

GAHC010114592015



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

Case No. : WP(C)/1565/2015

PABITRA BARUAH and 12 ORS
S/O- LT. GOLUK BARUAH, R/O- TEOK JOGDUAR, SONARIGAON, P.O.-
JOGDUAR, SONARI, DIST.- JORHAT, ASSAM.

2: DILIP SAIKIA
S/O- LT. INDRESWAR SAIKIA
R/O- PIRAKOTA DEWAN BHOROLUWH
KAKOJAN
TEOK
DIST.- JORHAT
ASSAM.

3: RATUL SADHANIDHAR
S/O- SRI NORESWAR SADHANIDHAR
R/O- MIDHAKHAT GAON
TEOK
P.O. and P.S.- TEOK
JORHAT
ASSAM.

4: NABAJYOTI BORAH
R/O- KATHGAON
DIST.- JORHAT
ASSAM.

5: BODON BORAH
S/O- LT. SONARAM NORA
R/O- KAKOJAN BONGAON
DIST.- JORHAT
ASSAM.

6: PRADIP HAZARIKA
S/O- LT. DINARAM HAZARIKA
R/O- JHANJIMUKH BHAKAT GAON

DIST.- JORHAT
ASSAM.

7: PRANJAN BORAH
S/O- RUPESWAR BORAH
R/O- BONAI AMTOL GOARSINGHA VILLAGE
P.O.- BONAI
P.S.- TEOK
DIST.- JORHAT
ASSAM.

8: PROBAL BORUAH
S/O- BINANDA BOLRUAH
R/O- PAKAMURA GAON
DIST.- JORHAT
ASSAM.

9: SURESH KR. BHUYAN
S/O- LT. PARAMANANDA BHUYAN
R/O- KAKOJAN
TIKURIA BHAKAT GAON
DIST.- JORHAT
ASSAM.

10: GOBIN OJHA
S/O- SRI HORESWAR OJHA
R/O- TEOK GUAL GAON
P.O. and P.S.- TEOK
DIST.- JORHAT
ASSAM.

11: JAGOT CHANGMAI
S/O- SRI NARESWAR CHANGMAI
R/O- BOLOMA LAHAN GAON
P.O.- BOLOMA
P.S.- TEOK
DIST.- JORHAT
ASSAM.

12: DILIP CHANDRA BORAH
S/O- NISWANATH BORAH
R/O- MARIJHANJI SONARI GAON
P.O.- DA-GAON
P.S.- BHAGAMUKH
DIST.- JORHAT
ASSAM.

13: TILU HAZARIKA

S/O- LT. KEHORAN HAZARIKA
R/O- GOROKHIADOR
DIST.- JORHAT
ASSAM

VERSUS

ASSAM STATE ELECTRICITY BOARD and 14 ORS
BIJULI BHAWAN, PALTAN BAZAR, GUWAHATI, ASSAM.

2:ASSAM POWER DISTRIBUTION COMPANY LTD.
BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI
ASSAM
REP. BY ITS MANAGING DIRECTOR.

3:THE GENERAL MANAGER
ASSAM POWER DISTRIBUTION COMPANY LTD.
JORHAT ELECTRICAL CIRCLE
ASSAM POWER DISTRIBUTION COMPANY LTD.
UPPER ASSAM ZONE
NA-ALI
BIJLI BHAWAN
JORHAT- 785001
ASSAM.

4:THE DY. GENERAL MANAGER
JORHAT ELECTRICAL CIRCLE
ASSAM POWER DISTRIBUTION COMPANY LTD.
UPPER ASSAM ZONE
NA-ALI
BIJLI BHAWAN
JORHAT- 785001
ASSAM.

5:THE CHAIRMAN
ASSAM POWER DISTRIBUTION COMPANY LTD.
BIJULI BHAWAN
PALTAN BAZAR
GHY- 1
ASSAM.

6:THE STATE OF ASSAM
REP. BY THE SECY. TO THE GOVT. OF ASSAM
DEPTT. OF POWER
ASSAM SACHIVALAYA
DISPUR

GHY- 6.

7:DUSHMANTA DUTTA
S/O- LT. KONLORA DUTTA
R/O- GARMUR SATRA
MAJUOLI
DIST.- JORHAT
PIN- 784104.

8:PRASANNA BHUYAN
S/O- LT. SURYA KR. BHUYAN
R/O- MOHKINA GAON
P.O.- DHEKIAJULI GARMURM
MAJULI
DIST.- JORHAT
PIN- 785104.

10:RAJIB KHANIKAR
S/O-
R/O- CHARING AGNIBAR KHANIKAR GAON
P.O.- CHARING
DIST.- SIVSAGAR.

11:NABIN DAS
S/O- POWAL CH. DAS
R/O- BIBIJAN GAON
P.O.- TITABOR.

12:UJJAL BORA
S/O- NANDESWAR BORA
R/O- SANTIPUR PUBERUN PATH
P.O.- TITABOR.

13:RANJAN TAMULY
S/O- KOLIA TAMULY
R/O- KAKOJAN TINIKURIA
P.O.- KAKOJAN
DIST.- JORHAT.

14:REBAKANTA BORA
S/O- PADMESWAR BORA
R/O- MIDHAKHAT GAON
TEOK
PIN- 785112.

15:RAFIQUR RAHMAN
S/O- SAHIDUR RAHMAN
R/O- ARENGAPARA GAON

DIST.- GOLAGHAT

Advocate for the Petitioner : MS.B DAS

Advocate for the Respondent : GA, ASSAMR6

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date: 12.09.2023

Heard Mr. A, Dasgupta, learned Senior Counsel assisted by Ms. B. Das, learned counsel for the petitioners. Also heard Mr. S.P. Sarma, learned Standing Counsel, Assam Power Distribution Company Limited (APDCL), for the respondents no.1 to 5 and Mr. C.S. Hazarika, learned for the respondent no.6.

2. This writ petition has been preferred by 13 petitioners who are seeking a direction to the respondent authorities i.e respondent nos. 1 to 6 for setting aside the appointment orders of respondents no. 7 to 15 in the writ petition in view of the enquiry conducted by the department and a further direction to the respondent authorities to appoint the petitioners in the resultant vacancies.

3. The petitioners were employed by the Assam State Electricity Board (ASEB) which was subsequently bifurcated into Assam Power Distribution Company

Limited (APDCL), which is a Government company. The petitioners were employed as Sahayaks Meter readers, bill clerks etc. Duties allotted to Sahayaks are to help/assist the linemen in respect of works like installation and wiring of electric posts and its maintenance for supply of electricity. Pursuant to the discussion held between the registered trade union espousing the causes of persons like the petitioners and the Management of the APDCL on 09.10.2007, it was decided that 75% of the posts of Sahayak would be filled up from existing casual employees like the petitioners. However, the recruitment did not proceed in terms of the agreement arrived between the trade union and the management. In the year 2010 a process of recruitment to the post of Sahayak was carried out by the APDCL under the Jorhat Electrical Circle. In the said recruitment, 50% of the posts of Sahayak were reserved for existing Sahayaks having three years experience and the remaining 50% would be filled up from the open market by submitting requisition to the local Employment Exchange to sponsor the names of the candidates. An order in this regard was also stated to have been issued by the Deputy General Manager, Jorhat Electrical Circle whereby the Senior Manager of each division under him was directed to sponsor the names of departmental eligible candidates for recruitment of Sahayaks having three years experiences in the Department. Total 141 posts were required to be filled up, out of which 70 posts were to be filled up from the

departmental candidates and 71 posts were to be filled up from the open market having requisite ITI certificates. The interview for the posts of Sahayak was held from 10.02.2011 to 16.02.2011. The APDCL published a select list on 09.08.2011. In the select list dated 09.08.2011 the Roll Numbers of the selected candidates were published. But the petitioners' roll numbers were not reflected in the said select list. It was found out by the petitioners that 70 persons were shown to be departmental candidates but amongst them 6 (six) persons were departmental candidates but remaining 54 persons none had worked in any electrical subdivision as per information received by the petitioners. The petitioners stated that all these 54 persons had fraudulently obtained certificates from different officers and offered their candidatures and got selected by fraudulent means. Being aggrieved, the petitioners had approached this Court by filing WP© No.4322/2011 and by a common order dated 26.08.2012 the learned Single Judge of this Court disposed of the said writ petition with a direction to the APDCL authorities to hold an inquiry into the matter and do the needful in accordance with law. Further direction was given that if any of the persons, who is selected as Sahayak on the basis of the quota of 50% reserved for casual employees of the Company, such person's selection and appointment, if already made, shall be terminated in accordance with law and by observing the principles of nature justice. If, however, pursuant to the selection no

appointments were made, then no appointment should be made until the inquiry is completed. The inquiry was directed to be completed within a period of three months from the date of the order. So the result of the inquiry was directed to be published and made known in writing to the petitioners.

5. Pursuant to the direction of the Court, an enquiry was conducted on 12.11.2012 by APDCL Authority, and those 16 persons were appointed to the post of Sahayaks were found not to have been appointed in accordance with law, and therefore their services were held liable to be terminated. These persons who were terminated pursuant to the inquiry dated 12.11.2012 approached this Court by filing WP(c) No.5733/2012. The present writ petitioners had also approached this Court by filing WP(C) No.1221/2013, praying for a direction to be appointed in the resultant vacancies which were created pursuant to the termination of those persons 16 persons in terms of the enquiry dated 12.11. 2012, held by APDCL in terms of the directions of this Court by order dated 26.08.2012 passed in WP(C) No.4322/2011.

6. WP(C) No.5733/2012 which was filed by the persons who were terminated pursuant to the enquiry conducted by APDCL on 12.11.2012, came to be disposed of by this Court by judgment dated 06.12.2013. The judgment of the Court is extracted below:

“The petitioners herein were once appointed as ‘Sahayak’ by the aforesaid company after holding written test and interview. Subsequently, their appointments have been cancelled on the ground that the petitioners did not fulfill the requisite eligibility criteria.

The learned counsel for the petitioners argued that on the basis of the judgment passed in WP(C)' No. 4344 of 2011 the APDCL held a fresh composite enquiry and have passed fresh orders of their termination. According to the learned counsel, the APDCL has not taken into consideration the eligibility criteria possessed by the petitioners. Besides this, termination orders have also been assailed on the ground that composite enquiry is not permitted under the law. During the course of hearing Mr. Das, learned Sr. counsel agreed to the proposal of the petitioners that a fresh individual enquiry shall be carried out.

Accordingly, the writ petitions are disposed of with a direction to the respondents i.e., APDCL to hold a fresh enquiry individually and take fresh decision. Such process of de-novo enquiry shall be initiated within four weeks from to-day giving due opportunity of hearing to all the petitioners individually.”

7. The writ petition being WP(C) No.1221/2013, which was preferred by the present petitioners seeking appointment in the resultant vacancies and which arose pursuant to the termination of the 16 Sahayaks, was also disposed of by order dated 06.12.2013. The said order reads as under:

“The petitioners had appeared before the APDCL for their appointment as ‘Sahayak’. However, the petitioners were not selected by the respondents. Hence, this writ petition.

To-day some other writ petitions arising out of same selection process have been disposed by this court directing the APDCL to hold fresh enquiry whether the other petitioners’ selection was correct and valid. Until and unless the claim of some other petitioners is decided by the concerned competent authority there can be no mandamus from the High Court. Certainly, if the other petitioners’ appointment is found to be illegal there will be vacancies and respondents may consider to the claim of the present petitioners in the resultant vacancies.

In view of above, the petitioners are directed to submit their representations before the competent authority and the representation shall be considered on the basis of the outcome of the administrative enquiry to be conducted against some other batch of the ‘Sahayak’.”

8. In view of the order dated 06.12.2013 passed in WP(C) no.5733/2012, the respondents i.e., APDCL was directed to hold a fresh enquiry individually and

take fresh decision. It was further directed to initiate such process of de-novo enquiry within four weeks from the date of passing of the order by giving due opportunity of hearing to all the petitioners individually.

10. Taking note of the order dated 06.12.2013, passed by this Court in WP(C) No.5733 of 2012, the learned Single Judge in WP(C) 1221/2013 by order dated 06.12.2013 held that if pursuant to the enquiry conducted, the appointments were found to be illegal, there will be vacancies, and the Respondent APDCL may consider the claims of the petitioners in those resultant vacancies. The petitioners were directed to submit their representations before the competent authority and it was directed to consider those representations on the basis of the outcome of the administrative inquiry to be conducted against some other batch of the Sahayaks.

11. The Respondent APDCL had contested the claims of the present petitioners by filing the affidavit-in-opposition. It was contended that pursuant to the directions of this Court passed in WP(C) No. 5733 of 2012 by order dated 06.12.2013, a de novo enquiry was conducted by giving due opportunity of hearing individually to those Sahayaks. Pursuant to the enquiry conducted, the competent authority by order dated 12.03.2015 on the basis of the *de novo* enquiry accepted the work experiences of 13 persons out of the 16 persons and

they were taken afresh as Sahayaks on humanitarian grounds. In respect of the rest 3 persons, the competent authority held that the candidatures of 2 candidates were not *bona fide* and therefore, their candidatures were cancelled and in respect of 1 person, his case was exempted from the purview of the inquiry and it was decided by the authority that his case will be taken in due course separately, after the final outcome of the case.

12. Learned Senior Counsel for the petitioners submits that the copy of the de novo enquiry report was not earlier supplied to the present petitioners and the same was received in the Court which is reflected in the order dated 16.08.2023 passed by this Court. No specific challenge has been made to the said enquiry. The said de-novo enquiry report is not brought on record.

13. Mr. SP Sarma, learned Standing Counsel, APDCL submits that the decision of enquiry is not challenged in the present writ petition. Therefore, the prayers made by the petitioners cannot be entertained by this Court.

14. Learned Senior Counsel for the petitioners submits that a perusal of the enquiry report reveals that there is no adverse finding in respect of the present petitioners. Out of the 16 Sahayaks against whom de-nova enquiry was conducted, 13 Sahayaks' appointments were found to be acceptable. But three persons appointments were not found to be genuine and bona fide. Therefore,

they were terminated. Consequently, there is a resultant vacancy of three posts of Sahayok. Accordingly, at least, 3 of the petitioners will have their claims. In view of the order dated 06.12.2013 passed by this Court in WP(C) No.1221/2013 learned Senior Counsel for the petitioners submits that since there is no adverse finding against the petitioners in the present enquiry report, the same is not required to be assailed.

15. Learned counsels for the parties have been heard. Relevant records of the case have been carefully perused.

16. It is seen that the issue of appointment of Sahayoks under APDCL was initiated in the year 2010 and the selection was made in the year 2012. Thereafter, several rounds of litigations followed between the present petitioners and the persons who were appointed as Sahayaks and this Court culminated the orders by directing de novo inquiry to be made. A perusal of the enquiry report reveals that the enquiry was conducted largely against the other batch of Sahayaks who are 16 in number. The enquiry committee arrived at a finding that out of 16 candidates, appointment of 3 candidates were found to be not genuine and therefore, the appointment of 13 candidates would be retained.

17. In respect of the 3 other candidates, the Committee recommended their appointments to be not bona fide on the basis of the findings rendered by the

Committee. The order dated 12.03.2015 issued by the Chief General Manager (D) UAR, Assam Power Distribution Company Ltd., which is enclosed as Annexure-3 of the affidavit-in-opposition filed by the APDCL and which is stated to have been issued pursuant to the enquiry conducted and in terms of the directions of this Court, does not reflect that the cases of the petitioners have been considered pursuant to the resultant vacancies which arose upon termination of the persons whose appointments were not found to be bona fide and acceptable.

18. The learned Senior Counsel for the petitioners submits that since there are vacancies available at least some of the writ petitioners may be considered in terms of the directions given by this Court by order dated 06.12.2013 and since this Order has attained finality and was an inter party order, the Respondent Authorities are duty bound to comply with the said directions contained in the Order dated 06.12.2013 passed in WP(C) No.1221/2013.

19. In that view of the matter, this writ petition is closed, directing the Respondent Authorities to consider the claims of the Petitioners in respect of the resultant vacancies which had arisen as is evident from the enquiry Report dated 12.11.2012 placed before this Court and the Consequential Order dated 12.03.2015 issued by the Chief General Manager (D) UAR, Assam Power

Distribution Company Lt.

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

JUDGE

Comparing Assistant