

GAHC010014052013



2024:GAU-AS:8042

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7411/2013

RAMESH PRASAD and ANR.
S/O- LT. JAGANNATH PRASAD, PUND ROAD, P.S. and DIST.- DHUBRI.

2: AWAL MOJID
S/O- LT. SARABUDDIN SHEIKH
VILL.- RANGAPANI PT- II
P.S.- BILASHIPARA
DIST.- DHUBRI
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
TO BE REP. BY COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, PWD
DEPTT., DISPUR, GHY- 6.

2:CHIEF ENGINEER
PWD ROADS
ASSAM
CHANDMARI
GHY- 3.

3:EXECUTIVE ENGINEER
PWD RURAL ROADS DIVISION
P.O. and DIST.- DHUBRI

Advocate for the Petitioner : MR.N H MAZARBHUYAN, MS.L WAJEEDA,MR.K MIRA,MR.N ISLAM

Advocate for the Respondent : MS.B BHUYAN, „SC, PWD

BEFORE
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR
ORDER

26/02/2026

Heard Ms. L Wajeeda, learned counsel for the petitioners and Mr. R Dhar, learned Standing counsel, Public Works Department, appearing for the respondents.

2. Ms. Wajeeda, learned counsel for the petitioners, at the outset, has submitted that the present writ petition is being pressed only in respect of the petitioner No. 2, inasmuch as, during the pendency of the present proceedings, the petitioner No. 1 had passed away. She submits that no substitution of the legal heirs of the petitioner No. 1 was also made by the petitioners. Accordingly, this Court would consider the present writ petition only in respect of the petitioner No. 2, herein, Awal Majid.

3. The petitioners have instituted the present proceedings praying for a direction upon the respondent authorities for upgradation of their posts to that of Lower Division Assistant/Section Assistant.

The petitioner No. 2, herein, was appointed as a regular Chowkidar (Grade-IV) on 01.01.1994 in the establishment of the respondent No. 3, i.e., the Executive Engineer, PWD (Rural Roads) Division, Dhubri. The petitioner No. 2 continued to discharge his duties in such capacity. Vacancies having arisen in the post of Lower Division Assistant/Section Assistant, the petitioner No. 2 submitted a representation before the authorities praying for his promotion against the vacant post of Grade-III, available in the establishment of the respondent No. 3.

It is projected that although, proposals were prepared for the purpose of promotion of the petitioner No. 2 to the next higher post figuring in Grade-III of the service, no final order came to be passed in the matter and the petitioner No. 2 continued to serve against the Grade-IV post, he was originally appointed to.

It is further projected by the petitioner No. 2 that during the pendency of the present

writ petition, the respondent authorities had promoted 2 (two) persons junior to the petitioner No. 2 in the Grade-IV service, to the post of Grade-III ignoring the case of the petitioner No. 2, herein.

In the above background, the petitioner No. 2 prays that his case be directed to be considered for promotion to the post, figuring in Grade-III cadre of the service with retrospective effect, at least, w.e.f. the date his juniors were so promoted.

4. Ms. Wajeeda, learned counsel for the petitioners, by reiterating the facts, noticed hereinabove, has submitted that admittedly the fundamental rights vested in the petitioner No. 2 for having his case considered for promotion to the post figuring in Grade-III of the service was violated, inasmuch as, while juniors came to be so promoted, the case of the petitioner No. 2 was not extended with similar consideration. Accordingly, she submits that a violation of the fundamental rights of the petitioner No. 2 having occasioned, this Court would direct the respondent authorities to consider the case of the petitioner for promotion to any of the vacant Grade-III post with retrospective effect, i.e., w.e.f. the date his juniors were so promoted.

Ms. Wajeeda, learned counsel for the petitioners has submitted that the petitioner No. 2 was regularly approaching the respondent authorities by way of submission of representations praying for consideration of his case for promotion to the next higher grade of the service, however, such representations had also not evoked any response from the respondent authorities.

5. Per contra, Mr. R Dhar, learned Standing counsel, PWD submits that the promotion from the cadre of Grade-IV to the cadre of Grade-III was so regulated by the provisions of the Assam Ministerial District Establishment Service Rules, 1967. He submits that in terms of the provisions of the said Rules of 1967, 10% of the posts of Grade-III are to be filled up from the incumbents in the Grade-IV of the service. He submits that considering the cadre strength of the post of Junior Assistant figuring in Grade-III service, 3 (three) posts had worked out for promotion from incumbents in the Grade-IV cadre to the post of Junior Assistant. He submits that one of the posts involved was filled up by appointing a person on

compassionate grounds. The other two posts were so filled up by 2 (two) other incumbents, working in Grade-IV post, who were found suitable for such promotion.

Mr. R Dhar, learned Standing counsel, PWD submits that the petitioners by way of filing an affidavit-in-reply has contended that 2 (two) persons so promoted to the post of Junior Assistant were junior to the petitioner No. 2 in service. He submits that the said contention having been raised, promotions effected in respect of juniors to the post of Junior Assistant was challenged in the present writ petition. He submits that the petitioner No. 2, had filed an Interlocutory Application praying for amending the writ petition, however, the said Interlocutory Application, on a prayer made by the petitioner, was permitted to be withdrawn by this Court, vide order dated 16.07.2025 and thereafter, no fresh application has been filed in this connection.

In the above premises, Mr. Dhar learned Standing counsel, PWD submits that promotion effected in respect of 2 (two) persons to the post of Junior Assistant in the year 2016, being not permissible to be interfered with by this Court at this stage, the prayer made by the petitioner for a retrospective consideration of his case for such promotion would not mandate an acceptance.

Mr. Dhar, learned Standing counsel, PWD has further submitted that the earlier Rules of 1967 was amended in the year 2016 and for promotion from Grade-IV to Grade-III of the service, it was mandated that the incumbents must have a Graduate qualification. He submits that the petitioner No. 2 in the present writ petition, admittedly, is not a Graduate. He further submits that for the post figuring in the district establishment of the Assam Public Works Department, the Assam Ministerial Staff District Establishment (Public Works Roads Department Office) Service Rules, 2021 was notified vide Notification dated 19.07.2021. He submits that in terms of the provisions of the said Rules of 2021 for promotion of a member of Grade-IV in service to the post of Junior Assistant, he is required to possess a Bachelor Degree or equivalent from a University, recognized by the Government of Assam. Accordingly, he submits that the petitioner No. 2 not having the requisite educational qualification, his case would be not mandated to be so considered for promotion to the Grade-III post, in the event any vacant post for the purpose is so available, as on date. Accordingly, he submits that

the writ petition would mandate to be dismissed.

6. I have heard the learned counsels for the parties and also perused the materials available on record.

7. The present writ petition is pending since the year 2013. The grievance of the petitioner No. 2 was to the effect that his case for promotion from Grade-IV to the post figuring in the Grade-III cadre of the service was not being considered. During the pendency of the present proceedings, the respondent authorities had undertaken an exercise for promotion of incumbents working in the grade-IV cadre of the service to the available vacancies in the Grade-III cadre of the service in the establishment of the respondent No. 3, wherein, the petitioner No. 2 is so working.

8. It is seen that in pursuance to the said exercise, two incumbents, namely, Amarjyoti Karmakar and Jamuna Rabha came to be promoted to the post of Junior Assistant vide issuance of office orders, both dated 30.01.2016. It is projected by the petitioner No. 2 that both the incumbents, who were so promoted vide the said order dated 30.01.2016 were junior to him in the Grade-IV cadre.

9. The petitioner No. 2 having brought the said aspect of the matter to the notice of this Court, it is seen that no steps were taken to assail the said order dated 30.01.2016, which had been projected to have the effect of promoting juniors to the petitioner No. 2 to the cadre of Junior Assistant ahead of him, without considering his case. Further, it is seen that the said two incumbents were also not arrayed as party respondents in the present writ petition. Although, the petitioner had instituted an Interlocutory Application, being I.A. (Civil) No. 1362/2025 for amendment of the writ petition to bring on record the said developments taking place in the matter, it is seen that the said Interlocutory Application, on a prayer made by the applicant, i.e., the petitioner No. 2, herein, was permitted to be withdrawn by this Court vide an order dated 16.07.2025. Thereafter, no application has been instituted for impleading the said juniors, who were promoted vide order dated 30.01.2016. Accordingly, this Court is of the considered view that the promotion as effected in respect of Amarjyoti Karmakar and Jamuna Rabha, vide orders dated 30.01.2016 would not mandate an

interference by this Court.

10. Having drawn the above conclusions, this Court would now examine as to whether a direction can be issued to the respondent authorities for considering the case of the petitioner No. 2 for such promotion against vacancies that may be existing as on date and/or that would arise in the near future.

11. It has been brought on record by the learned counsel for the respondents that the service conditions of incumbents in the District Level Establishment of the Public Works Department is now governed by the provisions of the Assam Ministerial Staff District Establishment (Public Works Roads Department Office) Service Rules, 2021. In terms of the provisions of Section 3 of the said Rules of 2021, the service is held to be consisted of the three cadres and they are (a) Head Assistant; (b) Senior Assistant and (c) Junior Assistant.

12. The manner of recruitment to the post of Junior Assistant is provided under the provisions of Rule 5(3) of the said Rules of 2021. Rule 5(3)(c) mandates the procedure for promotion to the post of Junior Assistant from the cadre of Grade-IV of the service. The eligibility criteria set out in the provisions of the said Rules of 2021 for such promotion requires the incumbent in the Grade-IV cadre to possess the Bachelor Degree or an equivalent examination from a University recognized by the Government. It also requires such incumbent to have rendered minimum continuous service of 7 (seven) years and to be capable of typing in computer and to have sufficient working knowledge of computer.

13. The petitioner No. 2 in the present writ petition, only has Higher Secondary qualification and admittedly, has not acquired a degree qualification. Accordingly, in view of the provisions of Rule 5(3)(c)(i) of the said Rules of 2021, the petitioner No. 2 under no circumstances can be considered for promotion as on date against the posts figuring in Grade-III service of the cadre, more particularly, against the post of Junior Assistant. It is also to be noted that the petitioner No. 2 in all probability would also not be entitled to be considered for promotion against the technical post of Section Assistant, inasmuch, it has not been demonstrated that he also possess the requisite qualification for such promotion.

14. In view of the above conclusions reached by this Court, this Court is of the

considered view that the claims made by the petitioner No. 2 in the present writ petition would not mandate an acceptance.

15. Accordingly, the present writ petition is held to be devoid of any merit and the same stands dismissed. However, there would be no order as to cost.

JUDGE

Comparing Assistant