

GAHC020006272023



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

Case No. : WP(C)/264/2023

SHRI K HUKUTO SUMI
S/O KIVISHE SUMI, R/O H.NO. 1015, DIPHUPAR-B, CHUMUKEDIMA
NAGALAND,
PRESENTLY SERVING AS HEAD ASSISTANT NAGALAND HANDLOOM
HANDICRAFTS DEVELOPMENT CORPORATION LTD. DIMAPUR NAGALAND

VERSUS

NAGALAND HANDLOOM HANDICRAFTS DEVELOPMENT CORPORATION LTD
AND 2 ORS
DIMAPUR NAGALAND. REPRESENTED BY ITS CHAIRMAN 2:THE
MANAGING DIRECTOR
HANDICRAFTS DEVELOPMENT CORPORATION LTD
DIMAPUR NAGALAND

3:SHRI V. TOVIKA SUMI
LT. TOKHEVI SUMI NHHDC DIMAPU

Advocate for the Petitioner : P. B. PAUL, MEDO
VERO,HETOKA,PFOSEKHO PFOTTE

Advocate for the Respondent : IMTI IMSONG,

Linked Case : WP(C)/263/2023

SHRI INAKA K AYE
S/O KIHOTO AYE
R/O BLOCK-2
THILIXU VILLAGE CHUMUKEDIMA
NAGALAND.
PRESENTLY SERVING AS HEAD ASSISTANT
NAGALAND HANDLOOM HANDICRAFTS DEVELOPMENT CORPORATION LTD.
DIMAPUR NAGALAND

VERSUS

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2:THE MANAGING DIRECTOR
HANDICRAFTS DEVELOPMENT CORPORATION LTD
DIMAPUR NAGALAND

3:SHRI V. TOVIKA SUMI
LT. TOKHEVI SUMI NHHDC DIMAPUR

Advocate for : P. B. PAUL
Advocate for : IMTI IMSONG appearing for NAGALAND HANDLOOM
HANDICRAFTS DEVELOPMENT CORPORATION LTD AND 2 ORS

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

19-11-2025

Heard Mr. P. B. Paul, learned counsel for the petitioners in both the writ petitions. Also heard Mr. Imti Imsong, learned counsel for the respondent nos. 1 and 2, i.e, the Nagaland Handloom Handicrafts Development Corporation Ltd, a Government Company. No one appears for the respondent no. 3 even though notice had been served upon the respondent no. 3. This Court, vide order dated 10.05.2024, had held that notice upon the respondent no. 3 was deemed to be served.

2. The petitioners in both the writ petitions, who have the educational qualification of Pre-university (Arts), are aggrieved

with the promotion of the respondent no. 3 (Graduate) to the post of Assistant Manager from Head Assistant, vide the impugned order dated 03.10.2023, in pursuance to the "Resolution passed by Circulation" of the Board of Directors held on 12.12.2022, hereinafter referred to as the "Resolution dated 12.12.2022".

3. The petitioners counsel submits that in the respondent no. 1 Company, the promotional post of Upper Division Clerk (UDA) is Head Assistant and the promotional post of Head Assistant is Assistant Manager. For promotion to the post of Assistant Manager in the Nagaland Handloom Handicrafts Development Corporation Ltd, Dimapur (respondent no. 1), a Head Assistant requires to have a minimum of 2 years length of service as Head Assistant, in terms of the "Resolution dated 12.12.2022".

4. The petitioners counsel submits that though the respondent no. 3 was a Upper Division Assistant, he was promoted to the post of Assistant Manager, vide the impugned order dated 03.10.2023 issued by the respondent no. 2, by showing him as a Head Assistant. He submits that even if it is assumed that the respondent no. 3 had been promoted to the post of Head Assistant from UDA, prior to his promotion as Assistant Manager, the respondent no. 3 had not completed 2 (two) years of service as Head Assistant, to be eligible for promotion. In this regard, he has relied upon the final Seniority List that had been made as on January, 2023, where the respondent no.3 is shown as UDA and juxtaposed the

same with the impugned promotion order dated 03.10.2023. The petitioners counsel submits that as the petitioners in both the writ petitions were holding the post of Head Assistant for more than 2 (two) years, either one of them should have been promoted to the post of Assistant Manager in place of the respondent no. 3, who did not have the eligibility criteria for promotion to Assistant Manager.

5. Mr. Imti Imsong, learned counsel for the respondent nos. 1 and 2 submits that the "Resolution dated 12.12.2022" provided the eligibility criteria for promotion from the post of Head Assistant to the post of Assistant Manager. However, while promotion was to be made from the post of Head Assistant to Assistant Manager in terms of the "Resolution dated 12.12.2022", on the basis of seniority, merit and requisite qualification, the educational qualification of the candidate was also to be given importance. He submits that though there is no service rule showing that promotion should also be made on the basis of their educational qualification, besides seniority, merit and requisite qualification, the respondent nos. 1 and 2 had promoted the respondent no. 3, as he had a higher educational qualification, i.e., Degree holder (graduate), while the petitioners were Under Graduates. He thus submits that there is no infirmity in the respondent nos. 1 and 2 promoting the respondent no. 3, due to his higher educational qualification.

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

7. The "Resolution dated 12.12.2022" and the impugned order of promotion dated 03.10.2023, promoting the respondent no. 3 to the post of Assistant Manager, are reproduced herein below as follows:

" RESOLUTION BY CIRCULATION

Dated:12-12-2022

In reference to a representation by NHHDC staff which was duly forwarded to Chairman, NHHDC Ltd. Vide NHHDC/Estt-13/2013(PT)/1257-1259 Dt. 04.10.22 requesting for a review of the minutes of 79th and 80th Board of Directors meeting restricting promotion of UDA to Asstt. Manager due to the unacceptable jump in pay level i.e. from Level 8 to Level 12.

However, after the creation of 2 (two) Head Assistant posts in level 10 it is hereby resolved that promotion from H.A. to Asstt. Manager will be allowed on the following conditions:

1. This resolution will come into effect only after the H.As completes the minimum length of service to be eligible for promotion i.e. 2 years.

2. Promotion will be considered on the basis of seniority, merit and requisite qualification.

3. Vacancies for Asstt. Manager will be filled in the ratio of 50:50 (i.e. 50% direct and 50% promotion)."

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"No NHHDC/Appt-28/2020/913-919 Dated Dimapur the 03 October, 2023

ORDER

In pursuance to the Resolution by Circulation of the Board of Directors held on 12th December, 2022 the undersigned is directed to offer promotion to the undermentioned Staff under the establishment

of NHHDC Ltd., Dimapur with the given details and pay level indicated against his name plus all other allowances admissible under the rules of the Corporation w.e.f. 03-10-2023.

<i>Sl. No.</i>	<i>Name and present Designation</i>	<i>Promotion to</i>	<i>Pay Level</i>	<i>Basic</i>	<i>Posting place</i>
<i>1</i>	<i>Shri Tovika Sumi, Head Assistant</i>	<i>Asst. Manager</i>	<i>Level- 12</i>	<i>Rs. 43,700/-</i>	<i>Head Office</i>

- 1. He shall abide by the rules, regulations, order and directions of the Corporation issued by the Corporation authority from time to time.*
- 2. He shall not undertake any profitable business with the Corporation either directly or indirectly without prior permission from the competent authority of the Corporation.*
- 3. He is liable to be posted at any office of the Corporation within or outside the State of Nagaland.*
- 4. He shall confirm in written within 15 (fifteen) days from the date of issue of this order if the above promotion is acceptable to him."*

8. A perusal of the above "Resolution dated 12.12.2022" clearly shows that a Head Assistant having a minimum length of service of 2 (two) years can be promoted to the post of Assistant Manager. The impugned promotion order dated 03.10.2023 shows that the respondent no.3 had been promoted on the basis of the "Resolution dated 12.12.2022" from Head Assistant to Assistant Manager.

9. The final Seniority List of Officers and Staff of the

respondent no. 1 as on January, 2023, shows that the petitioner in WP(C)/263/2023 and the petitioner in WP(C)/264/2023 are the only Head Assistants in the respondent no. 1 Company as on January, 2023. Further, the petitioner in WP(C)/263/2023 is the more senior Head Assistant. The respondent no. 3, on the other hand, is at Serial No. 2 amongst the UDAs in the Seniority List of UDAs, as on January, 2023.

10. The above facts goes to show that even if the respondent no. 3 had been promoted to the post of Head Assistant after issuance of the final Seniority List, the respondent no. 3 could not have been promoted to the post of Assistant Manager on 03.10.2023, as he would not have completed 2 (two) years of service as Head Assistant, in terms of the "Resolution dated 12.12.2022". On this count alone, the promotion of the respondent no. 3 is to be set aside.

11. As can be seen from the "Resolution dated 12.12.2022", promotion is to be considered on seniority, merit and requisite qualification. Though the learned counsel for the respondent nos. 1 and 2 has submitted that promotion of the respondent no. 3 had been done due to the respondent no. 3 being a Graduate, while the petitioners were under graduates, we find that the Deputy General Manager and Manager in the Government Company (respondent no. 1) also have the educational qualification of Pre-university (Arts) and Pre-university (Commerce) respectively. Some of the Deputy Managers in the said Government Company are also

Matriculates. As such, there is no substance in the stand taken by the learned counsel for the respondent nos. 1 and 2, that an Assistant Manager having a Degree would/could supersede an Under Graduate. The promotion of the respondent no. 3 on the basis of him being a Graduate is not justified, in view of the educational qualifications of the existing Deputy General Managers and Managers. For clarity, the Seniority List shows that the Deputy General Manager, Katovi I Chishi has the educational qualification of Pre University (Arts).

12. As the "Resolution dated 12.12.2022" already provides for promotion on the basis of seniority, merit and requisite qualification, besides requiring a Head Assistant to have a minimum of 2 (two) years length of service as Head Assistant, the promotion of the respondent no. 3 over the petitioners is not only arbitrary but illegal, as the respondent no. 3 was not eligible to be promoted to the post of Assistant Manager. As such, the promotion of the respondent no. 3 to Assistant Manager by the impugned order dated 03.10.2023 is hereby set aside.

13. As there was a vacancy as on 03.10.2023, which is proved by the promotion order of the respondent no. 3 on 03.10.2023, the respondents nos. 1 and 2 would have to consider the promotion of the petitioners in the above two writ petitions, to the said post of Assistant Manager, in terms of the "Resolution dated 12.12.2022". The respondent nos. 1 and 2 are accordingly directed to consider the promotion of either of the petitioners to the said vacant post earlier occupied by

respondent no.3. The same should be done within a period of 2 (two) months from the date of receipt of a certified copy of this order.

14. It is needless to add that in the event that there are other vacant posts of Assistant Manager available, the remaining petitioner and other eligible candidates should also be considered for promotion to the said vacant posts as and when the promotion process for the additional vacant posts are initiated.

15. The writ petitions are accordingly allowed.

JUDGE

Comparing Assistant