

GAHC010073792023



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

Case No. : I.A.(Civil)/923/2023

K.M. GOPAL SANA RAJKUMAR,
ADDITIONAL CHIEF ENGINEER, ZONE-VI, IRRIGATION DEPARTMENT,
HAFLONG.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, SECRETARIAT, DISPUR, GUWAHATI-6.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
IRRIGATION DEPARTMENT
SECRETARIAT
DISPUR
GUWAHATI-6.

3:THE DEPUTY SECRETARY (E) TO THE GOVT. OF ASSAM
IRRIGATION DEPARTMENT
SECRETARIAT
DISPUR
GUWAHATI-6.

4:ANU BARUAH
ADDITIONAL CHIEF ENGINEER AND CHAIRMAN CUM MANAGING
DIRECTOR
CENTRAL MONITORING CELL
IRRIGATION
GUWAHATI-3.

5:KAMAL LOCHAN BAYAN
ADDITIONAL CHIEF ENGINEER
CENTRAL MNITORING CELL

IRRIGATION
GUWAHATI-3.

6:MAYUR BHUYAN
ADDITIONAL CHIEF ENGINEER
CENTRAL MONITORING CELL
IRRIGATION
GUWAHATI-3.

7:UTPAL NATH
ADDITIONAL CHIEF ENGINEER AND CHAIRMAN CUM MANAGING
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GUWAHATI-3
ADDITIONAL CHIEF ENGINEER
ZONE-IV
IRRIGATION
GUWAHATI-3.

8:DHIRAJ SAIKIA

S/O- SRI BHABA TARANI SAIKIA
PRESENTLY WORKING AS CHIEF ENGINEER (IN-CHARGE
MAJOR) IRRIGATION DEPARTMENT
ASSAM
R/O- H/NO. 1
CHITRABON PATH
KALYANI NAGAR
KAHILIPARA-19
DIST. KAMRUP(M)
ASSA

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, IRRIGATION

Linked Case : WP(C)/1702/2023

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S/O- SRI BHABA TARANI SAIKIA
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Advocate for : MR. D DAS SR. ADV
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 7 ORS

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 10/04/2023

Heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. S.K. Goswami, learned counsel for the applicant. Also heard Mr. D. Das, learned senior counsel assisted by Mr. D. Mahanta, learned counsel for the opposite party/respondent no. 8. Mr. D. Mazumdar, learned Additional Advocate General, Assam, assisted by Mr. N. Upadhyay, learned Standing Counsel, Irrigation Department, Assam, is present on behalf of the official respondents.

The controversy involved in this proceeding pertains to the process initiated for filling up of the two vacant posts of Chief Engineers in the Irrigation Department of the State of Assam. The applicant, viz. K.M. Gopal Sana Rajkumar, was one of the candidates in the rank of Additional Chief Engineer, coming within the zone of consideration. As such, his case, along with the case of the writ petitioner and several other eligible candidates, were considered by the DPC, where-upon, the applicant was recommended for promotion to the post of Chief Engineer. However, due to the operation of the interim order dated 29/03/2023 passed in WP(C) 1702/2023, where the State has been granted leave

to proceed with the process of filling up of the vacancies in the post of Chief Engineers but not to finalise the same without the leave of this Court, no formal notification for filling up the vacant post of Chief Engineer has been issued till today. Hence, this IA has been filed with a prayer to modify/vacate the interim order dated 29/03/2023.

Mr. Choudhury, learned senior counsel for the applicant submits that the case of the writ petitioner/opposite party No. 8 has also been considered by the DPC along with the other eligible candidates, where-after, the name of the applicant and another candidate have been recommended. Therefore, the writ petitioner could not have any grievance in the matter moreso, when the minutes of the DPC is not under challenge.

Mr. D. Das, learned senior counsel for the opposite party/respondent no. 8 on the other hand, submits that the applicant did not complete five years of continuous service in the rank of Superintending Engineer and, therefore, he was not even eligible for promotion to the post of Additional Chief Engineer. As such, the recommendation of the DPC to promote him to the to the post of Chief Engineer is illegal. In support of the above argument, Mr. Das has referred to the Assam Engineering (Irrigation) Department Service Rules 1979, as amended on 30/06/1991. However, what remains to be seen is that there is no challenge to the candidature of the applicant on the ground of non-fulfillment of eligibility criteria.

Mr. Mazumdar, learned AAG, Assam, submits that the same criteria would have been applicable to the opposite party/respondent no. 8 as well as he also does not fulfill criteria of five years of service as Superintending Engineer.

Be that as it may, since the issue pertaining to eligibility of candidates for promotion to the post of Chief Engineer is not the subject matter of this proceeding, hence, this Court need not be detained on the said aspect of the matter. What is to be noted herein is that the post of Chief Engineer in a department like the Irrigation is of immense importance for the public and if the said

post is kept vacant, it is the public who would suffer ultimately. Moreover, if the interim order is continued in its present form, than also the opposite party/writ petitioner does not stand to gain anything, inasmuch as, until such time the recommendation of the DPC is interfered with, no Mandamus can be issued in favour of the writ petitioner/opposite party no. 8.

Considering the above, the department is granted leave to go ahead and notify the promotion of the selected candidate to the post of Chief Engineers in the department of Irrigation, Assam.

The impugned order dated 29/03/2023 stands modified to the extent indicated above. It is, however, made clear that the promotion order issued in terms of the leave granted by this court, would be subject to further orders that may be passed in the writ petition.

IA stands disposed of.

JUDGE

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Comparing Assistant