

GAHC010224722014



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

Case No. : WP(C)/365/2014

GAUTAM SAIKIA
S/O- LT. KHARGI SAIKIA, R/O VILL.- NO. 2 ITAKHOLA,
P.O.- ITAKHOLA, DIST.- SONITPUR, ASSAM.

VERSUS

1: THE STATE OF ASSAM AND 2 ORS REP. BY THE COMMISSIONER and
SECY., REVENUE DEPTT. TO THE GOVT. OF ASSAM, DISPUR, GHY- 6.

2: THE DY. COMMISSIONER
SONITPUR ASSAM.

3: ARUN GHOTOWAR
S/O- LT. LALIT CH. GHATOWAR R/O VILL. - NO. 2 ITAKHOLA
P.O. and P.S.- ITAKHOLA PIN- 784182 DIST.- ASSAM

Advocate for the Petitioner : MR.A CHOUDHURY

Advocate for the Respondent : MRS.V L SINGH

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 21-03-2024

Heard Mr. A. Choudhury, learned counsel for the petitioner. Also heard Mr. J. Handique, learned standing counsel, Revenue Department representing the respondent No.1 and Mr. B. Deori, learned Junior Government Advocate, Assam, representing the respondent Nos.1.A and 2.

The present writ petition has been instituted by the petitioner herein assailing an order dated 05.12.2023 passed by the Commissioner, North Assam Division, Tezpur in Appeal Case No.1/2013, by which the selection and appointment of the petitioner as the Gaonburah of No.2 Itakhola Village was cancelled.

The petitioner in pursuance to a due process of selection was appointed as the Gaonburah of No.2 Itakhola Village by the Extra Assistant Commissioner, Sonitpur, Tezpur and he, on assuming such charge and on completion of the formalities as prescribed, was discharging his duties in the said capacity. The respondent No.3 herein, who was also a candidate in the selection process for the post of Gaonburah of the said village, instituted an appeal before the Commissioner, North Assam Division, Sonitpur assailing the appointment of the petitioner herein as the Gaonburah of the said village. The said appeal was so instituted by the respondent No.3 contending that he being the son of the earlier incumbent in the post of Gaonburah, he had preferential right in the matter and accordingly it was he, who should have been preferred for such appointment. The respondent authorities having appointed the petitioner herein as the Gaonburah had violated the provisions of the Executive Instructions holding the field in this connection.

The petitioner herein had entered appearance in the said appeal and had questioned the jurisdiction of the Commissioner, North Assam Division, Tezpur to consider the said appeal inasmuch as the first appeal ought to have been preferred before the jurisdictional Deputy Commissioner. Ignoring the objections raised by the petitioner herein, the Commissioner, North Assam Division, vide order dated 05.12.2023, allowed the appeal of the respondent No.3 by interfering with the appointment made in the case of the petitioner. The

appellate authority further directed that the respondent No.3 herein be appointed as the Gaonburah of the village. Accordingly, vide an order dated 06.01.2024, while cancelling the appointment made in respect of the petitioner herein, the District Authorities proceeded to appoint the respondent No.3 as the Gaonburah.

It is to be seen that the petitioner was appointed as the Gaonburah of the said village after a due process of selection, wherein he was found to be the most suitable candidate for the said post. The respondent No.3 was also a candidate in the said selection process. It is reflected from the pleadings of the parties that the petitioner had secured 65 marks in the said recruitment process, whereas the respondent No.3 had secured only 39 marks. It is to be noted that the office of the Gaonburah is not a hereditary one and no family members of a Gaonburah, as a matter of right, can claim to have a preferential right to be appointed in such capacity. The provisions of the Executive Instructions holding the field mandate that the Selection Committee shall ascertain the suitability of the candidate for such appointment and thereafter basing on such ascertainment of suitability, recommendation would be made in favour of the candidate so found suitable.

The respondent No.3 has claimed that he being the son of the earlier Gaonburah, he was entitled to a preferential treatment in the matter of recruitment to the post of Gaonburah. Such contention of the petitioner also found favour with the appellate authority.

The said claim as made by petitioner for a preferential treatment in the context of the recruitment in question would mean that other things being qualitatively and quantitatively equal, legal heirs of earlier Gaonburahs would be preferred. It does not mean enblock preference irrespective of *inter-se*

suitability. The respondent No.3 and the petitioner herein having not been qualitatively and quantitatively found to be similarly placed, there would not arise any occasion for appointing the respondent No.3 by extending preferential treatment to the respondent No.3.

Accordingly, the contention of the respondent No.3 that he was entitled to be appointed as the Gaonburah by extending preferential treatment to him does not merit acceptance.

The contention of the petitioner that the Divisional Commissioner, North Assam Division, Tezpur had no jurisdiction to entertain the appeal preferred by the respondent No.3 is now being examined.

The provisions of the Executive Instructions, more particularly, the instructions at Clause 162(a) mandate that in the event the appointment is made by an authority below the Deputy Commissioner, an appeal in the first instance in such matter will lie before the jurisdictional Deputy Commissioner and it is thereafter only that any person aggrieved can approach the jurisdictional Divisional Commissioner.

In the case in hand, it is seen that the Divisional Commissioner had entertained the appeal at the first instance itself inspite of due objections being raised in this connection by the petitioner herein. The appeal having been so entertained without any jurisdiction, the order dated 05.12.2023 cannot be sustained and accordingly the same requires to be interfered with.

In view of the above conclusions, the order dated 05.12.2023 passed by the Commissioner, North Assam Division, Tezpur in Appeal Case No.1/2023 is hereby set aside and quashed. Further, the consequential order dated 06.01.2024 passed in pursuance to the said appellate order dated 05.12.2023 appointing the respondent No.3 herein as the Gaonburah of the said village also

stands set aside and quashed. Accordingly, the order dated 26.10.2012 appointing the petitioner as the Gaonburah stands revived and it is deemed that the petitioner is in service as a Gaonburah for all intent and purpose since the date of his appointment, i.e. 26.10.2012. However, on account of the developments taking place during the intervening period, the petitioner not having been able to discharge his duties, the Deputy Commissioner, Sonitpur is directed to forthwith allow the petitioner to resume his duties. The petitioner would not be entitled to any emoluments for the period from 06.01.2024 till the date he resumes his duties. On the date he so resumes his duties, necessary emoluments due to him would be released with prospective effect.

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

JUDGE

Comparing Assistant