



GAHC010153182022

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

Case No. : WP(C)/5059/2022

RAMANI MALAKAR
S/O- LATE BIPIN MALAKAR, R/O- VILL.- SARIAHTOLI, P.O. MILANPUR, P.S.
AND DIST. NALBARI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, GENERAL ADMINISTRATION DEPARTMENT,
DISPUR, GUWAHATI-06.

2:JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
GENERAL ADMINISTRATIVE (B) DEPTT.
DISPUR
GUWAHATI- 06.

3:THE COMMISSIONER
LOWER ASSAM DIVISION
PAN BAZAR
GUWAHATI- 1
ASSAM.

4:THE DEPUTY COMMISSIONER
BAKSA
MUSHALPUR
DIST.- BAKSA
ASSAM
PIN- 781372.

5:RATUL TALUKDAR
SUPERVISORY ASSISTANT
OFFICE OF THE DEPUTY COMMISSIONER



OFFICE
BAKSA
P.O. AND P.S.- MUSHALPUR
DIST.- BAKSA
ASSAM
PIN- 781372

Advocate for the Petitioner : MR. S K GOSWAMI

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT

Date : 30-08-2023

The issue which has arisen for determination before this Court in this petition filed under Article 226 of the Constitution of India pertains to a recruitment process for the post of Administrative Officer which was initiated vide an advertisement dated 17.12.2020 issued by the Deputy Commissioner, Baksa.

2. The case, as projected by the petitioner, is that he is presently working in the cadre of Supervisory Assistant and was initially inducted in the service as an LDA-cum-Typist in the year 1991. The petitioner claims that he has about 30 years of service experience without any adverse remarks. The aforesaid recruitment process for the post of Administrative Officer had invited applications from candidates having 15 years of service in any establishment of the Deputy Commissioner in Assam and the last date for submission of the application was fixed on 18.01.2021.

3. It is the case of the petitioner that though four candidates had initially applied for the said post, after scrutiny, only two candidates had remained which included the petitioner and the respondent no. 5. The categorical case of the petitioner is that the

respondent no. 5 was not eligible for consideration as he had not completed 15 years of service on the last date of submission of application. However, in spite of the same, not only the respondent no. 5 was considered, he was also selected vide the impugned order dated 30.07.2022. The petitioner has also contended that on merits, he is much above as he was also awarded best employee award on two consecutive years.

4. I have heard Shri SK Goswami, learned counsel for the petitioner and Shri A Phukan, learned Standing Counsel, GAD for the respondent nos. 1 and 2. Also heard Shri A Chakraborty, learned State Counsel for the respondent nos. 3 and 4 as well as Shri A Choudhury, learned counsel for the respondent no. 5.

5. Shri Goswami, learned counsel for the petitioner has submitted that with regard to the eligibility of the writ petitioner, there is no dispute that he was eligible on all respects. The learned counsel has drawn the attention of this Court to the various documents to establish his eligibility even with regard to the fact of having minimum 15 years of service experience in the establishment of the Deputy Commissioner. By referring to the advertisement dated 17.12.2020 issued by the Deputy Commissioner, Baksa, it is contended that one of the mandatory conditions was that the aspiring candidate must have served at least 15 years in any of the Deputy Commissioner's establishment in Assam and fulfilled the eligibility conditions and experience as per the Assam Ministerial District Establishment Service (Amendment) Rules, 2009 (hereinafter referred to as the Rules of 2009). The learned counsel for the petitioner has referred to the gradation list which has been annexed to the writ petition in which, the date of entry of the petitioner as well as the respondent no. 5 has been clearly stated. As per the said gradation list of Grade-III Employees under the amalgamated establishment of the Deputy Commissioner, Nalbari while the date of entry of the petitioner into Government service has been stated to be 21.02.1991, for the respondent no. 5, the

said date is 26.02.2007. Shri Goswami, learned counsel, accordingly submits that the respondent no. 5 would not complete 15 years which is a part of the aforesaid advertisement as well as the Rules governing the field.

6. By drawing the attention of this Court to the affidavit-in-opposition filed by the respondent no. 2, the learned counsel for the petitioner, Shri Goswami has submitted that from paragraph 8 of the said affidavit-in-opposition dated 09.12.2022, it is revealed that the period of 15 years has been reckoned from the date of consideration of the case when the Selection Board had met i.e., 29.07.2022. A similar stand has also been taken by the respondent nos. 3 and 4 in their affidavit-in-opposition dated 20.02.2023. Shri Goswami, learned counsel has submitted that the aforesaid interpretation is not at all correct and is in conflict with the law governing the field. He submits that it is a settled law that an intending candidate is required to meet all the essential criteria as on the last date of submission of application. As per the advertisement, the last date was stipulated as 18.01.2021 on which date, the respondent no. 5 did not have 15 years of service period.

7. In support of his submissions, Shri Goswami, learned counsel for the petitioner has relied upon the following case laws:

i) ***Ashok Kumar Sharma Vs. Chander Shekar, (1997) 4 SCC 18;***

ii) ***State of Haryana & Ors. Vs. Vijay Singh & Ors., (2012) 8 SCC 633;***

iii) ***Rajasthan Public Service Commission, Ajmer & Anr. Vs. Shikun Ram Firuda & Anr., (2019) 10 SCC 271;*** and

iv) ***Suman Devi & Ors. Vs. State of Uttarakhand & Ors., (2021) 6 SCC 163.***

8. In the case of **Ashok Kumar Sharma** (*supra*), the Hon'ble Supreme Court has held that the eligibility of the candidates should be judged with reference to that last date of submission of the application. It has further been held that acquiring of prescribed qualification subsequent to the prescribed date cannot be considered at all.

9. The case of **State of Haryana & Ors. Vs. Vijay Singh & Ors.** (*supra*) has been relied upon to bring home the contention that ad hoc service cannot be counted for seniority.

10. In the case of **Rajasthan Public Service Commission, Ajmer & Anr. Vs. Shikun Ram Firuda & Anr.** (*supra*), the Hon'ble Supreme Court has held that a person not eligible on the last date of submission of application forms cannot be treated eligible later.

11. In the case of **Suman Devi & Ors.** (*supra*), the Hon'ble Supreme Court has held that the eligibility of a candidate for a public post is to be adjudged as on the last date of receipt of application.

12. Shri Goswami, learned counsel, accordingly submits that the respondent no. 5 not being eligible, he could not have been considered and subsequently selected for appointment and therefore, interference is called for in the present case.

13. *Per contra*, Shri A Phukan, learned counsel for the respondent nos. 1 and 2 has submitted that though 18.01.2021 was stipulated to be the last date of submission of applications, the Selection Committee had actually considered the candidatures on 29.07.2022 by which date, the experience criterion of having at least 15 years of service was fulfilled by the respondent no. 5. The learned Standing Counsel has also

referred to the Rules governing the field, namely, Rules of 2009. He, accordingly submits that the selection has been properly done and therefore, the same should not be interfered with. Shri Phukan, learned Standing Counsel also submits that the advertisement did not mention that the eligibility criteria has to be met as on the last date of filing of the application.

14. Shri Chakraborty, learned State Counsel has also supported the stand of the Department and has also submitted that the respondent nos. 3 and 4 have filed an affidavit-in-opposition on 20.02.2023 whereby, the claim of the petitioner has been rebutted. The learned State Counsel further submits that in paragraph 4 of the affidavit-in-opposition, it has been clearly stated that as on the year on which the consideration was made, the respondent no. 5 was on his 15th year of service and in absence of any stipulation in the Rules that such completion should be at the starting of the year, the present interpretation can be construed to be a reasonable interpretation.

15. Shri Choudhury, learned counsel for the respondent no. 5 has submitted that the said respondent has also filed an affidavit-in-opposition on 16.02.2023. He submits that the Rules of 2009 prior to its amendment initially had the expression 'must' with regard to having 15 years of service experience in the establishment of the Deputy Commissioner. However, the said express 'must' has been removed in the amended portion done vide the amendment in the year 2009. He submits that Rule 8 (i) relating to Administrative Officer only stipulates to have at least 15 years of experience in any Deputy Commissioner's establishment. He further submits that since the amended Rule does not contain the expression 'must', the said requirement cannot be construed to be mandatory in nature and at best would be directory. Shri Choudhury, learned counsel has also submitted that the stand taken by the Department is a reasonable stand as it is only on the date of consideration that the eligibility criteria are to be

assessed and therefore, no case for interference is made out.

16. Alternatively, Shri Choudhury, learned counsel for the respondent no. 5 has submitted that he had joined the establishment much earlier in the year 2004 though on honourary basis and therefore, the period which he had rendered service from 2004 to his substantive appointment on 26.02.2007 should also be taken into consideration in which case, the respondent no. 5 would meet the requirement of having 15 years of service experience. The learned counsel for the respondent no. 5 in support of his submissions has relied upon a decision of the Hon'ble Himachal Pradesh High Court in the case of ***Sarita Sharma Vs. State of HP & Anr.***, reported in **AIR Online 2020 HP 219**.

17. The Hon'ble Himachal Pradesh High Court in the case of ***Sarita Sharma (supra)*** has laid down that the period in which an incumbent has rendered ad hoc service is to be taken into consideration when the same was followed by a regular service and such consideration was for the purpose of increments. However, in the instant case, the consideration was an open competition wherein eligibility criteria were prescribed.

18. 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.

19. The issue, as indicated, is with regard to the date on which the eligibility of an incumbent participating in a selection/recruitment process is to be reckoned.

20. In the instant case, there is no manner of doubt that as per the aforesaid Gradation List of Grade-III Employee, the date of joining in service of the respondent no. 5 was stated to be 26.02.2007. The advertisement, in question was dated

17.12.2020 and the last date for submission of application was 18.01.2021. Therefore, by taking into consideration the date of appointment of the respondent no. 5 in substantive capacity, he did not have 15 years of service experience as required under the advertisement as well as by the Rules of 2009. Under these conditions, this Court is required to consider the explanation given by the official respondents which is discernible from the affidavit-in-opposition filed by the respondent no. 2 dated 09.11.2022 as well as by the respondent nos. 3 and 4 dated 20.02.2023. The expressed stand of the official respondents is that the requirement of experience of 15 years has been counted by taking the date of selection and not from the last date of submission of the application. There is no other explanation in the affidavit-in-opposition. The said explanation, however, has been sought to be qualified by Shri Phukan, learned Standing Counsel, GAD by contending that the advertisement did not stipulate as to on which date the requirement of experience was to be fulfilled. The point of dispute has been settled by a number of decisions of the Hon'ble Supreme Court, few of which have also been relied upon by Shri Goswami, learned counsel for the petitioner. It is a settled law that the eligibility of the candidate has to be judged with reference to the last date of submission of the application. It has further been laid down that a person who acquires the prescribed qualification subsequent to such date cannot be held to be eligible. The interpretation of the official respondents given in the affidavits are in the teeth of the law holding the field with regard to assessing/evaluating the eligibility of candidates with respect to the date of which such evaluation is to be made.

21. Though Shri Choudhury, learned counsel for the respondent no. 5 in his submission has contended that the respondent no. 5 had actually served from 2004 on ad hoc basis and therefore, that period is also required to be taken into consideration, in absence of such a stand by the official respondents in their affidavits-in-opposition, that point cannot be a matter of adjudication or consideration by this Court which has

been raised by the beneficiary. Ultimately, it is the decision making process of the respondents which is the subject matter of adjudication and it is a trite law that reasons which are discernible from the order are only to be examined by a Court of law adjudicating the dispute. In the instant case, the only stand taken by the official respondents in their affidavits-in-opposition is that the date of consideration has been treated to be the date for assessing the eligibility which is not a correct position of law.

22. This Court has also considered the submission of Shri Choudhury, learned counsel for the respondent no. 5 regarding omission of the expression 'must' in the amended Rules. However, a reading of the Rules of 2009 makes it clear that a candidate is required to have service experience of at least 15 years and there cannot be any dispute that such expression is to be treated as mandatory. This Court is also of the view that if such eligibility criteria are to be determined on the date of actual consideration, it would be an unending process as in the meantime, many more candidates would acquire the eligibility and would make a stake for such appointment which would not be a reasonable interpretation at all.

23. In view of the aforesaid facts and circumstances, this Court is of the unhesitant opinion that a case for interference is made out. Accordingly, the consideration and selection of the respondent no. 5 in the selection process initiated vide the advertisement dated 17.12.2020 for the post of Administrative Officer under the establishment of the Deputy Commissioner, Baksa whereby, the said respondent no. 5 has been selected and appointed is set aside. Accordingly, the respondent authorities are directed to consider the case of the petitioner and take steps for appointment in accordance with law.

24. At this stage, Shri Goswami, learned counsel for the petitioner submits that the



petitioner is to retire in December, 2023.

25. Considering the above, the aforesaid exercise is directed to be completed within a period of 45 days from today.

JUDGE

Comparing Assistant