

GAHC010008672011



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

Case No. : WP(C)/5330/2011

SHRI BHAGAT SINGH and ANR
S/O- LT. DEVI SINGH, R/O- R.G. BARUAH ROAD, GHY- 5, DIST.- KAMRUP M,
ASSAM.

2: SIRAJUL HUSSAIN
S/O- MD. MAKBUL HUSSAIN
R/O- 17-C
MILANJYOTI PATH
HATIGAON
GHY- 38
DIST.- KAMRUP M
ASSAM

VERSUS

THE STATE OF ASSAM and 12 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, WATER RESOURCES DEPTT.,
DISPUR, GHY- 6, DIST.- KAMRUP M, ASSAM.

2:THE DY. SECY. I TO THE GOVT. OF ASSAM
WATER RESOURCES DEPTT.
DISPUR
GHY- 6
DIST.- KAMRUP M
ASSAM.

3:THE ASSAM PUBLIC SERVICE COMMISSION
REP. BY ITS SECY.
JAWAHAR NAGAR
KHANAPARA
GHY- 22
DIST.- KAMRUP M
ASSAM.

4:THE CHIEF ENGINEER
WATER RESOURCES DEPTT.
ASSAM
CHANDMARI
GHY- 3
DIST.- KAMRUP M
ASSAM.

5:THE EXECUTIVE ENGINEER
JORHAT MECHANICAL WATER RESOURCES DIVISION
RAJABARI
JORHAT- 14.

6:RAJEEB KR. SARMAH
AT SERIAL NO. 1.

7:AJIT KR. SARMAH
AT SERIAL NO. 2.

8:PRABIR JYOTI TALUKDAR
AT SERIAL NO. 3.

9:ANUPAM DAS
AT SERIAL NO. 4.

10:SUBHANKAR HAZARIKA
AT SERIAL NO. 5.

11:RAJIB KR. SARMAH
AT SERIAL NO. 6.

12:INDRAJIT SAIKIA
AT SERIAL NO. 7.

13:CHINMOY CHOUDHURY
AT SERIAL NO. 8

Advocate for the Petitioner : MR. B SARMA

Advocate for the Respondent : MRU SARMA

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 14-06-2023

Heard Mr. M.P. Sarma, learned counsel appearing for the writ petitioner. Also heard Mr. B. Goswami, learned Addl. Advocate General, Assam appearing for the Water Resource Department, Assam, i.e. the respondent Nos. 1, 2, 4 and 5 and Ms. P. Sarma, learned counsel representing respondent No. 3. None has appeared for the respondent Nos. 6 to 13.

The writ petitioners herein have approached this Court by filing the instant writ petition alleging that their cases for promotion to the post of Assistant Engineer (Mechanical) in the Flood Control Department ought to have been considered against the vacancies arising in the year 1998, 2000 and 2001 respectively. However, on an erroneous construction of the provision of Rule 11(3) of the Assam Engineer (Flood Control Department) Service Rules, 1981 (hereinafter referred to "the Rules of 1981"), the respondents have delayed the promotion of the petitioners to the post of Executive Engineer (Mechanical) till 11-06-2002. The private respondents who were direct recruits were given seniority above the petitioners by ignoring the objection raised by them. This writ petition has, therefore, been filed with a prayer to *inter-alia* set aside the notification dated 11-06-2002 by means of which the petitioners were promoted to the cadre of Assistant Engineer (Mechanical) with prospective effect with the consequent relief of retrospective effect to be given to his promotion w.e.f. the year 1998, 2000 and 2001; to declare that the petitioners were senior to the respondent Nos. 6 to 13 in the cadre of Assistant Engineer (Mechanical) and also to quash the provisional gradation list dated 09-

06-2011 wherein, the private respondents have been shown to be senior to the writ petitioners.

Mr. Sarma has argued that the authorities ought to have reserved 30% of posts in the cadre of Assistant Engineer (Mechanical) for being filled up by way of promotion. Had the said provision been followed, the petitioners would have got promoted prior to the promotion of the private respondents, in which event they would not have lost their seniority. Mr. Sarma has, however, admitted that vide notification dated 11-06-2002 his clients have been promoted to the post of Assistant Engineer (Mechanical).

Mr. Goswami, learned Addl. Advocate General, Assam, on the other hand, has argued that Rule 11(3) merely provides that the vacancies to be filled up by way of promotion of Sub-Engineers to the post of Assistant Engineer (Mechanical) shall not exceed 30% of the total cadre strength. There is no mandate under the Rules which requires that 30% of the post must be reserved for being filled up by way of promotional departmental candidates. Under the circumstances, submits Mr. Goswami, this writ petition is mis-conceived. The learned Addl. Advocate General has further argued that the notification by means of which promotion given to the petitioners with prospective effect, was issued on 11-06-2002. Notwithstanding the same, they had approached this Court by filing a writ petition only in the year 2011. Therefore, this writ petition is hit by the principles of delay and laches and is liable to be dismissed on such count alone.

I have considered the submission made by the learned counsel for both the sides and have also gone through the materials available on record. I find from the record that the private respondents were appointed as Assistant Engineer (Mechanical) in the

department of Flood Control (now renamed as Water Resource Department) as direct recruits in the months of March, 2001. The writ petitioners, who were serving as Sub-Engineer, were promoted to the post of Assistant Engineer (Mechanical) vide notification dated 11-06-2002 on the basis of recommendation made by the Selection Board in its meeting held on 29-12-2001. It is, therefore, apparent that the private respondents were borne in the cadre of Assistant Engineer prior to the date on which the petitioners were promoted to the said cadre.

It is the case of the petitioners that the appointment of the private respondents were dehors the Rules. However, there is no prayer in the writ petition to set aside their appointment. Therefore, the question of validity of the appointment of the private respondent Nos. 6 to 13 need not detain this Court. The fact of the matter is that the writ petitioners became Assistant Engineer subsequent to the date on which the private respondents were appointed to the cadre of Assistant Engineer. Therefore, it cannot be said that the writ petitioners ought to have assigned seniority above the private respondents in the provisional gradation list dated 09-06-2011. Moreover, Rule 11(3) of the Rules of 1981 merely puts a ceiling in respect of the total number of posts in the cadre of Assistant Engineer (30%) which can be earmarked for being filled up by promotion of Sub-Engineer. The said Rule, in the opinion of this Court, does not say that 30% of posts must always be kept reserved for being filled up for promotion of departmental candidates. Therefore, the arguments advanced by the learned counsel for the petitioner that had 30% posts been kept reserved for being filled up by promotion from the departmental candidate, his clients would have got promotion at an earlier date,

does not commend for acceptance by this Court.

What is also significant to note herein is that although the petitioners have claimed their right to be promoted in the year 1998, 2000 and 2001, yet, they did not approach this Court ventilating their grievance in the matter at the relevant point of time. Even after the gradation list was published, the petitioners had waited for nearly 10 years before approaching this Court and the only explanation for such delay is that their representation was pending before the authorities. Law is well settled that pendency of the representation before the authorities is not a ground to condone the delay in approaching the Court.

Therefore, having regard to the facts and circumstances of the case and the prayer made in the writ petition, this Court is of the opinion that there is no merit in the writ petition inasmuch as the prayer made by the petitioners is not maintainable in law as well as in the facts and circumstances of the case.

This writ petition is, therefore, held to be devoid of any merit and the same is accordingly dismissed.

JUDGE

GS

Comparing Assistant