

GAHC010018842024



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

Case No. : WP(C)/531/2024

MUKUL KUMAR DEKA
SON OF LATE PRAMOD CHANDRA DEKA,
R/O- NEAR JYOTINAGAR L.P. SCHOOL,
BAMUNIMAIDAM, GUWAHATI,
DISTRICT- KAMRUP(M), ASSAM,
PIN- 781021.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
HIGHER EDUCATION DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE DIRECTOR OF HIGHER EDUCATION ASSAM
KAHILIPARA GUWAHATI- 781019.

3:THE GOVERNING BODY
REPRESENTED BY ITS PRESIDENT
GUWAHATI COLLEGE
BAMUNIMAIDAM
GUWAHATI- 781021.

4:THE PRINCIPAL
GUWAHATI COLLEGE
BAMUNIMAIDAM
GUWAHATI- 781021

Advocate for the Petitioner : MR J ABEDIN

Advocate for the Respondent : SC, HIGHER EDU

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 16.02.2024

Heard Mr. J. Abedin, learned counsel for the petitioner. Also heard Mr. A. R. Tahbildar, learned standing counsel, Higher Education Department, appearing on behalf of respondents No. 1, & 2.

2. In view of the order that is being passed today, notice on respondents No. 3 & 4 is not deemed necessary.

3. The grievance raised in the present proceedings, by the petitioner is that although he has completed the requisite residency in the post of Senior Assistant in Guwahati College, Guwahati; his case for promotion to the next higher rank of Head Assistant is not being considered by the respondent authorities. The petitioner was initially appointed as a Junior Assistant on 16.08.1990 in Guwahati College and thereafter, the case of the petitioner was considered for promotion to the next cadre of Senior Assistant against a post that had fallen vacant on 01.10.2018.

4. The Departmental Promotion Committee(DPC) of the said college had recommended the case of the petitioner in its meeting held on 03.06.2020. The Director, Higher Education Department, Assam, vide order, dated 17.02.2022, proceeded to promote the petitioner in terms of the proposal submitted by the college to the post of Senior Assistant with effect from the date of his joining. The petitioner immediately joined against his said post in terms of the order, dated 17.0.2022, and has been discharging his duties in the said capacity. The next promotional avenue available to the

petitioner is the post of Head Assistant in the said college.

5. On a vacancy arising in the post of Head Assistant in the college w.e.f. 01.12.2022, the petitioner was vide a communication, dated 24.04.2023, issued by the Principal of the college, allowed him to function as the Head Assistant, in-charge, w.e.f. 24.04.2023, and the petitioner is continuing to discharge his duties in the said capacity. It is stated that the petitioner is slated to retire from his services w.e.f. 31.03.2024, on attaining the age of superannuation.

6. On the last date of listing, this Court had required the learned standing counsel, Higher Education Department, to receive his instructions in the matter.

Mr. Tahbildar, learned standing counsel, Higher Education Department, has placed before me, the written instructions received by him from the Director, Higher Education Department, Assam, and in terms of thereof, it has been contended that the post of Head Assistant in the said college is to be filled-up in terms of the provisions of the “Assam Ministerial District Establishment Service Rules, 1967”. In terms of the said Rules, it is contended that at least 2 years residency in the post of Senior Assistant is mandated, for being considered for promotion to the cadre of Head Assistant. The petitioner was promoted to the cadre of Senior Assistant on 18.02.2022 and in terms of the provisions of Rule 6(2) of the said Rules of 1967; the “first year of joining” shall be treated as a complete year irrespective of the date and month of the employee joining his services. The petitioner having joined in the cadre of Senior Assistant on 18.02.2022, the petitioner as of 31.12.2023, has completed the required residency of 2 years of service.

7. In that view of the matter and also in view of the fact that the petitioner is

continuing as the Head Assistant of the college on charge basis w.e.f. 24.04.2023; the college authorities are now required to convene the Departmental Promotion Committee (DPC) and consider the case of the petitioner for promotion to the post of Head Assistant w.e.f. 01.01.2024.

8. The said Departmental Promotion Committee(DPC) in the event, comes to the conclusion that the petitioner is found suitable for promotion as Head Assistant, the college authorities shall forward the proposal to the Director, Higher Education Department, Assam, for granting approval for effecting such promotion w.e.f. 01.01.2024. The Director, Higher Education Department, Assam, in the event of receipt of any such proposal from the college authorities, shall consider the same and grant his approval in terms of the Act and Rules holding the field within a period of 15(fifteen) days thereafter.

9. In the event, it is found that the processing, as directed to be made, cannot be concluded before 31.03.2024, the same shall not be a bar to grant the benefits of promotion to the petitioner w.e.f. 01.01.2024 although he would retire from his services on 31.03.2024, on attaining the age of superannuation.

10. It is made clear that the promotion that is directed to be effected in case of the petitioner, shall be so effected notionally w.e.f. 01.01.2024 and the actual benefits shall be granted to the petitioner with effect from the date of his promotion if so effected before his retirement and in the event, it is not so effected before the date of retirement of the petitioner, the same shall be so effected w.e.f. 30.03.2024.

11. With the above directions and observations, this writ petition stands disposed of.

12. The instructions as produced by Mr. Tahbildar, learned standing counsel, Higher Education Department, shall be kept as a part of the record and marked as 'X' for identification.

JUDGE

Comparing Assistant