



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

(1) WRIT APPEAL No.129 OF 2021

1. Shri Pankaj Chamuah,
Son of Late Deba Chamuah,
Resident of Panindra Road, Ward No.3,
PO & PS: North Lakhimpur, PIN - 787001,
District: Lakhimpur, Assam.

2. Shri Phatik Bora,
Son of Late Tankeswar Bora,
Resident of Rup Nagar, Ward No.11, K.B. Road,
PO & PS: North Lakhimpur, District: Lakhimpur,
Assam, PIN - 787001.

.....Appellants

-Versus-

1. The State of Assam, Represented by the
Commissioner & Secretary to the Government
of Assam, Health & Family Welfare
Department, Dispur, Guwahati - 781006.

2. The Deputy Secretary to the Government of
Assam, Health & Family Welfare (A)
Department, Dispur, Guwahati - 781006.

3. The Director of Health Services, Assam,
Hengrabari, Guwahati - 781036.

4. The Joint Director of Health Services
(Malaria), NVBDCP, Assam, Christian Basti,
Guwahati - 781005.

5. The Joint Director of Health Services, Lakhimpur, North Lakhimpur, Assam, PIN - 787001.

6. The District Malaria Officer, Lakhimpur, North Lakhimpur, Assam, PIN - 787001.

.....Respondents

(2) WRIT APPEAL No.125 OF 2021

Shri Raja Sarma @ Raja Sarmah,
Son of Sri Bibhash Sarma,
Resident of Hengrabari PHE Complex, Health
Complex, Quarter No.316, Dispur, Guwahati -
781036.

.....Appellant

-Versus-

1. The State of Assam, represented by the Under Secretary to the Government of Assam, Health & Family Welfare (A) Department, District: Kamrup, Assam.

2. The Commissioner & Secretary to the Government of Assam, Health & Family Welfare Department, Dispur, Guwahati - 781006, District: Kamrup, Assam.

3. The Director of Health Services, Assam, Hengrabari, Guwahati - 781036.

4. The Joint Director of Health Services (M), Assam, Guwahati - 781006.

5. The Entomologist-Cum-Research Officer (Filaria), NFCP, Assam, Hengrabari, Guwahati - 781036.

6. The Joint Director of Health Services (M) cum State Program Officer, NVBDCP, Assam, Christian Basti, Guwahati - 781005.

7. The Joint Director of Health Services, Kamrup, Panbazar, Guwahati - 781001.

.....Respondents

(3) WRIT APPEAL No.127 OF 2021

Smti. Julee Sinha @ Julee Singha,
Wife of Sri Radha Kanta Sinha,
Resident of House No.31, Chandan Nagar, Bye
Lane No.3, Survey, Beltola, Guwahati - 781028.

.....Appellant

-Versus-

1. The State of Assam, represented by the Under Secretary to the Government of Assam, Health & Family Welfare (A) Department, District: Kamrup, Assam.
2. The Commissioner & Secretary to the Govt. of Assam, Health & Family Welfare Department, Dispur, Guwahati - 781006, District: Kamrup, Assam.
3. The Director of Health Services, Assam, Hengrabari, Guwahati - 781036.
4. The Joint Director of Health Services, Assam, Guwahati - 781006.
5. The Joint Director of Health Services (Malaria), Hengerabari, Guwahati - 781036.
6. The Joint Director of Health Services (M) cum State Program Officer, NVBDCP, Assam, Christian Basti, Guwahati - 781005.

.....Respondents

(4) WRIT APPEAL No.130 OF 2021

Shri Manoj Das,
Son of Late Amulya Das,
Resident of Village: Galiahati, Barpeta,
PO & PS: Barpeta, PIN- 781301, District:
Barpeta, Assam.

.....Appellant

-Versus-

1. The State of Assam, represented by the Commissioner & Secretary to the Government

of Assam, Health & Family Welfare Department, Dispur, Guwahati -781006.

2. The Joint Director of Health Services (Malaria), NVBDCP, Assam, Christian Basti, Guwahati - 781005.

3. The Joint Director of Health Services, Lakhimpur, North Lakhimpur, Assam, PIN - 787001.

4. The District Malaria Officer, Lakhimpur, North Lakhimpur, Assam, PIN - 787001.

.....Respondents

(5) WRIT APPEAL No.133 OF 2021

Abedul Haque,
Son of Md. Tazujul Haque,
Resident of Nalbari Town, Ward No.1
(Khatahari), District: Nalbari, Assam.

.....Appellant

-Versus-

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Health & Family Welfare Department, Dispur, Guwahati -781006.

2. The Director of Health Services, Assam, Hengrabari, Guwahati - 781036.

3. The Joint Director of Health Services (Malaria) cum State Programme Officer, NVBDCP, Assam, Guwahati - 781036.

4. The Joint Director of Health Services, Nalbari, Assam.

5. The District Malaria Officer of the Office of the District Malaria Eradication Officer, Nalbari, Assam.

6. The Inspector of Drugs, Nalbari, Assam.

.....Respondents

(6) WRIT APPEAL No.134 OF 2021

Shri Jitumoni Kalita,
Son of Late Bhala Ram Kalita,
Resident of Village: Batikuriha, PO & PS: Bhella,
PIN - 781309, District: Barpeta, Assam.

.....Appellant

-Versus-

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Health & Family Welfare Department, Dispur, Guwahati - 781006.
2. The Director of Health Services, Assam, Hengerabari, Guwahati - 781036.
3. The Joint Director of Health Services, Barpeta.
4. The District Malaria Officer of the District Malaria Eradication Officer, Nalbari, Assam.

.....Respondents

(7) WRIT APPEAL No.137 OF 2021

Shri Samarjit Malakar,
Son of Biren Ch. Deka,
Resident of Hajo Saktibori, PO & PS: Hajo,
District: Kamrup (R), Assam, PIN - 781102.

.....Appellant

-Versus-

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Health & Family Welfare Department, Dispur, Guwahati -781006.
2. The Deputy Secretary to the Government of Assam, Health & Family Welfare (A) Department, Dispur, Guwahati - 781006.
3. The Director of Health Services, Assam, Hengrabari, Guwahati - 781036.

4. The Joint Director of Health Services,
Malaria, NVBDCP, Assam, Christian Basti,
Guwahati - 781005.

5. The Joint Director of Health Services,
Goalpara, District: Goalpara, Assam, PIN-
783101.

6. The District Malaria Officer, Goalpara,
District: Goalpara, Assam, PIN - 783101.

.....Respondents

(8) WRIT APPEAL No.138 OF 2021

Babita Das,
Daughter of Sri Dharmeswar Das,
Wife of Sri Hemchandra Sarkar,
Original resident of Paila, District: Nalbari and
present resident of Village: Jalakhata, PO:
Dnantola Bazar, PS: Abhayapuri in the District:
Bongaigaon, Assam.

.....Appellant

-Versus-

1. The State of Assam, represented by the
Commissioner & Secretary to the Government
of Assam, Health & Family Welfare
Department, Dispur, Guwahati - 781006.

2. The Director of Health Services, Assam,
Hengrabari, Guwahati - 781036.

3. The Joint Director of Health Services,
Bongaigaon, Assam.

4. The Sub Divisional Medical & Health Officer,
Boitamari BPHC, Bongaigaon, Assam.

.....Respondents

(9) WRIT APPEAL No.139 OF 2021

Sayed Jurima Ahmeda,
Daughter of Syed Latif Ali,
Resident of Village & PO: Bhogpur, Dhantola
Bazar, PS: Goreswar, presently Residing at
District: Barpeta, PS: Barpeta, Assam.

.....Appellant

-Versus-

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Health & Family Welfare Department, Dispur, Guwahati - 781006.
2. The Director of Health Services, Assam, Hengrabari, Guwahati - 781036.
3. The Joint Director of Health Services (Malaria) cum State Programme Officer, NVBDCP, Assam, Guwahati - 781036.
4. The Joint Director of Health Services, Barpeta, Assam, PIN - 781301.
5. The Dist. Malaria Officer of the Office of the District Malaria Eradication Officer, Barpeta, Assam, PIN - 781301.
6. The Inspector of Drugs, Barpeta, Assam, PIN – 781301.

.....Respondents

- B E F O R E -

**HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SUMAN SHYAM**

For the Appellants	: Mr. S. Sarma and Mr. A. Sarma, Advocates in W.A. No.129/2021; W.A. No.130/2021; W.A. No.133/2021; W.A. No.134/2021; W.A. No.137/2021; W.A. No.138/2021; W.A. No.139/2021. : Mr. H.K. Das, Advocate in W.A. No.125/2021 and W.A. No.127/2021.
For the Respondents	: Mr. D. Saikia, Advocate General, Assam, assisted by Mr. B. Gogoi, Standing Counsel, Health & Family Welfare Department.
Date of Hearing	: 25.04.2024.
Date of Judgment	: 03.05.2024.

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

Heard Mr. S. Sarma, learned counsel for the appellants in Writ Appeal No.129/2021; Writ Appeal No.130/2021; Writ Appeal No.133/2021; Writ Appeal No.134/2021; Writ Appeal No.137/2021; Writ Appeal No.138/2021; Writ Appeal No.139/2021 and Mr. H.K. Das, learned counsel for the appellants in Writ Appeal No.125/2021 and Writ Appeal No.127/2021. Also heard Mr. D. Saikia, learned Advocate General, Assam, assisted by Mr. B. Gogoi, learned Standing Counsel, Health & Family Welfare Department, representing the State respondents.

2. These writ appeals are filed by the writ petitioners (appellants herein) being aggrieved with the judgment & order dated 09.03.2021 passed by the learned Single Judge in WP(C) No.235/2017 and other connected writ petitions, whereby the learned Single Judge has dismissed the writ petitions. However, while dismissing the said writ petitions, the learned Single Judge has issued a direction that none of the appellants/writ petitioners should be deprived of their seniority from the original dates of their posting as Surveillance Worker and Basic Health Worker (hereinafter to be referred as "SW and BHW", respectively) and has also observed that such seniority shall be restored on the date from which the appellants/writ petitioners would render their service in the substantial posts of SW and BHW.

3. The brief facts of the case are that the appellants/ writ petitioners were appointed as SW and BHW under a particular

Scheme known as "National Vector Borne Disease Control Programme (NVBDCP)" on different dates running from the year 1995 to 2009. Subsequently, on their own request, the appellants/writ petitioners were posted as Store Keepers/LDAs in the same Pay Scale of SW and BHW at various places on different dates. The respondent State, vide orders issued on 30.11.2016, 12.12.2016 and 20.02.2017, has ordered for reversion of the appellants/writ petitioners to the posts of SW and BHW, on which they were initially appointed.

4. Aggrieved by the said reversion, the appellants/ writ petitioners have approached this Court by way of filing the aforesaid writ petitions on several grounds. The main grounds on which the challenge were made by the appellants/writ petitioners are noted down by the learned Single Judge in Paragraph 14 of the impugned judgment & order. The learned Single Judge, after hearing the counsel for the respective parties has held that the appellants/writ petitioners, initially appointed as SW and BHW, have no indefeasible right to continue in the posts of Store Keeper and LDA. The findings recorded by the learned Single Judge to arrive at the said conclusion are reproduced here as under:-

"28. This Court has given its anxious consideration to the rival contentions of the learned counsel for the parties. The core issue which requires determination is as to whether the action of bringing back the petitioners to their original posts of SW/BHW is justified. To answer the said issue, it is necessary to remind ourselves that the post of SW is a post under a particular programme, namely, NVBDCP and is not a cadre post under the Service Rules of the Health Department. The relevant point which is required to be noted is that the subsequent postings of the petitioners as Store Keepers/LDAs were in the same scale of pay of SW/BHW and therefore, cannot, by any stretch of imagination, be treated to be a

promotion. In any event, the post of SW being an ex-cadre post, promotion cannot be envisaged. The action of the authorities in permitting the petitioners to discharge duties as Store Keeper/LDA in the same scale of pay was mostly out of the own request of the petitioners and due to administrative convenience and by that, no indefeasible right to continue in the said post of Store Keeper/LDA has vested upon the petitioners.”

5. Dealing with the ground of violation of the principles of natural justice, the learned Single Judge, while relying on the decision of the Hon'ble Supreme Court rendered in the case of ***Aligarh Muslim University & Ors. -Vs- Mansoor Ali Khan***, reported in **(2000) 7 SCC 529**, has rejected the same by observing that adherence to the principles of natural justice would only amount to a 'useless formality'. The learned Single Judge has also observed that since the regular process of appointment to the rank of Store Keeper/LDA is prescribed in the Rules and the appellants/writ petitioners not being borne in the said cadre of Store Keeper/LDA by undergoing recruitment process, no right, whatsoever has accrued upon them to claim continuance in the said posts of Store Keeper/LDA.

6. The learned counsel for the appellants/writ petitioners have failed to satisfy this Court that the posts of SW/BHW were cadre posts under the Service Rules of the Health Department at the time when the appellants/writ petitioners were initially appointed and the posts of SW/BHW are the feeder posts for recruitment to the posts of Store Keeper/LDA to be filled through promotion.

In such circumstances, we do not find any illegality in the findings given by the learned Single Judge to the effect that the appellants/writ petitioners have no indefeasible right to

continue in the posts of Store Keeper/ LDA because their appointment on the posts of Store Keeper/LDA cannot be termed as promotion.

7. So far as the question regarding the adherence of the principles of natural justice before reverting the appellants/writ petitioners to their original posts of SW and BHW is concerned, we are also of the view that the learned Single Judge has rightly held that granting of opportunity of hearing to the appellants/writ petitioners would be a futile exercise.

8. The learned counsel for the appellants/writ petitioners have invited our attention that the Government of Assam, Health & Family Welfare Department was pleased to make Service Order regulating the recruitment and condition of the services of persons appointed as Para Medical and Non-Gazetted Staff under the establishment of the Director of Health Services, Assam for implementation of the National Vector Borne Disease Control Programme (NVBD CP) under the Assam Vector Borne Disease Control Programme Workers Service and the same are called as the Assam Vector Borne Disease Control Programme Workers Service Orders, 2006 (hereinafter to be referred as the "Service Orders, 2006"). The said Service Orders came into force on 08.01.2007, wherein the appellants/writ petitioners were treated as members of the service by virtue of Rule 2(f) of the Service Orders, 2006. It is contended that as per Rule 3 of the Service Orders, 2006, the SW and BHW are declared as cadre posts and the SW and BHW working in the various institutions in a district would constitute separate cadre in respect of each such district. It is contended that since the SW and BHW are now cadre posts

with the promulgation of Service Orders, 2006, the appellants/writ petitioners can very well be allowed to continue on the posts of Store Keeper and LDA.

9. Having gone through the Service Orders, 2006, which came into force from 08.01.2007 as well as the Assam Vector Borne Disease Control Programme Workers Service (Amendment) Orders, 2010 [hereinafter to be referred as the "Service (Amendment) Orders, 2010"], whereby certain provisions of Service Orders, 2006 had been amended, we are unable to agree with the learned counsel for the appellants/writ petitioners that they can be allowed to continue to work on the posts of Store Keeper or LDA because in the Service Orders, 2006 and the Service (Amendment) Orders, 2010, the post of LDA is not even encadred and though the post of Store Keeper is encadred but fixed in the same pay scale as of SW/BHW. In such circumstances, it can be concluded that the posts of SW or BHW are not the feeder posts to the posts of Store Keeper and LDA.

10. The learned counsel for the appellants/writ petitioners have placed reliance on the decisions of this Court rendered in the cases of **Himadri Das & Anr. -Vs- State of Assam & Ors.**, reported in **(2012) 5 GLT 568** and **Rubu Opo -Vs- State of Arunachal Pradesh & Ors.**, reported in **2011 (3) GLT 544** as well as on the decisions of the Hon'ble Supreme Court in the cases of **Balbir Singh -Vs- State of Himachal Pradesh & Ors.**, reported in **(2000) 10 SCC 166** and **S. Sumnyan & Ors. -Vs- Limi Niri & Ors.**, reported in **(2010) 6 SCC 791**, the judgments which were also pressed into service before the learned Single Judge. In addition to that, the learned counsel for

the appellants/writ petitioners have relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***Tarsem Singh & Anr. -Vs- State of Punjab & Ors.***, reported in **(1994) 5 SCC 392** and the decision rendered by the Madras High Court in the case of ***K.M. Subramaniam -Vs- State of Madras***, reported in ***AIR 1971 Madras 202 (V.58 C 31)*** as well as the decision of the Himachal Pradesh High Court in the case of ***Jai Singh -Vs- Himachal Pradesh Road Transport Corporation***, passed in ***CWP No.3093/2009***.

11. Having gone through the above referred judgments, we are of the view that none of the judgments are of help of the appellants/writ petitioners as in almost all of the cases, the issues for consideration before the Courts were of reversion/demotion from the promotional posts, or transfer of service of an employee. In the present case, as we have already held that the posting of the appellants/ writ petitioners to the posts of Store Keeper and LDA cannot be termed as promotion, the appellants/writ petitioners cannot claim any benefit with the aid of the said judgments.

12. It is noticed that the learned Single Judge has already issued a direction that none of the appellants/writ petitioners should be deprived of their seniority from the original dates of their posting as SW/BHW and their seniority is required to be restored on the dates from which the appellants/writ petitioners would render service in substantial posts of SW and BHW, the respondent Department are required to comply with the said directions.

13. It is further made clear that any rights accrued to the appellants/writ petitioners under the provisions of the Service Orders, 2006 and the Service (Amendment) Orders, 2010, such as seniority, pay protection or promotion, etc., the respondents shall grant the said reliefs to the appellants/writ petitioners without being influenced with the fact that their challenge to the reversion to the posts of SW and BHW has been rejected.

14. Taking into consideration the overall facts and circumstances of the case, we do not find any case for interference with the impugned judgment & order dated 09.03.2021 passed by the learned Single Judge in WP(C) No.235/2017 and other connected writ petitions. Hence, these writ appeals are dismissed with the aforesaid observations.

JUDGE

CHIEF JUSTICE

Comparing Assistant