

GAHC010045552023



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

Case No. : WP(C)/1261/2023

DILIP KR ROY

S/O- LT. DAYANANDA ROY, R/O- KHUDIRAM SARANI, RAMESH CHANDRA
NATH BYE LANE, TARAPUR, SILCHAR- 788003, DIST.- CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, PUBLIC
WORKS ROADS DEPTT., DISPUR,GHY-6, ASSAM

2:THE CHIEF ENGINEER
P.W.D. (ROADS) ASSAM
CHANDMARI
GUWAHATI-781003

3:THE ADDL. CHIEF ENGINEER (MECHANICAL)
P.W.D. (ROADS) ASSAM
CHANDMARI
GUWAHATI- 781003

4:THE EXECUTIVE ENGINEER
P.W.D.
(R AND B) MECHANICAL DIVISION
SILCHAR-I

5:THE EXECUTIVE ENGINEER
P.W.D. SILCHAR N.E.C. DIVISION-II

6:THE EXECUTIVE ENGINEER
P.W.D.
MECHANICAL DIVISION
SILCHAR

7:THE EXECUTIVE ENGINEER
P.W.D.
KARIMGANJ NH DIVISION
KARIMGANJ

Advocate for the Petitioner : MR. D J BARMAN

Advocate for the Respondent : SC, PWD ROAD

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 06.05.2024

Heard Mr. D.J. Barman, learned counsel for the petitioner as well as Mr. R. Dhar, learned Addl. Senior Govt. advocate appearing for all the respondents.

2. The petitioner was serving as a work charged Chowkidar in the PWD Mechanical Work-Shop, Silchar. It is projected that the said appointment was made on 04.12.1989 after undergoing apprenticeship training. In course of employment, by an order dated 02.01.1990 issued by the then Executive Engineer, PWD (R&B) Mechanical Division, Silchar, the petitioner claims that he was promoted to the post of Roller Handyman. It is projected that the service of the petitioner as work charged Roller Driver was extended from time to time. Thereafter, by an order no. 122 dated 14.11.1996, the petitioner was reverted back to his original post of Roller Handyman. However, by another order no. 123 dated 14.11.1996, another work charged Roller Handyman was promoted to the post of work charged Roller Driver. Accordingly, by filing this writ petition under Article 226 of the Constitution of India, the petitioner is seeking quashment of the order no. 122 dated 14.11.1996 and for issuance a direction upon the

respondent authorities to promote the petitioner to the post of Roller Driver w.e.f. 14.11.1996 and to regularize his service w.e.f. 22.07.2005 and for granting him consequential financial benefits.

3. The learned Addl. Senior Govt. advocate has opposed the prayer made in this writ petition.

4. On a consideration of the materials available on record, it is observed that it is not in dispute that the initial appointment of the petitioner was a temporary appointment to the post of Chowkidar vide order dated 04.12.1989. During his course of service, the petitioner was appointed as work charged Roller Handyman for 60 days vide office order no. 6 dated 02.01.1990, and it was a condition contained in the said communication that his service would be terminated after expiry of 60 days. Though, the petitioner claims that his appointment as work charged Roller Handyman was extended from time to time, but none of those orders are found to extend him the status of a regular employee.

5. The petitioner further claims that by office order dated 27.12.1995, he was promoted to the post of Roller Driver under work charged establishment for a period of 60 days. However, his appointment to the said post of Roller Driver and subsequent extension if any granted also do not confer upon him a status of a regular employee.

6. In the absence of petitioner becoming a member of any cadre, the question of giving him promotion to a substantive post cannot arise.

7. The documents annexed to this writ petition indicate that by office order no. 3 of 2005-06 dated 05.10.2005, issued by the Executive Engineer, PWD, Karimganj N.E.C. Division, which was made pursuant to directions of the

appropriate Government, service of the petitioner was regularized as Roller Handyman. Thus, by the said order, the petitioner, who was otherwise a work charged employee, was brought under the regular establishment w.e.f. 22.07.2005. The posts were made personal to the petitioner and other similarly situated persons and it was also provided that the said post would be abolished as soon as the concerned incumbents relinquish their post in any manner. Therefore, the petitioner came into the regular cadre of Roller Handyman w.e.f. 22.07.2005 pursuant to the hereinbefore referred order no. 3 of 2005-06 dated 05.10.2005.

8. Therefore, any *ad hoc* appointment or promotion made to the petitioner was only as a work charged employee and would not confer upon him a status of promotion without his entering into the respective cadre earmarked for the post of Roller Handyman and/ or Roller Driver.

9. The impugned office order no. 122 dated 14.11.1996 reverting back the petitioner to the post of work charged Roller Handyman has been assailed after almost 17 years. However, the status of the person who was promoted in place of the petitioner by order dated 122 dated 14.11.1996 is not known. The person who was promoted by order no. 123 dated 14.11.1996 is not a respondent in this writ petition for which this writ petition fails for non-joinder of necessary parties, and moreover, in the absence of challenge to the said appointment orders, this writ petition otherwise fails.

10. The writ petition would also fail for another issue which is the fact that the service of the petitioner was regularized as a Roller Handyman by office order no. 3 of 2005-06 dated 05.10.2005. The petitioner has not challenged the said regularization order dated 05.10.2005. Therefore, having accepted the substantive appointment to the post of Roller Handyman, the claim of the

petitioner for being appointed as a work charged Roller Driver would not be maintainable.

11. Moreover, third reason for not entertaining this writ petition that this Court in the case of *Dilip Talukdar & Anr. Vs. State of Assam and Ors. (2017) 3 GLR 376: 2017 (2) GLT 135* has held that a person who has accepted the regularization order which itself stipulates that they are regularized in post personal to them, cannot have an enforceable right to claim promotion and it was further held that a promotion in the department can be considered only from the eligible employee in the feeder cadre. Therefore, as the petitioner is not even regular employee of the PWD when purported order of promotion was issued on 27.12.1995, such an order cannot give any substantive right to the petitioner, as the same would run counter to the regularization order of 05.10.2005.

12. Therefore, on all these aforesaid reason, as mentioned in the foregoing paragraphs, this writ petition fails and the same is dismissed.

JUDGE

Comparing Assistant