

GAHC010094512018



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

Case No. : WP(C)/2975/2018

BAHARUL ISLAM
S/O LATE BADIR UDDIN AHMED, R/O NATBAMA HOUSEFED, SUPRABHAT
PATH, HOUSE NO. 4, P.O. AND P.S. HATIGAON, GUWAHATI 38, DIST.
KAMRUP (M), ASSAM, PRESENTLY WORKING AS PEON, O/O THE
DIRECTORATE OF MUNICIPAL ADMINISTRATION, ASSAM, DISPUR,
GUWAHATI-6, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PRINCIPAL SECY., URBAN DEVELOPMENT DEPTT.,
ASSAM SECRETARIAT, DISPUR, GUWAHATI-6, ASSAM.

2:THE DIRECTOR OF MUNICIPAL ADMINISTRATION

ASSAM
O/O THE DIRECTORATE OF MUNICIPAL ADMINISTRATION
ASSAM
DISPUR
GUWAHATI-6
ASSAM

Advocate for the Petitioner : MR S S DEY

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

09.02.2024

Heard Mr. M Nath, learned Senior counsel assisted by Mr. A Bhattacharjee, learned counsel for the petitioner. Also heard Mr. TC Chutia, learned Additional Senior Government representing the State.

2. The grievance of the petitioner is that the case of the petitioner for his promotion to the next higher post of LDA/ Junior Assistant has not been considered by his employer.
3. By an order dated 08.01.1992, the petitioner, who was working as peon against a leave vacancy with effect from 20.11.1991 was allowed to continue as peon under the Directorate of Municipal Administration, Assam in the resulted vacancy of one Sunanda Kalita, peon, who was appointed as Muhrrir.
4. The petitioner continued to work against such vacancy. While the petitioner was working in the aforesaid vacancy, by an office order dated 27.11.2013 issued under the signature of Director of Municipal Administration Assam, Guwahati, the service of the petitioner was confirmed in the post of peon with immediate effect i.e. with effect from 27.11.2013.
5. The case of the petitioner is that in terms of Rule 10(3) of the Assam Directorate Establishment (Ministerial) Service Rules 1973, the petitioner is having right for consideration of his case for promotion to the next higher post of LDA/ Junior Assistant. However, his case for promotion to the next higher grade has not been considered.
6. Rule 10(2) of the Rules, 1973 prescribes that the post of Junior Assistant should be filled up by two modes. Firstly, by direct recruitment and secondly by selection on the basis of suitability with due regard to seniority from amongst the Class-III employees as classified in the Assam Services (Revision of Pay) Rules 1983, whose scale of pay is less than that of Junior Assistant. Other prescribed qualifications under the said Rule are that the incumbents should pass higher secondary school leaving certification examination/ pre-university examination or equivalent examination and must have rendered not less than 5

years service on the first day of the year on which the selection is made. So far those candidates, who are matriculate or equivalent the length of service is prescribed to be continuous service of 7 years on the first day of the year in which the selection is made.

7. However, such Rule was amended and the Amendment Rule notified by notification dated 27.09.2016, whereby the minimum qualification prescribed was amended to be bachelor degree from a University recognized by the Government of Assam and not less than 7 years of continuous service in the office on the first date of the year on which the selection is made.
8. The service of the petitioner was confirmed on 27.11.2013 and therefore, prior to the amendment of the Rule on 27.09.2016, the petitioner did not acquire the qualification in terms of length of service to be considered for promotion under the old Rules inasmuch as he had only three years of service from the date of confirmation. Prior to 27.11.2013, the petitioner was working against a leave vacancy.
9. Though the petitioner has acquired the required length of service in the year 2020 in terms of the amended rule he is not having required qualification of Bachelor degree to be considered for promotion in terms of the amended rules.
10. As the petitioner did not acquired the require qualification in terms of the un-amended rule when he claimed for the promotion, at this stage, a direction cannot be issued for consideration of his case for promotion in terms of the un-amended rule also and at the same time he is not eligible for consideration in term of the amended rule.
11. In view of the aforesaid, no writ of mandamus can be issued even for consideration of promotion of the petitioner to the next higher grade. Accordingly, the writ petition stands dismissed being devoid of any merit.

JUDGE

Comparing Assistant