



GAHC010113952020

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

Case No. : WP(C)/3368/2020

MRINAL KANTI SEAL AND ANR.
S/O LT. MONINDRA KUMAR SEAL, R/O VILL. RANGAUTI-PART-I, P.O.
RANGAUTI, P.S. AND DIST. HAILAKANDI, ASSAM-788155

2: MUNGALAL RABIDAS
S/O LT. RAM SUNDAR DAS
R/O VILL. BASDAHAR PART-II
P.O. MATIJURI
P.S. AND DIST. HAILAKANDI
ASSAM-78815

VERSUS

THE STATE OF ASSAM AND 3 ORS.
TO BE REP. BY THE COMMISSIOER-PRINCIPAL SECRETARY, GENERAL
ADMINISTRATIVE DEPTT. GOVT. OF ASSAM, DISPUR, GUWAHATI-781005

2:THE DEPUTY COMMISSIONER
HAILAKANDI
DIST. HAILAKANDI
ASSAM

3:THE DISTRICT LEVEL SELECTION COMMITTEE
(RELATING TO THE PROMOTION OF GRADE-IV TO GRADE-III) TO BE REP.
BY THE ADDITIONAL DEPUTY COMMISSIONER
I/C PERSONNEL BRANCH
HAILAKANDI
DIST. HAILAKANDI

4:RAKTIMAVA DEY
JARIKAROK GRADE -II
O/O THE DEPUTY COMMISSIONER
HAILAKANDI LAND ACQUISITION BRANCH
P.O. AND DIST. HAILAKANDI



ASSAM-78815

Advocate for the Petitioner : MR. B CHAKRAVARTY

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri B. Chakravarty, Adv.

Advocate for the respondents : Shri R. Dhar, GA-Assam
Shri IH Barbhuiya, R-4

Date of hearing : **23.04.2024**

Date of Judgment : **23.04.2024**

JUDGMENT & ORDER

The grievance raised in this petition filed under Article 226 of the Constitution of India is with regard to the promotion which the petitioners claim from Grade IV to Grade III under the Assam Ministerial District Establishment Service Rules, 1967 (hereinafter the Rules, 1967).

2. The background facts leading to the aforesaid claim are narrated hereinbelow in brief.

3. While the petitioner no. 1 was appointed as Process Server on 12.10.1993, the petitioner no. 2 was appointed as a Peon on 31.08.1988 in the establishment of the Office of the deputy Commissioner, Hailakandi. It is not in dispute that both the aforesaid posts are in the Grade IV. The post in Grade III has a promotional quota of 10% which are to be filled up from eligible



candidates in the feeder cadre of Grade IV and the educational qualification at that time was prescribed to be Higher Secondary. It is the case of the petitioners that both of them were eligible for such consideration and in spite of meeting the eligibility criteria, both by means of educational qualification and other factors, the petitioners were not given the benefit of promotion. The Rules however had undergone an amendment in the year 2015 wherein the minimum qualification was amended from Higher Secondary to Graduation. The petitioners contends that the Rules being prospective in nature, the cases of the petitioners can still be considered as they were eligible during the period till 2015 and therefore, a direction be issued for their promotion.

4. The defence of the State is that any consideration has to be made as per the existing Rules which admittedly require a candidate to be a Graduate and the petitioners do not possess such qualification.

5. I have heard Shri B. Chakravarty, learned counsel for the petitioners. I have also heard Shri R. Dhar, learned State Counsel for the official respondent. Shri IH Barbhuiya, learned counsel appears for the respondent no. 4.

6. Shri Chakravarty, learned counsel for the petitioners, at the outset, has submitted that though an incumbent has been made a party respondent no. 4, the present relief claim would not affect his service as the prayer is only for a consideration of the cases of the petitioners for promotion to Grade III. By drawing the attention of this Court to the Rules of 1967, the learned counsel for the petitioners has submitted that for filling up the post of Grade III, there is also an avenue for promotion of 10% of the vacancies. By drawing the attention of this Court to the averments made in the petition including a response received by an application under the RTI Act dated 08.10.2018, the learned counsel for the petitioners has submitted that sufficient vacancies were there till

the amendment of the Rules wherein the petitioners could have been considered and promoted. He submits that the amendment not having any clause that the same would have a retrospective affect, such additional qualification can be held to be necessary only post 2015 and therefore, the petitioners would possess a vested right for consideration of their cases.

7. In support of his submissions, the learned counsel for the petitioners has placed reliance upon the following case laws-

- i. ***AIR 1965 SC 1970 [Amireddi Raja Gopala Rao Vs. Amireddi Sitharamamma]***
- ii. ***1976 (3) SCC 37 [Vijayalakshmi Rice Mills, New Contractors Company Vs. State of A.P.]***

8. In the case of ***Amireddi Raja Gopala Rao*** (supra), the Hon'ble Supreme Court has laid down that if a statute is intended to be retrospective it should be expressly made, otherwise the effect would only be prospective in nature. In the case of ***Vijayalakshmi Rice Mills*** (supra), the aforesaid proposition has been reiterated.

9. Additionally, the learned counsel for the petitioners has also relied upon an order dated 15.06.2023 of this Court passed in WP(C)/3797/2020 [***Dinesh Kumar Singh Vs. the State of Assam and Ors.***] The learned counsel for the petitioners has also submitted that the petitioners have not been given the benefit of Assured Career Progression and they are stagnating in the same post.

10. *Per contra*, Shri Dhar, learned State Counsel has submitted that the writ petition itself has been filed in the year 2020 which is much after amendment of the Rules in question. It is his contention that any directions for consideration has to be construed to be with the prescription of the Rules which presently



requires that a Grade IV employee should possess the qualification of being a Graduate so that he can be considered for promotion to the next higher grade (Grade III). He further submits that the contention of the petitioners that they ought to have been considered and promoted prior to 2015 could be of no relevance, as there was no grievance raised during the said period of time. It is further submitted that there being no challenge to the prescription to the present Rules, no relief can be granted to the petitioners.

11. Shri Barbhuiya, learned counsel for the respondent no. 4 endorses the submission of the learned State Counsel and has further submitted that his client possess the qualification of being a Graduate and therefore no fault can be attributed in the process of his promotion.

12. The rival contentions have been duly considered and the materials placed before this Court have been carefully examined.

13. The basis of the present claim is the earlier Rules which was in existence till the year 2015 when an amendment was brought into effect. Prior to the amendment, the minimum educational qualification prescribed for being promoted to the post of Grade III was Higher Secondary. This Court has however noticed that no grievance was ever raised before any Court by the petitioners prior to 2015 when the amendment had come. Though the learned counsel for the petitioners has submitted that a representation was filed in the year 2013, unless such cause of action was espoused in the relevant point of time, filing of a representation would not give any vested right to the petitioners.

14. The thrust of the learned counsel for the petitioners is that there being no expression in the amendment of the Rules of 1967 made in the year 2015 that



such amendment would be retrospective in nature, the petitioners can still be considered since they had the requisite qualification till the amendment had come into force. The aforesaid contention however cannot be accepted by this Court as any direction for consideration has to be in consonance with the present Rules. The matter would have slightly different if the *lis* was before this Court in a period prior to 2015 where the minimum qualification prescribed was Higher Secondary.

15. The reliance to the case laws by the petitioners would not come to the aid of the petitioners. In the case of **Vijaylakshmi Rice Mills** (supra), the observation of the Hon'ble Supreme Court in paragraph 5 which has been relied by the petitioners would clarify that the said observations were made in view of such transaction which were completed before the amendment had come into force. For ready reference, the relevant part of the said paragraph is extracted hereinbelow-

5. ... The principle is also well settled that statutes should not be construed so as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the Amending Act came into force."

16. The observation of the Hon'ble Supreme Court in the case of **Amireddi Raja Gopala Rao** (supra) that an Act would be held to be retrospective only if it expressly provides is a settled position. However, the said position would not be relevant to the present case.

17. This Court has also observed that reliance on the case of **Dinesh Kumar Singh** (supra) would not come to the aid of the petitioners as the issue therein was a different one wherein the incumbent in the said case who was appointed



on compassionate ground had raised the dispute with regard to the subsequent promotional avenues by a different branch of the Government.

18. This Court is also of the considered opinion that though the petitioners have obtained information under the RTI regarding existence of vacancies prior to the amendment, in view of the present litigation being instituted in the year 2020 which is much after the amendment of the year 2015, no relief whatsoever, can be given to the petitioners.

19. Accordingly, the writ petition stands dismissed.

20. Though the petition has been dismissed, the aspect of Assured Career Progression and stagnation increment is a valid aspect which has been raised by the petitioners and that aspect is required to be looked into and whatever benefit is available is required to be given to the petitioners in accordance with law.

JUDGE

Comparing Assistant