

GAHC010289142023



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

Case No. : I.A.(Civil)/3868/2023

GANESH CHOUDHURY
S/O- LATE KAMAKHYA CHOUDHURY, R/O- HOUSE NO. 8, TARINI BHANU
COMMERCIAL COMPLEX, NAKSHA BUILDING, MALIGAON CHARIALI,
DIST. KAMRUP(M), ASSAM, PIN- 781011.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, HOUSING AND
URBAN AFFAIRS DEPARTMENT, DISPUR, GUWAHATI-781006.

2:THE JOINT SECRETARY

HOUSING AND URBAN AFFAIRS DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE DIRECTOR OF TOWN AND COUNTRY PLANNING
ASSAM
DISPUR
GUWAHATI
PIN- 781006.

4:THE EXECUTIVE ENGINEER

DRAINAGE AND SEWERAGE DIVISION
DEPARTMENT OF TOWN AND COUNTRY PLANNING
DISPUR
PIN- 781006

Advocate for the Petitioner : MR. M P SARMA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

10.01.2024

Heard Mr. H. K. Das, learned counsel for the applicant/writ petitioner. Also heard Mr. C. S. Hazarika, learned Government Advocate, Assam appearing for the OPs/respondents.

The applicant/writ petitioner is presently serving as a Junior Engineer in the Town and Country Planning Department, Assam. According to the applicant/writ petitioner, he is eligible under the relevant Service Rules for being promoted to the next higher post of Assistant Engineer in the Town and Country Planning Department.

Mr. Das, learned counsel for the applicant/writ petitioner submits that there are number of vacancies available in the rank of Assistant Engineer in the Town and Country Planning Department, Assam which are required to be filled up by way of promotion. However, on an erroneous interpretation of the Service Order i.e. the Assam Town and Country Planning Service Orders, 1990, the respondents are seeking to fill up all vacancies of Assistant Engineer by way of promotion without considering the case of eligible candidates such as the applicant/writ petitioner. It is also the submission of Mr. Das that since the applicant/writ petitioner has approached this Court by filing the connected writ petition being WP(C) No.3437/2023 seeking a writ of mandamus directing the respondents to consider his case for promotion, hence, one post in the cadre of Assistant Engineer be kept vacant awaiting the final order in the writ petition. As such, this I.A. has been filed.

Mr. C. S. Hazarika, learned Government Advocate, Assam, on the other hand, submits that the interpretation to the Rules/Service Order sought to be given by the applicant/writ petitioner is wholly erroneous inasmuch as the applicant has not been deprived of proper consideration for promotion under the Rules.

Therefore, the relief as prayed for by the applicant/writ petitioner is not maintainable in the eyes of law.

Whether the assertion made by the applicant/writ petitioner on construction of the Rules/Service Order are correct or not can be ascertained only at the time of final hearing of the writ petition. However, if the applicant/writ petitioner ultimately succeeds in the writ petition, unless his interest is protected in the interregnum, the writ petition would be rendered infructuous. At the same time, keeping a post vacant indefinitely would not only pose difficulties for the department but would also deprive the public of the services of an officer in the rank of Assistant Engineer. Therefore, balancing the equities and keeping the interest of the applicant/writ petitioner in mind, it is hereby provided that in the event the authorities propose to fill the vacant post of Assistant Engineer the same be done only after giving proper opportunity to all eligible candidates to participate in the process to be held in accordance with the Rules/Service Order. Any promotion given to the post of Assistant Engineer during the pendency of the connected writ petition would be subject to the final order that would be passed in the writ petition.

With the above observation, this I.A. stands disposed of.

JUDGE