

GAHC010120102023



2024:GAU-AS:11669

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

Case No. : WP(C)/3236/2023

SAKTIDHAR GATHIRI AND ANR
S/O- SRI GOJEN GATHIRI,
VILL- CHAKALI BHORIA GAON,
P.O.- TENGAKHAT, DIST- DIBRUGARH,
PIN- 786103.

2: RANJAN RAIDONGIA VILL- LALMATI
P.O.- LALMATI PIN- 786007 DIST- DIBRUGARH ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY (GENERAL
ADMINISTRATIVE DEPARTMENT),
GOVERNMENT OF ASSAM,
DISPUR, GUWAHATI-06.

2:THE COMMISSIONER UPPER ASSAM DIVISION JORHAT 785001.

3:THE DISTRICT COMMISSIONER DIBRUGARH ASSAM PIN- 786001.

4:SMTI. RITUMONI DAS HEAD ASSISTANT
OFFICE OF THE DEPUTY COMMISSIONER DIBRUGARH ASSAM 786001

Advocate for the Petitioner : MR MINTU SAIKIA, MS R DUTTA,MR J FIRDAUS

Advocate for the Respondent : GA, ASSAM, SC, GAD,MS S MOCHAHARI (r-4),MR. S DUTTA (r-4),MR S DUTTA (r-4)

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

Date of hearing : 26.11.2024

Date of Judgment : 26.11.2024

Judgment & order(Oral)

Heard Mr. Mintu Saikia, learned counsel, appearing on behalf of the petitioners. Also heard Mr. A. Phukan, learned standing counsel, General Administration Department; Mr. D. Bora, learned Government Advocate; and Mr. S. Dutta, learned counsel, appearing on behalf of their respective respondents.

2. The challenge in the present proceeding, is to the promotion effected in respect of the respondent No. 4, herein, to the post of Head Assistant in the then establishment of the Deputy Commissioner, Dibrugarh, vide order, dated 20.02.2023.

3. As projected in the writ petition; the petitioners, herein, as well as the private respondent No. 4, herein, who were working as Senior Assistants in the then establishment of the Deputy Commissioner, Dibrugarh, had submitted their respective applications for being considered for appointment against the post of Head Assistant in the amalgamated establishment of the then Deputy Commissioner, Dibrugarh, in pursuance of an advertisement, issued for the purpose on 25.05.2022. Thereafter, the cases of the petitioners as well as the respondent No. 6, herein, along with other eligible candidates so applying for recruitment to the post of Head Assistant in pursuance of the said advertisement, were considered by the duly constituted selection committee.

4. On conclusion of the process of selection, in question, the selection committee had recommended one Smt. Malati Borah, Supervisory Assistant, at Serial No. 1, and the private respondent No. 4, herein, at Serial No. 2, and the petitioners No. 1 & 2, herein, at Serial No. 3 & 4, respectively. The recommendations of the selection committee in this connection having been received; it is seen that Smt. Malati Borah who was recommended at Serial No. 1 was also selected for promotion to the post of Revenue Sheristadar and accordingly, she had withdrawn her candidature for appointment to the post of Head Assistant. The Commissioner, Upper Assam Division, Jorhat, vide order, dated 20.02.2023, on consideration of the recommendations of the selection committee and noticing that the person so recommended at Serial No. 1 viz. Smt. Malati Borah had withdrawn her candidature; proceeded to appoint the private respondent No. 4, herein, against the post of Head Assistant.

5. Being aggrieved, the petitioner has instituted the present proceeding before this Court.

6. Mr. Saikia, learned counsel for the petitioners, has submitted that the selection and appointment of respondent No. 4, herein, is not sustainable on account of the fact that she was junior to the petitioners, herein. The learned counsel has further submitted that the promotion of the respondent No. 4 to the post of Senior Assistant is not sustainable in-as-much as on the date of her such promotion effected on 15.10.2005, she was not a confirmed employee in the post of Junior Assistant and accordingly, her such promotion would be of no consequence thereby rendering her selection for appointment to the post of Head Assistant *void ab initio*.

7. Mr. Saikia, learned counsel, has also submitted that the prescription

made in the advertisement, in question, having mandated that the candidate to be eligible to apply for selection against the post of Head Assistant, must have necessarily completed 10 years as Senior Assistant including as Supervisory Assistant in different branches of the amalgamated establishment of the office of the then Deputy Commissioner; the respondent No. 4, herein, not having the experience of serving against the post of Supervisory Assistant coupled with the fact that her promotion to the post of Senior Assistant was so effected without she being confirmed to the post of Junior Assistant; the promotion of the respondent No. 4, herein, to the post of Head Assistant, would require an interference.

8. Per contra, Mr. Bora, learned Government Advocate, appearing on behalf of respondents No. 2 & 3, has submitted that both the petitioners as well as the respondent No. 4, herein, were eligible in terms of the advertisement, in question, to apply for recruitment against the post of Head Assistant and they having so applied; their cases were considered by the duly constituted selection committee. The selection committee, on consideration of the cases of the candidates placed before it including the cases of the petitioners and the respondent No. 4, herein; had proceeded to recommend the names of one Smt. Malati Borah at Serial No. 1; the respondent No. 4, at Serial No. 2; and the petitioners No. 1 & 2, at Serial No. 3 & 4, respectively. Said Smt. Malati Borah having withdrawn her candidature for recruitment against the post of Head Assistant; the respondent authorities had proceeded to appoint the respondent No. 4, herein, as Head Assistant, in terms of her merit obtained in the selection process.

9. Mr. Bora, learned Government Advocate, has further submitted that the Rules holding the field and also the prescription made in the advertisement,

dated 25.05.2022, does not mandate a candidate applying for the post of Head Assistant to have a mandatory service as Supervisory Assistant also. It is, therefore, submitted by Mr. Bora, that a period of 10 years of service as Senior Assistant would suffice the requirements of the Rules as well as the eligibility conditions prescribed in the advertisement, dated 25.05.2022, for applying for promotion to the post of Head Assistant.

10. In the above premises, Mr. Bora, learned Government Advocate, has submitted that the respondent No. 4, herein, being eligible to apply for the post of Head Assistant having the requisite length of service against the post of Senior Assistant; no error exists in the selection and appointment of the respondent No. 4, herein, to the post of Head Assistant.

11. Mr. Dutta, learned counsel appearing on behalf of respondent No. 4, has adopted the arguments advanced by Mr. Bora, learned Government Advocate, appearing for respondents No. 2 & 3. Mr. Dutta, learned counsel, has, however, submitted that in pursuance of the appointment of private respondent No. 4, herein, to the post of Head Assistant; the respondent No. 4 has been discharging her duties in the said capacity till date.

12. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

13. The advertisement, dated 25.05.2022, mandates the eligibility conditions for applying to the post of Head Assistant, in pursuance thereof, as under:

“Candidates who have not completed at least 10 (ten) years of service as Senior Assistant Including Supervisory Assistant in different branches of the amalgamated establishment of the office of the Deputy Commissioners in the State of Assam, need not apply.”

14. A perusal of the said eligibility conditions would go to show that a candidate having 10 years of service as Senior Assistant would be eligible for applying for recruitment to the post of Head Assistant. The said eligibility conditions as mentioned in the advertisement, dated 25.05.2022, only specifies that the 10 years of service experience requisite for applying against the post of Head Assistant, can be so satisfied by an incumbent with his/her service as Senior Assistant and also as a Supervisory Assistant.

15. The eligibility conditions as set-out in the advertisement, dated 25.05.2022, does not, in any manner, indicate that for being eligible to apply for the post of Head Assistant, an incumbent must necessarily possess the experience of working as a Supervisory Assistant in the amalgamated establishments of the then Deputy Commissioners in the State of Assam. Accordingly, it is to be held that the respondent No. 4, herein, having rendered the requisite length of service as a Senior Assistant, was eligible for being considered for recruitment against the post of Head Assistant.

16. Having concluded as above with regard to the eligibility of the respondent No. 4, herein, to apply for appointment against the post of Head Assistant in pursuance of the advertisement, dated 25.05.2022; the contention raised by Mr. Saikia, learned counsel for the petitioners, that the respondent No. 4 was not eligible for being promoted against the post of Senior Assistant as on 15.10.2005, on the ground that she was not confirmed in her service against the post of Junior Assistant held by her, is being considered.

17. The provisions of the Assam Ministerial District Establishment Service Rules, 1967, more particularly, sub-rule 3 of Rule 9 thereof; mandates that if

confirmation of a member is delayed on account of his failure to qualify for such confirmation, he shall lose his position in order of seniority vis-à-vis such of his juniors as might be confirmed earlier than him. It is also stipulated that the seniority of such employee shall, however, be restored on his confirmation, subsequently.

18. It is brought on record that the respondent No. 4, herein, was subsequently confirmed as a Junior Assistant and accordingly, the said contention of Mr. Saikia, learned counsel for the petitioners, with regard to the eligibility of the respondent No. 4, herein, for being promoted to the post of Senior Assistant before confirmation of her service as Junior Assistant; would not merit acceptance.

19. A perusal of the contentions raised in the present proceeding, would go to show that the petitioner, herein, has not alleged any mala fide against the members of the selection committee constituted under the Chairmanship of the jurisdictional Deputy Commissioner, for holding the selection for appointment against the post of Head Assistant, in pursuance of the advertisement, dated 25.05.2022. Accordingly, in view of the above position; the recommendations as made by the said selection committee leading to the appointment of the respondent No. 4, herein, to the post of Head Assistant, would not call for any interference.

20. In view of the above discussions; this Court is of the considered view that the appointment of the respondent No. 4, herein, as Head Assistant, so effected vide order, dated 20.02.2023, would not call for any interference from this Court.

21. In that view of the matter, the writ petition is held to be devoid of any merit and the same, accordingly, stands dismissed. However, there shall be no order as to costs. Interim order, if any, stands vacated.

JUDGE

Comparing Assistant