

GAHC010031032018



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

Case No. : WP(C)/989/2018

ASHIM DEB AND 5 ORS.
S/O. LT. SUKHAMOY DEB, R/O. N.S. AVENUE, P.O. AND P.S. SILCHAR-
788005, DIST. CACHAR, ASSAM.

2: SIDDHARTHA RANJAN DEY
R/O. NATIONAL HIGHWAY
P.O. AND P.S. SILCHAR-788012
DIST. CACHAR
ASSAM.

3: SALIM UDDIN LASKAR
S/O. LT. SURJAD ALI LASKAR
R/O. VILL. BARJURAI
P.O. BETHUKANDI
DIST. CACHAR
ASSAM.

4: GAUSEL AMIN LASKAR
S/O. SARIF ALI LASKAR
R/O. P.O. AND P.S. NAIRGRAM
DIST. CACHAR
ASSAM.

5: TAPAN KOIRI
S/O. LT. RAMAVATAR KOIRI
R/O. P.O. AND P.S. NAYABIL
DHOLAI
DIST. CACHAR
ASSAM.

6: MISHRI LAL KAHAR
S/O. SRI GOPAL KAHAR
R/O. RADHAMADHAB ROAD
P.O. AND P.S. SILCHAR

DIST. CACHAR
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SPL. SECRETARY TO THE GOVT. OF
ASSAM, PUBLIC WORKS DEPTT., DISPUR, GUWAHATI-6

2:THE CHIEF ENGINEER
P.W.D.(ROADS)
ASSAM
CHANDMARI
GUWAHATI-3

3:THE SUPERINTENDING ENGINEER
P.W.D.(ROADS)
CACHAR CIRCLE

SILCHAR
DIST. CACHAR
ASSAM-788001

4:THE EXECUTIVE ENGINEER
PWD
SILCHAR RURAL ROADS DIVISION
CACHAR
SILCHAR
DIST. CACHAR
ASSAM-788001

5:THE DIRECTOR OF EMPLOYMENT AND CRAFTSMAN TRAINING
ASSAM
REHABARI
GHY-8

6:THE ASSISTANT DIRECTOR OF EMPLOYMENT
DISTRICT EMPLOYMENT EXCHANGE
CACHAR
SILCHAR
DIST. CACHAR
ASSAM-78800

Advocate for the Petitioner : MS. S SEAL

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 25/05/2023

Heard Mr. I.H. Saikia, learned counsel for the writ petitioners. Also heard Mr. P. Nayak, learned Standing Counsel, PWD, Assam, appearing for the respondent nos. 1 to 4 and Mr. A. Alom, learned counsel for the respondent nos. 5 and 6.

The 6 (six) writ petitioners herein are working in Grade-IV posts in the establishment of the Executive Engineer, Silchar Rural Roads Division, Silchar i.e. the respondent no. 4. Aggrieved by non-consideration of their cases for promotion, the petitioners have approached this Court for second time by filing the instant writ petition, *inter alia*, assailing the speaking order dated 06/12/2019 passed by the respondent no. 1 in terms of the orders passed by this Court in WP(C) 5606/2010, WP(C) 6103/2010 and WP(C) 6232/2010, rejecting their prayer for promotion to the Grade-III cadre.

It appears that the writ petitioners are not graduates but are only HSSLC passed candidates. The question of promotion of the petitioners can only be considered in accordance with the provisions of *Assam Ministerial District Establishment Service Rules, 1967*. The amended provisions of Rule 6(6) (b) requires that an incumbent should have passed Degree examination in any discipline from a recognized University for being appointed in a Grade-III post. However, none of the writ petitioners are Bachelor Degree holder.

Be that as it may, there is a larger problem in respect of writ petitioner nos. 1 to 5, inasmuch as, these petitioners were apparently regularized in the Grade-IV posts held by them, which posts were personal to them. Therefore, after the judgement of this Court in the case of ***Dilip Talukdar Vs. State of Assam and others*** reported in **(2017) 3 GLR 376**, their cases cannot be considered for promotion to the next higher grade. However, there is no doubt or dispute about the fact that the

writ petitioner no. 6, viz. Shri Mishri Lal Kahar was brought under the regular establishment against a sanctioned vacant post of Grade-IV and, therefore, his claim would not be hit by law laid down in the case of ***Dilip Talukdar (Supra)***. The only problem in case of petitioner no. 6 is that he does not possess a Bachelor Degree.

Rules of 1967 contains a provision in the form of Rule 15 which permit the authorities to dispense with any provision or relax any rule, if the same causes undue hardship in a particular case. However, power under Rule 15 of the Rules of 1967 can be invoked only when a proper application is made before the competent authority by the aggrieved person.

In view of the above, this writ petition stands dismissed in so far as the petitioner nos. 1 to 5 are concerned. The petitioner no. 6 is, however, granted liberty to file appropriate application under Rule 15 of the Rules of 1967.

If such an application is filed, within four weeks from today, before the competent authority by annexing a certified copy of this order, the same be considered objectively and be disposed of by a reasoned order.

Subject to the outcome of the aforesaid process, the case of the petitioner may be considered for promotion to Grade-III post, in accordance with law, along with other eligible departmental candidates.

With the above observation, the writ petition stands disposed of.

JUDGE

sukhamay

Comparing Assistant