



GAHC010188452021

Page No.# 1/21



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

Case No. : WP(C)/6008/2021

DHIRENDRA PATWORY AND 16 ORS.
S/O LATE CHANDICHARAN PATWORY, R/O JOTIA MANDAKINI PATH, P.O.-
ASSAM SACHIBALAYA, DIST-KAMRUP(M), PIN-781006

2: MRS. MALABIKA ROY GOSWAMI
W/O SHRI NIRUTPAL GOSWAMI
R/O HOUSE NO. 32
LAST GATE
P.O.-ASSAM SACHIBALAYA
DIST- KAMRUP(M)
PIN-781006

3: MRS. JILIKANI DAS
W/O SHRI ASHOK KR. DAS
R/O NORTH GUWAHATI
ABHAYAPUR
P.O.-KAMALPUR
DIST-KAMRUP(R)
PIN-781031

4: SANJIB GOGOI
S/O SHIR BUDHAESWAR GOGOI
R/O JAYANAGAR
HOUSEFED APARTMENT
P.O.-BELTOLA
DIST-KAMRUP(M)
PIN-781029

5: DILIP CH. DAS
S/O LATE GOPAL CHANDRA DAS
R/O UPPER HENGRABARI
P.O.-HENGRABARI
DIST-KAMRUP(M)
PIN-781036



6: MRS. BHABANI TERON
W/O SRI HARA KANTA TERON
R/O PATAR KUCHI
UDAINAGAR
P.O.-KHANAPARA
DIST-KAMRUP(M)
PIN-781022
ASSAM

7: MADHAB BARMAN
S/O LATE ARJUN CHANDRA BARMAN
R/O PUB BISHNUPUR
P.O.-NOONMATI
DIST-KAMRUP(M)
PIN-781020

8: DHIRENDRA KUMAR DEB
S/O LATE BIRENDRA KUMAR DEB
R/O DISPUR SUPERMARKET COMPLEX
P.O.-ASSAM SACHIBALAYA
DIST- KAMRUP(M)
PIN-781006

9: MRS. TEJ KUMARI GOND (TANTI)
W/O LATE MANORANJAN GOND
R/O E-BLOCK 1ST FLOOR
DISPUR
P.O.-ASSAM SACHIBALAY
DIST-KAMRUP(M)
PIN-781006

10: PRAFULLA SAIKIA
S/O LATE JAGMESWAR SAIKIA
R/O SANKARNAGAR BARBARI
P.O.-HENGRABARI
DIST-KAMRUP(M)
PIN-781036

11: RATNESWAR BARMAN
S/O LATE HARIMAL BARMAN
R/O JOURNALIST COLONY
P.O.-KAHILIPARA
DIST-KAMRUP(M)
PIN-781019
ASSAM

12: SMTI SUMITA DAS (DEY)



W/O SRI RATAN KR. DAS
R/O SANSKRITI ENCLAVE
DISPUR
SREENAGAR MAIN LANE
GUWAHATI-781005

13: BHULANATH BORAH
S/O LATE SUREN BORAH
R/O SONAIGHULI
NIZARAPARA PATH
GUWHATAI-781040
ASSAM

14: DHANTI BORA
S/O LATE NANDESWAR BORA
R/O NARAKASUR PAHAR
TIWA NAGAR
JATIA
KAHILIPARA
GUWAHATI-781019

15: SMTI HEMAPROVA BORBORA (GOGOI)
W/O LATE PARAMANANDA GOGOI
R/O ELEGANT ENCLAVE
SARUSOJAI
CHANDAN NAGAR
PRAGATI PATH
P.O. AND P.S.-HATIGAON
GUWAHATI-781028

16: UTTAM DAS
S/O LATE GOPAL CH. DAS
R/O VILL- MIRZA (NARAYANPUR)
P.O.-MIRZA
P.S.-PALASHBARI
PIN-781125
ASSAM

17: SABHA RAM DAIMARI @ SUBHA RAM DAIMARI
S/O SRI DHANTAP DAIMARY
R/O BARBARI
BISHNUNAGAR PATH
GUWAHATI-781036
ASSA

VERSUS

THE STATE OF ASSAM AND 15 ORS.



REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI-781006

2:THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
GENERAL ADMINISTRATION DEPARTMENT
(ASSAM SECRETARIAT)
DISPUR
GUWAHATI-781006

3:THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
PERSONNEL (B) DEPARTMENT
DISPUR
GUWAHATI-781006

4:THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-781006

5:SAKAYAT HUSSAIN
C/O COMMISSIONER AND SECRETARY
G.A.D.
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR
GUWAHATI-6
PIN-781006
ASSAM

6:RAJGIRIH SING
C/O COMMISSIONER AND SECRETARY
G.A.D.
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR
GUWAHATI-6
PIN-781006
ASSAM

7:AMULYA CHANDRA BORA
C/O COMMISSIONER AND SECRETARY
G.A.D.
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR



GUWAHATI-6
PIN-781006
ASSAM

8:PRANAB KR. SAIKIA
C/O COMMISSIONER AND SECRETARY
G.A.D.
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR
GUWAHATI-6
PIN-781006
ASSAM

9:SAWAN KUMAR RAI
C/O COMMISSIONER AND SECRETARY
G.A.D.
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR
GUWAHATI-6
PIN-781006
ASSAM

10:SMTI MINA DUTTA
C/O COMMISSIONER AND SECRETARY
G.A.D.
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR
GUWAHATI-6
PIN-781006
ASSAM

11:JAJNESWAR RAJKHOWA
C/O COMMISSIONER AND SECRETARY
G.A.D.
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR
GUWAHATI-6
PIN-781006
ASSAM

12:SAMBHU NATH THAKURIA
C/O COMMISSIONER AND SECRETARY
G.A.D.
GOVT. OF ASSAM



ASSAM SECRETARIAT
DISPUR
GUWAHATI-6
PIN-781006
ASSAM

13:MRINAL CHANDRA DAS
C/O COMMISSIONER AND SECRETARY
G.A.D.
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR
GUWAHATI-6
PIN-781006
ASSAM

14:SMTI DIPALI BORA
C/O COMMISSIONER AND SECRETARY
G.A.D.
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR
GUWAHATI-6
PIN-781006
ASSAM

15:MRS. HASINA BEGUM (R)
C/O COMMISSIONER AND SECRETARY
G.A.D.
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR
GUWAHATI-6
PIN-781006
ASSAM

16:DULAL CH
KALITA (R)
C/O COMMISSIONER AND SECRETARY
G.A.D.
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR
GUWAHATI-6
PIN-781006
ASSA

Advocate for the Petitioner : MR. B CHETRI



Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT

Date : 15-03-2024

1. Heard Mr. B Chetri, learned counsel for the petitioners. Also heard Mr. P Nayak, learned counsel for the respondents.
2. Though multiple prayers are made in this writ petition, however, Mr. Chetri, learned counsel for the petitioners has submitted that he will confine his arguments relating to the prayers A, C and D of the petition.
3. The basic challenge in this writ petition is an order dated 30.10.2021 passed by the Chief Secretary to the Govt. of Assam pursuant to the order(s) of this court dated 22.09.2021, 06.10.2021 and 07.10.2021 passed in WP(C) No.5136/2021, WP(C) No.5376/2021 and WP(C) No.5501/2021 respectively. The aforesaid writ petitions were preferred by the present petitioners and their cases for consideration for promotion to the next higher grade was directed in terms of power of relaxation of Rule 16 of the Assam Secretariat Service Rules, 2019, (hereinafter referred to as Rules 19).
4. The Chief Secretary by the impugned order dated 30.10.2021 rejected the prayer of the petitioners that relaxation of educational qualification cannot be granted in each and every case inasmuch as such action will defeat the very purpose of enacting the new Rules

2019, which is issued by repealing the earlier rule i.e., the Assam Secretariat Service Rules, 1963.

5. Pursuant to this court's order dated 14.12.2023, Mr. Nayak, learned counsel for the respondent has produced the record pertaining to the consideration of the case of the petitioners under Rule 16 of the Rules 19.

6. From the pleadings of the petitioners made in this writ petition as well as from the record as aforesaid the following facts are discernible.

I. Even prior to approaching this court by the petitioners, a memorandum was submitted by the Assam Secretariat Service Association including some individual employees for relaxation of educational qualification for promotion to the next higher post.

II. Under the Assam Secretariat Service Rules 1963, (hereinafter referred to as the Rule 1963), the qualification for promotion from the post of Junior Administrative Assistant to the post of Superintendent the required qualification is at least 5 years of service as Senior Administrative Assistant/Upper Division Assistant and confirmation in that cadre.

III. Rules 1963 was repealed by another set of Rules, namely the Assam Secretariat Service Rules, 2019. In terms of the Rules of 2019, the qualification for promotion to the post of Superintendent is 5 years of continuous service as Administrative Assistant, passed Group – B training or equivalent as prescribed

by the Government. Proviso to Rule 5 mandates that such a candidate must possess a graduate degree in any stream as academic qualification from any recognized university.

IV. Rule 16 of the 2019 rules further provides that when the government is satisfied that operation of any of these rules has caused undue hardship, it may dispense with or relax the rule to such extent and subject to such conditions as it may consider necessary for dealing with the case, in a just and equitable manner.

V. According to the petitioners, they are having the required qualification, however for the proviso mandated under the Rule 5 of the Rules 2019, they are deprived of such promotion, however, at the time of their entry into service such prescription was not there and the petitioners are non graduates.

VI. The petitioners represented before the respondent authorities to relax their educational qualification inasmuch it is their case that by virtue of the new rule 2019, undue hardship has been caused to them and equity and justice shall demand that rules are relaxed and their cases for promotion are considered as consideration for promotion is a very valuable right.

VII. Such representations, as is discernible from the records, were considered by the respondent employer and the Additional Chief Secretary had put a note on 20.10.2021. The relevant portion is quoted herein below:

“Although the provisions of Rule 16 stipulates that the Govt. has the power to relax the provisions of the said rule, it is an exception rather than the rule. If such relaxation was to be given in each and every case, the very purpose of enacting the new rules shall be defeated. Accordingly, the provisions of Rule 16 are to be used cautiously and not all the time.”

VIII. Thereafter, a decision was taken that as the petitioners do not possess the required qualification for the promotion to the post of superintendent i.e., graduation degree the case of the petitioners were rejected, as according to the respondents, such claim lacks merit. Such decision was notified by issuing the impugned order dated 30.10.2021

7. In the aforesaid backdrop Mr. Chetri, the learned counsel for the petitioners argues:

I. The respondent authorities have failed to apply their mind to the given facts of the present case and thus, failed to exercise their power properly in terms of the rules 16 of the Rule 2019.

II. The rule of relaxation is required to be given a pragmatic construction so to achieve an effective implementation of good policy of the government inasmuch as the rule 16 has been enacted to handle a situation of undue hardship as that has been created in the present situation.

III. Therefore the reason that petitioner's case cannot be considered for promotion in absence of educational

qualification is the result of total non application of mind inasmuch as it is a foregone conclusion that the petitioners are not having required qualification and therefore, they are seeking a relaxation.

IV. The government has exercised their power in a way resulting in not only discrimination of the petitioner but the purpose of such rule of relaxation has been defeated inasmuch as similarly situated persons were purported granting such relaxation. In support of such contention, Mr. Chetri, learned counsel for the petitioner places reliance on the decision of the Hon'ble Apex Court rendered in the case of ***Kranti Associates Private Limited and Another –Vs- Masood Ahmed Khan and Others*** reported in **(2010) 9 SCC 496**. Mr. Chetri also relies on the decision of the Hon'ble Division Bench of this Court in the case of ***Sh. Zonunthara – Vs- State of Mizoram & Ors*** reported in **2021 (3) GLT 395** and in the case of ***Ashok Kumar Uppal and Others – Vs- State of J&K and Others*** reported in **(1998) 4 SCC 179**.

V. In view of the long service and experience of the petitioners, the department ought to have relaxed the rule to promote the petitioners to the next higher grade and by not doing so, the respondents have acted unreasonably and therefore, a direction should be issued in this regard. In support of his contention, the learned counsel relies on the decision of this Court in the case of ***Susmita Sutradhar Das***

(Dr.) –Vs- State of Assam & Ors reported in **2022 (1) GLT 108.**

VI. The impugned order refusing to relax the rule lacks any reason inasmuch as the respondents are required to have a satisfaction regarding the hardship and the rule does not permits for rejection of a claim of relaxation on the ground that all the similarly situated persons cannot be granted relaxation inasmuch as such course of action is violative of Article 14 of the Constitution of India.

VII. Article 14 of the Constitution of India mandates that every state action must be supported by reason; however, the employer/government has done what is forbidden under the constitutional scheme by rejecting the claim of the petitioners. In support of such contention Mr. Chetri learned counsel for the petitioners relies on the decision of the Hon'ble Apex court in the case of **Sandeep Kumar Sarma Vs. State of Punjab and other** reported in **(1997) 10 SCC 298.**

VIII. From the record it is well established that cases of similarly situated persons have already been considered by the authorities and they have already been promoted. However, the case of the petitioners' had been rejected only on the ground that they are not having the qualification.

IX. The power of relaxation provided under Rule 16 is for the purpose of mitigating the hardship and total lack of promotion in a service career is a clear case of hardship and therefore, such rule is required to be construed liberally and

arbitrary exercise of such power must be guarded against. In support of such contention Mr. Chetri relies on the decision of the Hon'ble Apex Court in the case of ***Ashok Kumar and others Vs. State of Jammu and Kashmir and Others*** reported in ***(1988) 4 SCC 179***.

8. Per contra, Mr. P. Nayak, learned counsel for the respondents argues the following:-

I. There is no discrimination between the petitioners and the private respondents. When the pre amended rule was holding the field, the petitioners did not even acquire the qualification for promotion to the next higher grade in terms of the extant Rule'1963, whereas, the case of the private respondents for promotion to the next higher post was initiated Rule'1963, when the said rule was holding the field and they had already acquired the required qualification at that point of time. Their recommendation for promotion was also made by the DPC prior to enactment of the Rule'2019 and therefore, a conscious decision was taken to promote them. Therefore, the petitioners and private respondents cannot be said to be placed in a similar situation and therefore, non consideration of their case under the power of relaxation provided in the Under Rule'2019 can't be said to be discriminatory in nature.

II. Time and again it has been held by the Hon'ble Apex Court that power of relaxation cannot be exercised to relax the essential qualifications. In the case in hand, taking note of the

changing situation and the requirement of modern day needs, the minimum qualification for promotion was made graduation, whereas none of the petitioners are graduate inasmuch as they did not acquire their qualification for promotion even under the Rule'1963 as they did not have the required qualification of passing Group-B training and which they have acquired after the the Rule'2019 was enacted and therefore, the employer has consciously taken a decision that relaxation cannot be made in all cases.

III. The decision of the employer in refusing to relax rule in a particular case may not be a subject matter of judicial review inasmuch as this Court does not sit as an appellate authority over such decision of the employer. Therefore in absence of any procedural impropriety and/or in absence of any unreasonableness in taking the impugned decision, this Court may not like to interfere with the decision. In support of such contention, Mr. Nayak, learned counsel relies on the decision of the Hon'ble Apex Court in the case of ***State of Uttar Pradesh and Others –Vs- Vikash Kumar Singh and Others*** reported in ***(2022) 1 347***, in the case of ***P. Murugeasan and Others –Vs- State of Tamil Nadu and Others*** reported in ***(1993) 2 340***, in the case of ***Sayed Khalid Rizvi and Others –Vs- Union of India and Others*** reported in ***1993 Supp (3)SCC 575***, in the case of ***Dani Belo –Vs- State of Arunachal Pradesh and Others*** reported in ***2011 (2) GLT 686***, in the case of ***J&K Public Service Commission and Others –Vs-***

Dr. Narinder Mohan and Others reported in ***(1994) 2 SCC 630*** and in the case of ***Keshav Chandra Joshi and Others – Vs- Union of India and Others*** reported in ***1992 Sup (1)SCC 272.***

9. The determination:

I. This court has given anxious consideration to the arguments advanced by the learned counsel for the parties. Perused the decisions relied on. Also perused the record produced by Mr. P. Nayak, learned counsel for the respondent.

II. The petitioners who were working in the post of Senior Administrative Assistant in the Assam Secretariat claim for the next higher promotion to the post of Superintendent.

III. The service condition of Superintendent and above, in the Secretariat, is governed by the Assam Secretariat Service Rules, 1963.

IV. In terms of Rules, 1963, the Secretariat Service cadre constitutes of Superintendent (Category III), Under Secretary (Category II), Deputy Secretary (Category I) and each of the aforesaid categories forms an independent cadre. Rule 8 of the 1963 Rules prescribes that recruitment to the post of Superintendent shall be made by promotion on the basis of a select list to be prepared in terms of Rule 10 of the said Rules 1963, from amongst the Upper Division Assistant (UDA) in the Secretariat. The qualification prescribed is

rendering at least 5 years of service as UDA and confirmed as UDA.

V. The service condition up to the level of UDA in the Secretariat is governed by the Assam Secretariat Subordinate Service Rules 1963 (hereinafter referred to Subordinate Service rules 1963). In terms of rule 4 of the said rule, the service consists of 3 categories of cadres:- (i) Upper Division Assistant, (ii) Lower Division Assistant and (iii) Typist.

VI. Rule 25 of the Subordinate Service Rules, 1963 prescribe that subject to availability of permanent vacancy, every member of service shall be confirmed subject to the condition, firstly, the incumbent has completed at least one year of service to the satisfaction of the appointing authority; secondly, he has successfully undergone prescribed training and also passed the prescribed departmental examination (Group B Training) and thirdly, the incumbent is otherwise considered fit for confirmation by the appointing authority.

VII. Therefore, a person shall come into the zone of consideration for promotion from UDA to Superintendent only after acquiring the qualification in terms of Rule 8 of 1963 Rule.

VIII. The Rules 1963 was repealed by the Assam Secretariat Service Rules 2019, which came into effect on 13.06.2019 i.e. the date when the aforesaid rule was notified in

the official gazette.

IX. The required qualification for promotion to the Superintendent was also amended and in addition to the requirement of experience of 5 years continuous service as Senior Administrative Assistant and passing of Group B training, it was also mandated that a candidate must possess a graduate degree in any stream from any recognized university. It is stated at the bar that such prescription of qualification is under challenge and pending for determination before the Division Bench.

X. Rule 16 of the Rules 2019 empowers the government to relax or dispense with operation of any of the rules, when it causes undue hardship in any particular case subject to the condition that such relaxation is necessary for dealing with a case in just and equitable manner.

XI. As discussed hereinabove, the grievance of the petitioner is that though they are having the other required qualification but they are not having the required qualification of graduation in terms of the Rules 2019 and therefore, in view of such hardship the rule ought to have been relaxed in case of the petitioners inasmuch as similar relaxation have been granted to some similarly situated persons.

XII. It is not in dispute that the Rule 2019 came into effect from 13.06.2019. None of the petitioners had passed

the essential qualification of group B training examination in terms of the Rules'1963 during the subsistence of the rule. Thus they did not even acquire such a qualification. Therefore, they could not have even within the zone of consideration for promotion at that stage.

XIII. Now coming to the new set of Rules 2019, this Court cannot be oblivious of the settled propositions of law as held by the Hon'ble Apex Court in the case of ***Dipak Agarwal Vs. State of UP*** reported in **(2011) 6 SCC 725** that there is no rule of universal application that vacancies must be necessarily filled up on the basis of the law which existed on the date when they arose. It was further held that a candidate has a right for consideration in the light of the existing rules, which implies the "rule in force" as on the date consideration takes place and the right to be considered for promotion occurs on the date of consideration of the eligible candidates. In the case of ***Dr. K Ramulu and another Vs. Suryaprakash Rao*** reported in **(1997) 3 SCC 59** it was also laid down that the government is entitled to formulate a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules and the employees does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the government. The only requirement is that the policy decision of the government must be fair and reasonable and must be justified on the touchstone of Article 14 of the Constitution of

India. It is stated at the bar that the new rule prescribing the higher qualification of graduation has already been put under challenge and pending consideration before the Division Bench and the validity of such rule not being a consideration in the present litigation, this court is only to look into the right of the petitioners under the new Rule 2019, including power of relaxation and whether, while exercising such power of relaxation, the petitioners had been discriminated..

XIV. From the records it is seen that the promotion of the respondents were initiated and considered during the existence of the now repealed Rule'1963 and on that day they had already acquired the qualification. In the factual backdrop that on the date of consideration of the case of some of the respondents, the said respondents had already acquired the essential qualification and that the petitioners did not have the required qualification of passing Group B Training, the petitioners cannot allege discrimination.

XV. Now coming to the case of some other respondents, who acquired the required qualification prior to repeal of the Rule,1963. Their cases were not considered for promotion and in the meantime the Rule 2019 was brought in repealing the earlier Rule,1963 were considered and relaxations were granted as regards the essential qualification of having graduation inasmuch as they acquired the other qualification of passing group B training prior to coming into

force of the new rule. Therefore, these classes of employees are also not similarly situated to the present petitioners inasmuch as the present petitioners passed the group B training after coming into effect of Rule' 2019.

XVI. The record also reveals that the prayer of the petitioners for relaxation of the rules was looked into by the competent authority in exercise of power under 16 of the Rules 2019. The record further reveals that a decision was taken that the government is not inclined to give relaxation to all the candidates for the reason that prescription of graduation for the next higher level was made taking note of the need of modern day's requirements and the change in the nature of work.

XVII. Relaxation of Rule cannot be prayed as a matter of right. If a conscious decision is taken not to grant the relaxation, merely because rule permits relaxation, no writ of mandamus can be issued directing competent authority to grant relaxation in required qualification. In the case in hand, the respondents have applied their mind to the given facts of the case and have taken a conscious decision that as the Rule has mandated for a definite qualification, such qualification shall not be relaxed in each and every case, otherwise the enactment of the rule and the object thereof shall be defeated. Accordingly, it cannot be said that the employer has not considered the case of the petitioner for relaxation of the

essential qualification of having a graduate degree. Therefore, such satisfaction of the employer should not be interfered with in exercise of judicial power of this court in absence of any material resulting in violation of any legal or constitutional right of the petitioner and any defect in the decision making process.

XVIII. The argument that the impugned decision is not supported by the reason is not tenable inasmuch as the order itself discloses the reason. Not only that, the department has produced the record to show that there was application of mind and there was a conscious decision as discussed herein above. This Court in exercise of its certiorari jurisdiction can very well go through the record and ascertain whether decision is backed by any reason or result of arbitrary action. In the case in hand, this Court has gone into the record and found what is discussed in the foregoing paragraph.

XIX. The judgments relied on by the learned Counsel for the petitioner are not applicable in the context of the present case.

10. For the reasons as discussed hereinabove, this Court is of unhesitant view that this writ petition is devoid of any merit and accordingly, the same stands dismissed. Parties to bear their own cost.

JUDGE

Comparing Assistant