

GAHC010054642024



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

Case No. : WP(C)/1575/2024

HARENDRA NATH BORA
RETIRED STATE ELECTION COMMISSIONER, ASSAM,
SON OF LATE LILA KANTA BORA,
RESIDENT OF- HOUSE NO. 05, VINAYAK MARG,
HENGRABARI, GAUHATI-06,
DISTRICT- KAMRUP(M), ASSAM.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
SACHIBALAYA, DISPUR, GUWAHATI-06.

2:THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM
GENERAL ADMINISTRATIVE DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI-06.

4:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL(B) DEPARTMENT
DISPUR
GUWAHATI-06.

5:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
P AND RD DEPARTMENT
DISPUR
GUWAHATI-06.

6:THE COMMISSIONER SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-06.

7:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
SECRETARIAT ADMINISTRATION DEPARTMENT
DISPUR
GUWAHATI-06.

8:THE SECRETARY
ASSAM STATE ELECTION COMMISSION
2ND FLOOR
ADITYA TOWER
G.S. ROAD

OPPOSITE TO DOWNTOWN HOSPITAL

GUWAHATI-06

Advocate for the Petitioner : MR. N BORAH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

24.04.2024

Heard Mr. N. Bora, learned counsel for the petitioner. Also heard Mr. P. Handique, learned Standing Counsel, P&RD; Mr. A. Chakrabarty, learned Government Advocate; Mr. A Phukan, learned Standing Counsel, GAD and Mr. A. Chaliha, learned Standing Counsel, Finance.

This writ petition has been filed by the petitioner praying for setting aside of the order dated 11.05.2023 issued by the Secretary, General Administration Department informing the petitioner that the facilities of Telephone and Security Assistant are extended to Officers retiring in the rank of Chief Secretary and

equivalent rank from the Government of Assam. It was informed that the post of State Election Commissioner, Assam is equivalent to the rank of a Chairman, Assam Public Service Commission.

The learned counsel for the petitioner submits that the Chairman of the APSC is also equivalent to the rank of the Chief Secretary of the State. It is submitted that besides the Chief Secretary even the post of Officer in the rank of Addl. Chief Secretary has also been granted the benefit of Telephone and Security Assistant.

Mr. P. Handique, learned counsel appearing for the respondents submits that there is an appeal already preferred by the petitioner to the Chief Secretary vide appeal dated 01.07.2023. It is submitted that since there is already an appeal filed, a direction should be issued to the Chief Secretary to dispose of the appeal and pass necessary orders thereon. It is submitted that when there is a detailed appeal already preferred ordinarily, the writ Court would not like to entertain exercises powers of judicial review.

The rival submissions have been heard. The issue revolves around a short campus as to whether the petitioner who was appointed as the State Election Commissioner is entitled to the services of Telephone and Security Assistant which is a facility available to the Chief Secretary of the State as well as posts having equivalent rank.

Having heard the learned counsel for the parties, since the issues raised in the present writ petition are essentially the questions of fact and more particularly considering that an appeal has been preferred before the Chief Secretary, it would be apposite for the Chief Secretary to consider the matter in its entirety and thereafter pass necessary order indicating whether the post of

the State Election Commissioner is equivalent to that of the post of the Chief Secretary, Government of Assam and in which case whether the benefit of Telephone and Security Assistant is also required to be made available to an incumbent holding the post of State Election Commissioner may be adequately decided by calling for the necessary records as required. The Chief Secretary will, thereafter, pass a speaking order and any such speaking order that is passed, a copy thereof shall be served on the petitioner.

Needless to say, if the petitioner is still aggrieved with the orders passed by the Chief Secretary, is at liberty to approach this Court by assailing such orders as may be passed.

The directions be carried out by the appellate authority namely the Chief Secretary within a period of thirty days from the date of receipt of certified copy of this order.

With the above observations, the writ petition stands disposed of.

JUDGE

Comparing Assistant