

GAHC010108382011



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

Case No. : WP(C)/5592/2011

BASANTA MEDHI and 4 ORS.
S/O JOGESWAR MEDHI, R/O 6TH MILE, GUWAHATI, DIST KAMRUP, ASSAM

2: RATNESWAR DEKA

S/O LT. KOLARAM DEKA
R/O BARBHALUKI
DIST BARPETA
ASSAM

3: HOMESWAR MEDHI

S/O LT. ACHYUTANANDA MEDHI
R/O BARBHALUKI
DIST BARPETA
ASSAM

4: DILIP KR DAS

S/O LT. RAMESH CH. DAS
R/O NO. 2 MATGHORIA
GHY
KAMRUP

5: MUKUL RABHA

S/O LT. JATINDRA MOHAN RABHA
R/O VILL. GALHIA PARA
DIST GOALPARA
ASSA

VERSUS

STATE OF ASSAM and ANR.

REP. BY THE COMMISSIONER AND SECY. WATER RESOURCES DEPTT,
GOVT. OF ASSAM, DISPUR, GHY-6,, ASSAM

2:THE CHIEF ENGINEER

WATER RESOURCE DEPTT
CHANDMARI
GHY-3

3:SRI SISIR KUMAR BHATTA
S/O LT. KANDARPESWAR BHATTA
R/O BASTIRAM ROAD GOPAL BAZAR- NALBARI
ASSAM
PRESENTLY SERVING AS JUNIOR ENGINEER UNDER RIVEN RESEARCH
STATION
BASISTHA.

4:SRI NARENDRA CH. DEB CHOUDHURY
S/O LT. UMESH CH DEB CHOUDHURY R/O RAIPUR PATSALA BARPETA
PRESENTLY SERVING AS JUNIOR ENGINEER AT NALBARI WATER
RESOURCES DIVISION.

5:SRI PRASANNALAL BAISHYA
S/O LT. NAGENDRA NATH BAISHYA
HOUSE NO. 11 WARD NO. 36
R/O SONADHAR SENAPATI PATH
GHY-3
PRESENTLY SERVING AT TAMULPUR WATER RESOURCES SUB-DIVISION
TAMULPUR.

6:ATUR RAHMAN
S/O- LT. BASIRUDDIN AHMED
PRESENTLY SERVING IN RIVER RESEARCH STATION AT BASISTHA
GHY- 29.

7:PRADIP KR. BAISHYA
S/O- LT. JADHAV CH. BAISHYA
R/O- AEC CAMPUS
NEAR PWD CHOOK
JALUKBARI
GHY- 13
P.S.- JALUKBARI
DIST.- KAMRUP M
ASSAM.

8:SYED NATIS HUSSAIN SUBHANI
S/O- LT. AZAHAR HUSSAIN
R/O- JORHAT WATER RESEARCH DIVISION ROYAL ROAD

JORHAT.

9:SEKHAR PAUL

S/O- LT. SURESH CH. PAUL

SERVING AT GUWAHATI EAST WATER RESEARCH DIVISION AT
GUWAHATI.

10:SISIR KR. BHATTA I

S/O- LT. SAMBHU NATH BHATTA

R/O- KRISHNAPUR

NEAR A.G. OFFICE

BELTOLA

GHY- 29.

11:SHEIKH MUBARAK HUSSAIN

S/O- LT. ISMAIL HUSSAIN

R/O VILL.- SAHAR RANGIA

DIST.- KAMRUP

ASSAM.

12:KISHOR BHATTACHARJEE

S/O- LT. KHIROD BHATTACHAREE

R/O- GANGAPAR

DIBRUGARH

DIST.- DIBRUGARH

ASSAM.

13:BHUBANESWAR DEKA

S/O- LT. KRISHNA KANTA DEKA

R/O- NIZ NAMATI TIHU

DIST.- NALBARI

ASSAM.

14:DAMODAR BANGANG

S/O- LT. CHANDORAM BANGANG

R/O- HENGRABARI

GHY- 36

DIST.- KAMRUP M

ASSAM

For the Petitioner(s)

: Mr. M. P. Sarma, Advocate

: Mr. A. Chakraborty, Advocate

For the Respondent(s)

: Mr. B. K. Bhagawati, Advocate

: Mr. B. Goswami, Advocate

: Mr. N. Goswami, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 10-08-2023

1. The Petitioners before this Court have assailed the selection process dated 09.08.2011 whereby various Junior Engineers in the Water Resource Department were promoted to the post of Assistant Engineers. The Petitioners have also sought for a direction upon the Respondents to hold departmental examination in the rank of Junior Engineers for eligibility for consideration of promotion to the post of Assistant Engineers in Water Resource Department, Government of Assam.

2. Taking into account that it is the specific case of the Petitioners that they were not considered for the promotion from the post of the Junior Engineer to the post of the Assistant Engineer in the Water Resource Department, this Court finds it relevant to take note of Rule 11 of the Assam Engineering (Flood Control Department) Service Rules, 1981 (for short "the Rules of 1981"). The said Rule 11 of the Rules of 1981 for the sake of convenience is quoted hereinbelow:

"11. Promotion as Assistant Engineer: –

(1) The Appointing Authority shall publish in the Government Gazette annually the number of vacancies in the respective cadres of Assistant Engineers which have occurred or are likely to occur in the year.

(2) Subject to suitability as may be decided by the Board and by the Appointing

Authority in consultation with the Commission, an officer belonging to the corresponding cadre of Subordinate Engineer Grade I in the Assam Subordinate Engineering (Flood Control Department) Service under the Government and possessing the qualifications as set forth herein below shall be promoted to the cadre of Assistant Engineers in the manner provided in Rules 13 and 14.

(3) The vacancies to be filled up by promotion of Subordinate Engineers shall be so fixed that the promoted Assistant Engineers do not exceed 30% of the total corresponding cadre strength of permanent and temporary Assistant Engineers.

(4) A member of the Assam Subordinate Engineering Grade I (Flood Control Department) Service shall be eligible for promotion as Assistant Engineer subject to the following conditions :

(a) He has rendered minimum 8 years of service as a Subordinate Engineer on the First January of the year of promotion.

(b) He has successfully undergone the training and passed the Departmental Examination as prescribed by Government from time to time.

(5) Notwithstanding anything contained hereinbefore in this rule, subject to suitability, a Subordinate Engineer Grade I, of the Assam Subordinate Engineering (Flood Control Department) Service, on his acquiring the academic qualification, as prescribed for a direct recruit Assistant Engineer shall be promoted as Assistant Engineer, in consultation with the Commission as provided in Rule 14 against the next available vacancy in the cadre and such promotion shall be treated as direct recruitment to the cadre of Assistant Engineer for the purpose of these rules.

3. From a perusal of Sub-Rule (4) of Rule 11 of the Rules of 1981, a member of the Assam Subordinate Engineering Grade-I (Flood Control Department) service shall be eligible for promotion as Assistant Engineer subject to the conditions as enumerated in Sub-Clause (a) and (b). The first condition is that the said person has rendered minimum 8 years of service as a

Subordinate Engineer as on 1st of January of the year of promotion and secondly, that the said person has successfully undergone training and passed the departmental examination as prescribed by the Government from time to time.

4. This Court finds it relevant to take note of the affidavit-in-opposition filed by the Respondent No.1. In the said affidavit-in-opposition, it has been mentioned that the departmental examinations were held 7 times i.e. on March 1987, November 1990, August 1991, September 1994, September 1995, February 1999 and lastly in January 2001. Further to that, it has been mentioned that the Petitioner No.1 appeared in the departmental examination held on 24.11.1990 and passed in the paper of "Civil Engineering" only and his results along with others declared vide notification dated 18.06.1991 but he could not come out successful in the Accounts paper. As regards the Petitioner No.3, it has been mentioned that he appeared in the departmental examination held on 23.09.1995 wherein he had only cleared the "Civil Engineering" paper but failed to clear the Accounts paper. As regards the Petitioner No.4, it has been mentioned that he appeared in the departmental examination held on 07.02.1999 and passed in the paper of "Accounts" only but failed to pass the "Civil Engineering" Paper. Further to that, it has been mentioned that the Petitioner No.2 who was appointed in the year 1981 did not come out successful in any of the examinations which were held 7 times for the reasons best known to him. As regards the Petitioner No.5, it has been mentioned that after he has joined service in the year 1992, he got as many as 4 (four) chances to clear his departmental examination and during the period, departmental examinations were held 4 (four) times and he was least bothered towards successful completion of his departmental examinations.

5. This Court cannot also lose sight of the fact that the Petitioner Nos. 1 to 4 have already retired from service. As regards the Petitioner No.5, he is yet to retire from service but it is not known as to whether the Petitioner No.5 in the meantime has been granted any promotion or not.

6. Be that as it may, the eligibility in terms with Rule 11(4) of the Rules of 1981 for being considered for promotion to the post of Assistant Engineer is that the person concerned have to render minimum 8 years of service and have to also undergone training and pass the departmental examination as prescribed by the Government from time to time. In the case of the Petitioner No.5, he has joined in the year 1992 and he would be eligible only after 8 years i.e. after 2000. The stand so taken in the affidavit-in-opposition filed by the Respondent No.1 is also noteworthy that no departmental examination have been held from 2002-2010. It is the opinion of this Court that as the Petitioner No.5 only became eligible after 8 years of service i.e. in the year 2000 and thereupon not holding any departmental examination on the ground that there are sufficient candidates who have already passed departmental examination, the right of the Petitioner No.5 would definitely be affected for being considered for promotion. Taking into account the above, it is therefore observed that if pursuant to 2011, there has been no departmental examination held and the petitioner No.5 still continues to render service as the Junior Engineer on the ground that no departmental examination are held, this Court directs the Respondent Authorities to hold departmental examination as required under Rule 11(4)(b) so that the Petitioner No.5 can participate in such departmental examinations.

7. The above direction is subject to the Petitioner No.5 having not been

promoted in the meantime.

8. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant