

GAHC010319802019



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

Case No. : WP(C)/9578/2019

DIPAK HAZARIKA
S/O- LATE PADMADHAR HAZARIKA, R/O- VILL- SONARIGAON, P.O-
SILGHAT, P.S- KALIABOR, DIST- NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
DEPTT OF LAW AND JUSTICE, DISPUR, GUWAHATI- 06

2:THE GAUHATI HIGH COURT
REP. BY THE REGISTRAR GENERAL
GAUHATI HIGH COURT
GUWAHATI- 01

3:THE DISTRICT AND SESSIONS JUDGE
NAGAON
DIST- NAGAON
ASSAM
PIN-

4:PRAHLAD KUMAR BORA
OFFICE PEON
OFFICE OF THE DISTRICT AND SESSIONS JUDGE
NAGAON
DIST- NAGAON
ASSAM
PIN- 782001

5:THE SELECTION BOARD FOR SELECTION TO THE POST OF LDA
IN THE ESTD OF DISTRICT AND SESSIONS JUDGE
NAGAON

REP. BY ITS CHAIRMAN
I.E DISTRICT AND SESSIONS JUDGE
NAGAON
DIST- NAGAON
ASSAM
PIN- 78200

Advocate for the Petitioner : MR. N BORAH

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

08.02.2023

Heard Mr. N. Borah, learned counsel appearing for the writ petitioner. Also heard Mr. T. J. Mahanta, learned senior counsel assisted by Mr. A. Barua, learned counsel appearing for the respondent nos.2, 3 and 5. Ms. A. Talukdar, learned Govt. Advocate, Assam is present on behalf of respondent no.1. None has appeared for the respondent no.4.

2. The writ petitioner herein was appointed in a Grade-IV post viz. Process Server in the establishment of the District & Sessions Judge, Nagaon in which post he had joined on 04.02.2004. Since then he has been serving in the aforesaid post. According to the petitioner, he is the senior-most Grade-IV level employee in the establishment and is eligible for being promoted in the next higher post of Lower Division Assistant (LDA), which is a Grade-III post. Notwithstanding the same, the respondents have not considered the case of the petitioner.

3. Mr. Borah submits that on 16.12.2019 the authorities had issued a notice fixing the date for holding written test and viva voce test for filling up one

vacant post of LDA on direct recruitment basis. Aggrieved by the aforesaid notice, the petitioner has approached this Court by filing the instant writ petition.

4. Mr. Mahanta, learned senior counsel appearing for the respondent Nos.2, 3 and 5 submits that the official respondents have brought their stand on record by filing affidavit. According to Mr. Mahanta, the case of the petitioner comes under Rule 6(5)(c) of the Assam District and Sessions Judges Establishment (Ministerial) Service Rules, 1987. However, since the petitioner did not participate in the selection process nor did he challenged the Rules, hence, at this point of time, no relief can be granted to him. It is also the submission of Mr. Mahanta that in case of an LDA minimum merit is required to be assessed and that is why, the selection process had to be conducted. Since there is no infraction of fundamental/legal right of the petitioner in this case, hence, submits Mr. Mahanta, this writ petition is not maintainable in the eye of law.

5. On assessment of the pleadings brought on record, I find that in the affidavit-in-opposition filed on behalf of the respondent Nos.2, 3 and 5 the following statements have been made in paragraphs 9 and 10, which are reproduced herein below :-

“9. That with regard to the statements made in paragraphs 8, 12, 14 & 16 of the writ petition, this deponent denies the same to be correct. This deponent begs to state that the Respondent No.4 is junior to the writ petitioner but the Respondent No.4 has completed 7 (seven) years of continuous service and as per Rule 6(5)(c) of the Assam District and Sessions Judges Establishment (Ministerial) Service Rules, 1987 he is eligible to be considered for promotion to the post of Lower Division

Assistant. It is to be mentioned here that the allegations levelled by the petitioner are baseless and just to find meritorious and best candidate the Selection Board has decided to conduct written test and Viva Voce for the promotion to the post of Lower Division Assistant.

10. That with regard to the statements made in paragraphs 9, 11, 13 & 15 of the writ petition, this deponent denies the same to be correct. This deponent begs to state that the Rule 6(5)(c) of the 1987 Rules, has specifically provides that the criteria for promotion to the post of Lower Division Assistant from amongst the Grade-IV staff is "Seniority cum Merit" and not only "seniority" and therefore, the Selection Board has decided that written examination is the best process to evaluate the merit of the candidates for promotion to the post of Lower Division Assistant in the establishment of the respondent No.3. It is to be mentioned here that the 1987 Rule neither provides any specific procedure for selection for promotion to the post of Lower Division Assistant amongst Grade-IV staff nor provides not to conduct any written examination. Therefore, no provisions of any law in force has been violated in this case by conducting a written examination, which is aimed to select the candidate found suitable in the selection process, conducted in a fair and transparent manner."

6. The claim of the petitioner is that he being the seniormost Grade-IV employee in the establishment of the District & Sessions Judge, Nagaon, his case for promotion ought to have been considered only on the basis of his seniority. However, what would be relevant to note herein that Rule 6(5)(c) of the Rules of 1987 does lay down the criteria of "seniority-cum-merit" and the

Rules are not under challenge. The petitioner has not denied that his case would come under Rule 6(5)(c). Notwithstanding the same, he has not participated in the process initiated by the notice dated 16.12.2019. Since the criteria applicable in this case is "seniority-cum-merit", the authority would have to devise some methodology for testing the merit of the candidates. Therefore, holding a written test and viva-voce test appears to be in tune with the provisions of the Rules. The petitioner has not been able to demonstrate as to in what manner the impugned notice dated 16.12.2019 is in contravention of the Rules of 1987. If that be so, I do not find any justifiable ground to interfere in the matter.

7. This writ petition is, therefore, held to be devoid of any merit and is accordingly dismissed.

Interim order passed earlier stands vacated.

JUDGE

Comparing Assistant