

GAHC010068792025



2026:GAU-AS:1407

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

Case No. : WP(C)/1857/2025

ANAMIKA NATH
W/O- KALINDRA KALITA, R/O- SONALI BHABANIPUR PATH, NOONMATI,
GUWAHATI, DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
COOPERATION DEPARTMENT, DISPUR, GUWAHATI- 781006.

2:THE REGISTRAR OF COOPERATIVE SOCIETIES
KHANAPARA
GUWAHATI
ASSAM

3:THE DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES
BHANGAGARH
GUWAHATI
ASSAM

4:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
BHANGAGARH
GUWAHATI
ASSA

Advocate for the Petitioner : P BARO, N J DAIMARI

Advocate for the Respondent : SC, CO OP,

B E F O R E

HON'BLE MR. JUSTICE KARDAK ETE

Advocates for the petitioner : Mr. NJ Daimari

Advocates for the respondents : Ms. MD Bora, SC-Cooperation

Date on which judgment is reserved : **04.02.2026**

Date of pronouncement of judgment : **04.02.2026**

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

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (ORAL)

Heard Mr. NJ Daimari, learned counsel for the petitioner. Also heard Ms. MD Bora, learned Standing Counsel, Cooperation Department for all the respondents.

2. By filing this writ petition, the petitioner has prayed for a direction to consider for promotion to the post of Lower Division Assistant (LDA) in the Office of the Registrar of Cooperative Societies, Kamrup (M), Department of Cooperation, Govt. of Assam.

3. The case of the petitioner, in brief is that she was appointed as Peon vide order dated 25.02.2014 in the Office of the Registrar of Cooperative Societies, Kamrup (M) and is presently serving in the said capacity at Khanapara, Assam. The petitioner contends that she is eligible and having all requisite qualifications as well as experiences for promotion to the next higher post of LDA. However, despite the existing clear vacancy, the respondent authorities have not initiated any action to consider for promotion to the post of LDA.

4. As per the final Gradation List dated 28th of February, 2025 of Peon / MTS of the Department in the Office of the Registrar of Cooperative Societies, Assam, the name of the petitioner appears at Sl. No. 20. Although, she is placed at Sl. No. 20, as per the Recruitment Rules, she having the degree of B.A. and one Babli Bey at Sl. No. 18, the petitioner and the said Babli Bey are entitled to the promotion to the next higher post of LDA as there exists two clear vacancies in the Department as the persons, who are at Sl. Nos. 1 to 17 and 19 did not possess the educational qualification in terms of the Recruitment Rules.

5. Mr. Daimari, learned counsel for the petitioner submits that as per the Assam Directorate Establishment (Ministerial) Service Rules, 1973 as Amended in the year 2016 (in short, Rules of 1973) as regards the promotion from the post of Grade IV to LDA selection on the basis of suitability who possess the Bachelors degree and also such other qualification as laid down in Rule 12 who have rendered not less than 7 years of continuous service in Grade IV. He submits that initially, when this writ petition was moved, the petitioner was admittedly, not eligible as she did not complete 7 years of continuous service in the Grade IV. However, by efflux of time, the petitioner has completed the 7 years of continues service. Therefore, he submits that the respondent authorities may be directed to consider the case of the petitioner for promotion to the post of LDA in terms of the said Rules of 1973.

6. Ms. Bora, learned Standing Counsel, Cooperation Department fairly submits that although the petitioner was initially not eligible as she has not completed 7 years of continuous service in the same Office as per the applicable Rules, though she had other qualification and experiences, by now she appears to have been completed 7 years of continuous service in the same Office. Therefore, a direction may be issued to the respondent authorities to consider

the case of the petitioner for promotion to the next higher post of LDA strictly in accordance with the Rules of 1973 along with all other eligible candidates as there exists clear vacancies in the grade of LDA.

7. Considered the submissions of the learned counsel for the parties and have perused the materials available on record.

8. The petitioner was appointed as Peon and has been serving since the year 2014. She appears to have been transferred to other establishment of the same Department in the year 2017 on mutual consent which takes away the seniority position of the petitioner. As admitted by the learned counsel for the parties, the petitioner has completed 7 years of continuous service in the same Office in post of Grade IV by now.

9. The promotion to the post of LDA is regulated by the Rules of 1973, the sub-Rule (iii) of Rule 12 is extracted hereinbelow:

*"(iii) **Educational Qualification:-** For appointment to the post of Junior Assistant, a candidate must possess a Bachelor's degree from a recognized University or any examination declared equivalent by the Government.*

Moreover, a candidate for the post of Junior Assistant must possess computer skills for handling data and text on computer."

10. The amended Rule requires that for the post of LDA under the promotional quota, selection is made on the basis of suitability amongst the Grade IV Staff of the Office, who must possess a Bachelor's degree from a recognized University and also possess such other qualifications as laid down in sub-Rule (iii) of Rule 12 of the Rules of 1973 and have rendered not less than of 7 years of continuous service in the Office on the date of selection.

11. Reading of the above Rules clearly shows that the promotion to the post of LDA is on the basis of suitability amongst the Grade IV staff, having a Bachelor degree and other qualifications as laid down in the Rules of 1973. As noted above, the petitioner by now has completed 7 years of continuous service in the Grade IV and is having the Bachelor degree and other requisite qualifications and experiences. Thus, the petitioner would be entitled to consider for promotion to the next higher post of LDA in terms of the said Rules of 1973.

12. It is submitted at the Bar that there exists two clear cut vacancies of the post of LDA which is to be filled up by way of promotion / appointment from amongst Grade IV staff.

13. It is a settled position of law that right to be considered for promotion is not only a statutory right but also a fundamental right, however, there is no fundamental right to the promotion itself. A reference may be made to the case of **Government of West Bengal and Ors. Vs. Dr. Amal Satpathi and Ors.** reported in **2024 SCC Online SC 3512**, a relevant paragraph is reproduced hereinunder:

*“19. It is a well settled principle that promotion becomes effective from the date it is granted, rather than from the date a vacancy arises or the post is created. While the Courts have recognized the right to be considered for promotion as not only a statutory right but also a fundamental right, there is no fundamental right to the promotion itself. In this regard, we may gainfully refer to a recent decision of this Court in the case of **Bihar State Electricity Board and Others v. Dharamdeo Das**, wherein it was observed as follows:*

“18. It is no longer res integra that a promotion is effective from the date it is granted and not from the date when a vacancy occurs on the subject post or when the post itself is created. No doubt, a right to be considered for promotion has been treated by courts not just as a statutory right but as a fundamental right, at the same time, there is no fundamental right to promotion itself. In this context, we may profitably cite a recent decision in *Ajay Kumar Shukla v. Arvind Rai*¹⁰ where, citing earlier precedents in *Director, Lift Irrigation Corporation Ltd. v. Pravat Kiran Mohanty*¹¹ and *Ajit Singh v. State of Punjab*¹², a three-Judge Bench observed thus:

41. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in *Director, Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty* in para 4 of the report which is reproduced below:

‘4..... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent-writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent-writ petitioner was unjustly denied of the same is obviously unjustified.’

42. A Constitution Bench in *Ajit Singh v. State of Punjab*, laying emphasis on Article 14 and Article 16(1) of the Constitution of India

held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, C.J., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paras 22 and 27:

‘Articles 14 and 16(1) : is right to be considered for promotion a fundamental right

22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the 'State shall not deny to any person equality before the law or the equal protection of the laws'. Article 16(1) issues a positive command that:

‘there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State’.

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense "equality of opportunity" in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16 (1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone

criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right. "Promotion" based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1).

*

*

*

27. In our opinion, the above view expressed in **Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P.]**¹³, and followed in Jagdish Lal [Jagdish Lal v. State of Haryana]¹⁴, and other cases, if it is intended to lay down that the right 13 (1997) 5 SCC 201 14 (1997) 6 SCC 538 12 guaranteed to employees for being "considered" for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be "considered" for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P.], right from 1950.'

.....

“20. In **State of Bihar v. Akhoury Sachindra Nath**¹⁵, it was held that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre, nor can seniority be given with retrospective effect as that might adversely affect others. The same view was reiterated in **Keshav Chandra Joshi v. Union of India**¹⁶, where it

was held that when a quota is provided for, then the seniority of the employee would be reckoned from the date when the vacancy arises in the quota and not from any anterior date of promotion or subsequent date of confirmation. The said view was restated in Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P17, in the following words:

‘37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in Keshav Chandra Joshi v. Union of India held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotes, it would not be proper to do injustice to the direct recruits.....

38. This Court has consistently held that no retrospective promotion can be granted nor can any seniority be given on retrospective basis from a date when an employee has not even been borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validity in the meantime.”

14. Having considered that the petitioner is having all the requisite qualifications to be considered for selection / promotion to the post of LDA in terms of the Rules of 1973 and also considering the fact that there are two clear

vacant posts of LDA to be filled up amongst the Grade IV staff, this Court is of the considered view that the petitioner is entitled to be considered for promotion to the post of LDA. Thus, it would be appropriate to direct the respondent authorities to consider the case of the petitioner along with all other eligible candidates for promotion to the next higher post of LDA in terms of the Rules of 1973. It is ordered accordingly.

15. The aforesaid exercise be completed within a period of 4(four) months from the date of receipt of a certified copy of this order.

16. In terms of the above, the writ petition stands disposed of.

JUDGE

Comparing Assistant