

GAHC010055252021



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

Case No. : WP(C)/2177/2021

JIMPI BORAH
W/O- SRI ANKUR SAIKIA, R/O- SANKARDEV PATH, NEAR K G NURSING
HOME, JAIL ROAD, DIST.- JORHAT, ASSAM, PIN- 785001

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GHY-06

2: THE DIRECTOR
STATE COUNCIL OF EDUCATIONAL RESEARCH (SCERT)
KAHILIPARA
GHY-19

3: THE JOINT DIRECTOR
STATE COUNCIL OF EDUCATIONAL RESEARCH
JORHAT CAMPUS
JORHAT
ASSAM
PIN- 785001

4: HEM CHANDRA RABHA
OFFICE OF THE DIRECTOR
SCERT
ASSAM
KAHILIPARA
GHY-1

Advocate for the Petitioner : , MR. P DUTTA, MR. T CHAKRABORTY, MR. D CHOUDHURY

Advocate for the Respondent : SC, ELEM. EDU, MR. A DAS (R 4), MR. N C DAS (R 4), SC,
SCERT, ASSAM

Linked Case : WP(C)/7626/2022

JIMPI BORAH

W/O SRI ANKUR SAIKIA R/O SANKARDEV PATH NEAR K G NURSING HOME
JAIL ROAD DIST. JORHAT ASSAM PIN-785001

VERSUS

THE STATE OF ASSAM AND 2 ORS

REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
EDUCATION ELEMENTARY DEPTT. DISPUR GUWAHATI
PIN-781006

2:THE DIRECTOR

STATE COUNCIL OF EDUCATION RESEARCH SCERT KAHILIPARA
GUWAHATI-781019

3:THE JOINT DIRECTOR

STATE COUNCIL OF EDUCATION RESEARCH JORHAT CAMPUS
JORHAT ASSAM PIN-785001

Advocate for :

Advocate for : SC

ELEM. EDU appearing for THE STATE OF ASSAM AND 2 ORS

BEFORE

HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 02-04-2025

Heard Mr. T Chakraborty, learned counsel for the petitioner. Also heard Mr. S Bora, learned counsel for the respondent Nos. 2 & 3/State Council of Educational Research and Training (SCERT); Ms. S Chutia, learned counsel for the Elementary Education Department as well as Mr. NC Das, learned Senior counsel assisted by Ms. M Devi, learned counsel for the respondent No. 4.

2. In WP(C) 2177/2021, the petitioner has prayed for setting aside the selection and

promotion of the respondent No. 4, from the post of Lower Division Assistant (LDA) to the post of Research Assistant, vide the impugned order dated 24.02.2021. The other prayer of the petitioner in WP(C) 2177/2021 is that the petitioner should be promoted to the post of Research Assistant, as it has been the practice of the State respondents to promote a Statistical Assistant of the SCERT as Research Assistant, SCERT.

3. In WP(C) 7626/2022, the petitioner has prayed for setting aside and quashing the impugned common gradation list dated nil of Statistical Assistants of DIET & SCERT, issued by the Director, SCERT, in so far it relates to the petitioner, where his name figures at Sl. No. 16 out of 23 Statistical Assistants of the SCERT and DIET (District Institute of Education & Training). The further prayer of the petitioner in WP(C) 7626/2022 is that a separate gradation list of Statistical Assistants for SCERT should be made, without including the Statistical Assistants working in DIET.

4. The petitioner's counsel submits that there is no Service Rule governing the procedure to be followed for filling up the post of Research Assistant even till today and as such, the practice of promoting Statistical Assistants of the SCERT to the post of Research Assistant, SCERT that has been followed earlier, should continue.

5. The facts of the case in brief is that the petitioner was appointed as a Statistical Assistant, SCERT vide order dated 19.02.2011 and he joined his post on 21.02.2011. Thereafter, a proposal for upgradation of a few posts in the State Institute of Education (now known as SCERT) was made, vide letter dated 13.09.1993 issued by the Principal, State Institute of Education. The said proposal included upgradation of one of the two posts of Statistical Assistant in the State Institute of Education, which was later renamed as SCERT, to the level of Assistant Research Officer. Subsequently, another proposal was sent by the Principal of State Institute of Education to the Commissioner to the Government of Assam, Education Department, for upgradation of one post of Statistical

Assistant to the post of Research Assistant, as there was no chance of promotion for a Statistical Assistant to the post of Educational Statistical Officer, in view of the big gap between the post of Statistical Assistant and the post of Educational Statistical Officer.

6. The Joint Secretary to the Government of Assam, Education Department, thereafter issued a letter dated 18.10.1993, stating that the Government had agreed to upgrade one post of Statistical Assistant in the scale pay of Rs. 1285-30-1435-40-1635-50-1735-EB-50-2035-60-2395-80-2875-100-3075 /- p.m. to that of Research Assistant, in the scale of pay of Rs. 1475-40-1635-50-2035-EB-60-2395-80-2875-100-3575-125-3825 p.m.. Subsequent to the upgradation of one post of Statistical Assistant to the post of Research Assistant, the incumbent to the post of Statistical Assistant was also upgraded (promoted) to the post of Research Assistant. Thereafter, two other orders were issued promoting Statistical Assistants of the SCERT to the post of Research Assistant. It may also be mentioned that in the meantime two posts of Research Assistants had also been created, thereby taking the total number of Research Assistant posts to three.

7. The impugned order dated 24.02.2021 was thereafter issued by the Director, SCERT, Assam whereby the respondent No. 4, who was not a Statistical Assistant, but a LDA, was promoted to the post of Research Assistant, SCERT, Jorhat Campus.

8. The petitioner's counsel submits that the respondent No. 4 could not have been promoted to the post of Research Assistant, inasmuch as, the organizational chart of the SCERT does not contain the post of LDA. He also submits that as per the notification No. FPC.43/2018/3 dated 09.03.2019 issued by the Commissioner & Secretary to the Government of Assam, Finance (PRU) Department, the pay band of an LDA is 14000-60500 with grade pay 6,200, while the pay band of a Statistical Assistant is 14000-60500 with grade pay of Rs.7,600/- He submits that the promotional post of an LDA is UDA in terms of the Assam Directorate Establishment (Ministerial) Service Rules, 1973

(hereinafter referred to as the “1973 Rules”), wherein the grade pay of a UDA is 14,000 - 6,500 with grade pay of 8,000/-. On the other hand, the grade pay of a Research Assistant is 22,000 – 97,000 with grade pay of Rs. 9,100/-

9. The petitioner’s counsel submits that when the promotional post of an LDA is UDA, which is having a lesser grade pay then the grade pay of Research Assistant, the promotion of the respondent No. 4 was not only bad in law, but it was also unreasonable.

10. The petitioner’s counsel submits that in terms of Rule 2(g) of the 1973 Rules, service means the minimum service in the respective office where the member serves. Rule 3 of the 1973 Rules shows the various categories of posts, including LDA and UDA, which come within the definition of service. He submits that a reading of Rule 2 and Rule 3 of the 1973 Rules goes to show that the service of the respondent No. 4 is governed by the 1973 Rules and as such, the respondent No. 4 could not have been promoted outside his cadre post, as the post of Research Assistant did come within the definition of service as provided in the 1973 Rules.

11. The petitioner’s counsel further submits that prior to the promotion of the earlier Research Assistant from the post of Statistical Assistant, a DPC meeting was held on 25.02.2016, wherein the petitioner was in the zone of consideration for promotion to the post of Research Assistant. As such, the petitioner should also have been considered for promotion at the time the respondent No. 4 was promoted vide the impugned order. However, the petitioner was not considered for promotion by the DPC on 25.02.2016.

12. The petitioner’s counsel thus prays for setting aside the promotional order of the respondent No. 4 and the impugned gradation list dated nil, wherein the petitioner has been shown to be at Sl. No. 16 out of 23 Statistical Assistants, belonging to both the SCERT and DIET. He also submits that a direction should be issued to the State respondents to make a separate seniority lists for Statistical Assistants of DIET and for

the SCERT. He submits that prior to the issuance of the impugned final seniority list dated nil of Statistical Assistants, no provisional seniority list had been issued by the State respondents.

13. Mr. S Bora, learned counsel for the respondent Nos. 2 & 3/SCERT submits that DIET comes under the SCERT. He further submits that while there is no service Rule governing the promotion procedure for the post of Research Assistant, the promotion of the respondent No. 4 had been made on the basis of the conditions required of candidates for direct recruitment to the post of Research Assistant, in terms of the advertisement No.02/2001 dated 01.03.2001 issued by the Assam Public Service Commission. In terms of the advertisement No.02/2001, the post of Research Assistant had to be filled up by direct recruitment, after calling for candidates possessing a minimum of 10 years of experience from LDA/UDA and Statistical Assistants, from any Department/Institute under the Government of Assam. He submits that as an LDA was eligible to be directly recruited to the post of Statistical Assistant pursuant to the advertisement No.02/2001, there was no infirmity with the State respondents promoting the respondent No. 4, who was an LDA to the post of Research Assistant, as he had all the qualifications required in terms of the advertisement No. 02/2001.

14. The learned counsel for the SCERT has also put in a preliminary challenge to the writ petition, by stating that though the petitioner has prayed for setting aside the seniority list dated nil, wherein the petitioner has been placed at Sl. No. 16, the petitioner has not made any of the persons who are above him in the seniority list as parties to the writ petition. He also submits that in the seniority list dated nil, there are two Statistical Assistants of the SCERT who are senior to the petitioner. However, they have not been made parties in the writ petition. As such, even assuming the petitioner succeeds in the writ petition, the petitioner cannot have the right to promotion to the post of Research Assistant by superseding his seniors, as per the seniority list dated nil.

15. Mr. S Bora, learned counsel for the respondent Nos. 2 & 3 submits that a provisional gradation list had been published, along with a covering letter, i.e. notice dated 12.06.2020 issued by the Director, SCERT, Assam, calling for objections with supporting documents from those who were aggrieved by the same. He submits that though the notice dated 12.06.2020 does not contain the draft provisional list, as the same is only a forwarding letter, he will produce the draft provisional list on a subsequent date.

16. Mr. NC Das, learned senior counsel for the respondent No. 4 submits that writ petition is not maintainable, due to non-joinder of necessary parties, as the petitioner has not impleaded the Statistical Assistants, who are shown to be senior to the petitioner in the seniority list dated nil, in the writ petition. He submits that if the writ petition succeeds, the seniors of the petitioner would be prejudiced, as they would have been condemned unheard. He also submits that the respondent No. 4 having the required eligibility criteria in terms of the advertisement No. 02/2001, there is no infirmity in promoting the respondent No. 4 to the post of Research Assistant, in the absence of Service Rules for filling up the post of Research Assistant. He also submits that the DPC which was constituted for selecting the successful candidate to the post of Research Assistant, SCERT Jorhat Campus had recommended the respondent No. 4, as he had all the requisite qualification and experience required for the post. He submits that as there is no Service Rule of the SCERT, Assam for the post of Statistical Assistant and Research Assistant, it cannot be said that the post of Statistical Assistant is the only feeder post for promotion to the post of Research Assistant. The post of Research Assistant can be filled up from Statistical Assistants as well as LDA/UDA having requisite qualification with 10 years experience in planning matters in terms of the advertisement No.02/2001. The learned senior counsel also reiterates the submissions made by Mr. S Bora, learned counsel for the respondent Nos. 2 and 3.

17. Mr. NC Das, learned senior counsel for the respondent No. 4 submits that the respondent No. 4 as Research Assistant has been promoted, vide order dated 24.02.2021 issued by the Director, SCERT, Assam. He accordingly submits that there being no merit in the writ petition, the same should be dismissed.

18. List the matter again on **05.04.2025**.

19. Mr. S Bora, learned counsel for the respondent Nos. 2 and 3 shall produce the official records on that day. He will also obtain instructions as to whether the petitioner was in the zone of consideration for promotion to the post of Research Assistant in the DPC meeting held on 25.02.2016. He shall also produce the said meeting minutes. He shall also produce the provisional seniority list that has been mentioned in the notice dated 12.06.2020.

20. The petitioner's counsel shall obtain instructions as to whether the two Statistical Assistants, SCERT shown in the impugned seniority list dated nil are senior to the petitioner and as to why they have not been made parties in the writ petition. He shall also have to explain as to why the persons, who have been made senior to him in the seniority list dated nil, are not made parties in the writ petition.

21. The counsels for the parties may also obtain instructions as to whether it is reasonable and possible for the LDAs and UDAs to both be promoted to the post of Research Assistant, when the post of UDA is the promotional post of LDA in terms of the 1973 Rules.

JUDGE

Comparing Assistant