

GAHC010264532023



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

Case No. : WP(C)/6851/2023

PRANAB DAS
S/O- LATE ANANTA CH. DAS,
R/O- MALOIBARI,
P.S.- KHETRI,
DISTRICT- KAMRUP(M), ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
IRRIGATION DEPARTMENT, ASSAM SECRETARY,
DISPUR, GUWAHATI- 781006.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
IRRIGATION DEPARTMENT
ASSAM SECRETARIAT
DISPUR

GUWAHATI- 781006.

3:THE CHIEF ENGINEER
IRRIGATION DEPARTMENT
CHANDMARI
GUWAHATI- 781003.

4:THE EXECUTIVE ENGINEER
IRRIGATION DEPARTMENT
GUWAHATI DIVISION
GUWAHATI- 781007.

5:THE ASSTT. EXECUTIVE ENGINEER
IRRIGATION DEPARTMENT

SONAPUR SUB-DIVISION

KHETRI
KAMRUP(M)

Advocate for the Petitioner : MR. N K KALITA

Advocate for the Respondent : SC, IRRIGATION

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

29.11.2023

Heard Mr. N.K. Kalita, learned counsel for the petitioner, who submits that the petitioner was working as a Muster Roll Worker in the office of the Assistant Executive Engineer, Sonapur Sub-Division, Irrigation Department, Government of Assam from 01.08.1994. However, his service was discontinued in June, 1995. In the year 2011, the department inaugurated the newly constructed Inspection Bungalow (IB) at Maloibari Jungle under Sonapur Sub-Division, Irrigation Department and the petitioner was engaged as Chowkidar in the said IB in the month of February, 2011 by the then Assistant Executive Engineer, Irrigation Department verbally. However, no appointment order was issued to the petitioner.

2. The petitioner's counsel submits that though the petitioner has been working in the Irrigation Department from the year 2011 till date as a Chowkidar, no salary has been paid to him. He, accordingly, prays that a direction should be issued to the authority for giving him salary, as no decision has been taken by the respondent authorities on the various representations submitted by him.

3. Mr. N. Upadhyay, learned counsel for all the respondents submits that the

present writ petition should be dismissed, inasmuch as, the petitioner has not been appointed by the Government as a Chowkidar and as such, no salary can be paid to a person not appointed by the Government.

4. I have heard learned counsels for the parties. The fact that no appointment order has been issued by the Government to the petitioner to work as a Chowkidar, is not disputed by either of the parties. The stand taken by the petitioner that he was appointed verbally by the then Assistant Executive Engineer in the year 2011 as a Chowkidar is a question of fact. Even if the petitioner was appointed verbally by the then Assistant Executive Engineer, there is nothing to show that any selection process had been initiated by the State respondents, or that the Government had approved the appointment of the petitioner. Besides the above, the petitioner having taken the stand that he has been working for last 12 years in the Irrigation Department, the filing of the present writ petition only on 23.11.2023 shows that the writ petition is hit by delay and laches. It is also not understood as to how the petitioner has survived these 12 years, without being paid for the services allegedly rendered by him to the Irrigation Department.

5. In the present case, as there is no appointment order issued by the Government appointing the petitioner as Chowkidar, the petitioner does not have any plausible right to claim payment of wages from the Government. However, the petitioner has the liberty to make a claim for payment of wages against the person, who appointed him as Chowkidar in the Irrigation Department. This Court is thus of the view that no direction for payment of wages can be made by this Court, keeping in view the fact that the petitioner has been engaged through the backdoor. In any event, Annexure-9 of the writ petition appears to be a forwarding of the petitioner's representation dated

10.11.2023 by the respondent No.4, regarding the petitioner's claim for wages. In that view of the matter, this Court is of the view that the decision to pay wages for services rendered should be left at the discretion of the authorities, as questions of facts are involved. Accordingly, the respondent Nos.3 and 4 shall take a decision on the petitioner's representation dated 10.11.2023 for payment of wages, after ascertaining as to whether the petitioner has been working for the Irrigation Department since 2011. If the decision is in the affirmative, the respondents would have to examine the prayer for payment of the petitioner's wages for services rendered, without losing sight of the fact that the petitioner has been engaged through the backdoor. The said decision should be taken by the respondent Nos.3 and 4, within a period of 1 (one) month from the date of receipt of a certified copy of this order along with the copy of the writ petition.

The writ petition is, accordingly, disposed of.

JUDGE

Comparing Assistant