

GAHC010205772023



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

Case No. : WP(C)/5579/2023

NIBON CHANDRA DAS AND 27 ORS
S/O LATE NONIGOPAL DAS KHALASI, R/O VILL-HILARA COLONY, P.O.-
KALAIN, DIST-CACHAR, ASSAM, PIN-788814

2: BIMAL CHANDRA DAS
S/O LATE NIBARAN DAS
KHALASI
DATE OF JOINING 01.01.1987
UNDER SILCHAR PHE DIVISION-II
R/O VILL- NETAJI PALLI TULARGRAM PART-II
P.O.-SONAIMUKH
DIST-CACHAR
ASSAM
PIN-788119

3: MD. RAHIM UDDIN LASKAR
S/O LATE HARUN RASHID LASKAR
KHALASI
DILCHAR PHE- DIVISION-I
DOJ-08.07.7987
R/O VILL- WEST JARAILTALA
P.O.-JARAILTALA BAZAR
DIST- CACHAR
ASSAM
PIN-788127

4: MURLIDHAR YADAV
S/O LATE BIMAL GOALA
KHALASI
VILL AND P.O.-CHHOTA MAMDA
DIST-CACHAR
ASSAM
PIN-788126

5: ASHU TANTI
S/O LATE NAKUL TANTI
KHALASI
DIVISION-II SILCHAR
VILL AND P.O.-DEWAN T.E.
DIST-CACHAR
ASSAM
PIN-788802

6: BIDHAN LASKAR
S/O LATE BHANU KUMAR LASKAR
KHALASI
R/O CHANDRAPUR
P.O.-BHAKATPUR
DIST-CACHAR
ASSAM
PIN-788005

7: MD. ARJU RAHMAN BARBHUIYA
S/O LATE SAFIQR RAHMAN BARBHUIYA
KHALASI
VILL-BERENGA PART-I
P.O.-BERENGA
DIST-CACHAR
ASSAM
PIN-788005

8: SANJIB DAS
S/O LATE SUKHAMOY DAS
KHALASI
R/O NATIONAL HIGHWAY
NEAR NP BHAWAN
P.O.-KALPANA TRADING
SILCHAR
DIST- CACHAR
ASSAM
PIN-788005

9: BANIPADA SARMACHARJEE
S/O LATE RAMESH CH SARMACHARJEE
KHALASI
R/O TARAPUR E AND D COLONY
SHIBBARI ROAD
SILCHAR
DIST-CACHAR
ASSAM
PIN-788003

10: SMTI TAPASHI BHATTACHARJEE
W/O LATE SAMUAL KASHYAP
KHALASI
CHENCOORI ROAD
MADHYASHREE LANE
BYE LANE NO.1
HOUSE NO. 29
SILCHAR
DIST- CACHAR
ASSAM
PIN-788004

11: MANGAL CHANDRA DAS
S/O LATE ISHAN CHANDRA DAS
R/O KHELMA PART-III
P.O.-SADIRKHAL
DIST- CACHAR
ASSAM
PIN-788815

12: DIPAK KUMAR DEB
S/O LATE GOPAL CHANDRA DEB
KHALASI
RONGPUR
SHANTIPARA
WARD NO. 5
SILCHAR
CACHAR
ASSAM
PIN-788009

13: RATHINDRA CHANDRA ROY
S/O LATE SASHINDRA CH ROY
KHALASI
R/O KHELMA PART-I
P.O.-GUMRAH BAZAR
DIST-CACHAR
ASSAM
PIN-788815

14: GURU CHARAN KURMI
S/O LATE GOPAL KURMI
KHALASI
R/O ASHRAM ROAD
BILPAR
P.O.-RANGIRKHARI
SILCHAR
DIST-CACHAR

ASSAM
PIN-788005

15: MD. ZAKIR HUSSAIN LASKAR
S/O LATE HAZI ABDUL LATIF LASKAR
KHALASI
R/O VILL- KRISHNAPUR
NIJJOYNAGAR
P.O.-KRISHNAPUR
DIST- CACHAR
ASSAM
PIN-788126

16: NILKANTA ROY
S/O LATE BROJENDRA ROY
KHALASI
R/O VILL-KALINAGAR PART-I
P.O.-DALU
DIST- CACHAR
ASSAM
PIN-788101

17: SAMSUL ALOM BARBHUIYA
S/O SIRAJ UDDIN BARBHUIYA
R/O VILL- NIZ LEVERPUTA
P.O.-SADIRKHAL
DIST- CACHAR
ASSAM
PIN-788815

18: BIDYADHAR HAZAM
S/O LATE RAM SWARUP HAZAM
KHALASI
R/O VILL AND P.O.-CHOTOJALENGA
DIST- CACHAR
ASSAM
PIN-788014

19: MEHBUB HUSSAIN BARBHUIYA
S/O LATE MATHIR ALI BARBHUIYA
KHALASI
R/O VILL-GANIRGRAM
P.O.-MOHADPUR
DIST-CACHAR
ASSAM
PIN-788025

20: SWAPAN CHANDRA ROY

S/O LATE SUDHIR CHANDRA ROY
R/O VILL AND P.O.-CHUTTAJALENGA PART-II
DIST-CACHAR
ASSAM
PIN-788014

21: MD. BILAL UDDIN LASKAR
S/O LATE ARBESH ALI LASKAR
KHALASI
R/O VILL AND P.O.-CHANDRAPUR
DIST-CACHAR
ASSAM
PIN-788001

22: NAZRUL HOQUE BARBHUIYA
S/O SUNAHAR ALI BARBHUIYA
KHALASI
VILL-BURIBAIL PART-I
P.O.-GONIRGRAM
CACHAR
ASSAM
PIN-788025

23: L NILMOHAN SINGHA
S/O LATE GOBINDA SINGH
KHALASI
R/O VILL- SUNDARI PART-III
P.O.-SUNDARI
DIST- CACHAR
ASSAM
PIN-788001

24: MD. AKBAR HUSSAIN MAZUMDER
S/O LATE FAIZUL BARI MAZUMDER
KHALASI
R/O BERENGA PART-I
P.O.-BERENGA PART-II
DIST-CACHAR
ASSAM
PIN-788005

25: SUJIT CHANDRA DAS
S/O LATE SUNESH CHANDRA DAS
KHALASHI
R/O VILL- TULARGRAM PART-II
P.O.-SONAIMUKH
DIST- CACHAR
ASSAM

PIN-788001

26: BROJESWAR NATH
S/O LATE BROJENDRA CHANDRA NATH
KHALASI
R/O VILL- SALGANGAR PAR
P.O.-NORSHINGPUR
DIST- CACHAR
ASSAM
PIN-788115

27: MD. SALIM UDDIN LASKAR
LATE KHALIL UDDIN LASKAR
KHALASHI
R/O VILL- DAKHAIN MEHERPUR PART-VII
P.O.-DAKHIN MEHERPUR
DIST- CACHAR
ASSAM
PIN-788014

28: MD. AMADUL HAQUE CHOUDHURY
S/O LATE SIDDQUE AHMED CHOUDHURY
KHALASI
R/O SARALKHA ROAD
WARD NO. 2
P.O.-SETTLEMENT ROAD
MAIZDHI
DIST-KARIMGANJ
PIN-788712. PETITIONER NO. 28 HAS COMMON ADDRESS OF
CORRESPONDENCE C/O SRI BIMAL CHANDRA DAS
VILL- NETAJI PALLI TULARGRAM PART-II
P.O.-SONAIMUKH
DIST- CACHAR
ASSAM
PIN-78811

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, DEPARTMENT OF PUBLIC HEALTH ENGINEERING, ASSAM
CIVIL SECRETARIAT, DISPUR, GUWAHATI, ASSAM, PIN-781006

2:THE CHIEF ENGINEER
PUBLIC HEALTH ENGINEERING (WATER) ASSAM
HENGRABARI
GUWAHATI
ASSAM

PIN-781036

3:TEH ADDITIONAL CHIEF ENGINEER
PHE
BARAK VALLEY ZONE
SILCHAR
GUNGUR
DIST- CACHAR
ASSAM
PIN-788014

4:THE SUPERINTENDING ENGINEER
PHE
CACHAR CIRCLE
MEHERPUR
SILCHAR
CACHAR
ASSAM
PIN-788014

5:THE SUPERINTENDING ENGINEER
PHE
HAILAKANDI CIRCLE
HAILAKANDI
ASSAM

6:THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING
SILCHAR DIVISION-I
HOSPITAL ROAD
SILCHAR
DIST-CACHAR
ASSAM
PIN-788005

7:THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING
SILCHAR DIVISION-II
SMC ROAD
GHUNGOOR
SILCHAR
DIST-CACHAR
ASSAM
PIN-788015

8:THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING
HAILAKANDI DIVISION

DIST-HAILAKANDI
ASSAM

9:THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING
KARIMGANJ DIVISION
SETTLEMENT ROAD
DIST-KARIMGANJ
ASSA

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent : SC, P H E

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

22.09.2023

1. No one appears for the petitioners, though Mr. A.K. Dutta, learned counsel for the petitioners had appeared in the morning, praying for adjournment of this case. The same was not allowed by this Court. Further in terms of the Notification dated 20.02.2023 issued by the Gauhati High Court, adjournment requests are to be submitted one day in advance along with No Objection endorsement from the opposite party, which has not been done. Ms. M. Kalita, learned counsel appears for all the respondents.

2. The petitioners' case is that they were initially engaged as Khalasis/Peon in the Public Health Engineering Department on Muster Roll basis. Thereafter the petitioners' services were regularized by the Government.. The counsel Mr. A.K. Dutta had been asked by this Court in the morning, as to whether the regularisation of the services of the petitioners had been made personal to their

post, to which he had replied in the affirmative. However, the petitioners have not annexed any order showing regularisation of their service. The Office Memo No. EC(I)452/99 dated 28.12.1999 issued by the Secretary to the Government of Assam, Finance Department (Page-73) and the Office Order No.130/2003-2004 (Page-81) issued by the Executive Engineer (PHE), Silchar Division No.II, Silchar shows that the regularisation of Muster Roll Workers had been done against posts made personal to them and that the posts would be abolished with the cessation of their services.

3. The prayer of petitioners herein is that they may be promoted to Grade-III post.

4. Ms. M. Kalita, learned counsel for the PHE Department submits that in terms of the Division Bench judgment of this Court passed in ***Dilip Talukdar & Others vs. State of Assam & Others***, reported in ***2017 (2) GLT 135***, the petitioners cannot be promoted to a Grade-III post, as the posts held by the petitioners are ex-cadre post. She submits that the fact situation in the above case of ***Dilip Talukdar (supra)*** is similar to the fact situation in this case.

5. The present issue has already been decided by this Court in WP(C) Nos. 2416/2014, 3116/2014 and 4254/2014. The petitioners, who were regularized Muster Roll/Work charge workers in the WaterResource Department, Govt. of Assam filed WP(C) 2416/2014 (Sri Dilip Talukdar and 21 Others vs State of Assam and 5 Others) where they challenged their reversion to their original posts after being promoted. WP(C) 2416/2014 was disposed off by a Co-

ordinate Bench of this Court on 16.03.2015, holding that when regularization of a Grade-IV Muster Roll/Work-charge worker has been done against a personal post, the post held by those persons would be outside the cadre of Grade-IV post, i.e., an ex-cadre post. Unless a person who is holding an ex-cadre post is en-cadred into a cadre post, which is a feeder cadre to a higher cadre post, the person holding the personal post cannot be promoted to a higher cadre post. This Court thereafter dismissed the writ petition filed by the petitioners.

WP(C) No. 3116/2014 was with regard to the claim of the petitioners therein for promotion from Grade-IV post to the post of Section Assistant, which is a Grade-III post. The petitioners who were in the Water Resource Department, Govt. of Assam had been regularized against posts which were made personal to them and which were to be abolished as soon as the incumbent relinquished the post in any manner. This Court, after having discussed the manner of regularization of the petitioners therein and keeping in view the Office order dated 25.11.2013, issued by the Commissioner & Special Secretary to the Govt. of Assam, Water Resource Department held that the petitioners were not entitled to promotion to the post of Section Assistant and as such, had to be reverted back, as the post held by them were ex-cadre post and as such, they could not be promoted to a regular post.

6. Being aggrieved, the writ petitioners in WP(C) No. 2416/2014 and WP(C) No. 3116/2014 thereafter filed appeals, vide W.A. No. 124/2015 & 111/2016 which is reported in 2017 2(GLT)135, "Dilip Talukdar & Others v. State of Assam & Others."

The Division Bench dismissed the appeals on the ground that a claim for promotion from a person holding an ex-cadre post was not legally tenable.

The Division Bench held that promotion in the Department can be considered only from eligible employees in the feeder cadre post and the writ petitioners being outside the cadre, they could not have any enforceable rights for promotion, particularly when the regularization order itself stipulates that they are regularized in a post personal to them. The extract of the order passed by the Division Bench in the case of Dilip Talukdar and 21 Others, 2017(2) GLT 135, which is at paragraph 12 is re-produced below:

"12. We have seen the reasons recorded by the learned Judge for the impugned verdict and find that the posts against which the writ petitioners were regularized were never added to the notified cadre in the department. Yet no plea was advanced for en-cadrement of the posts held by the affected parties. The promotion in the department can be considered only from the eligible employees in the feeder cadre and the writ petitioner being outside of the cadre, cannot have any enforceable right to claim promotion, particularly when, the regularization order itself stipulates that they are regularized in posts personal to them. Such temporary creation of post cannot automatically add to the cadre strength of the department and claim for promotion from a person holding an ex-cadre post, is not legally tenable. Therefore we see no basis to take a different view in the matter than the one taken by the learned Single Judge, in dismissing the cases".

7. Thus, in ***Dilip Talukdar (supra)***, the Division Bench of this Court has held that promotion to a higher rank can be considered only from the feeder cadre and not from an ex-cadre post. In the case before me, I find that the petitioners who are Muster Roll Workers have had their services regularized against posts, which were made personal to them, similar to the fact situation in the case of ***Dilip Talukdar (supra)***.

8. In view of the present case being a covered case, in terms of the judgment of this Court and the Division Bench of this Court in ***Dilip Talukdar (supra)***, the petitioners who are holding ex-cadre posts, cannot be considered for promotion to Grade-III cadre post. Accordingly, there being no merit in the writ petition, the same is dismissed.

JUDGE

Comparing Assistant