

GAHC010192412022



2026:GAU-AS:1912

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

Case No. : WP(C)/6226/2022

MANMOHAN BHARALI
S/O- LATE PRABHAT BHARALI,
VILLAGE- HAJO (UDHANPATA),
P.O.- HAJO, P.S.- HAJO,
DISTRICT- KAMRUP, ASSAM,
PIN- 781102.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GUWAHATI- 781006.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
PANJABARI
JURIPAR
GUWAHATI- 37.

3:THE DEPUTY COMMISSIONER
NALBARI
DIST.- NALBARI
PIN- 781335.

4:AS PER ORDER DATED 27.02.2023
RESP. NO. 4 IS STRUCK OFF.

5:THE CHIEF EXECUTIVE OFFICER
NALBARI ZILLA PARISHAD
NALBARI

DISTRICT- NALBARI

PIN- 781335.

6:THE BLOCK DEVELOPMENT OFFICER

MADHUPUR DEVELOPMENT BLOCK

KAITHALKUSHI

P.S.- BELSOR

P.O.- KAITHALKUSHI

DISTRICT- NALBARI

PIN- 781370.

7:THE PRESIDENT

MADHUPUR ANCHALIK PANCHAYAT

MADHUPUR DEVELOPMENT BLOCK

KAITHALKUSHI

P.S.- BELSOR

P.O.- KAITHALKUSHI

DISTRICT- NALBARI

PIN- 781370

Advocate for the Petitioner : MR. M BHAGABATI, MS M GOGOI,MS. B TALUKDAR,MS G BORA

Advocate for the Respondent : SC, P AND R.D., GA, ASSAM

Date on which judgment was reserved : 20.11.2025

Date of pronouncement of judgment : 11.02.2026

Whether the pronouncement is of the operative part of the judgment? : NA

Whether the full judgment has been pronounced? : Yes

**BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA**

JUDGMENT & ORDER (CAV)

Heard Mr. M. Bhagabati, learned counsel appearing for the Petitioner and also heard Mr. S. Dutta, learned Standing Counsel, Panchayat and Rural Development Department (P&RD).

2. The instant writ petition under Article 226 of the Constitution of India has been filed by the Petitioner for ventilating his grievance that although he fulfilled the requisite criteria for promotion from Grade-IV to Grade-III post under the Panchayat and Rural Development Department (In short, 'P&RD'), Government of Assam, the Petitioner has not been promoted, despite submission of several representations by him praying for his promotion, in violation of Rule 6 of the Assam Ministerial District Establishment Service Rules 1967 as well as Rule 10 (3) of the Assam Directorate Establishment (Ministerial) Service Rules, 1973 which provide for provisions relating to promotion of Grade-IV personnel to Grade-III posts.

3. The case of the Petitioner is that he is serving in Grade-IV post of Peon in the Office of Madhupur Anchalik Panchayat under Nalbari Zilla Parishad, Nalbari which comes under the P&RD Department, Government of Assam. The Petitioner was initially engaged as a Peon for three (3) months in District Rural Development Agency (In short 'DRDA'), Nalbari by the Project Director on daily wage basis, vide an

order dated 05.11.1992. However, his service was extended from time to time by different orders issued by the DRDA. The service of the Petitioner was regularized as a Peon (Grade-IV), vide order dated 23.03.1996 issued by the Project Director, DRDA, Nalbari. While the Petitioner was serving as a Peon, he passed the Bachelor of Preparatory Programme Examination (BPPE) which is equivalent to Higher Secondary or Class-XII Examination. In the year 2016, the Panchayat and Rural Development Department, Assam, Panjabari, Juripar had taken an initiative to promote fifteen (15) incumbents who were similarly situated with that of the Petitioner and promoted them to the posts of Gram Sevaks (RD) (Grade-III), vide office order dated 03.10.2016. However, the Petitioner was left out during the process of promotion.

4. The Petitioner being felt deprived of his legitimate right for being considered for promotion from Grade-IV to Grade-III, immediately submitted two (2) representations before the Commissioner, P&RD on 09.01.2017 & 09.02.2017 respectively, praying for promotion to any Grade-III post. However, his representations were not responded to by P&RD Department. The Petitioner submitted similar representations before the Commissioner, P&RD on several dates subsequently, i.e., on 25.01.2017, 04.02.2017, 09.02.2017, 14.02.2017, 17.02.2017, 23.02.2017 etc. The Petitioner, as such, submitted more than twenty five (25) representations, praying for his promotion from Grade-IV to Grade-III posts. However, his case was never considered by the respondent-Department, i.e., P&RD Department.

5. In the meantime, the Petitioner had also passed his B.A. Examination in the year, 2018 from Krishna Kanta Handique State Open University, Guwahati. After getting his graduation, the Petitioner further submitted two (2) more representations praying for his promotion from Grade-IV to Grade-III posts.

6. It is the case of the Petitioner that as per Rule 6 (6) (b) of Assam Ministerial District Establishment Service Rules 1967, a Grade-IV staff who has passed the Higher Secondary or equivalent examination and has rendered at least 7 (seven) years of continuous service on the 1st day of the year is eligible for promotion to a Grade-III post. Similarly, as per Rule 10 (3) of the Assam Directorate Establishment (Ministerial) Service Rules 1973, a Grade-IV staff who has passed: (i) Higher Secondary or equivalent examination and has rendered not less than 5 (five) years; or (ii) the Matriculation or equivalent examination and has rendered not less than seven (7) years of continuous service in the office on the 1st day of the year is eligible for promotion to a Grade-III post. It is stated that, vide an order dated 25.05.1992 issued by the Under Secretary to the Government of Assam, Personnel (B) Department, the percentage (%) of quota for promotion from Grade-IV to Lower Division Assistant (Grade-III) was raised to 15% of the annual vacancy. By another notification dated 15.10.2015, the minimum qualification for promotion from Grade-IV to Grade-III has been made Degree Examination passed in any discipline from a recognized university. Therefore, it is the case of the Petitioner that since he has passed his Higher Secondary or Class-

XII examination in the year 2014 as he had cleared the aforesaid BPP examination from Krishna Kanta Handiqui State Open University, Guwahati and he has already passed B.A. Examination in the year 2018 from Krishna Kanta Handiqui State Open University, Guwahati, he is qualified to be promoted from Grade-IV to Grade-III posts under the aforementioned Rules, i.e., Assam Directorate Establishment (Ministerial) Service Rules, 1973 as well as under the aforesaid notification dated 15.10.2015 issued by the General Administration (B) Department, Government of Assam.

7. It is also the case of the Petitioner that though the P&RD Department, Government of Assam had promoted fifteen (15) incumbents, similarly situated with him to the posts of Gram Sevaks (RD) (Grade-III) in the year 2016 after his absorption by P&RD, he was left out although he met all the requisite educational qualifications for being promoted to a Grade-III post. It is stated that the Petitioner has completed more than 30 years of service since 1992 and even after submission of various representations praying for his promotion from Grade-IV to Grade-III posts, he has been denied any promotion till date.

8. An Affidavit-in-Opposition has been filed on behalf of Respondent No. 2, i.e., the Commissioner, P&RD Department, Assam, Panjabari, Juripar, Guwahati. The stand of the Respondent No. 2 is that the Petitioner came under the P&RD Department, Government of Assam only after 12.09.2016, vide notification No.RDD.51/2011/Pt.I/305 and he was absorbed in a regular sanctioned vacant post, vide order

No.DRD-2(A)15/2017/Pt-II/46-49A dated 16.08.2017, issued by the Commissioner, P&RD Department, Assam, Panjabari, Juripar, Guwahati. It is stated that prior to absorption of the Petitioner in P&RD Department, the Petitioner belonged to DRDA and their services were governed by the Societies Registration Act, 1860.

9. It is contended in the Affidavit-in-Opposition that though certain employees were promoted to Grade-III posts from Grade-IV, vide office order No. DRD-2(A)56/2014/28-29A dated 03.10.2016, those were regular government employees working in the P&RD Department and therefore, no way similarly situated with the Petitioner. It is stated that the Petitioner was not considered for promotion at that point of time because the Petitioner became an employee of the P&RD Department only after the aforesaid order dated 16.08.2017 in pursuance of the abovementioned notification dated 12.09.2016. Therefore, it is contended that the Petitioner's service prior to absorption will not come into the zone of consideration of such promotion and therefore, the case of the Petitioner for promotion was not considered.

10. As per direction of this Court, an Additional Affidavit was filed by the Respondent No. 2, wherein, it was stated that under P&RD Department, Assam, the term "Provincialised Employees" refers to Panchayat employees whose services have been taken over by the State Government under the Assam Panchayat Employees (Provincialisation) Act, 1999 (In short, the Act, 1999). It is stated that the aforesaid Act, 1999 defines "employees" as a person in the

employment of Panchayats against a regularly sanctioned post. It is further stated that "Provincialisation" is defined in the Act, 1999 as taking over of the liabilities for payment of salaries (including dearness allowance), medical relief and other allowances, as admissible to government servants of similar categories and also gratuity, pension, leave encashment etc., as per the rules for Assam government employees. It is the further stand of the Respondent Department that in contrast to Panchayat employees, the DRDA was an autonomous body governed by the DRDA administration guidelines issued by the Government of India. Accordingly, the appointment and promotion of DRDA employees were made by the DRDA authorities themselves and the employees of the DRDA were not government employees prior to their absorption in the Zilla Parishads with effect from 01.08.2017. It is stated that the P&RD Department was not responsible for promotions etc. in respect of DRDA employees before their absorptions into the Zilla Parishad with effect from 01.08.2017. It is stated that the Government of Assam, vide notification No. No.RDD.51/2011/Pt-I/305 dated 12.09.2016 accorded approval for the criteria governing the absorption of DRDA-borne employees into the Zilla Parishads. Therefore, as per the aforesaid notification, the Commissioner, P&RD Department issued office orders absorbing Grade-IV DRDA employees, which includes the Petitioner. It is stated that with regard to the promotion of such absorbed DRDA-borne employees, the Commissionerate is yet to formulate the criteria and procedure for their promotions. It is stated that the matter of their promotions will be considered in due course after finalization of inter-

se-seniority gradation list of qualified Grade-IV employees working under the Department and thereafter, instructions to be issued in that respect by the P&RD Department.

11. The Petitioner has filed an Affidavit-in-Reply to the Affidavit-in-Opposition filed by the P&RD Department reiterating his statements made in the writ petition.

12. Mr. M. Bhagabati, learned counsel appearing for the Petitioner submits that the Petitioner has been working in DRDA and thereafter, in the P&RD Department for the last 35 years without getting any promotion though he has been qualified to be promoted to the next higher cadre, i.e., Grade-III post a long time back. He submits that the Petitioner's service conditions were governed by the Assam Ministerial District Establishment Service Rules, 1967 and thereafter, Assam Directorate Establishment (Ministerial) Service Rules, 1973, as amended. He submits that as per the aforesaid rules, the Petitioner has sufficient experience to be promoted to the next higher level, however, in spite of his repeated representations, the Petitioner has been denied of his right to be considered for the next higher cadre. He submits that the Petitioner has passed HSLC examination in the year 1986, HS examination in 2014 and B.A. Examination in 2018, which made him eligible under the aforesaid Rules of 1973 read with notification No. GAG (B) 306 /2014 /Pt-III /22 dated 15.10.2015 to be promoted to the next higher cadre of Grade-III posts, yet, he has not been promoted and has been kept stagnant in the same grade for so many years. He submits that the petitioner is a victim of unfair

administrative conduct which is glaringly evident from the actions of non-consideration of his representations submitted before the respondent-Department. He further submits that since there is no rule that has been framed as yet by the P&RD Department for DRDA absorbed employees in the P&RD Department, the Petitioner's services shall be covered under the aforesaid Rules of 1973, which makes him eligible for promotion to the next cadre of Grade III posts.

13. In view of the aforesaid, the learned counsel submits that the Petitioner's prayer in the writ petition may be allowed by promoting him from Grade-IV to Grade-III post at the earliest.

14. Per contra, Mr. S. Dutta, learned Standing Counsel for the P&RD Department submits that the petition filed by the Petitioner is not maintainable as the petitioner cannot be granted any relief under the prevailing laws. He submits that there is no provision of any promotion for Grade-IV employees to Grade-III employees under the Assam Panchayat (Administrative) Rules, 2002 (as amended in 2012) read with the Assam Panchayat Act, 1994. He submits that since the Petitioner has been absorbed in the P&RD Department, his service shall be governed by the aforesaid Assam Panchayat Act, 1994. He submits that as per Section 62 (2) of the Assam Panchayat Act, 1994, other employees except the Executive Officer of the Anchalik Panchayat, shall be appointed as provided in Section 140 of the aforesaid Act 1994. Section 140 (i) of the Act 1994 provides that all recruitments of Grade-III and Grade-IV staffs under Zilla Parishad, Anchalik Parishad and Gaon Panchayat shall be conducted by the

State Level Recruitment Commission for Class-III and State Level Recruitment Commission for Class-IV constituted under the Assam Direct Recruitment Commission for Analogous Posts in Class-III and Class-IV, Act, 2021 (Assam Act No.XLII of 2023). He further submits that as per rule 2 (iii) of the Assam Panchayat (Administrative) Rules, 2002, except the posts of Head Assistant, Upper Division Assistant, Accountant which are promotional posts and are required to be filled up from out of the existing provincialised employees both regular and Ex-cadre, the posts which could not be filled up from out of the provincialised ones, shall be filled up by re-deploying excess staff of the Department and other Departments having requisite qualification and if posts still remain vacant, the same shall be recruited in the manner provided under Section 140(1) of the aforesaid Act, 1994. Therefore, he submits that the Petitioner being posted as Peon in Anchalik Panchayat, he cannot be promoted to the Grade-III post in view of the bar of Section 140 (1) of the Act, 1994. He further submits that the Petitioner's case cannot be equated with the fifteen (15) incumbents who were promoted to Grade-III, vide office order dated 03.10.2016 due to the fact that at that point of time, the Petitioner was not absorbed in the P&RD Department as he was absorbed in the P&RD Department only in pursuance of the notification dated 12.09.2016 and vide, order dated 16.08.2017. He submits that Section 140 (1) of the Act, 1994 was amended, vide Assam Act No. No. XLII of 2023, wherein, the Bar for any promotion from Grade-IV to Grade-III employees of P&RD Department has been brought in. He submits that when the aforesaid fifteen (15)

incumbents were promoted, the bar under Section 140 (1) of the Act, 1994 was not in existence, therefore, the scope of promotion was available at that relevant point of time. However, at present, there is no promotional scope available under the Assam Panchayat Act, 1994 read with Rules, 2002 (as amended in 2012).

15. In view of the aforesaid, the learned Standing Counsel, P&RD Department submits that the Petitioner's case cannot be considered in view of the specific bar as provided in Section 140 (1) of the Assam Panchayat Act, 1994.

16. This Court has heard the submissions made by the learned counsel appearing for the respective parties and has also considered the relevant provisions of law.

17. It is seen that the Petitioner was absorbed in the P&RD Department, vide notification No.RDD.51/2011/Pt-I/305 dated 12.09.2016 which provided that in pursuance to a Cabinet decision, the Government of Assam in Panchayat and Rural Development Department, vide Notification No. RDD.51/2011/248 dated 02.03.2016 has accorded approval to dissolve the DRDAs of Assam in due course of time and to absorb DRDA-borne employees against sanctioned vacant posts of Government of Assam. It was further provided that 294 redundant posts of Anchalik Panchayats and Mahakuma Parishads have been abolished, vide order No. RDD.51/2011/Pt.I/292 dated 29.08.2016 and 91 personal posts have been created in the Zilla Parishads, vide order dated 31.08.2016. It

was provided that out of 558 employees, 467 DRDA-borne employees shall be absorbed against the existing vacant posts of identical pay-scale in the Zilla Parishads, Development Blocks, Anchalik Panchayats and Gaon Panchayats as per list at Annexure-II. It was also stated that 91 DRDA-borne employees shall be absorbed against newly created personal posts. The normal pay and allowances of the employees, which they have been drawing before absorption shall be allowed to be drawn under the appropriate Head of Accounts. It was also provided that the DRDA employees shall be governed by Assam Panchayat Employees (Provincialised Service Rule 2012 (Draft), the Assam Panchayat and Rural Development Employees (non-gazetted Service Rules, 2012 (draft) and the Assam Panchayat (Administrative) Rules, 2012. It was provided that after absorption, promotional avenue of the DRDA employees will be as per Government existing Rules and Regulations and a separate cadre wise gradation list for the inter-se-seniority of these absorbed personnel shall be maintained in the concerned Zilla Parishads, Autonomous Councils and also in P&RD Department.

18. In terms of the aforesaid notification dated 12.09.2016, the Petitioner along with others were absorbed w.e.f. 01.08.2017 in the vacant posts under Zilla Parishads/ Anchalik Panchayat against the sanctioned posts created, vide Government Letter No.PDA.169/91/167 dated 17.02.1993 in the scale of pay Band 1, Rs. 12,000/- to Rs. 37,500/- + Grade Pay of Rs.3900/- PM with other allowances as admissible under the Rules with immediate effect.

19. From the above, it is seen that the Petitioner was absorbed only with effect from 01.08.2017 against the sanctioned posts, therefore, the Petitioner was, in fact, was not working in the P&RD Department when the aforesaid fifteen (15) incumbents working in the P&RD at Grade-IV were promoted to the posts of Gram Sevaks (RD) (Grade-III). Therefore, the question of Petitioner's promotion cannot be considered at this stage being not similarly situated as those fifteen(15) incumbents.

20. The contention of the Petitioner that he is qualified under the provisions of Assam Ministerial District Establishment Service Rules, 1967 as well as the Assam Directorate Establishment (Ministerial) Service Rules, 1973, this Court is not agreeable to such claim as the Petitioner's services is no longer governed by the aforesaid Rules. It is specifically mentioned in the aforesaid notification dated 12.09.2016 that the Petitioner and other absorbed employees' services will be governed by Assam Panchayat Administrative Rules, 2012 enacted in exercise of powers under Assam Panchayat Act, 1994. Though, it is seen that two (2) draft Rules, namely, Assam Panchayat Employees (Provincialised Service Rule 2012 and Assam Panchayat & Rural Development Employees (non-gazetted) Service Rules, 2012 were also mentioned in the aforesaid notification dated 12.09.2016, however, the same are yet to be brought into effect.

21. On a query by this Court, the learned Standing Counsel, P&RD has confirmed that those Rules are yet to be brought into effect. Therefore, it is clear that the conditions of service of the Petitioner

shall be governed by the Assam Panchayat Act, 1994 read with Assam Panchayat (Administrative) Rules, 2012 since the Petitioner has been absorbed by the P&RD Department. Therefore, it is needless to say that his services will be governed by the aforesaid Act of 1994 and the Rules of 2012. Accordingly, the Petitioner cannot claim any promotion under the other Acts and or Rules. Hence, the contention that since the Petitioner was qualified under the aforesaid Rules of 1967 and 1973, he should be promoted to Grade-III from his present Grade-IV post as no Rule has been framed for DRDA absorbed employees is not acceptable.

22. It may be relevant herein to refer the relevant provisions of the Assam Panchayat Act, 1994 and Assam Panchayat Administrative Rules, 2012. Section 62 (1) and Section 140 (1) of the aforesaid Act of 1994 are reproduced here in below along with Rule 2 (iii) of the Rules 2012:-

“62 (1) An Anchalik Panchayat being co-terminous to a Development Block shall have an Executive Officer appointed by Government who shall be the Ex-Officio secretary: Provided that the Block Development Officer or such other officer as may be appointed by the Government shall hold the post of the Executive Officer and Secretary of the Anchalik Panchayat.

140 (1) All the recruitment of Grade-III and Grade-IV staff under Zilla Parishad, Anchalik Panchayat and Gaon Panchayat shall be conducted by the State Level Recruitment Commission for Class-III and State Level Recruitment Commission for Class-IV constituted under the Assam Direct Recruitment

Commission for Analogous Posts in Class-III and Class-IV, Act, 2021 (as amended Act No.XLII of 2023).

2 (iii) Except the posts of Head Assistant, Upper Division Assistant, Accountant, which are promotional posts and are required to be filled up from out of existing provincialised employees both regular and Ex-Cadre, the post which could not be filled up from out of the provincialised ones, shall be filled up re-deploying excess staff of this Department and other Departments having requisite qualification. If posts still remain vacant the same shall be recruited in the manner provided under Section 140 (1) of the Assam Panchayat Act, 1994. The State Government shall exercise such powers of redeployment, transfer of posts with incumbents to districts outside the original district cadre”.

23. A bare perusal of the aforesaid provisions of law, it is clear that after the amendment of Section 140 (1) of the Act in the year, 2023, there is no promotional avenue for a Grade-IV employee working in the P&RD Department as the appointments shall be only through direct recruitments. Section 62 clearly provides that other than the Executive Officer of the Anchalik Panchayat, the other staffs of the Anchalik Panchayat shall be appointed as provided in Section 140 of the Act. Section 140 (1) clearly provides that all the recruitment of Grade-III and Grade-IV staffs under the Anchalik Panchayat shall be conducted by the State Level Recruitment Commission for Class-III and State Level Recruitment Commission for Class-IV, constituted

under the Assam Direct Recruitment Commission for Analogous Posts in Class-III and Class-IV, Act, 2021. Therefore, any appointment in Grade of Class-III and Class-IV has to be made after a selection process by the State Level Recruitment Commission for Class-III and State Level Recruitment Commission for Class-IV constituted under the Assam Direct Recruitment Commission for Analogous Posts in Class-III and Class-IV, Act, 2021. Rule 2 (1) (b) provides for staffing pattern for Zilla Parishad, Anchalik Panchayat and Gaon Panchayat, wherein, Grade-III consisted of Peon and Chowkidar. Therefore, it is clear that since the Petitioner is holding the post of a Peon in the Anchalik Panchayat, he cannot be promoted to Grade-III under the prevailing laws, i.e., the aforesaid Act of 1994 and the Rules, 2002(as amended in 2012).

24. In view of the aforesaid findings, this Court does not find any merit in the instant writ petition and therefore, the same stands dismissed.

25. No order as to costs.

JUDGE

Comparing Assistant