

GAHC010149392017



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

Case No. : WP(C)/7194/2017

BHARAT CH. BARUAH
S/O. LT. GUNA RAM BARUAH, R/O. VILL. MADALI GAON, P.O.
DALLANGHAT, DIST. UDALGURI B.T.A.D, ASSAM.

VERSUS

THE STATE OF ASSAM and 5 ORS
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, HEALTH and
FAMILY WELFARE DEPTT., DISPUR, GUWAHATI, ASSAM, PIN-781006.

2:THE BODOLAND TERRITORIAL COUNCIL

REP. BY THE PRINCIPAL SECRETARY
B.T.C.
KOKRAJHAR
ASSAM
PIN-783370.

3:THE JOINT SECRETARY
HEALTH and FAMILY WELFARE DEPTT.
BTC

KOKRAJHAR
ASSAM
PIN-783370.

4:THE DIRECTOR OF HEALTH SERVICES
BTC

KOKRAJHAR
ASSAM
PIN-783370.

5:THE JT. DIRECTOR OF HEALTH SERVICES
UDALGURI

DIST. UDALGURI B.T.A.D.
ASSAM
PIN-

6:THE CHIEF MEDICAL OFFICER
UDALGURI

DIST. UDALGURI B.T.A.D.
ASSAM
PIN

Advocate for the Petitioner : MS.A BARUAH

Advocate for the Respondent : SC, HEALTH

Linked Case : WP(C)/703/2018

JUNAS DAIMARI AND ANR
S/O LATE TIMOTHY DAIMARI
R/O VILLAGE KADAMGURI
P.O KABIALI
DIST. UDALGURI
BTAD
ASSAM

2: MWNSWMA BORO
S/O- LATE GABKHIRAO BARO
R/O- VILL- KHASIACHUBA
P.O- KHAGRABALI
DIST- UDALGURI
BTAD
ASSAM
VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR
GUWAHATI

ASSAM
PIN- 781006

2:THE BODOLAND TERRITORIAL COUNCIL
REP. BY THE PRINCIPAL SECRETARY
BTC
KOKRAJHAR
ASSAM
PIN- 783370

3:THE JOINT SECRETARY
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BTC
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PIN- 783370

4:THE DIRECTOR OF HEALTH SERVICES
BTC
KOKRAJHAR
ASSAM
PIN- 783370

5:THE JOINT DIRECTOR
OF HEALTH SERVICES
UDALGURI
DIST- UDALGURI
BTAD
ASSAM
PIN- 784509

Advocate for : MRS. A BUJARBARUAH

Advocate for : SC

HEALTH appearing for THE STATE OF ASSAM AND 3 ORS

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

27.10.2022

Heard Mrs. A. Bujarbaruah, learned counsel for the petitioner. Also heard Ms. R.B. Bora, learned counsel for the BTC and Ms. S. Sarma, learned counsel for the respondent no.1.

The grievance of the petitioner in WP(C) No.7194/2017 is that while the

junior of the petitioner in the cadre of Grade-IV had been promoted to a Grade-III post of Vaccinator on 16.11.2004, the petitioner is still languishing in his Grade-IV post, since his date of appointment on 18.04.1990.

The petitioner's case is that the petitioner's junior Shri Mukunda Deka was promoted to the post of Vaccinator (Grade-III post) on 16.11.2004 without considering the case of the petitioner. The petitioner filed WP(C) No.5232/2008 and the same was disposed of, vide order dated 15.06.2011 with a direction to the respondent authorities to pass an appropriate order considering the grievance of the petitioner.

The petitioner's counsel submits that consequent to the order dated 15.06.2011 passed in WP(C) No.5232/2008, an interview was held in the month of December, 2011 for filling up 9 (nine) vacant posts of Vaccinators, under the establishment of the Director of Health Services, Udalguri. The petitioner appeared and secured the 7th position in the merit list.

As no appointment order was being issued by the respondents, the petitioner filed Contempt Case No.;251/2012. Contempt Petition No.251/2012 was closed, vide order dated 07.11.2004, by observing that the claim of the petitioner for promotion had been considered and rejected.

Subsequent to the above, the petitioner came to know of order dated 01.03.2012 issued by the Principal Secretary, Bodoland Territorial Council (BTC), Kokrajhar, which states that the claim of the petitioner for promotion to the post of Vaccinator was not sustainable, as the Government of Assam was pleased to create the post of Surveillance Worker while abolishing the post of Vaccinator. Further, as per the provisions of Assam Vector Borne Disease Control Programme Workers Service Orders, 2006, Surveillance Workers and Basic

Health Workers (BHW) are non-gazeted Class-III services under the Government of Assam and recruitment was to be made by direct recruitment, in accordance with Order 6 of the Assam Vector Borne Disease Control Programme Workers Service Orders, 2006.

The petitioner's counsel submits that thereafter the Joint Director of Health Services, Udalguri, BTAD, wrote a letter dated 05.01.2013 to the Director of Health Services, BTC, Kokrajhar, submitting details with regard to the posts of Vaccinator, under the establishment of the office of the Joint Director of Health Services, Udalguri. In the said annexure attached to letter dated 05.01.2013, it was shown that there was 16 posts of Vaccinator, out of which 5 (five) persons were holding the post of Vaccinator and 9 (nine) posts were vacant. The petitioner's counsel thus submits that as the post of Vaccinator has not been abolished, as can be seen from the dated 05.01.2013 issued by the Joint Director of Health Services, Udalguri, BTAD, a direction should be issued to the respondents, to consider the case of the petitioner for promotion to the post of Vaccinator.

Ms. R.B. Bora, learned counsel for the BTC submits that as per paragraph 3 of the affidavit-in-opposition filed by the respondent no.5 on 04.02.2021, no Grade-IV employee can be promoted to the post of Vaccinator/Surveillance Worker, which is a non-gazetted service. She submits that recruitment to such posts have to be made by direct recruitment, in accordance with Order 6 of the Assam Vector Borne Disease Control Programme Workers Service Orders, 2006.

Ms. S. Sarma, learned counsel for the respondent no.1 submits that the Health Department is a transferred subject and the BTC have got their own Principal Secretary, Health Services and Director, Health Services. She submits that even if the State of Assam abolishes some posts under the Assam

Government by some notification, the same does not become automatically applicable to the BTC areas.

The above being said, Ms. R.B. Bora, learned counsel for the BTC shall obtain instructions, as to whether the petitioner, who has been languishing in a Grade-IV post for the last 25 years can be considered for promotion to a Grade-III post, such as Junior Assistant/LDA etc., provided the petitioner has the required educational qualification.

List the matter on 22.11.2022.

JUDGE

Comparing Assistant