

GAHC010234282016



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

Case No. : WP(C)/130/2016

SADIQ RAHMAN and 12 ORS
S/O. M RAHMAN, R/O. ISLAMPUR, NEAR MASJID, GHY.-781007, DIST.
KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, FINANCE
TAXATION DEPTT., DISPUR, GHY.-06.

Advocate for the Petitioner : MR. A CHETRY

Advocate for the Respondent : SC, FINANCE and TAXATION

Linked Case : I.A.(Civil)/1149/2017

SADIQ RAHMAN and 12 ORS

VERSUS

THE STATE OF ASSAM AND 9 ORS
ASSAM

Advocate for : MR.A SARMA

Advocate for : MRS. M RAJKUMARI (R4-10) appearing for THE STATE OF
ASSAM AND 9 ORS

Linked Case : I.A.(Civil)/450/2021

TARINI SAIKIA AND 6 ORS.
SUPERINTENDENT OF TAXES
FINANCE (TAXATION) DEPTT.

2: AMAL KR. DEURI
SUPERINTENDENT OF TAXES
FINANCE (TAXATION) DEPTT.

3: R. S. JENNY L. DENIAL
SUPERINTENDENT OF TAXES
FINANCE (TAXATION) DEPTT.

4: SACHINDRA CH. MAZUMDER
SUPERINTENDENT OF TAXES
FINANCE (TAXATION) DEPTT.

5: BIJOY KRISHNA SAIKIA
SUPERINTENDENT OF TAXES
FINANCE (TAXATION) DEPTT.

6: BOBBY HANSEPI
SUPERINTENDENT OF TAXES
FINANCE (TAXATION) DEPTT.

7: ALPANA BORO
SUPERINTENDENT OF TAXES
FINANCE (TAXATION) DEPTT.
VERSUS

SADIQ RAHMAN AND 15 ORS.
S/O. M. RAHMAN
R/O. ISLAMPUR
NEAR MASJID
GHY-7
DIST. KAMRUP(M)
ASSAM

2:JOHN SONA
S/O. SRI ANANDA SONA
R/O. ANUSUYA ASHIRWAD APARTMENT
VIP ROAD

SIX MILE
GHY-22
DIST. KAMRUP(M)
ASSAM
3:ASHOK KR. THAKURIA
S/O. UPENDRA NATH THAKURIA
R/O. KAILASH AGAR
BELTOLA TINIALI
GHY-28
DIST. KAMRUP(M)
ASSAM
4:HEMANTA KUMAR SARMA
S/O. LATE DINA NATH SARMA
R/O. MG ROAD
UZAN BAZAR
GHY-1
DIST. KAMRUP(M)
ASSAM
5:SUDESNA BORA
D/O. P. BORA
R/O.. T.D. ROAD
ITACHALIL
NAGAON
DIST. NOWGAON
ASSAM
PIN- 782003
6:PAPORI NEOG
D/O. DR. SOMODHAR NEOG
R/O. AJANTA PATH
SURVEY BELTOLA
GHY-28
DIST. KAMRUP(M)
ASSAM
7:RAJIB ISLAM
S/O. LATE ZAHIRUL ISLAM
R/O. AHMED NAGAR
PANJABARI ROAD
GHY-37
DIST. KAMRUP(M)
ASSAM
8:SANDEEP CHANDA
S/O. LATE BENU CHANDA
R/O. BEHIND DGP OFFICE
REHABARI
GHY-8
DIST. KAMRUP(M)
ASSAM
9:IFTIKAR ALI

S/O. LATE MOAZZIN ALI

R/O. TRP ROAD

MACHKHOWA

GHY-1

DIST. KAMRUP(M)

ASSAM

10:RIPUNJOY HAZARIKA

S/O. LATE LALIT HAZARIKA

R/O. DONA TOWER

ABC

GHY-5

DIST. KAMRUP(M)

ASSAM

11:GANESH CHANDRA KALITA

S/O. LATE MAHESWAR KALITA

R/O. SEWALI PATH

FATASIL AMBARI

GHY-25

DIST. KAMRUP(M)

ASSAM

12:SATYAJIT BHUYAN

S/O. LATE S. N. BHUYA

R/O. RUKMINIGAON

GHY-22

DIST. KAMRUP(M)

ASSAM

13:UTTAM KR. BORA

S/O. LATE K. M. BORHA

R/O. NEW SARANIA

GANDHI BASTI

GHY-3

DIST. KAMRUP(M)

ASSAM

14:THE STATE OF ASSAM

REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM

FINANCE (TAXATION) DEPTT.

DISPUR

GHY-6

15:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

FINANCE (TAXATION) DEPTT.

DISPUR

GHY-6

16:THE DEPUTY SECY. TO THE GOVT. OF ASSAM

FINANCE (TAXATION) DEPTT.

DISPUR

GHY-6

Advocate for : MR. I C DEKA

Advocate for : MR. U K NAIR appearing for SADIQ RAHMAN AND 15 ORS.

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

21.02.2023

Heard Mr. U. K. Nair, the learned senior counsel assisted by Ms. D. Mahanta, the learned counsel for the petitioners and Mr. D. Mazumdar, the learned Additional Advocate General, Assam assisted by Mr. B. Choudhury, the learned counsel appearing on behalf of the State respondents as well as Ms. M. Buragohain, the learned counsel appearing on behalf of the private respondent Nos.4 to 10.

2. The case of the petitioner herein is that they are the Superintendents of Taxes in the Finance Department. They are aggrieved by the undue benefit of reservation being given to the private respondents to first promote them from the rank of Inspector of Taxes to the rank of Superintendent of Taxes and thereafter further granting them higher seniority position in the final gradation list of Superintendent of Taxes solely on the basis of the application of reservation benefits in favour of the private respondents.

3. It is the case of the petitioners that the respondents in doing so have not followed the law as laid down by the Apex Court in the case of ***M. Nagraj and Others vs. the Union of India and Others***, reported in **(2006) 8 SCC 212**. It is the further case of the petitioners that pursuant to the judgment of the Supreme Court in the cases of ***M. Nagraj*** (supra), the

Supreme Court in the case of **B. K. Pavitra vs the Union of India**, reported in **(2019) 16 SCC 129** and in the case of **Jarnail Singh vs Lachhmi Narain Gupta**, reported in 2022 SCC OnLine SC 96 had further clarified the said position.

4. The learned counsel for the petitioners further submitted that a Coordinate Bench of this Court in the case of **Bhagwan Pator vs State of Assam and Others** reported in **(2022) 3 GLT 520** had taken into consideration the above law laid down by the Supreme Court while deciding the issue as regards the procedure to be adopted by the State of Assam providing reservation in promotion in services and posts for the members of Schedule Castes and Schedule Tribes.

5. It has been submitted that the Coordinate Bench of this Court in the case of **Bhagwan Pator** (supra) reported in 2022 SCC Online Gau 922 has summarized its decision in paragraph No.3 of the said judgment which is quoted herein below:-

3. The aforesaid determinations can be summarized in the following manner:

I. The Policy of the state in providing reservation in promotion with consequential seniority is discernable from Section 5 of the 1978 Act read with O.M. dated 12.03.2002.

II. The Office Memorandum dated 12.03.2002 shall hold the field till such policy is expressly repealed by the State.

III. O.M. dated. 03.06.2016 is notified laying procedure for collection of quantifiable data on Backwardness and inadequacy of representation and determining efficiency in administration while giving effect to such policy of providing reservation.

IV. Given the dicta of Jarnail Singh (supra), the O.M. dated 03.08.2016 cannot sustain so far, the same relates to the collection of data on backwardness.

V. The determination of cadre as a unit for collection of quantifiable data as laid down in OM dated 03.08.2016 conforms to the mandate of Jarnail Singh (supra) and M. Nagraj (supra) and therefore the same is upheld.

VI. The procedure as laid down for determining efficiency in administration not being arbitrary and not being based on any extraneous consideration, the same is upheld.

VII. Article 16 (4B) enables the State to carry forward vacancies and the vacancies carried forward is cannot be included in the ceiling of 50% of the year of filling up vacancies. Section 5A of the Act 1978 permits carrying forward vacancies and therefore, the policy of carrying forward as provided in the office memorandum dated 03.08.2016 not being arbitrary and not being based on any extraneous consideration, same is upheld.

VIII. Given the dictum in Jarnail Singh (supra), the judgment made in the Equality Forum-I relating to collection of data to determine of backwardness has become redundant.

IX. Article 16 (4A) and 16 (4B) being enabling provisions, the State is at liberty to implement its policy of giving reservation in promotion with consequential seniority, at liberty to provide for reservation in promotion without consequential seniority or at liberty not to provide any reservation in promotion. However, while implementing/ adopting/ changing such policy, due process of law need to be followed including dicta in M. Nagraj (supra) clarified in Jarnail Singh (supra).

6. It is also relevant to take note of that pursuant to the said judgment, the Government of Assam, Department of Personnel (B) had reviewed its

policy for reservation in promotion and accordingly had issue an Office Memorandum dated 18.01.2023. The said Office Memorandum has been brought on record by the respondents by way of an additional affidavit filed on 20.02.2023. Taking into consideration with the services in the instant case pertains to Group-A services. It is relevant to take note of paragraph No.(iv) (a) of the said Office Memorandum which is reproduced herein below:-

“vi).

(a) In case of promotion in Group-A services, the quantum of reservation for SC, ST(P), ST(H) in promotion shall be as per stipulated percentage of reservation available for these categories. However, SC or ST(P) or ST(H) Government Servants in Group-A services on their accelerated promotion by virtue of rule of reservation, shall not be entitled to consequential seniority. The application of general catch-up rule will allow eligible officers who were senior in the merit list at the entry level in Group-A services to regain their seniority in the promotional post, once they are promoted to the same cadre as an officer of reserved category, provided the officer of the reserved category had got his promotion ahead of an officer senior to him in the merit list, by way of accelerated promotion on account of reservation in promotion in a particular cadre. Seniority of Government servants in Group-A services shall be revised accordingly as per above principle.

Further, an officer promoted from Group-B to Group-A service, will also regain his seniority in Group-A service on promotion vis-à-vis his compatriot in Group-B service, provided that the Officer was senior to the reserved category officer in the particular Group-B cadre, prior to the promotion of the reserved category officer into Group-A. Seniority of such Group-B Government servant promoted to Group-A service shall be revised accordingly in Group-A.

If an occasion arises during the promotion process in Group-A service, in which stipulated percentage in respect of reserved category is met in the next promotional grade, but in the zone of consideration there are candidates of reserved category who on merit are entitled to the promotions, their cases shall be considered for promotion on merit, if such candidates have not made into zone of consideration by way of any accelerated promotion earlier by virtue of rule of reservation.”

7. The learned counsel for the petitioners has submitted that taking into consideration the present stand of the Government in terms with the Office Memorandum dated 18.01.2023 which as per him is in conformity with the judgment rendered in the case of **Bhagwan Pator** (supra), the instant writ petition can be disposed of by directing the respondent authorities to comply with the said Office Memorandum dated 18.01.2023 and more particularly to paragraph No.(iv) (a).

8. I have also heard Mr. D. Mazumdar, the learned Additional Advocate General as well as Ms. M. Buragohain, the learned counsel appearing on behalf of the private respondents who have no objection to the submission so made by the learned counsel for the petitioners.

9. Accordingly, the instant writ petition stands disposed of with a direction to the respondent authorities to apply the Office Memorandum dated 18.01.2023 and more particularly to paragraph No.(iv) (a), and accordingly, on the basis thereof to recast the gradation list in the cadre of Superintendent of Taxes.

10. It is further directed that the promotion so held up in pursuance to the order dated 20.06.2017 in I.A.(C) No.1149/2017 shall now be carried out in terms with the Office Memorandum dated 18.01.2023 after

completion of the exercise in terms with paragraph No.9 herein above.

11. Before concluding, this Court, however, would take note of that there is a challenge to the Office Memorandum dated 18.01.2023 which is pending before this Court. The instant decision so rendered shall not be taken that this Court had decided the legality or validity of the Office Memorandum dated 18.01.2023.

12. It is relevant to take note that a perusal of the Office Memorandum dated 18.01.2023 stipulates that the said Office Memorandum would come into force with immediate effect. Consequently, this Office Memorandum dated 18.01.2023 shall not affect the rights and status of the parties herein prior thereto.

13. With the above observation and directions, the instant writ petition stands disposed of. Pending applications stand closed on the basis of the instant order.

JUDGE

Comparing Assistant