

GAHC010270822023



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

Case No. : WP(C)/6997/2023

ANJAN BURAGOHAIN AND ANR
SON OF LATE BHADRESWAR BURAGOHAIN,
RESIDENT OF VILLAGE KUWARITOL,
POST OFFICE- KUWARITOL,
POLICE STATION- KALIABOR,
DISTRICT- NAGAON, ASSAM,
PIN- 782137.

2: ASHOK KUMAR DAS
SON OF SRI REBA NATH DAS

RESIDENT OF FAUZDARI PATTI

KHANA JAN PATH
NAGAON

POST OFFICE AND POLICE STATION- NAGAON

DISTRICT- NAGAON
ASSAM
PIN- 782001

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM,
ASSAM SECRETARIAT, DISPUR, GUWAHATI- 781006.

2: THE SPECIAL COMMISSIONER AND SPECIAL SECRETARY TO THE
GOVERNMENT OF ASSAM
PUBLIC WORKS DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE SECRETARY TO THE GOVERNMENT OF ASSAM
PUBLIC WORKS DEPARTMENT
DISPUR
GUWAHATI- 781006.

4:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
PUBLIC WORKS DEPARTMENT
DISPUR
GUWAHATI- 781006

Advocate for the Petitioner : MR A KALITA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 06-12-2023

Heard Mr. A Kalita, learned counsel for the petitioners. Also heard Mr. R Dhar, learned Additional senior Government Advocate appearing for the State respondents.

The writ petitioners herein are presently serving as Assistant Engineer (Civil), PWD. Earlier they were denied promotion by the department on the ground that the qualification of "Section A&B of Associate Membership Examination AMICE(I) in Civil Engineering" from the Institution of Civil Engineers (India), Ludhiana, Punjab was not equivalent to BE degree and hence, there was a question mark on their educational qualification. The aforesaid stand of the departmental authorities was apparently taken on the basis of a decision of the Hon'ble Supreme Court rendered in "Orissa Lift Irrigation" case. However, being aggrieved by decision of the

authorities, the persons similarly situated to that of the petitioners who have approached this Court by filing W.P.(C) No. 5046/2022, which was disposed of by order dated 05-08-2022 directing the authorities to pass a reasoned order on the claim of those petitioners for promotion.

It is the further case of the petitioner that although the petitioners became eligible and entitled to be promoted to the post of Assistant Engineer (Civil), PWD since the year 2016, by the notification dated 06.01.2023 (Annexure – 11) the respondent authorities, along with the others, promoted the petitioners from the post of Junior Engineer (Civil), PWD to the post of Assistant Engineer (Civil), PWD in normal course being eligible for promotion to the next higher lever without giving retrospective effect of their seniority and consequential financial benefits of promotion from the year 2016 whereon they obtained the necessary qualification as prescribed under the Rules, 1978.

According to the petitioners in view of such order, the officers junior to the petitioners having the same qualification and from the same institute were considered for promotion and have been duly promoted to the rank of Assistant Engineer. The case of the petitioners have to be considered by giving retrospective effect from the date when their immediate juniors were promoted.

At this stage the learned counsel for the petitioners Mr. A Kalita submits that if a direction is issued to consider the representations of the petitioners pending before the competent authority, then they shall have no grievance.

Mr. Dhar representing the State Respondents submits that if the prayer of the petitioners is limited to the extent that their representations shall be considered, they will have no objection to such prayer inasmuch as the employer shall definitely consider their claim permissible under law.

That being the position the writ petition is therefore, disposed of with a direction upon the respondent Nos.1 and 2 to consider the representation(s) dated 31.10.2023 & 01.11.2023 submitted by the petitioner Nos.1 and 2 in accordance with law and pass reasoned order(s) therein, within a period of 06 weeks from the date of receipt of a certified copy of this order.

If the petitioners' continues to remain aggrieved in the matter even thereafter, it will be open for them to approach this court afresh by filing appropriate petition.

The writ petition stands disposed of accordingly.

JUDGE

Comparing Assistant