

GAHC010228312016



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

Case No. : WP(C)/6660/2016

PRANAB JYOTI DAS
S/O SRI PRAFULLA CHANDRA DAS R/O VILL- NARAYANPUR, MIRZA, P.O.
MIRZA, P.S. PALASHBARI DIST. KAMRUP R, ASSAM, PIN - 781125.

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY SECRETARY TO THE GOVT. OF ASSAM, PUBLIC HEALTH
ENGINEERING DEPARTMENT, DISPUR, GUWAHATI -6.

2:THE ASSAM PUBLIC SERVICE COMMISSION

REP. BY ITS SECRETARY
JAWAHARNAGAR
KHANAPARA
KAMRUP
GUWAHATI -22
ASSAM.

3:THE CHIEF ENGINEER

PUBLIC HEALTH ENGINEERING
W
ASSAM
HENGRABARI
GUWAHATI -36
KAMRUP M
ASSAM.

4:THE DIRECTOR

WSSO

PUBLIC HEALTH ENGINEERING DEPARTMENT BETKUCHI
GUWAHATI-35.

5:THE EXECUTIVE ENGINEER

PHE STORE AND WORKSHOP DIVISION
GUWAHATI

Advocate for the Petitioner : MS.F BEGUM

Advocate for the Respondent : SC, P H E

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

24.07.2024

Heard Shri JI Borbhuiya, learned counsel for the petitioner. Also heard Shri RR Gogoi, learned Standing Counsel, PHE Department and Ms. P. Sarma, learned counsel is present for the respondent no. 2 – APSC.

2. The grievance of the petitioner is with regard to non-completion of a recruitment process initiated by the Department through the APSC for filling up the post of Assistant Engineer (IT), PHE Department. As per the facts projected, the petitioner was appointed as Assistant Engineer (IT), PHE under Regulation 3(f) of the Assam Public Service Commission (Limitation of Function) Regulation, 1951 vide an order dated 16.06.2014. Though the petitioner was working on the strength of extension order, the post was sought to be filled up on regular basis vide an advertisement dated 31.12.2014 in which this particular post was reflected against Sl. No. 2. It is the case of the petitioner that though he had duly applied for the said post, no steps were taken by the authorities to bring the process to a logical conclusion. In the meantime, the engagement of the petitioner under Regulation 3(f) was also discontinued.

3. The learned counsel for the petitioner has submitted that since he was appointed in the said post under Regulation 3(f), that indicates that there is a valid sanctioned post and the authorities were under a bounden duty to complete the process of recruitment by fairly considering the case of the petitioner. However, the same has not been done without any valid reason and therefore appropriate direction is liable to be issued. He has also submitted that there was no delay in approaching the court as this petition was filed in the year 2016 itself immediately after his discontinuation from service.

4. The PHE Department had filed affidavit-in-opposition on 10.07.2017 as well as an additional affidavit on 01.11.2022. By referring to the said affidavit, more particularly, a communication dated 08.01.2018, Shri Gogoi, learned Standing Counsel has submitted that though there was a contemplation to have such a post in the cadre of the Department, the same was not approved and therefore the recruitment could not be done. He submits that when the post itself is not there in the cadre, making of a regular appointment will not be permissible under the law. He has also clarified that the post was included in the advertisement on the contemplation that the Rules would be amended to incorporate the post which was ultimately not done.

5. The reasons prescribed to justify the stand of the respondents not to fill up the post on regular basis appear to be *bona fide* as in absence of a post in the cadre, the regular appointment is not permissible in law. This Court has also noticed that the aforesaid document dated 08.01.2018 issued by the Department to the APSC has been supported by an affidavit.

6. In view of the above, this Court is of the opinion that no effective relief can be granted to the petitioner in this case and accordingly, the writ petition is dismissed.

7. At this stage, Shri Borbhuiya, learned counsel for the petitioner prays for release of his entitlements. The petitioner may make appropriate application to the Department which would be considered in accordance with law.

JUDGE

Comparing Assistant