

GAHC010066702018



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

Case No. : WP(C)/2121/2018

DILIP CHANDRA KALITA
S/O- LATE KAMALA KANTA KALITA SERVING AS CHOWKIDAR/PEON
(GRADE IV) IN THE OFFICE OF THE ASSTT COMMISSIONER OF TAXES,
GUWAHATI, UNIT D SINCE 01.07.1994, P.O- ASSAM SACHIVALAYA, DISPUR,
GUWAHATI- 781006, DIST- KAMRUP(M), ASSAM, PERMANENT R/O-
NOONMATI, GOPAL NAGAR, RAM NAGAR, BYE LANE 1, GUWAHATI- 20,
DIST- KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT OF ASSAM, DISPUR,
GUWAHATI- 781006, DIST- KAMRUP(M), ASSAM

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
FINANCE(TAXATION) DEPTT
DISPUR
GUWAHATI- 781006
P.O- ASSAM SACHIVALAYA
DISPUR
GUWAHATI- 781006
DIST- KAMRUP(M)
ASSAM

3:THE COMMISSIONER OF TAXES
ASSAM KAR BHAWAN
DISPUR
GUWAHATI- 781006
DIST- KAMRUP(M)
ASSAM

4:THE ASSISTANT COMMISSIONER OF TAXES
GUWAHATI
UNIT -D
KAR BHAWAN
DISPUR
GUWAHATI- 781006
DIST- KAMRUP(M)
ASSAM

5:NILADHAR DEKA
PRESENTLY PROMOTED TO THE POST OF JUNIOR ASSTT. ON 01.02.2018
FROM THE POST OF GRADE- IV
CHOWKIDER/PEON OF THE OFFICE OF THE ASSTT COMMISSIONER OF
TAXES UNIT D
GUWAHATI- 781006
DIST- KAMRUP(M)
ASSA

Advocate for the Petitioner : MR. S. SAHU

Advocate for the Respondent : MR. B. GOGOI

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER (ORAL)

Date : 04-01-2023

Heard Mr. S. Sahu, the learned counsel appearing on behalf of the petitioner and Mr. B. Gogoi, the learned Standing counsel appearing on behalf of the Finance (Taxation) Department, Government of Assam. None has appeared on behalf of the respondent No.5.

2. It appears from the records that on 22.12.2021, the Lawazima Court has deemed service upon the respondent No.5 in terms with the provisions of Section 27 of General Clauses Act, 1897.

3. The dispute involved in the instant writ petition is that the petitioner has not been promoted to the post of Junior Assistant with retrospective effect from the date of promotion of respondent No.5, for which the petitioner has sought for a Mandamus directing the respondent authorities to immediately promote the petitioner to the post of Junior Assistant, with retrospective effect from the date of promotion of the respondent No.5, as well as for a writ of Certiorari for setting aside and quashing the promotion order dated 01.02.2018 passed by the respondent No.4 in favour of the respondent No.5.

4. For appreciating the dispute, it would be relevant to take note of the brief facts of the instant case. The petitioner herein has admittedly passed only High School Leaving Certificate Examination in the year 1989. Thereupon, the petitioner got appointed to one post of Chowkidar (Grade-IV) in the Office of the Superintendent of Taxes, Guwahati. His appointment was regularized vide an order dated 24.02.1995. It is the case of the petitioner that in terms with the Office Memorandum dated 06.04.1999, the Assam Ministerial District Establishment Service Rules, 1967 (for short the "Rules of 1967") is to be followed and in terms with the provisions of Clause-(b) of Sub-Rule (6) of Rule 6 of the said Rules of 1967, 10% of the vacancies of the L.D. Assistant in the year is to be filled up by selection on the basis of seniority-cum-merit from amongst the Grade-IV staff of the establishment concerned, who have passed the HSLC or equivalent examination and have rendered at least 7 years of continuous service on the first day of the year in which the selection is made.

5. It is the case of the petitioner that in spite of the petitioner having completed the period of 7 years and having the qualification to that effect, the petitioner was not promoted to the post of Junior Assistant but the respondent

No.5 was promoted to the said post vide an order dated 01.02.2018. It is the case of the petitioner that the respondent No.5 is junior to the petitioner by more than 3 years 8 months in the cadre of Grade-IV Chowkidar post. Under such circumstances, the petitioner has sought for reliefs as above mentioned.

6. For the purpose of deciding the instant dispute, it is relevant to take note of Rule 6(6) of the Rules of 1967 which admittedly applies to the department in question in view of the Office Memorandum dated 06.04.1999. Rule 6(6) is in relation to the post of Junior Assistant. The said Rule 6(6) being relevant is quoted hereinbelow:

“6.(6) [Junior Assistants – (a) By direct recruitment on the basis of a competitive examination [consisting of an Objective Type Written Test and Computer Proficiency Test (practical) as laid down in the Schedule-I of these rules to be conducted by the Deputy Commissioner at the beginning of each year, for any vacancy in the post of Junior Assistant, likely to occur in course of the year in their respective establishments unless otherwise directed by the Government in this behalf]

Note:- At the beginning of each calendar year the Deputy Commissioners shall call for applications to fill up temporary vacancies of any kind which are likely to occur in course of the year in their respective establishments. On receipt of applications by a specified date, ["the Objective Type Written Test" and the Computer Proficiency Test (practical)] shall be held and a list of all candidates suitable for appointment to the posts of [Junior Assistants] shall be prepared in order of merit by the Deputy Commissioners. The list shall remain valid for one year unless it is exhausted earlier and one such list shall be prepared every year. The Deputy Commissioners shall make all appointment during

the year from such a select list. The syllabus for such tests shall be as specified in the Schedule I;

(b) By selection on the basis of seniority-cum-merit from amongst Grade IV staffs of the district establishment concerned who have passed the [Degree Examination in any discipline from a recognized University or any examination declared equivalent thereto] and have rendered at least 7 years of continuous service in the district establishment on the first day of the year in which selection is made.

Note:- (i) *The proportion of vacancies to be filled in any year according to clauses (a) and (b) of sub-rule [(5)] of Rule 6 shall be 90:10 respectively. In the event of sufficient number of qualified or suitable persons not being available in category (b), the balance shall be made from category (a), i.e., through direct recruitment. Here vacancies shall include both permanent and temporary vacancies.*

(ii) *Appointment by selection under clause (b) of sub-rule [(5)] of this rule shall be made by the Deputy Commissioner from amongst the eligible Grade IV staffs.”*

7. From a perusal of the above Rule, it would show that for the purpose of appointment to the post of Junior Assistant, recruitment is to be made from two sources. One is by direct recruitment which have been mentioned in Clause-(a) of Rule 6(6) whereas Clause-(b) is in respect to promotion. The instant case pertains to promotion from Grade-IV post to the post of Junior Assistant. In terms with Clause-(b) of Rule 6(6), it would transpire that with effect from 15.10.2015, recruitment to the post of Junior Assistant can be made by selection on the basis of seniority-cum-merit from amongst the Grade-IV staff of the District Establishment concerned, who have passed the degree examination in any discipline from a recognized university or any examination declared

equivalent thereto and have rendered at least 7 years of continuous service in the District Establishment on the first day of the year in which the selection is made.

8. In the instant case, it would be seen that the petitioner admittedly is not a graduate. His qualification is only HSLC passed. Under such circumstances, any direction given to the respondent authorities to promote the petitioner would be in violation to Rule 6(6)(b) of the Rules of 1967.

9. At this stage, this Court would also like to take note of the submissions made by the learned counsel for the petitioner to the effect that the respondent No.5 was promoted on 01.02.2018 and on a perusal of the information furnished by the Superintendent of Taxes, Guwahati, Unit-D enclosed as Annexure-5 to the writ petition dated 16.03.2018 shows that the respondent No.5 is only Higher Secondary pass and does not have a degree but he was promoted to LDA on 01.02.2018.

10. Mr. B. Gogoi, the learned Standing counsel for the Finance (Taxation) Department has submitted that if the respondent No.5 did not have the qualification of degree, the promotion of the respondent No.5 as LDA on 01.02.2018 is also illegal and could not have been made by the respondent authorities.

11. Taking into account the said submission, this Court therefore is of the opinion and accordingly directs that the respondent authorities shall verify as to whether the respondent No.5 had passed the degree as on the date of his promotion from a recognized university; and if it is found that the respondent No.5 had not passed any degree as required under Rule 6(6)(b) of the Rules of

1967, the respondent authorities shall cancel the promotional order dated 01.02.2018 which was made in favour of the respondent No.5 and revert him back to his original post of Peon. The said exercise be completed with a period of 45 days from the date of the instant order.

12. A copy of the instant order be furnished to Mr. B. Gogoi, the learned Standing counsel for taking necessary action in that regard.
13. With above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant