
(2023) 04 GAU CK 0017
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 32 Of 2019

Mridul Talukdar And 2 Ors.

APPELLANT

Vs

State Of Assam And 4 Ors.

RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Citation : (2023) 04 GAU CK 0017

Hon'ble Judges : Lanusungkum Jamir, J

Bench : Single Bench

Advocate : R Singha

Final Decision : Disposed Of

Judgement

1. Heard Mr. R. Singha, learned counsel for the petitioners. Also heard Mr. B. Gogoi, learned Standing Counsel, Health Department for the respondents.
2. Pursuant to an advertisement for filling up the post of Assistant Entomologist in the Directorate of Health Services, the three petitioners herein applied for the post inasmuch as they had the requisite qualification of B. Sc with Zoology. Thereafter, on being successful in the recruitment process, the three petitioners were appointed by different notifications, all dated 20.02.2010, as Assistant Entomologist against the vacant post under the Directorate of Health Services, Assam. Since then, they have been serving as Assistant Entomologist till date without any break.
3. Being aggrieved for non-consideration of their promotion to the next higher post of District Malaria Officer, the petitioners are before this Court by way of present writ petition praying for a direction to the respondents to consider their case for promotion to the post of District Malaria Officer.
4. Mr. Singha, learned counsel for the petitioners, submits that there are no service rule governing the post of Assistant Entomologist and District Malaria Officer and, therefore, on the basis of a decision taken by the Selection

Committee for promotion to the rank of District Malaria Officer on 29.05.19917, candidates having B. Sc with Zoology and advanced Entomology training having at least 5 years regular service as Assistant Entomologist were considered for promotion. Accordingly, by Notification dated 18.08.1993, three Assistant Entomologists were promoted to the post of District Malaria Officer under Regulation 4(d) of the Assam Public Service Commission (Limitation and Function) Regulation, 1951 (hereinafter referred to as 'Regulation of 1951') for a period of one year. By another Notification dated 12.03.2001, two Assistant Entomologists were also promoted to the post of District Malaria Officer under Regulation 4(d) of the Regulation of 1951. The last promotion to the post of District Malaria Officer from the post of Assistant Entomologist was made by Notification dated 25.07.2008 under Regulation 4(d) of the Regulation of 1951.

5. It is submitted that the present three writ petitioners have completed more than 12 years of service as on date and they also have the requisite qualification of B. Sc with Zoology along with advance Entomology training, which they acquired in the year 2012. It is also submitted that as the post of Assistant Entomologist and the post of District Malaria Officer do not have any rules governing the service condition of the incumbents, the respondents are required to consider the case of the petitioners in terms of the long standing practice that has been followed by the department for promoting Assistant Entomologist to the post of District Malaria Officer.

6. To substantiate his claim that in absence of any service rule, the department is to follow executive instructions and/or decision taken administratively would operate in the field and appointment/promotion can be made in accordance with such executive instructions, the learned counsel for the petitioners has placed reliance in the case of Nagpur Improvement Trust Vs. Yadaorao Jagannath Kumbhare and others, reported in (1999) 8 SCC 99.

7. Mr. Gogoi, learned Standing Counsel, Health Department, on the other hand, submits that the department has already formulated a draft service rule of the District Malaria Officer named as "The District Malaria Officer Service Rules, 2022", which was prepared by the Health and Family Welfare (A) Department and has been sent to the Personnel (B) Department. However, on 17.02.2023, the Personnel (B) Department has made 8 (eight) numbers of observations pertaining to the Draft Service Rule. He, therefore, submits that as the department is in the process of rectifying the Service Rule as per observations made by the Personnel Department, the department may be permitted to finalise the Draft Service Rules of the District Malaria Officer and, thereafter, consider the case of the petitioners for their promotion.

He further submits that there are no service rule governing promotion from the post of Assistant Entomologist to the post of District Malaria Officer and there are also no standing instruction/notification from the State Government for giving promotion to the post of District Malaria Officer and, therefore, the reliance made by the learned counsel for the petitioners in Nagpur Improvement Trust (supra)

is not applicable in the present case.

8. I have heard learned counsel for the parties.

9. A perusal of the record indicates that the petitioners, on being successful in the recruitment process, were appointed as Assistant Entomologist by separate Notifications all dated 20.02.2010. Thereafter, the Director of Health Services, Assam by communication dated 28.02.2017 wrote to the Joint Director of Health Services (Malaria), Assam-cum-SPO, NVBDCP, Assam forwarding the representation made by the petitioners and made a request to submit a gradation list of Assistant Entomologist along with the vacancy position of District Malaria Officer (DMO) and ACRs for last 5 years.

10. In reply, the Joint Director of Health Services submitted the ACRs of three numbers of Assistant Entomologists (petitioners) as directed by letter dated 28.02.2017 on 23.06.2017. Consequent thereto, the Director of Health Services wrote to the Secretary to the Government of Assam, Health and Family Welfare Department by letter dated 05.08.2017 on the subject of Annual Confidential Reports of Assistant Entomologist. The communication dated 05.08.2017 is reproduced hereinbelow:-

"GOVERNMENT OF ASSAM

DIRECTOR OF HEALTH SERVICES ASSAM,

HENGRABARI, GUWAHATI-36

No. HSE/Apptt/Asstt/Enclo-298/11424 Dated Guwahati the 5/8/2017.

From :- The Director of Health Services, Assam,

Hengrabari, Guwahati-36.

To, The Secretary to the Govt. of Assam

Health & FW Deptt, Dispur, Guwahati-06.

Sub :- Annual Confidential Reports of Assistant Entomologists.

Ref :- Letter No. C-130-Esstt 04/10514, dtd. 23/06/2017

Sir,

With reference to the subject cited above, I have the honour to enclose herewith the gradation list laong with ACRs of the following Entomologist under the Joint Director of Health Services (Malaria) cum State Programme Officer NVBDCP, Assam, Christan Basti, Guwahati-05 for the year 2012-2017 in connection with the proposal for filling up the vacant posts of District Malaria Officer by way of promotion from the post of Assistant Entomologist to District Malaria Officer. As per minutes of the meeting of the selection committee for promotion, it was decided to full up the vacancies of District Malaria Officer from Asstt. Entomologist by means of promotion in the ratio of 2:3 (i.e., 2 by direct

recruitment and 3 nos by means of promotion from Assistant Entomologist), who have completed 5 years of their services provides other general criteria for promotion are fulfilled. In such way based on the minutes 2 (two) Asstt. Entomologist was promoted to DMO in 1997.

List of Asstt. Entomologist

- 1) Mridul Talukdar, Assistant Entomologist.
- 2) Niranjan Nath, Assistant Entomologist.
- 3) Jyotirupa Das, Assistant Entomologist.

This is for favour of your information & necessary action.

Enclo:- Minutes of selection committee.

Yours faithfully,

Sd/-

Director of Health Services, Assam,
Hengrabari, Guwahati-36."

11. Thereafter, the Deputy Secretary to the Government of Assam, Health and Family Welfare (A) Department wrote back to the Director of Health Services, Assam and the Joint Director of Health Services, Malaria by communication dated 17.03.2018 with regard to promotion of Assistant Entomologist to District Malaria Officer. The said communication is also reproduced below:-

"GOVERNMENT OF ASSAM HEALTH & FAMILY WELFARE (A) DEPARTMENT
DISPUR, GUWAHATI-781006

No. HLA.1174/2002/Pt-I/124 Dated Dispur, the 17th March, 2018.

From :- Shri H. Bhuyan, ACS,

Deputy Secretary to the Govt. of Assam,
Health & Family Welfare Deptt., Dispur.

To, 1) The Director of Health Services, Assam,
Hengrabari, Guwahati-36.

2) The Joint Director of Health Services, Malaria, Christian Basti, Guwahati-5.

Page No.# 7/8

Sub :- Regarding promotion of Asstt. Entomologist to District Malaria Officer.

Sir,

With reference to the subject cited above I am directed to request you to furnish the following information to this department for promotion of Assistant

Entomologist to District Malaria Officer at an early date:

1. Up to date vacancy position of DMO.
2. Up to date ACR (last 5 years) in respect of Asstt. Entomologist.
3. Up to date APR of Asstt. Entomologist.
4. Gradation list of District Malaria Officer.
5. Merit List of Asstt. Entomologist.
6. Furnish copies of qualification of the candidates eligible for promotion along with certificates of advance Entomology training. The minutes of the Selection Committee meeting dated 29/05/1997 is enclosed for reference in respect of eligibility criteria & others.

Yours faithfully,

Sd/-

Deputy Secretary to the Govt. of Assam

Health & Family Welfare (A) Department"

12. A perusal of the aforesaid communications dated 05.08.2017 and 17.03.2018 would clearly indicate that the Department had taken initiative for considering promotion of the petitioners to the post of District Malaria Officer, however, nothing happened thereafter.

13. This Court has also considered the minutes of the Selection Committee meeting for promotion to the rank of District Malaria Officer from the cadre of Assistant Entomologist, which was held on 29.05.1997, which projects that there are no service rule or service orders, etc. in matters relating to service conditions of various cadres/posts under NMEP organization including that of District Malaria Officer. Accordingly, a decision was taken to fill up the vacant post of District Malaria Officer keeping the ratio 2:3 by direct recruitment and by promotion. The eligibility criteria provided in the minutes of the said Selection Committee indicate that for direct recruitment through APSC, a candidate must be B. Sc with Zoology as one of the subjects and for promotion, a candidate must be B. Sc with Zoology and advance Entomology training having at least five years regular service as Assistant Entomologist.

The case of the petitioners comes under the promotion quota and they have the qualification as laid down in the said minutes of the Selection Committee.

14. This Court has also considered the affidavit filed by the respondent No.2/ Secretary to the Government of Assam, Health and Family Welfare (A) Department on 01.04.2023, which indicates that the Draft Service Rule, namely, "The District Malaria Officer Service Rule, 2022" has been prepared by the Health and Family Welfare Department and is in the process of finalization.

15. After considering the entire facts, this writ petition is disposed of directing the respondents to finalise the Draft Service Rule, i.e., "The District Malaria Officer Service Rule, 2022" within a period of three months from the date of receipt of a copy of this order. Thereafter, the case of the petitioners shall be considered for promotion under the said Rules. In the event, the Draft Service Rule is not finalized within the time-frame given by this Court as indicated above, the case of the petitioners shall be considered for promotion to the post of District Malaria Officer, as has been done for other Assistant Entomologist in the past, by convening a special DPC, within a period of two months thereafter.

16. With the above observations and directions, this writ petition stands disposed of.