

GAHC010270762022



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

Case No. : Review.Pet./32/2023

THE STATE OF ASSAM AND ORS
REPRESENTED BY THE ADDL. CHIEF SECRETARY TO THE GOVT. OF
ASSAM, FOOD AND CIVIL SUPPLIES AND CONSUMER AFFAIRS
DEPARTMENT, DISPUR GUWAHATI 781006

2: THE SECRETARY
TO THE GOVT. OF ASSAM
FOOD AND CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT
DISPUR GUWAHATI 781006

3: THE DIRECTOR
GOVT. OF ASSAM
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT
BHANGAGARH
GUWAHATI 781005

4: THE SELECTION COMMITTEE
CONSTITUTED FOR PROMOTION OF JUNIOR ASSISTANT TO THE POST OF
SUB INSPECTOR UNDER THE PROMOTIONAL QUOTA IN THE
DIRECTORATE OF FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
ASSAM
REPRESENTED BY ITS CHAIRMAN
OFFICE OF THE DIRECTOR
GOVT. OF ASSAM
FOOD AND CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT
BHANGAGARH
GUWAHATI 78100

VERSUS

ATIFUL RAHMAN AND ANR .
S/O SOHRAB ALI SARKAR, RESIDENT OF VILLAGE SHERNAGAR, PO AND

PS AGOMONI, DIST DHUBRI, ASSAM, 783335

2:THE DEPUTY COMMISSIONER
DHUBRI
ASSA

Advocate for the Petitioner : SR GA,ASSAM

Advocate for the Respondent : MR. K N CHOUDHURY (R-1)

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

07.03.2024

1. Heard Mr. D. Nath, learned counsel for the review petitioners. Also heard Mr. K.N. Choudhury, learned Senior Counsel, assisted by Mr. M. Das, learned counsel for the opposite party no.1.

2. The review petitioners have prayed for reviewing the impugned judgment and order dated 31.03.2022 passed in WP(C) No.5158/2021, on the ground that the opposite party no.1/writ petitioner, who was an employee in the establishment of the Deputy Commissioner, Dhubri, could not be considered for promotion to a post in the Directorate of Food & Civil Supplies. The learned counsel for the review petitioner submits that six categories of posts makeup the Assam Food and Civil Supplies Service under the Assam (Food and Civil Supplies) Service Rules, 1970 (hereinafter referred to as "the 1970 Rules"). Rule 3 of the 1970 Rules provides as follows :

“3. Constitution: (1) The service shall consist of the following six categories of posts :-

(a) Joint Director of Foodland. Civil Supplies;

(b) Deputy Director of Food and Civil Supplies;

- (c) Assistant Director of Food and Civil Supplies;*
- (d) Superintendent of Food and Civil Supplies;*
- (e) Inspector of Food and Civil Supplies;*
- (f) Sub-Inspector of Food and Civil Supplies.*

(2) Each of the six categories in sub- rule (1) shall form an independent cadre. Members of any category shall have no claim for appointment to another category except in accordance with the provisions of these rules."

3. The review petitioners' counsel submits that the post of Sub-Inspector of Food & Civil Supplies have to be filled up in terms of Rule 11(2) of the 1970 Rules from the ministerial cadre of the Directorate. As the opposite party no.1 did not belong to the ministerial cadre of the Directorate, he could not have been promoted to a post under the Directorate.

4. Mr. K.N. Choudhury, learned Senior Counsel for opposite party, on the other hand submits that the issue in the writ petition was only confined to the petitioner not being considered for promotion to the post of Sub-Inspector of Food & Civil Supplies, on the ground that he did not meet the required qualifying years of service in the Food, Civil Supplies & Consumer Affairs (for short "FCS & CA") Branch of the DC's establishment, due to a 3 month break. However, the issue raised here is beyond the issue raised in the writ petition.

5. The learned Senior Counsel for the opposite party no.1 submits that in terms of Rule 11(2) of the 1970 Rules, the feeder post for promotion to the post of Sub-Inspector of Food & Civil Supplies was not confined only to the

ministerial cadre of the Directorate of Food & Civil Supplies, but also included the ministerial cadre working in the Food & Civil Supplies offices in the District and Sub-Division, thereby implying that those working in the FCS & CA Branch of the amalgamated Deputy Commissioner's establishment could also be considered for the same.

6. The learned Senior Counsel for the opposite party no.1 also submits that in terms of the order dated 19.09.2014 passed by the Commissioner & Secretary to the Government of Assam, FCS & CA Department, in pursuant to the order dated 29.09.2014 passed in WP(C) 8769/2005, the promotion to the cadre of Sub-Inspector, FCS & CA from the LDA of the amalgamated establishment of Deputy Commissioner in the Districts/Sub-Divisions so far made, was held to be not irregular, as the relevant rule was not specific in respect of Lower Division Assistants of Districts/Sub-Divisions. He further submits that as per the order dated 22.02.2022 issued by the Director, FCS & CA, 12 (twelve) persons working in the establishment of Deputy Commissioner of various Districts have been promoted to the post of Sub-Inspector of FCS & CA. As such, no ground is available to the review petitioners to come up with a plea that Rule 11(2) of the 1970 Rules is not applicable to the employees appointed under the establishment of the Deputy Commissioners, to be considered for promotion to the post of Inspector of FCS & CA.

7. I have heard the learned counsels for the parties.

8. At the very outset, this Court would like to make a correction with regard to paragraph-2 of the impugned judgment and order dated 31.03.2022, wherein

it has been recorded that promotion was to be made to the post of Sub-Inspector in the FCS & CA Branch in the amalgamated establishment of the Deputy Commissioner, Dhubri. This factual position mentioned in paragraph-2 of the impugned judgment and order dated 31.03.2022 is incorrect. The correct position/fact is that the vacant post of Sub-Inspector, FCS & CA was to be filled up under the Directorate of FCS & CA and not in the amalgamated establishment of the Deputy Commissioner, Dhubri. The above being said, the question pertains to whether the employees of the establishment of the Deputy Commissioner can be considered, for filling up a post under the Directorate of FCS & CA. In this regard, Rule 11(2) of the 1970 Rules provides as follows :

“11(2) Twenty five percent of the vacancies in the cadre of SubInspector of Food and Civil Supplies shall be filled up by promotion from the select list prepared for this purpose under sub-rule (2) of Rule 13, from amongst the ministerial cadre who are of outstanding ability and have rendered at least 5 (five) years continuous service in the ministerial cadre on the first day of the year in which the selection for promotion is made. The ministerial cadre shall include the post of Lower Division Assistant, Accounts Assistant, Accounts Assistant (Junior) in the office of the Director and the Food and Civil Supplies Offices in the Districts and Sub-Division.”

9. A careful perusal of the same shows that the feeder post for the post of Sub-Inspector of Food & Civil Supplies is from the ministerial cadre in the office of the Directorate and the Food & Civil Supplies offices in the Districts and Sub-Divisions. This issue was considered by this Court in the case of ***Dipnarayan Misra & Others vs. State of Assam & Another [WP(C) 8769/2005]***, which was disposed of vide order dated 29.05.2024. This Court in the said judgment and order had directed the State Government to clarify whether the

ministerial cadre under the Deputy Commissioner's establishment could also be considered for promotion to the post of Sub-Inspector, FCS & CA, in the Directorate of FCS & CA, along with the ministerial cadre working in the Directorate. Paragraph nos.3, 13 & 16 of the above judgment and order are as follows :

“3. According to the petitioners, as per the provision of Assam Supply Service Rules, 1970 (as amended in 1989), it is only the members of the ministerial cadre under the Directorate are entitled to get promotion and not the member of the ministerial cadre of the Deputy Commissioner's/Sub-Divisional Officer's establishment.

13. The issue is as to whether the ministerial staff referred to in the amended provision of Rule 11 can be said to be of the establishment of the Deputy Commissioner/Sub Divisional Officer or the same will have to be necessarily of the establishment of Director of Food & Civil Supplies. It was in such circumstances, the Director of Food & Civil Supplies by his aforesaid letter dated 2.7.1989 sought for clarification from the Government of Assam in the department of Food & Civil Supplies. However, before issuance of any such clarification, the private respondents were promoted to the post of Sub Inspector of Food & Civil Supplies. In absence of any interim order passed in this proceeding, they are still holding the promotional posts.

16. For all the aforesaid reasons, both the writ petitions are disposed of directing the Government in the Food & Civil Supplies Department to look into the grievance of the petitioners in reference to the relevant rules and the amendment brought therein and also consistently with the observations made above. It will be appropriate for the Government to pass a speaking order. Let the required exercise be carried out as expeditiously as possible, preferably within 31.8.2014 upon hearing all the necessary parties. There shall be no order as to costs.”

10. In pursuant to the judgment and order dated 29.05.2014 passed in WP(C) 8769/2005, the Commissioner & Secretary to the Government of Assam, FCS & CA Department issued order dated 19.09.2014, stating that promotion to the cadre of Sub-Inspector, FCS & CA from the LDA of the amalgamated establishment of Deputy Commissioner in the Districts/Sub-Divisions so far made was not irregular, as the relevant rule was not specific in respect of Lower Division Assistants of Districts/Sub-Divisions. It also stated that relevant Rules needed to be amended and made more specific. Thus the Government has taken a decision that promotion of ministerial cadre of the Deputy Commissioner's establishment to the post of Sub-Inspector in the Directorate of Food & Civil Supplies was not irregular, unless and until the 1970 Rules were amended and made more specific. The last two paragraphs of the order dated 19.09.2014 passed by the Commissioner & Secretary to the Government of Assam, FCS & CA Department is reproduced below as follows :

“Now, therefore, having considered the facts as stated above and taking into account all factors relevant to the case, it is ordered that the promotion to the cadre of Sub- Inspector, FCS & CA from the LDA of the amalgamated establishment of Deputy Commissioner in the Districts/Sub-Divisions so far made, is not irregular as the relevant rule is not specific in respect of Lower Division Assistants of Districts/Sub-Divisions.

However, considering the fact that there are also separate avenues for promotion of the ministerial staff of the amalgamated staff of the Deputy Commissioners offices, henceforth the promotion to the cadre of Sub-Inspector, FCS & CA should include eligible ministerial staff of Directorate of FCS & CA and of the Food, Civil Supplies and Consumer Affairs branches of Deputy of the amalgamated Commissioners/Sub-Divisional officers drawing salaries under the F, CS & CA Heads of Accounts for a period of five years or more. Relevant rules need to be

amended and made more specific accordingly.”

11. As can be seen from the above facts, the issue raised by the review petitioner had been considered by this Court in WP(C) No.8769/2005 and in pursuance to the order dated 29.09.2014 passed in WP(C) No.8769/2005, the State Government has taken a decision, as reflected above, which does not support the case of the review petitioner.

12. It is an admitted position by the parties that till date, there has been no amendment to Rule 11(2) of the 1970 Rules. As such, the decision of the State Government that promotion of LDAs from the amalgamated establishment of the Deputy Commissioner in the Districts/Sub-Divisions to the post of Sub-Inspector, FCS & CA can be done, still holds the field till date. In the Case of ***State of Kerala vs M. K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (Dead) & Others***, reported in ***(1996) 1 SCC 435***, the Supreme Court has held that all official decisions are presumed to be valid until set aside or held to be invalid by a Court of competent jurisdiction.

13. In view of the fact that the State Government has taken a decision that the LDAs of the amalgamated establishment of the Deputy Commissioner in the Districts/Sub-Divisions can be considered and promoted to the post of Sub-Inspector, FCS & CA, the review petition which is goes against the decision taken by the State Government does not have any merit.

14. The review petition is accordingly dismissed.

JUDGE

Comparing Assistant