
(2019) 09 GAU CK 0050
In the Gauhati High Court
Case No : Writ Petition (C) No. 3580 Of 2017

Minu Kalita

APPELLANT

Vs

State Of Assam And 3 Ors.

RESPONDENT

Date of Decision : 19-09-2019

Acts Referred:

Assam Ministerial District Establishment Service Rules, 1967 — Rule 6

Citation : (2019) 09 GAU CK 0050

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : P Das, Dr.B Ahmed

Final Decision : Disposed Off

Judgement

1. Heard Mr. M.K. Borah, learned counsel for the petitioner. Also heard Ms. D.S. Neog, learned counsel for the Co-operation Department and Mr. A. Choudhury, learned counsel for the respondent no.4.

2. The petitioner's case in brief is that the petitioner is serving as a UDA in the Office of the Deputy Registrar of Co-operative Societies, Govt. of Assam. In the selection process that was held for promoting UDA to Head Assistant, the respondent no. 4 was selected and appointed as Head Assistant vide order dated 25.05.2017.

3. The learned counsel for the petitioner submits that the petitioner is senior to the respondent no. 4 in the Gradation List of UDA and as the promotion was to be made on the basis of seniority-cum-merit, the State Respondents were bound to promote the petitioner and not his junior. The petitioner's counsel relies upon Note-2 of Rule 6 of the Assam Ministerial District Establishment Service Rules, 1967 (hereinafter referred to as "the 1967 Rules") in support of his submission that selection to the post of Head Assistant should be by way of seniority-cum-merit.

4. The counsels for the respondents, on the other hand, submit that the

promotion to the post of Head Assistant from UDA has to be done in accordance with Note of Rule 6 of the 1967 Rules, which requires that the selection should be made strictly on merit.

5. The counsel for the State Respondents submits that the Selection Committee had decided to take a little test among the candidates and they were asked to write a prayer petition in Assamese praying for promotion to the vacant post of Head Assistant. They were also asked to write a note and a draft of release order. However, the petitioner refused to appear in the test without any reason. The counsel for the State Respondents also submits that after scrutiny of all records, documents and Rules the Respondent No. 4 was selected.

6. The counsels for the respondents submit that though the petitioner is senior to the Respondent No. 4 in the grade of UDA, the selection was done on the basis of merit, in which the petitioner declined to participate. Accordingly, the impugned selection and appointment of the Respondent No. 4 to the post of Head Assistant should not be interfered with.

7. I have heard the counsels for the parties. A perusal of Rule 6 of the 1967 Rules clearly provides that appointment to the post of Head Assistant shall be made strictly on merit.

8. The meeting minutes of the District Selection Committee held on 25.05.2017, for filling-up the vacant post of Head Assistant by promotion, shows that the ACRs for last 5 years of the senior most of four UD Assistants, which included the petitioner, were examined. Thereafter the Selection Committee decided to take a little test among the candidates, wherein they were asked to write a prayer petition in Assamese praying for promotion to the vacant post of Head Assistant. They were also asked to write a note and a draft of release order. However, the petitioner refused to participate in the Test without giving any reason for the same.

9. The Selection Committee thereafter gave its recommendation for selecting the Respondent No. 4 as Head Assistant, which is as follows:

"After scrutiny of all records, documents and rules the Committee decides to select Sri Mina Ram Bhuyan, U.D. Asstt. O/o the Dist. Deputy Registrar of Coop: Societies, Kamrup, Guwahati for promotion to the vacant post of Head Asstt. in the office of the Dist. Deputy Registrar of Coop: Societies, Kamrup, Guwahati on the basis of seniority cum merit."

10. A perusal of the above shows that the Selection Committee has used the words seniority-cum-merit. However, it is an admitted fact that the Respondent No. 4 is junior to the petitioner. As the petitioner is senior to the Respondent No. 4, the selection for the post of Head Assistant on the basis of seniority has to be made by selecting the petitioner. On the other hand, Note of Rule 6 of the 1967 Rules requires that appointment to the post of Head Assistant shall be made strictly on the basis of merit. Though it appears that the Respondent No. 4 has

been selected solely on the basis of merit, the Selection Committee has made its recommendation ambiguous, by selecting the Respondent No. 4, on the basis of seniority-cum-merit. This aspect of the matter has caused confusion and in the opinion of the Court, the ambiguity can be settled if a fresh review selection process is undertaken by the respondents, on the basis of the statutory law, for promotion to the post of Head Assistant.

Accordingly, the respondents are directed to constitute a review selection committee, who shall consider the case of the petitioner and the Respondent No.4 afresh, along with all other eligible candidates for promotion to the post of Head Assistant. The same shall be done by the State Respondents within a period of 2 (two) months from the date of receipt of a certified copy of this order.

11. Consequently, the selection and appointment of the Respondent No. 4 as Head Assistant is hereby set aside.

12. However, till a new selection of Head Assistant is made by the review selection committee and appointment order issued, the Respondent No. 4 shall be allowed to continue in the said post of Head Assistant.

13. The writ petition is accordingly disposed off.