

GAHC010258242014



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

Case No. : WP(C)/439/2014

CHAMPAK RAVA

S/O- SRI TARUN RAVA, R/O VILL.- RAJU GAON, P.O.- PALASH PATHAR,
NEAR LAKESWARI TEA INDUSTRIES, PIN- 784110, DIST.- SONITPUR,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
THROUGH THE SECY. TO THE GOVT. OF ASSAM, HEALTH AND FAMILY
WELFARE DEPTT., DISPUR, GHY- 6.

2:THE DIRECTOR OF HEALTH SERVICES ASSAM
HENGRABARI GHY- 36.

3:THE JOINT DIRECTOR OF HEALTH SERVICES ASSAM
SONITPUR P.O.- TEZPUR DIST.- SONITPUR ASSAM.

4:THE SUPERINTENDENT KANAKLATA CIVIL HOSPITAL
TEZPUR DIST.- SONITPUR ASSAM.

5:SUHAN KURMI
C/O- THE JOINT DIRECTOR OF HEALTH SERVICES
ASSAM SONITPUR P.O.- TEZPUR DIST.- SONITPUR ASSAM.

6:JATIN BORAH
C/O- THE JOINT DIRECTOR OF HEALTH SERVICES
ASSAM SONITPUR P.O.- TEZPUR DIST.- SONITPUR ASSAM.

7:KISHORE SUBEDI
C/O- THE JOINT DIRECTOR OF HEALTH SERVICES
ASSAM SONITPUR P.O.- TEZPUR DIST.- SONITPUR ASSAM

Advocate for the Petitioner : MS.S D CHOUDHURY

Advocate for the Respondent :

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

ORDER

Date : 03.05.2024

Heard Ms. A. Borah, learned counsel for the petitioner. Also heard Mr. D. P. Borah, learned standing counsel, Health & Family Welfare Department, appearing on behalf of respondents the State respondents. However, none appears for private respondents No. 5, 6 & 7.

2. The grievance raised by the petitioner in the present proceeding, pertains to the denial of the benefit of promotion to the cadre of Lower Division Assistant[presently rechristened as "Junior Assistant(JA)"] and his supersession in such promotion by the private respondents No. 5, 6 & 7.

3. As projected in the writ petition, the petitioner, in pursuance to a Special Recruitment Drive as conducted by the Health and Family Welfare Department, Government of Assam, for filling up of vacant posts reserved for candidates belonging to Scheduled Castes/Scheduled Tribes; the petitioner being found to be eligible, he was along with others, appointed as a Grade-IV employee vide an order, dated 24.01.2006, issued by the Director of Health Services, Assam. The petitioner on his recruitment against the Grade-IV post as involved in the said special recruitment drive, was, on his appointment vide order, dated 24.01.2006, posted against an available vacant post in the establishment of the Joint Director of Health Services, Government of Assam, Sonitpur. It is contended that the petitioner joined his services in terms of his said order of appointment on 10.02.2006.

4. The private respondents No. 5, 6 & 7 were contended to have joined the establishment of the respondent No. 3 on 05.04.2008 as Grade-IV employees. It is the contention of the petitioner that the cases of private Respondents No. 5, 6 & 7 were so considered for promotion to the cadre of Junior Assistant(JA), and they were so promoted vide an order, dated 07.12.2013.

5. However, the petitioner, inspite of being senior to the private Respondents No. 5, 6 & 7; his case for such promotion was not considered and accordingly, he came to be deprived of his due promotion to the cadre of Junior Assistant(JA). Being aggrieved, the petitioner had approached the Director of Health Services, Assam, by way of submitting a representation, dated 16.12.2013, praying for his promotion to the cadre of Junior Assistant(JA) with effect from the date his juniors were so promoted.

6. The petitioner further contends in the writ petition that inspite of there being available vacant posts in the cadre of Junior Assistant(JA) wherein the case of the petitioner could be considered for promotion; his case for such promotion to the cadre of Junior Assistant(JA) was not considered by the respondent authorities and further, the representation as submitted by him in the matter not having been given its due consideration; the petitioner was constrained to institute the present proceeding praying for a direction upon the respondent authorities for his promotion to the cadre of Junior Assistant(JA).

7. At the outset, it is to be noted that the respondent authorities inspite of pendency of the present proceeding since the year 2014, have not filed their

affidavits in the matter and accordingly, the averments as made in the writ petition by the petitioner, stands uncontroverted.

8. However, considering the issue as arising in the present proceeding and also the long lapse of time occasioning since the date the private Respondents No. 5, 6 & 7 were so promoted to the cadre of Junior Assistant(JA); this Court had required the learned Standing Counsel, Health and Family Welfare Department, appearing in the matter, to receive instructions.

9. Today, Mr. Borah, learned standing counsel, Health and Family Welfare Department, has placed on record, a communication, dated 30.04.2024, received by him from the Director of Health Services, Assam, in the matter.

10. In the said communication, dated 30.04.2024, it was projected that the case of the petitioner for promotion to the cadre of Junior Assistant(JA) did not come under consideration, may be, due to oversight and thereafter, as the matter had become subjudiced in the present proceeding; the promotion of the petitioner was not considered. It is contended that the petitioner would be now promoted to a Grade III post after the Model Code of Conduct with regard to the General Elections, 2024, is lifted.

11. It was also contended in the said communication, dated 30.04.2024, that the ministerial staff under the Directorate of Health Services, Assam, form a single cadre all over the State although they are working in their district establishments. It was further pointed-out in the said communication that a

common gradation list of Grade IV employees is not maintained and such promotion of Grade IV employees to higher posts is effected basing on the district level gradation list as maintained in the matter.

12. The issues as arising in the present proceeding, need not detain this Court any further in view of the stand as taken by the respondent authorities in the said communication, dated 30.04.2024, wherein, it has been brought on record that admittedly, the case of the petitioner for promotion to the cadre of Junior Assistant(JA) was not considered on account of an oversight when the cases of the respondents No. 5, 6 & 7 were so taken-up for consideration for their promotion to the cadre of Junior Assistant(JA) .

13. The petitioner not having been demonstrated to be junior to the private Respondents No. 5, 6 & 7, herein, and the averments made in the writ petition to the effect that the Respondents No. 5, 6 & 7 had joined their respective services only on 05.04.2008 whereas the petitioner, herein, had joined his such services on 10.02.2006; it is held by this Court that non-consideration of the case of the petitioner for promotion to the cadre of Junior Assistant(JA) while considering the cases of the private Respondents No. 5, 6 & 7, for their promotion to the cadre of Junior Assistant(JA) had resulted in a violation of the fundamental rights of the petitioner, in this connection.

14. Accordingly, the denial as meted-out to the petitioner in the matter, as noted hereinabove, and the promotion of the private Respondents No. 5, 6 & 7, w.e.f. 07.12.2013 to the cadre of Junior Assistant(JA) having caused prejudice to

the service interest of the petitioner; the same is called to be remedied.

15. In view of the above conclusions as reached by this Court in the matter and in the absence of any material brought on record to contradict the contentions made by the petitioner in the writ petition; this Court passes the following directions:

(i). The Director of Health Services, Assam, in terms of the contentions as made by him in the communication, dated 30.04.2024; shall now have the case of the petitioner considered for promotion to the cadre of Junior Assistant(JA) w.e.f. 07.12.2013 i.e. the date when the private Respondents No. 5, 6 & 7 were so promoted to the cadre of Junior Assistant(JA).

(ii). The petitioner, on being promoted to the cadre of Junior Assistant(JA) with effect from the date of such promotion effected in the cases of private Respondents No. 5, 6 & 7, w.e.f. 07.12.2013; the petitioner's pay and allowances shall be so fixed on notional basis with effect from the date of his promotion till the date of actual assumption of charge by the petitioner of the promotional post of Junior Assistant(JA).

(iii). The petitioner now being required to be promoted to the cadre of Junior Assistant(JA) with effect from the date of such promotion effected in the cases of Respondents No. 5, 6 & 7, i.e. 07.12.2013; he shall be deemed to be senior to the Respondents No. 5, 6 & 7, herein, in the cadre of Junior Assistant(JA) and his such promotion to the next

higher cadres of the service shall be so considered by reckoning him to be senior to the Respondents No. 5, 6 & 7.

(iv). In the event, if the Respondents No. 5, 6 & 7 and/or any one of them have been considered for promotion to the next higher cadres of the service; the case of the petitioner shall also be so considered for such promotion and on such consideration being made, the petitioner shall also be promoted to the cadres to which the Respondents No. 5, 6 & 7 and/or anyone of them have so moved, in the meantime, with all consequential benefits of pay, seniority, etc..

16. The exercise as now required to be carried-out by the Director of Health Services, Assam, for implementation of the directions as passed by this Court hereinabove; would be now initiated and concluded by him within a period of 90(ninety) days from the date of receipt of a certified copy of this order.

17. The petitioner, herein, is now required to submit a certified copy of this order along with a forwarding to the Director of Health Services, Assam, for taking the matter forward.

18. With the above directions and observations; this writ petition stands disposed of.

JUDGE

Comparing Assistant