

GAHC010267642017



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

Case No. : WP(C)/4731/2017

MD. AMZAD HUSSAIN
S/O. LT. JASHMAT ALI, R/O. VILL. BALIKURI, P.O. BALIKURI, P.S.
BAGHBAR, DIST. BARPETA, ASSAM, PIN-781319.

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, PANCHAYAT and
RURAL DEVELOPMENT, ASSAM, PANJABARI, JURIPAR, GUWAHATI-37.

2:THE SECRETARY TO THE GOVT. OF ASSAM

FINANCE AUDIT and FUND DEPTT.
DISPUR
GUWAHATI-06.

3:THE JOINT SECRETARY TO THE GOVT. OF ASSAM

PANCHAYAT and RURAL DEVELOPMENT DEPTT.
DISPUR
GUWAHATI-06.

4:THE DIRECTOR OF PANCHAYAT and RURAL DEVELOPMENT DEPTT.

JURIPAR
GUWAHATI-37

Advocate for the Petitioner : MS.M GOGOI

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

22.04.2024.

Heard Shri SA Ahmed, learned counsel for the petitioner. Also heard Shri P Handique, learned Standing Counsel, Panchayat and Rural Development (P&RD) Department, Assam.

2. The writ petition has been filed with the following prayers:

“ It is therefore prayed that your Lordship would graciously be pleased admit this petition, issue Rule calling upon the Respondents as to why a writ in the nature of mandamus/certiorari shall not be issued directing the Respondent authorities to consider the 1% reserved category in promotion as well as provide disability allowances in favour of the petitioner. Without considering the physical disability of the petitioner, any further arrangement for promotion may not be prepared and/or cause or causes being shown and after hearing both the parties and on perusal of the records of the case make the Rule absolute and/or pass such further Order/orders as Your Lordships may deem fit and proper to secure the ends of justice.

-AND-

Pending disposal of this Writ Petition, without including the petitioner's name in the promotional list, further promotion may be stayed as interim measure and/or pass such further order /orders as Your Lordship may deem

fit and proper in the interest of justice.”

3. The facts projected is that the petitioner was appointed as a Extension Officer (Fishery) in the year 2002 in the Department of P&RD. The next promotional post is of Assistant Development Commissioner.

4. It is the contention of the petitioner that on 31.12.2014, four numbers of incumbents in the post of Extension Officer (Fishery) were promoted to the next higher post of Assistant Development Commissioner. However, the petitioner was not promoted.

5. The entire case of the petitioner is that he comes within the category of the Persons with Disabilities (Equal Opportunities, Projection of Rights and Full Participation) Act, 1995 (for short referred to as the Act) as per which, 3% reservation is to be given for such post. The petitioner has also annexed an identity card in this regard as Annexure-B.

6. Shri Ahmed, learned counsel for the petitioner has submitted that he had filed representation on 01.10.2007 to consider his promotion which, however, has not been done and accordingly, the writ petition was filed in the year 2017.

7. The learned counsel for the petitioner submits that since the petitioner belongs to the PwD category under the said Act, it is mandatory to fill up the aforesaid reserved vacancy. In this connection, Shri Ahmed, learned counsel has also referred to an order of the Hon'ble Apex Court dated **08.10.2013** in **Civil Appeal No. 9096/2013** arising out of **SLP(C) No.7541/2009 (Union of India & Anr. Vs. The National Federation of the Blind & Ors.)**. The learned counsel,

accordingly submits that an appropriate directions be issued for promoting the petitioner in the post of Assistant Development Commissioner under the PwD category.

8. *Per contra*, Shri Handique, learned Standing Counsel, P&RD has submitted that admittedly, the petitioner had joined the service as an Extension Officer (Fishery) in the year 2002 and the claim made under the category PwD emanates from the certificate of the year 2004. That apart, he submits that the cadre strength in the post of Assistant Development Commissioner is 4 wherein the 3% reservation would not be applicable. The learned Standing Counsel has also placed on record the written instructions received on 17.04.2024 along with parawise comments and the relevant documents.

9. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

10. There is no dispute in the Bar regarding the mandatory nature and obligation to fill up vacancies by following the reservation mentioned in the Act. The claim of the petitioner is based on a certificate which has been annexed as Annexure-B, page 19. The said certificate was issued in the year 2004 i.e. after the petitioner had joined the services as Extension Officer (Fishery). However that would not come in the way for considering the case of the petitioner for claiming promotion to the next higher post. However, the certificate has also mentioned that it was only for children below 18 years of age.

11. Be that as it may, without dilating further into the aspect of the validity of

the certificate and proceeding with the assumption that the petitioner, indeed belongs to the PwD category, what is relevant is to consider whether the aforesaid Act could be made applicable so far as the present post of Assistant Development Commissioner is concerned. Nowhere in the writ petition, the petitioner has made any statement with regard to the cadre strength in the post of Assistant Development Commissioner and therefore, the basis to make such claim cannot be ascertained at all. However, the learned Standing Counsel of the Department has submitted that the total cadre in the post of Assistant Development Commissioner is 4. Therefore, the contention made on behalf of the Department that reservation of 3% would not be permissible is a sustainable contention.

12. Therefore, even if the aspect of inadequate pleadings is overlooked, in the facts and situation of the present case, the provision of the Act will not be applicable. Accordingly no relief can be granted to the petitioner.

13. However, it is made clear that while the claim for reservation to the aforesaid post of Assistant Development Commissioner has been negated, if there is a provision for affording the disability allowance, the authorities may consider the same in accordance with law. To facilitate the same, the petitioner may file a representation within a period of 15 days from today.

14. In view of the above, the writ petition is disposed of.

JUDGE

Comparing Assistant