

(2023) 06 GAU CK 0059

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 1944 Of 2019

Ganesh Kalita

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 20-06-2023

Acts Referred:

Assam Technical Education Service Rules, 1981 — Rule 11, 11(1), 11(3), 13, 14

Citation : (2023) 06 GAU CK 0059

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : S Barman, K Gogoi, D Das Barman

Final Decision : Dismissed

Judgement

1. Heard Shri S Barman, learned counsel for the petitioner. Also heard Shri K Gogoi, learned Standing Counsel, Higher Education Department, Assam as well as Ms. D Das Barman, learned State Counsel, Assam appearing for the Personnel Department.

2. The grievance of the petitioner is with regard to non-consideration of his case for promotion to the post of Lecturer in Polytechnic Institute which was under consideration in a DPC constituted on 27.01.2016.

3. The case of the petitioner is that he had initially obtained a Three Years Diploma course in Computer Engineering and thereafter had obtained the B.Tech. in Computer Science and Engineering and also possessed long experience as Data Entry Operator and Senior Instructor. The petitioner claims to be eligible for promotion to the post of Lecturer under the Assam Technical Education Service (Junior) Rules, 1984 (Rules of 1984) and also eligible under the Assam Technical Education Service Rules, 1981 (Rules of 1981). The petitioner claims to have possessed all the requisite qualifications and experience under those Rules. However, vide the minutes of the DPC which had sat on 27.01.2016 while the cases of other candidates were considered, the petitioner was left out.

4. Shri Barman, learned counsel for the petitioner submits that the petitioner possesses all the requisite qualifications as per the Rules of 1981. He further submits that the Office Memorandum of 2004 which was published by the Department pertains only to direct recruitment and cannot be made applicable to the cases of promotion. It is further submitted that the AICTE notification is applicable from the stage of Lecturer and not prior to that and therefore, in a case for consideration of promotion to the post of Lecturer, there would be no application of such notification. In any case, the learned counsel, Shri Barman submits that such notification is not meant for promotion and should be confined only to direct recruitment.

5. Shri Barman, learned counsel for the petitioner has also relied upon a judgment and order dated 01.08.2016 passed by this Court in WP(C)/3327/2011. It is the contention of the petitioner that in the said case, a similarly situated person was given the benefit of promotion and appropriate directions issued in that regard. The learned counsel prays that a similar direction be issued in the present case also.

6. Per contra, Shri K Gogoi, learned Standing Counsel, Higher Education Department has submitted that refuting the allegations and claims of the petitioner, an affidavit-in-opposition has been filed on 09.12.2020. By drawing the attention of Rule 11 of the Rules of 1981, the learned Standing Counsel submits that the said Rule was amended in the year 2008 by which certain clauses were substituted. By drawing the attention of this Court to Rule 11(3), the learned Standing Counsel submits that there is a requirement to have an experience of minimum period of 8 years on the First of January of the year of promotion. Under sub-clause (c), the candidate is required to possess the qualification and experience for the cadre of Lecturer, Polytechnic as prescribed by the AICTE from time to time as adopted by the Government of Assam. Reference has been made to Rule 11(1) to contend that the procedure prescribed in Rules 13 and 14 of the Rules of 1981 with regard to the mode of promotion would also be applicable for promotion to the post of Lecturer under Rule 11. By drawing the attention of this Court to the Office Memorandum dated 18.01.2016 issued by the Higher Education (Technical) Department, Government of Assam, the learned Standing Counsel has submitted that the qualification is prescribed as Bachelor's Degree in Engineering/Technology in the relevant Branch with First Class or Equivalent. The learned Standing Counsel, Shri Gogoi has also referred to the Gazette Notification dated 05.03.2010 of the AICTE wherein, the minimum qualification and experience have been laid down and in case of Lecturer, such qualification has been stated to be First Class or equivalent in the relevant Branch.

7. Shri Gogoi, learned Standing Counsel has submitted that it appears from the records that the petitioner had rendered service for a major period from 17.08.2006 to 28.06.2017 as an LDA and only for a brief period from 28.06.2017 to 01.08.2017, he had served in the Computer Section and he is Second Class in

Computer Science in his B.Tech. Therefore, the learned Standing Counsel contends that both on account of lack of qualification as well as lack of experience, as prescribed by the Rules, the petitioner does not come into the zone of consideration for such promotion.

8. With regard to the judgment of this Court relied upon by the petitioner, the learned Standing Counsel has submitted that the said judgment pertains to a DPC which was conducted on 27.01.2006 when the amendment had not even come into operation. On the other hand, Shri Gogoi submits that in the instant case, the consideration was made in the year 2016 when the amendment and the office memorandum had already come into operation. It is submitted on behalf of the Department that the situation in which the earlier order dated 01.08.2016 in WP(C)/3327/2011 was passed, the situation was entirely different and cannot be equated with the present case.

9. The rival submission made by the learned counsel for the parties have been duly considered and the materials placed before this Court carefully examined.

10. The primary contention of the petitioner, as recorded above, is that the Office Memorandum of 2004 is not applicable in the case of promotion and is only for direct recruitment. He further submits that under the Rules of 1981, he has all the qualifications and therefore, his case ought to have been considered in the DPC held on 27.01.2016 and accordingly, be given promotion to the post of Lecturer.

11. The aforesaid contention, however, has to be tested with regard to the statutory Rules governing the field. The Rules of 1981 lays down the provisions for recruitment by promotion as Lecturer in Polytechnic which is found in Rule 11. Under Rule 11(3), the feeder Cadre has been stated from which such promotion to be made and the eligibility has also been laid down. For ready reference, Rule 11(3) is extracted hereinbelow:

"11. (3) A member of the cadres of Senior Instructor, Forman and Supervising Instructor in the Assam Technical Education (Junior) Service be eligible for promotion as Lecturer, Polytechnic subject to the following conditions:

(a) He was rendered service in the respective cadre for a minimum period of 8 years on the First of January of the year of promotion; and

(b) he has successfully undergone the training and passed the Departmental Examination, as may be prescribed for the purposes; and

(c) he possesses the qualification and experience as prescribed for the cadre of Lecturer, Polytechnic as prescribed by the AICTE from time to time as adopted by the Government of Assam."

12. It is seen that there is a requirement of rendering service in the respective Cadre for a minimum period of 8 years and the qualification and experience are required for the Cadre of Lecturer, Polytechnic as prescribed by the AICTE. The

said Rule was amended in the year 2008 and once the requirement of qualification and experience, as prescribed by the AICTE, is made a part of the statute, this Court is unable to accept the contention made on behalf of the petitioner that such qualification and experience would not be applicable in case of promotion and should be confined only to direct recruitment. In fact, Rule 11 as noted above, is pertaining to recruitment by promotion as Lecturer. This Court also finds force in the contention made on behalf of the Department that the notification dated 05.03.2010 of the AICTE clearly lays down the qualification to be Bachelor's Degree in Engineering/Technology in the relevant Branch with First Class or equivalent and in the instant case, it is not in dispute that the petitioner is not a First Class in his B.Tech. and is only a Second Class. The materials on record would also show that the petitioner lacks the minimum experience of 8 years in the discipline of Computer Science as he had served barely for 2 months under the said discipline in the Feeder Cadre.

13. With regard to the earlier judgment of this Court dated 01.08.2016 passed in WP(C)/3327/2011, Shri Gogoi, learned Standing Counsel appears to be correct in contending that the said judgment was rendered vis-a-vis a DPC held on 27.01.2006 which was prior to the amendment and the present case is on the basis of a DPC dated 27.01.2016 when the amendment brought in the year 2008 was already operating.

14. Under these aforesaid facts and circumstances, this Court is of the opinion that no case for interference is made out and accordingly, the writ petition stands dismissed.