable as it is only the provisions of the Rules which have been incorporated in the impugned advertisement dated 25.08.2023.
5. Shri TC Chutia, learned Additional Senior Government Advocate, Assam while endorsing the submission of Shri Mahanta, learned Senior Counsel for the APSC, has further submitted that even such a challenge would be belated as the Amendment was of the year 1995 and the Amended Rules are being followed for the past three decades.
6. This Court is of the view that the impugned advertisement published on 25.08.2023 only takes into consideration the requirement of the Amended Rules which were notified in the Official Gazette on 24.02.1995. The said Rules were formulated under the proviso to Article 309 of the Constitution of India. This Court is of the opinion that unless the Amended Rules by which the qualification has been prescribed is put to challenge, the present challenge which is confined to the advertisement is not maintainable.
7. In view of the above, this writ petition is dismissed, however with liberty to

challenge the said Rules, if so advised and in accordance with law.

JUDGE

Comparing Assistant