

GAHC010054912019



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

Case No. : WP(C)/1760/2019

RABINDRA DEKA
S/O. LT. DEBANDRA DEKA, R/O.- BONGAON, BELTOLA, GUWAHATI-28,
PRESENTLY WORKING AS INSPECTOR, FOOD, CIVIL SUPPLIES AND
CONSUMER AFFAIRS DEPTT., GOVT. OF ASSAM AND POSTED AT
KAMRUP(M), GUWAHATI.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, FOOD,
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT., DISPUR, GUWAHATI-6.

2:THE SECRETARY TO THE GOVT. OF ASSAM

FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT.
DISPUR
GUWAHATI-6.

3:THE DIRECTOR

FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
BHANGAGARH
GUWAHATI-5.

4:THE ASSAM PUBLIC SERVICE COMMISSION
REP. BY ITS SECRETARY
KHANAPARA
GUWAHATI-22.

5:RANJIT KR. BHATTACHARYYA

POSTED AS SUPERINTENDENT FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
BAKSA
OFFICE OF THE DEPUTY COMMISSIONER
BAKSA
BTAD
MASALPUR
ASSAM
PIN- 781366.

6:AJIT KUTUM
POSTED AS SUPERINTENDENT FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
JONAI
O/O. THE SUB-DIVISIONAL OFFICER(CIVIL)
JONAI
ASSAM
PIN- 787060.

7:ALAKESH DAS
POSTED AS SUPERINTENDENT FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
O/O. THE DEPUTY COMMISSIONER
NAGAON
ASSAM. PIN- 782001

Advocate for the Petitioner : MR D N BHATTACHARYYA

Advocate for the Respondent : GA, ASSAM

Linked Case : I.A.(Civil)/2169/2023

RANJIT KR. BHATTACHARYYA AND ANR
POSTED AS SUPERINTENDENT FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
BAKSA
OFFICE OF THE DEPUTY COMMISSIONER
BAKSA
BTAD
MASALPUR
ASSAM
PIN- 781366.

2: AJIT KUTUM
POSTED AS SUPERINTENDENT FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
JONAI
O/O. THE SUB-DIVISIONAL OFFICER(CIVIL)
JONAI
ASSAM
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VERSUS

RABINDRA DEKA AND 5 ORS.
S/O. LT. DEBANDRA DEKA
R/O.- BONGAON
BELTOLA
GUWAHATI-28
PRESENTLY WORKING AS INSPECTOR
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT.
GOVT. OF ASSAM AND POSTED AT KAMRUP(M)
GUWAHATI.

2:THE STATE OF ASSAM

REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT.
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BHANGAGARH
GUWAHATI-5.
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REP. BY ITS SECRETARY
KHANAPARA
GUWAHATI-22.

6:ALAKESH DAS
POSTED AS SUPERINTENDENT FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
O/O. THE DEPUTY COMMISSIONER

NAGAON
ASSAM. PIN- 782001.

Advocate for : MR J PAYENG
Advocate for : GA
ASSAM appearing for RABINDRA DEKA AND 5 ORS.

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

21.09.2023

Heard Mr. J. Payeng, learned counsel for the applicant. Also heard Mr. D.N. Bhattacharyya, learned counsel for the respondent No. 1; Mr. R. Dhar, learned Sr. Government Advocate for the respondent No. 2, 3 & 4; Mr. T.J. Mahanta, learned Senior Counsel assisted by Mr. T. Gogoi, learned counsel for the respondent No. 5 and Mr. K. Kalita, learned counsel for the respondent No. 6.

This interlocutory application has been filed by the applicant seeking vacation of the order dated 29.03.2019 passed by this Court in W.P.(C) No. 1760/2019. By the said order, the following direction was issued:

“Heard Mr. D.N. Bhattacharya, learned counsel for the petitioner.

Issue notice, returnable by 08.05.2019.

Mr. S.S. Roy, learned Government Advocate accepts notice on behalf of the respondent No.1 to 3.

Mr. B. Sinha, learned Standing Counsel, APSC accepts notice on behalf of the respondent No.4.

Petitioner is to take steps for service of notice upon respondent Nos.5 to 7 by registered post with A/D.

Since, the claim of the petitioner is that he has been superseded by juniors, promotion of the respondent Nos.5 to 7 who are stated to be junior to the petitioner

will be provisional and will be subject to result of this petition.

List the matter again on 08.05.2019.”

As a consequence of the said order, the applicants who are the private respondents in the writ petition being W.P.(C) No. 1760/2019 although came to be promoted to the next higher post of Superintendent, they were not regularized in their posts in view of the interim order passed by this Court.

During the course of the hearing, it was pointed out by the learned counsel for the Department that in the meantime the opposite party, namely respondents No. 5 & 6 who are the writ petitioners in W.P.(C) No. 1760/2019 were also promoted to the post of Superintendent with effect from 19.08.2021. At present both the applicants as well as the writ petitioner have been promoted to the post of Superintendent. Being aggrieved, they have filed the interlocutory application.

The learned counsel for the opposite party does not dispute this position. He submits that the opposite party was senior to the applicants and as such his claim for promotion ought not to have been overlooked by the Department. However, now that he is promoted to the next higher post, his seniority needs to be restored as his case for promotion along with the applicants was wrongly overlooked by the Department.

The learned counsels for the parties have been heard. Pleadings on record have been perused. In the writ petition, the opposite party No. 1, who is the writ petitioner made the following prayers:

“(a) a writ of or in the nature of Mandamus and/or any other appropriate writ, order or direction of like nature shall not issue directing the respondents to consider the case of petitioner to the

post of Superintendent Food, Civil Supplies & Consumer Affairs w.e.f 07-03-2019.

-AND

(b) a writ of or in the nature of Certiorari and/or any other appropriate writ, order or direction of like nature shall not issue setting aside the promotion of Private Respondent No. 5, 6 and 7 given in supersession of the petitioner by the impugned order dated 07-03-2019.

c) a writ of or in the nature of Mandamus and/or any other appropriate writ, order or direction of like nature shall not issue directing the respondents to regularize period of suspension w.e.f 13.12.2016 to 16-10-2017 enabling him to draw regular salary.

On cause of causes being shown and after hearing the parties and on perusal of records make the Rule absolute. and/or pass such order(s) as Your Lordship may deem fit and proper in the facts and circumstances of the case.

-AND-

In the interim Your Lordship may further be pleased to direct the Assam Public Service Commission not to regularize the service of the Private Respondent No. 5, 6 and 7 till disposal of the Writ Petition."

Out of these prayers, prayer No.(c) stood withdrawn as is reflected in the order dated 29.05.2019. Consequently, only prayers No. (a) and (b) are required to be dealt with. However, in view of the information furnished before the Court by the learned Government Advocate which reflects that the petitioner in the meantime has also been promoted to the post of Superintendent w.e.f.

19.08.2021. The only question which needs to be answered is the claim of the petitioner for promotion to the post of Superintendent with effect from the date the applicants stood promoted which is on 07.03.2019. The grievance of the writ petitioner/opposite No. 1 was that he was senior to the applicants in the feeder category which is a post of Inspector.

Under such circumstances, this Court is of the view that this issue can be decided in the writ petition and for which purpose the necessary orders to be passed in respect of the applicants for their regularization after promotion need not be kept pending or suspended.

As discussed above, as the opposite party/petitioner has been promoted w.e.f 19.08.2021 for the post of Superintendent, therefore, the only question would be his position in the gradation list vis-à-vis the seniority of the applicants which issue can also be decided in the writ petition. The vacation or modification of the order dated 29.03.2019 prayed for in this interlocutory application will not come in the way of deciding the said issue.

Accordingly, the IA stands allowed.

The interim order dated 29.03.2019 stands vacated.

The applicants cases for consideration of their regularization in their posts after promotion may be proceeded with by the Department.

JUDGE

Comparing Assistant