

GAHC010107122020



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

Case No. : WP(C)/3815/2020

JAYDEB KR. NATH AND 17 ORS.
S/O SHRI PRABHAT CH. NATH, VILL-GIJAJANI, P.O.-LALABORI, DIST-
GOALPARA, ASSAM, PIN-783126

2: GIRISH CH. NATH
S/O LATE THANESWAR NATH
VILL-BAKAITARI
P.O.-BAKAITARI
DIST-GOALPARA
ASSAM
PIN-783125

3: PURNANANDA NATH
S/O SHRI GOBINDA CH. NATH
VILL-RAJAPARA
P.O.-RAJAPARA
DIST-GOALPARA
ASSAM
PIN-783133

4: PRADIP KR. NATH
S/O DWIJEN NATH
VILL-KARIPARA
P.O.-CHAKLA
DIST-GOALPARA
ASSAM
PIN-783125

5: KAMAL CH. NATH
S/O ASWINI KR. NATH
VILL-DOMANI
P.O.-MATIAPARA
DIST-GOALPARA
ASSAM

PIN-783125

6: DILIP KR. NATH
S/O SHRI HARICHARAN NATH
VILL-RAJAPARA
P.O.-RAJAPARA
DIST-GOALPARA
ASSAM
PIN-783133

7: DHANESWAR NATH
S/O SHRI RAMESH CH. NATH
VILL-BAKAITARI
P.O.-BAKAITARI
DIST-GOALPARA
ASSAM
PIN-783125

8: DIGANTA NATH
S/O SHRI MAHENDRA NATH
VILL-BAKAITARI
P.O.-BAKAITARI
DIST-GOALPARA
ASSAM
PIN-783125

9: SHASHADHAR NATH
S/O SHRI DWIJEN NATH
VIL-KARIPARA
P.O.-CHAKLA
DIST-GOALPARA
ASSAM
PIN-783125

10: MANAB KALITA
S/O LATE JITENDRA KALITA
VILL-BAKAITARI
P.O.-BAKAITARI
DIST-GOALPARA
ASSAM
PIN-783125

11: HITESH CH. NATH
S/O SHRI MAHENDRA NATH
VILL-BAKAITARI
P.O.-BAKAITARI
DIST-GOALPARA
ASSAM

PIN-783125

12: SMTI. GOKULI NATH
D/O SHRI BHABATARAN NATH
VILL-RAJAPARA
P.O.-RAJAPARA
DIST-GOALPARA
ASSAM
PIN-783133

13: CHANDAN NATH
S/O SHRI SUDHIR NATH
VILL-UPARKARKASHI
P.O.-DUDHNOI
DIST-GOALPARA
ASSAM
PIN-783125

14: TAPAN NATH
S/O SHRI PRABHAT CH. NATH
VILL-GOJIAJANI
P.O.-LALABORI
DIST-GOLAPARA
ASSAM
PIN-783126

15: RAJIB CH NATH
S/O SHRI BHABANI NATH
VILL-RAJAPARA
P.O.-RAJAPARA
DIST-GOALPARA
ASSAM
PIN-783133

16: HARISH CH. NATH
S/O LATE HIRANMOY NATH
VILL-UPORTOLA
P.O.-DUDHNOI
DIST-GOALPARA
ASSAM
PIN-783124

17: BHUBAN NATH
S/O SHRI BHUBAN CH. NATH
VILL-GOJIAJANI
P.O.-LALABAORI
DIST-GOALPARA
ASSAM

PIN-783126

18: BIJOY CH. NATH
S/O SHRI LAKHI KANTA NATH
VILL-TOKRAPARA
P.O-AGIA
DIST-GOALPARA
ASSAM
PIN-78312

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY, WATER
RESOURCES DEPARTMENT, GOVERNMENT OF ASSAM, DISPUR,
GUWAHATI-781006

2:THE UNDER SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL (B) DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE STAFF OFFICER TO THE CHIEF SECRETARY
ASSAM
DISPUR
GUWAHATI-781006

4:THE DEPUTY SECRETARY (I) TO THE GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
DISPUR
GUWAHATI-781006

5:THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT
CHANDMARI
GUWAHATI-781003

6:THE DEPUTY CHIEF ENGINEER
WATER RESOURCES DEPARTMENT
CHANDMARI
GUWAHATI-781003

7:THE EXECUTIVE ENGINEER
GUWAHATI WEST WATER RESOURCES DIVISION
GOVERNMENT OF ASSAM
KAMRUP (M)
GUWAHATI-78100

Advocate for the Petitioner : MS. N S THAKURIA, MR. G K THAKURIA

Advocate for the Respondent : GA, ASSAM, SC, WATER RESOURCE,SC, PERSONAL DEPT.

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 01.08.2024

Heard Ms. A. Das, learned counsel for the petitioner. Also heard Mr. C. Sarma, learned standing counsel, Water Resources Department appearing on behalf of all the respondents.

2. By instituting the present proceeding, the petitioners have prayed for their engagement as Muster Roll Workers(MRWs) in the establishment of the respondent No. 7, on the ground that the petitioners, herein, were engaged as Muster Roll Workers(MRWs) after 01.04.1993, and had completed 5 years of services as on 24.01.2001.

3. As projected in the writ petition, the petitioners, herein, were so engaged as Muster Roll Workers(MRWs) in the establishment of respondent No. 7 after 01.04.1993 and completed 5 years of continuous service in the said establishment in such capacity as on 24.01.2001. The services of the petitioners were, thereafter, disengaged from their services.

4. Raising the issue similar to the one as raised in the present proceeding; an umbrella organization of Muster Roll Workers(MRWs) i.e. Assam Rajyik Karmachari Parishad had approached this Court by way of filing a writ petition being WP(c)560/2009, which was disposed of by this Court vide order, dated

04.05.2010, with the following directions:

“Having heard the learned counsel for the parties, this Court had passed an order, on 08.04.2010, which reads, inter alia, thus: Considering the matter in its entirety and in the interest of justice, it is hereby made clear that unless otherwise directed by this Court, there shall be no bar, on the part of the State respondents, to engage the present petitioners in the field work of the Department along with similarly situated other persons, if such engagement is legally made. It is further clarified that the engagement, as has been permitted by this Court, by its order, dated 08.04.2010, shall not be in a manner, which may come into conflict with the observations made, and the directions given, by a Full Bench of this Court, in Jitendra Kalita & Ors. Vs. State of Assam & Ors., reported in (2006) 2 GLT 654 (FB). As regards the claim of the petitioners that they have not been paid their dues for the period, for which they had worked, it needs to be pointed out that the contention of the petitioners, that they had worked, is disputed by the respondents. For such a disputed question of fact, a proceeding of present nature, under Article 226 of the Constitution of India, is not the appropriate proceeding inasmuch as determination of such a question would require making of roving enquiry and adducing of evidence by the parties concerned. In such circumstances, as far as the petitioners’ claim for non-payment of their dues are concerned, the petitioners shall have to take recourse to appropriate provisions of law for remedy of their grievances. If any proceedings is instituted by the petitioners claiming payment of their alleged dues, the observations, made and/or the findings recorded by the respondents, in their enquiry report, on 19.11.2008 (Annexure P-2 3 to the writ petition), shall not be binding on the petitioners, though the same may be relevant for the respondents in order to sustain their findings in the matter.”

5. The petitioners, herein, are claiming for re-engagement/re-appointment on the basis of the Office Memorandum, dated 30.10.2001, issued by the Principal Secretary to the Government of Assam, Finance Department, which provides that the Muster Roll Worker(MRW)/Work-Charged employees who were engaged after 01.04.1993 and completed five years of continuous service as on 24.01.2001, shall only continue in services in their respective capacity subject to proper verification of their engagements by the respective appointing authorities.

6. It is the claim of the petitioners, herein, that as they were engaged after 01.04.1993 and have completed five years’ of continuous service as on 24.01.2001; they should, therefore, be re-engaged/re-appointed.

7. Mr. Sarma, learned standing counsel, Water Resources Department, has,

by relying on the report of the Committee formed to examine the records of the Muster Roll Workers(MRWs) engaged after 01.04.1993 and who had completed five years' of continuous service on 24.01.2001, has submitted that the said Committee on examination of a claim made by the organization, in question, that around 35 persons were engaged as Muster Roll Workers(MRWs) after 01.04.1993 and who had completed five years' of continuous service as on 24.01.2001, in the establishment of respondent No. 7; had come to a conclusion, on verification of contemporaneous records maintained in the Division that no Muster Roll Workers(MRWs) were so engaged in the establishment of respondent No. 7 after 01.04.1993 and there is no record of such engagement being so effected.

8. However, on consideration of the report, in question; it is seen that the said report is dated 19.11.2008, which is prior in time to the order dated 04.05.2010, passed by this Court in WP(c) 560/2009.

9. Mr. Sarma, learned standing counsel, Water Resources Department, on a query, is unable to clarify before this Court as to whether any exercise has been taken by the Water Resources Department for verification of Muster Roll Workers/Work Charged/Sectional Assistant, who were appointed after 01.04.1993 and have completed five years' of service upto 24.01.2001 after the order dated 04.05.2010 was passed by this Court in WP(c) 560/2009.

10. As this Court has already observed that the report is of the year 2008; this Court is of the considered opinion that without entering into the merits of the case, it would be in the interest of justice to dispose of this writ petition by directing the respondent authorities in the Water Resources Department, to have a re-verification strictly basing on contemporaneous records, with regard

to the claim of the petitioners as to whether they were appointed after 01.04.1993 and have continuously been serving for five years till 24.01.2001. Such exercise shall be also so carried-out by reckoning the policy of the State for engagement of Muster Roll Workers(MRWs) as on date.

11. Let such an exercise be undertaken by the respondent authorities and the same be concluded within a period of 6(six) months from the date of receipt of a certified copy of this order. The authorities concerned, on conclusion of the exercise as required to be undertaken; shall, thereafter, intimate petitioners, herein, with regard to the outcome of such re-verification.

12. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant