
(2022) 06 GAU CK 0040

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4159 Of 2022

Nazrul Islam Barbhuiya

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 24-06-2022

Acts Referred:

Citation : (2022) 06 GAU CK 0040

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : P Barman

Final Decision : Disposed Of

Judgement

1. Heard Ms. P Barman, learned counsel for the petitioner. Also heard Mr. D Nath, learned Senior Government Advocate for the respondents.

2. The petitioner who was appointed as a muster roll worker under Mahur NEC Sub-Division on 01.11.1992 was regularized in service as per the order dated 03.10.2005 of the Executive Engineer, PWD and. This writ petition is instituted by raising a claim that under the Assam Ministerial District Establishment Service Rules, 1967, the petitioner is entitled for a consideration for promotion to a Grade-III post by invoking the provisions of reserving 10% of the post in the Grade-III cadre for promotion from the cadre of Grade-IV post.

3. Fundamentally, we are unable to accept the said claim of the petitioner inasmuch as the petitioner was regularized in service against a personalized post i.e. a supernumerary post. Supernumerary post is a post which is over and above the encadred post in a Department meaning thereby that it is a post which is outside the cadre. The 10% reservation for promotion from Grade-IV to Grade-III post is from the cadre Grade-IV post and not for those persons holding Grade-IV outside the cadre. Accordingly, the claim of the petitioner for promotion within 10% reservation for promotion from the cadre of Grade-IV to the cadre of Grade-III cannot be accepted. But however, as per the proposition laid down in CSIR &

ors v. Ramesh Chandra Agarwal and another reported in (2009) 3 SCC 35, a person joins the service for an entire career which also includes the right to be considered for promotion. If the petitioner cannot be promoted against the 10% reserved quota in the cadre of Grade-III inasmuch as the petitioner was appointed beyond the cadred posts of Grade-IV, nevertheless would be subjected to the legal proposition that he is also entitled to be considered for promotion in any other manner as may be available in law.

4. Mr. D Nath, learned Senior Government Advocate submits that for such employees who otherwise attain the qualifying service for a promotion but promotion cannot be given because of any other reason, such persons may be subjected to the scheme of MACP.

5. We accept the said submission of Mr. D Nath, learned Senior Government Advocate.

6. In the circumstance, the petitioner to file a representation before the Chief Engineer, PWD, Assam and upon the representation being submitted, the Chief Engineer would consider the claim of the petitioner as to whether he had otherwise attained the qualifying service for a promotion from Grade-IV and if yes, to pass a reasoned order on the same and in doing so, the Chief Engineer to also take note of the submission of Mr. D Nath, learned Senior Government Advocate that if the petitioner cannot be otherwise promoted but had satisfied the required qualifying service for such promotion, consideration can also be made to give the MACP benefits to the petitioner.

7. Representation be submitted within a period of one month from the date of receipt of certified copy of this order, as submitted by Ms. P Barman, learned counsel for the petitioner and upon the representation being submitted, the Chief Engineer shall pass a reasoned order thereon within a period of another two months thereafter.

Writ petition stands disposed of in the above terms.