



GAHC010152562018

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

Case No. : WP(C)/4672/2018

ARUN CHANDRA CHOWDHURY
S/O- LT HARESWER DAS CHILLING PLANT ATTENDANT, OFFICE OF THE
DY. DIRECTOR, DIARY DEVELOPMENT, NALBARI ZONE, NALBARI, PO
MILANPUR, DIST- NALBARI, ASSAM, PIN- 781337

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF
VETERINARY, DISPUR, ASSAM, PIN- 781006

2:THE DIRECTOR
DAIRY DEVELOPMENT
GOVT.. OF ASSAM
KHANAPARA
GHY-22

3:THE DY. DIRECTOR
DIARY DEVELOPMENT
GOVT. OF ASSAM
NALBARI ZONE
PO MILANPUR
DIST- NALBARI
ASSAM
PIN- 781337

4:THE SUPERINTENDENT
TOWN MILK SUPPLY SCHEME
GOVT. OF ASSAM
KHANAPARA
GHY-22

5:SHRI NAGEN CHANDRA TALUKDAR
JUNIOR ASSTT.
OFFICE OF THE DY. DIRECTOR
DIARY DEVELOPMENT



GOVT. OF ASSAM
NALBARI ZONE
NALBARI
PO MILANPUR
DIST- NALBARI
ASSAM
PIN- 78133

Advocate for the Petitioner : MR. A AHMED
Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri A. Ahmed, Adv.

Advocates for the respondents : Ms. MM Katak, SC-AH & VT
Shri M. Pathak, R-5

Date of hearing : **01.04.2024**

Date of Judgment : **01.04.2024**

JUDGMENT & ORDER

Heard Shri A. Ahmed, learned counsel for the petitioner. Also heard Ms. M.M. Katak, learned Standing Counsel, Animal Husbandry and Veterinary Department whereas the private respondent no. 5 is represented by Shri M. Pathak, learned counsel.

2. It is the promotion of the respondent no. 5 as Junior Assistant in the Department of Animal Husbandry and Veterinary which is the subject matter of challenge in this writ petition.

3. According to the petitioner, he was initially engaged as a Muster Roll Worker in the Department on 01.10.1986 whereas the respondent no. 5 was



engaged at a later point of time on 01.10.1992. Both the petitioner and the respondent no. 5 were however regularized vide a common order dated 30.09.2005 in the establishment of the Deputy Director of Dairy Development (Zonal) Nalbari. On such regularization, the parties were to be considered for further promotions subject to fulfilling the criteria laid down. In the meantime, a Gradation List was published wherein the petitioner was placed against Sl. No. 37 and the respondent no. 5 was at Sl. No. 128. The petitioner also claims to have participated in a training programme and various documents have also been pressed into service to contend that the petitioner was entrusted with additional duties pertaining to Grade-III post. On 16.02.2018, the Selection Committee held a meeting and in the said meeting, the respondent no. 5 was selected for appointment to the post of Junior Assistant, as indicated above, it is this exercise which is the subject matter of challenge.

4. Shri Ahmed, learned counsel for the petitioner has submitted that the Assam Directorate Establishment (Ministerial) Service Rules, 1973 (hereinafter the Rules, 1973) had undergone an amendment on 27.09.2016 as per which, the eligibility criteria for promotion from Grade-IV to Grade-III has been laid down. As per the amended Rules, there is a requirement to serve in the feeder cadre for a minimum period of 7 years and the educational qualification is to be a graduate and the candidate is required to fulfill Rule 12(iii). The percentage fixed for such promotion to the post of Grade-III which is otherwise a post to be filled up by direct recruitment is 10%. The criteria for promotion has been laid down as 'Suitability' to be assessed. By drawing the attention of this Court to the impugned minutes of meeting dated 16.02.2018, Shri Ahmed, learned counsel has submitted that the remarks column does not specify any details as to how the respondent no. 5 was selected over the petitioner. He has also drawn



the attention of this Court to the order dated 05.03.2024 whereby the learned Standing Counsel for the Department was directed to produce the comparative statement of the parties to the *lis*.

5. It is also submitted on behalf of the petitioner that remarks in the ACRs were never communicated as mandated by the Hon'ble Supreme Court in a catena of judgments including the landmark case of ***Dev Dutt Vs. Union of India and Ors.*** reported in ***(2008) 8 SCC 725***. He accordingly submits that the impugned promotion is liable to be interfered with. Shri Ahmed has however fairly informed this Court that his client has attained the age of superannuation yesterday i.e. 31.03.2024 and therefore he may be granted notional benefits pursuant to such promotion, in the event this writ petition is allowed.

6. *Per contra*, Ms. Kataki, learned Standing Counsel, Animal Husbandry and Veterinary Department has contended that the promotion was made by following the due process of law and in a transparent manner. By referring to the affidavit-in-opposition which was filed on 04.12.2018, it is submitted that since the post held by the petitioner as well as the respondent no. 5 in Grade-IV are supernumerary post which were personal to the parties, Rules of 1973 *per se* would not be applicable. However, promotion was considered on the basis of continuous service and other reports and the recommendations. She has also pointed out that the date of regularization of the parties being the same, the parties were at par in terms of their consideration and in any case, seniority does not play any pivotal role in the matter of this promotion. She clarifies that the Gradation List is only to ascertain the date of retirement and not for the purpose of any seniority.

7. The learned Standing Counsel has also placed before this Court the comparative statement of the parties and the special report / remarks as per



which, the respondent no. 5 has been termed as "Excellent, Outstanding" whereas the petitioner has been termed as "Very Good". The learned Standing Counsel of the Department has otherwise pointed out that since the petitioner had already superannuated from the service, no effective relief can be granted to the petitioner even if any case for interference is made out.

8. Shri Pathak, learned counsel for the respondent no. 5 has submitted that affidavit-in-opposition has been filed on 14.11.2023 and the promotion being made strictly in accordance with the Rules and there being no allegation of any such violation, those would not call for any interference by this Court. As regards the qualification and additional works claimed to be done by the petitioner, Shri Pathak clarifies that his client has got the same qualification and has also rendered additional works pertaining to Grade-III. Though it is submitted that the regularization was done on supernumerary post which would be abolished after the retirement or otherwise leaving the post, by drawing the attention of this Court to a communication dated 12.03.2013, it is submitted that such incumbents would be entitled for consideration for all services benefits including the promotion.

9. Shri Pathak, learned counsel has also placed reliance upon a case of ***Ashok Gulati and Ors. Vs. B.S. Jain and Ors.*** reported in ***1986 Supp. Supreme Court 424*** wherein it has been laid down that *ad hoc* period of service would not be taken into account. Paragraph 22 of the said judgment has been pressed into service as per which, seniority is to be reckoned from the date when one becomes a member of the cadre.

10. Shri Pathak, learned counsel has also placed reliance upon the provision of the Rules, namely, Rule 10 of the Rules, 1973 and submits that there being 16 nos. of vacancies, 10% would constitute 2 nos. of posts which were duly

filled up by the respondent no. 5 and another incumbent.

11. Shri Ahmed, learned counsel for the petitioner, in his rejoinder has submitted that it is for the first time when the remarks in the ACRs have been learnt by him on the report being placed before this Court and remarks of the ACRs not been communicated, such ACRs could not have been acted upon for the purpose of promotion.

12. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

13. The challenge by the petitioner towards the promotion of the respondent no. 5 vide the minutes of meeting dated 16.02.2018 is primarily on the ground that the petitioner is senior in service as he was initially engaged on 01.10.1986 whereas the respondent no. 5 was engaged on 01.10.1992 both as Muster Roll Worker. The petitioner has also emphasized that such seniority is also reflected in the Gradation List in which the petitioner has been placed against Sl. No. 37 whereas the respondent no. 5 has been placed at Sl. No. 128.

14. This Court has looked into the Rules of 1973 regarding the recruitment to Grade-III which is normally to be filled up by direct recruitment and only 10% is to be filled up by promotion from eligible Grade-IV employees, who fulfills the criteria laid down and such promotion is on the basis of 'Suitability'.

15. There is no provision in the Rules that seniority would have been any role in the manner of promotion to Grade-III. That being the position, the rival contentions as pleaded in the writ petition as well as the affidavit is required to be seen. The petitioner has pleaded that additional duties of Grade-III post were entrusted to him. However, such duties were also performed by the



respondent no. 5 which in any case the same would not be a deciding factor in the matter of promotion. Though the contention has been made on behalf of the Department that the Rules of 1973 *per se* would not be applicable, the spirit of the Rules would be applicable wherein a transparent and fair manner is to be adopted for making such promotion. The comparative statement placed before this Court would show that while deciding the aspect of 'Suitability', the respondent no. 5, as noted above, is "Excellent, Outstanding" whereas that the petitioner is "Very Good". Though Shri Ahmed, learned counsel for the petitioner may be right in contending that the remarks in the ACRs ought to have been communicated to him, the same however would not have much bearing in the adjudication of this Court as that is not the subject matter of challenge. When the records placed before this Court clearly reflects that the remarks of the respondent no. 5 was better than that of the petitioner and both of them were considered in the promotion exercise made by the Selection Committee in the meeting held on 16.02.2018 there remains hardly any scope for interference with the aforesaid promotion. This Court has also noted that the petitioner has, in the meantime, attained the age of superannuation.

16. In view of the above, this Court is of the considered opinion that no case for interference is made out and accordingly the writ petition is dismissed.

17. The documents placed before this Court by Ms. Katakai, learned Standing Counsel of the Department are made part of the records.

JUDGE

Comparing Assistant