

(2022) 03 GAU CK 0064

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5158 Of 2021

Atiful Rahman

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 31-03-2022

Acts Referred:

Assam (Food & Civil Supplies) Service Rules, 1970 — Rule 2(i), 3, 11, 11(2), 13(2)
Assam Ministerial District Establishment Service Rules, 1967 — Rule 2(4)
Assam Services (Pension) Rules, 1969 — Rule 64, 64(e)

Citation : (2022) 03 GAU CK 0064

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : K.N. Choudhury, M. Das, T.C. Chutia

Final Decision : Allowed

Judgement

1. Heard Mr. K.N. Choudhury, learned Senior Counsel for the petitioner, who is assisted by Mr. M. Das, learned counsel. Mr. T.C. Chutia, learned counsel appears for the State authorities.

2. The petitioner is aggrieved by the meeting minutes of the Selection Committee held on 26.09.2019, by which the petitioner's case for promotion from the post of Junior Assistant to Sub-inspector in the Food & Civil Supplies & Consumer Affairs (FCS & CA) Branch in the amalgamated establishment of the Deputy Commissioner, Dhubri was not considered, on the ground that he had 3 (three) months' break from the FCS & CA Branch, due to which he did not have 5 years continuous service in the FCS & CA Branch in the year in which the selection for promotion was to be made.

3. The petitioner's case is that the petitioner was appointed as a Junior Assistant under the amalgamated establishment of the Deputy Commissioner, Dhubri vide order dated 29.02.2008. The petitioner was posted at the FCS & CA Branch in the Office of the SDO(C), Bilasipara on 20.08.2010. Thereafter vide order dated 05.07.2017, the petitioner was transferred and posted in the Administration

Branch of the DC Office, Dhubri, which he joined on 14.07.2017. Thereafter vide order dated 12.08.2017, the Deputy Commissioner, Dhubri deputed the petitioner to the Office of the SDO(C), Bilasipara w.e.f. 13.08.2017 to 23.08.2017 for works relating to the Independence Day and Flood Relief Operations in Bilasipara Sub-Division. Thereafter vide order dated 16.10.2017 issued by the Deputy Commissioner, Dhubri and in the interest of public, the petitioner was transferred and posted at the FCS & CA Branch in the SDO(C)'s office, Bilasipara, which he joined on 17.10.2017.

4. The Director, Food, Civil Supplies & Consumer Affairs sent a letter dated 12.04.2018 to all the Principal Secretaries of the Autonomous Councils, Deputy Commissioners and Sub-Divisional Officers requesting them to furnish the names of willing eligible candidates for filling up the vacant posts of Sub-Inspectors of FCS & CA by promotion, from the candidates belonging to the Ministerial Cadre, as per Rule 11(2) of the Assam (Food & Civil Supplies) Service Rules, 1970, as amended in the Assam Supply Service (Amendment) Rules, 1989.

5. In pursuant to the initiation of the process for promotion of Junior Assistant to Sub-Inspector, the petitioner's name was also sent for consideration of the Selection Committee. However, as stated above, the case of the petitioner was not considered by the Selection Committee in its meeting minutes dated 26.09.2019 and the Selection Committee took a decision that as there was a service break of three months in the case of the petitioner, the relaxation of the said period of three months should be obtained from the Government of Assam, FCS & CA Department. The State Government thereafter took a decision, vide the impugned letter dated 02.08.2020, issued by the Secretary to the Government of Assam, FCS & CAS Department that relaxation was not allowed.

6. Mr. K.N. Choudhury, learned Senior Counsel for the petitioner has submitted that the petitioner is working in the amalgamated establishment of the DC, Dhubri which includes the establishment of the SDO(C), Bilasipara. He also submits that the same has been supported by the affidavit filed by the DC., Dhubri which at paragraph 6 states as follows :

"6.

Thereafter, the petitioner was transferred and posted back at FCS & CAS branch, Office of the SDO(C), Bilasipara vide this Office Order dated 16.10.2017 and till date he is serving his duty in the FCS & CA Branch, Bilasipara, as Junior Assistant which comes under the amalgamated establishment of the Deputy Commissioner, Dhubri."

The learned Senior Counsel also referred to Rule 11(2) of the Assam (Food & Civil Supplies) Service Rules, 1970 (hereinafter referred to as "1970 Rules"), Rule 2(4) of the Assam Ministerial District Establishment Service Rules, 1967 (hereinafter referred to as "1967 Rules") and Rule 64(e) of the Assam Services (Pension) Rules, 1969 (hereinafter referred to as "1969 Pension Rules") in support of his submission that there can be no break in the service of the

petitioner. Besides, the petitioner was made to work in the amalgamated establishment of the DC, Dhubri in public interest on the orders of the DC, Dhubri.

7. Mr. T.C. Chutia, learned counsel for the State respondents submits that there is no infirmity with the decision of the respondents as Rule 11(2) of the 1970 Rules does not envisage consideration of a person for promotion, who does not have continuous 5 (five) years service in the FCS & CA Branch of the amalgamated establishment of the DC, Dhubri. He also submits that as the 1970 Rules has not been challenged, the writ petition has to be dismissed.

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

9. A perusal of the pleadings goes to show that the petitioner has been in continuous service in the amalgamated establishment of the DC, Dhubri from the time of his appointment in the year 2008 till today. Further, he had been transferred in the Office of the DC, Dhubri for approximately three months in public interest and on the orders of the DC, Dhubri,

10. Rule 11(2) of the 1970 Rules states as follows :

"11(2) Twenty five percent of the vacancies in the cadre of Sub-Inspector 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."

A perusal of the above shows that 25% of the vacancies in the cadre of Sub-Inspector is to be filled up by promotion from persons who have outstanding ability and have rendered 5 (five) years continuous service in the ministerial cadre on the first day of the year in which the selection for promotion is to be made. The ministerial cadre includes the post of LDA, Accounts Assistant, Accounts Assistant (Junior) in the office of the Director and the Food and Civil Supplies Offices in the Districts and Sub-Division. The amalgamated establishment of the DC cannot be said to include Food & Civil Supplies & Consumer Affairs Offices in the Districts and Sub-Divisions.

11. It is not the case of the parties that the persons working in the FCS & CA Branch of the DC's establishment can be transferred to the FCS & CA Department offices or vice versa. Further, the DC, Dhubri has categorically stated that the FCS & CA Branch in the Office of the SDO(C), Bilasipara comes under the amalgamated establishment of the DC, Dhubri.

12. In view of the above reasons, it is quite clear that the 1970 Rules cannot come in the way of the petitioner being considered for promotion to the post of

Sub-Inspector, inasmuch as, the five years continuous service required in the FCS & CA Department would apply to departmental officers and not to the employees working under the amalgamated establishment of the Deputy Commissioner. It should also be noted that the 1970 Rules pertain to members of the Assam Food and Civil Supplies Department and as such, the same cannot be said to cover the service conditions of the employees under the amalgamated establishment of the Deputy Commissioner. Further, the establishment of the Deputy Commissioner comes under the General Administration Department and not the FCS & CA Department.

Rule 2(i) and 3 of the 1970 Rules states as follows :-

"2(i) "Service" means the Assam Food and Civil Supplies Service"

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

- (a) Joint Director of Food and 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"

A reading of Rule 2(i), 3 & 11 shows that the employees working in the establishment of the DC are not a part of the FCS & CA Department.

13. Rule 2(4) of the 1967 Rules states as follows :

"2(4) 'District Establishment' means and includes all non-gazetted ministerial staff in the offices of the Deputy Commissioner, Sub-Divisional Officers and Sub-Deputy Collectors of the District"

14. Rule 64 of the 1969 Pension Rules states as follows:

"64. Interruptions- An interruption in the service of an officer entails forfeiture of his past service except in the following cases :

- (a) Authorised leave of absence.
- (b) Unauthorised absence in continuation of authorised leave of absence so long as the office of the absentee is not substantively filled ; if his office is substantively filled, the past service of the absentee is forfeited.

(c) Suspension immediately followed by re-instatement, which need not be to the same office or where the officer died or is permitted to retire or is retired while under suspension.

(d) Abolition of office or loss of appointment owing to reduction of establishment.

Note. The above clause (d) applies only in case of abolition of permanent office or loss of permanent appointment.

(e) Transfer to non-qualifying service in an establishment under Government control. The transfer must be made by competent authority; an officer who voluntarily resigns qualifying service cannot claim the benefit of this exception. Transfer to grant in aid school entails forfeiture.

(f) Transfer to service on the household establishments of the Governor.

(g) Time occupied in transit from one appointment to another ; provided that the officer is transferred under the orders of competent authority, or, if he is non-gazetted officer, with the consent of the head of his old office."

A perusal of Rule 64(e) would go to show that the transfer of the petitioner to the establishment of the Office of the SDO(C), Bilasipara or the establishment/ DC's Office (Administration Branch), would not entail forfeiture of the past service of the petitioner and as such, the petitioner's service would have to be considered to be in continuous service and not a break in service.

15. In view of the reasons stated above, this Court is of the view that non-consideration of the petitioner's case for promotion from Junior Assistant to Sub-Inspector by the Selection Committee is arbitrary. Further, the decision of the respondent no.2, not to give relaxation, as reflected in the letter dated 02.08.2020 is also found to be unreasonable and unjustifiable. The Selection Committee's meeting minutes dated 26.09.2019, in so far as it relates to the petitioner and the letter dated 02.08.2020 issued by the respondent no.2 are hereby set aside. The respondents are directed to convene a Review DPC to consider the case of the petitioner, for promotion to the post of Sub-Inspector, from the date when his immediate junior was promoted, in terms of the next below rule.

16. The writ petition is allowed accordingly.