

GAHC010152372020



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

Case No. : WP(C)/5123/2020

DHIREN BHARALI AND 11 ORS
S/O. SRI DHANO RAM BHARALI, VILL. KAIHATI, P.O. SOLMARA, PIN-
781338, DIST. NALBARI, ASSAM.

2: JYOTISH CH. DAS
S/O. SRI GANGADHAR DAS
VILL. PATANI
P.O. HAJO
DIST. KAMRUP
ASSAM
PIN-781102.

3: HITESH DEKA
S/O. JOY CH. DEKA
R/O. DISPUR
GUWAHATI-06
DIST. KAMRUP (M)
ASSAM
PIN-781006.

4: BHUPEN BARUAH
S/O. LT. CHANDRA KR. BARUAH
R/O. NO.2 BANK COLONY
NORTH HAIBORGAON
P.O. HAIBORGAON
DIST. NAGAON
ASSAM
PIN-782002.

5: BHASKAR JYOTI BARUAH

S/O. LT. NARESWAR BARUAH
R/O. MADHUPUR
WORD NO.28
DIST. BISWANATH

ASSAM
PIN-784176.

6: MOUSUMI KAKATI
W/O. MR. KHAGESH DEKA
VILL. KETEKIBARI
P.O. TEZPUR
DIST. SONITPUR
ASSAM
PIN-784001.

7: JADAB CH. BARMAN
S/O. LT. JATINDRA MOHAN BARMAN
R/O. B.R. DEKA PATH
JALUKBARI
GUWAHATI-14
DIST. KAMRUP (M)
ASSAM
PIN-781013.

8: JAHUR UDDIN CHOWDHORY
S/O. LT. MONIRUDDIN AHMED CHOWDHURY
R/O. FOUZDARI PATTY
M.D. ABU ROAD
P.O. NAGAON
DIST. NAGAON
ASSAM
PIN-782001.

9: RANJIT DAS

S/O. LT. KHEGESWAR DAS
R/O. KANAKLATA PATH
P.O. BELTOLA
DIST. KAMRUP (M)
ASSAM
PIN-781028.

10: PRANAB KR. MARKARY

S/O. LT. LAKHESWAR MAKRARY
R/O. PADUM NAGAR PATH NO.2
P.O. BOIRAGIMATH
DIST. DIBRUGARH
ASSAM
PIN-786003.

11: GOBINDA RABHA

S/O. LT. DANDI RAVA
R/O. PACHIM BORAGAON
GUWAHATI-33
DIST. KAMRUP (M)
ASSAM
PIN-781033.

12: BIJOY KR. SARMA

S/O. LT. HARENDRA NATH SARMA
R/O. CHANDAN NAGAR
SERVEY
BELTOLA
GUWAHATI-28
DIST. KAMRUP (M)
ASSAM
PIN-781028

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, DEPTT. OF
PANCHAYAT AND RURAL DEVELOPMENT, DISPUR, GUWAHATI-06.

2:THE COMMISSIONER

DEPTT. OF PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
PANJABARI
GUWAHATI-37.

3:THE SECRETARY

GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT
DISPUR
GUWAHATI-06.

4:THE SECRETARY

GOVT. OF ASSAM
DEPTT. OF FINANCE
DISPUR
GUWAHATI-06.

5:THE ACCOUNTANT GENERAL (A AND E)

ASSAM
BELTOLA
MAIDAMGAON
GUWAHATI-29

Advocate for the Petitioner : MR. C GOSWAMI,

Advocate for the Respondent : SC, PNRD, MR. M NATH, MR. S K MEDHI (r-5), SC, AG, SC,
FINANCE DEPTT.

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioners : Shri KN Choudhury, Senior Counsel
Shri C. Goswami

Advocates for the respondents : Shri S. Dutta, SC-P&RD
Shri R. Borpujari, SC-Finance Dept.
Shri SK Medhi, SC-AG

Date of hearing : **23.07.2024**

Date of Judgment : **05.08.2024**

JUDGMENT & ORDER

The issue involved in this writ petition pertains to a claim for giving retrospective effect to the promotion of the petitioners as Assistant Engineers in the Panchayat and Rural Development Department.

2. As per the facts projected, the petitioners, who were initially Diploma holders were appointed as Junior Engineers in the Panchayat and Rural Development Department. While in service, the petitioners had acquired the Degree of Associate Membership Examination in Civil Engineering (India) (AMICE) (I), in the year 2013, which the petitioners contend to be equivalent to Degree in Civil Engineering. As per the Rules holding the field, namely, Assam

Panchayat and Rural Development Officers (Technical) Service Rules of 2015 (hereinafter Rules of 2015), more particularly, Rule 11(4)(c), when a Diploma holder who was appointed in the post of Junior Engineer obtains the Degree of Engineering, he is to be promoted to the next available vacancy of Assistant Engineer in consultation with the Assam Public Service Commission (APSC). It is further stipulated that such promotion would be considered as direct appointment. A meeting was held on 05.06.2014 and the minutes of meeting indicate that 27 nos. of posts of Assistant Engineers were vacant. Since no action was taken to promote the petitioners, they had filed a writ petition being WP(C)/279/2015. The said writ petition was disposed of vide order dated 15.05.2017 with a direction to consider their cases for promotion within 6 months. Though the period of 6 months was stipulated, the order of promotion was ultimately passed on 10.01.2020. The petitioners' claim is to give retrospective effect to the said order of promotion.

3. I have heard Sri K.N. Choudhury, learned Senior Counsel assisted by Shri C. Goswami, learned counsel for the petitioners. I have also heard Shri S. Dutta, learned Standing Counsel, Panchayat and Rural Development Department; Shri R. Borpujari, learned Standing Counsel, Finance Department and Shri SK Medhi, learned Standing Counsel, Accountant General, Assam.

4. Shri Choudhury, the learned Senior Counsel, by referring to the Rules of 2015, has submitted that the Rules provide in clear terms that if a Junior Engineer of the Assam Panchayat and Rural Development Officers (Technical) Service acquires the academic qualification as prescribed for a direct recruitment for the post of Assistant Engineer, he should be promoted as Assistant Engineer in consultation with the Commission against the next available vacancy in the cadre and such promotion would be treated as direct recruitment. Specific

reference has been made to Rule 11(4)(c). He submits that there is no ambiguity regarding the acquiring of the Degree by the petitioners in the year 2013 and therefore, it was incumbent upon the respondent authorities to consider and promote the petitioners to the posts of Assistant Engineer. He has also highlighted the aspect of availability of vacancies which has been noted in the Minutes of Meeting dated 05.06.2014 wherein 27 nos. of vacant posts were recorded to be existing. The learned Senior Counsel submits that the initial writ petition filed by the petitioners, namely, WP(C)/279/2015 was disposed of vide order dated 15.05.2017 with a direction to consider the cases of the petitioners within 6 months. However, such promotions were made only on 10.01.2020. He therefore submits that the effect of the promotion should be given from the date of availability of the vacancies in the cadre of Assistant Engineer.

5. *Per contra*, Shri Dutta, the learned Standing Counsel of the Department has resisted the writ petition. By drawing the attention of this Court to the relevant Rules, he contends that the aspect of promotion is conditional and the same is subject to suitability. By referring to the affidavit-in-opposition filed on 31.08.2022, the learned Standing Counsel has submitted that there was some issue with the Degree of AMICE (I) obtained by the petitioners from the Ludhiana University and a verification exercise had to be made. It is submitted that not only the petitioners were promoted as Assistant Engineer in the year 2000, they were subsequently promoted to the next higher grade of Assistant Executive Engineer in February, 2021. The learned Standing Counsel, by referring to the averments made in paragraph 9 of the affidavit-in-opposition has submitted that the delay was also because of pendency of certain cases in this Court wherein interim orders were operating. He has strenuously argued that no case of discrimination or bias is there as no persons junior to the

petitioners have been given the benefit of promotion prior to them. It is submitted that in case, any relief is granted to the petitioners, it will lead to opening of a floodgate.

6. Shri Choudhury, the learned Senior Counsel for the petitioners in his rejoinder, has however submitted that though certain cases on the issue were filed, those cases were disposed of on 18.09.2014 and at least from such date, the petitioners should have been given the benefit of promotion.

7. The rival submissions have been duly considered and the materials placed before this Court have been carefully perused.

8. The relevant Rule, namely, Rule 11(4)(c) of the Rules of 2015 pertains to the subject and for the sake of convenience is extracted hereinbelow.

“Notwithstanding anything contained herein before in this rule, subject to suitability, a Junior Engineer of the Assam Panchayat and Rural Development Officers (Technical) Service, on his acquiring the academic qualification, as prescribed for a direct recruit Assistant Engineer, shall be promoted as Assistant Engineer, in consultation with the Commission, as provided in rule 12 against the next available vacancy in the cadre and such promotion shall be treated as direct recruitment to the cadre of Assistant Engineer for the purpose of these rules.”

9. The Rules make it clear that a Junior Engineer of the Department, on acquiring the Degree in Engineering would be promoted as Assistant Engineer through the Commission, subject to suitability. It becomes apparent that the mere fact of acquiring a Degree may not *per se* vest a right for such promotion. However, the right is definitely vested on such incumbents for a fair

consideration for promotion to the post of Assistant Engineer.

10. In the instant case, in the year 2013, the petitioners had acquired the Degree of AMICE (I) which they contend to be equivalent to B.E. and this contention is not disputed. Though certain doubts appear to have been arisen regarding the said Degree from the Ludhiana University, on a verification exercise, such doubts have been said to be cleared. The availability of vacancies in the year 2014 is also apparent from the minutes of meeting dated 05.02.2014 wherein it has been recorded that 27 nos. of posts of Assistant Engineers were lying vacant. However, the promotions were not given. The WP(C)/279/2015 instituted by the petitioners was also allowed by this Court vide order dated 15.05.2017 whereby there was a direction for consideration of the cases of the petitioners within 6 months. The consideration and promotion was ultimately done only on 10.01.2020.

11. While there is no indefeasible right to promotion, a right of consideration for such promotion, depending on the suitability is a legal right of an employee where there is a promotional ladder. The Department has strenuously contended that no junior persons were promoted prior to the petitioners and therefore, there was no discrimination. While the decision to make promotion would be a matter of prerogative and administrative convenience, inaction on the part of the respondent authorities to effect the promotions from 2014 when vacancies were available is required to be examined vis-à-vis the reasons cited. It has been contended that verification exercise was being carried out on the authenticity of the AMICE (I) acquired by the petitioners from the Ludhiana University. While such reason may be held to be *bona fide* and justifiable, a verification exercise cannot be stretched to an indefinite period. In any case, this Court vide order dated 15.05.2017 in WP(C)/279/2015 had directed for

consideration of the case of the petitioners within 6 months. However, such consideration was not done within the stipulated period and was ultimately done much later leading to the promotion on 10.01.2020.

12. The learned Standing Counsel of the Department has highlighted the aspect that in the meantime, the petitioners have further been promoted to the post of Assistant Executive Engineer and that any orders passed would open a floodgate. This Court is however of the opinion that such objections would not have a material bearing as it is the rights of the citizens which are to be protected if it can be demonstrated that there is a violation of such rights.

13. In view of the aforesaid discussions, this Court is of the considered opinion that interest of justice would be served and the equities would be balanced if a direction is issued to give notional benefits to the petitioners at least from the date of expiry of 6 months from the judgment dated 15.05.2017 passed in WP(C)/279/2015 as it was the time prescribed for considering and giving such promotions. This Court is fortified by the fact that the eligibility of the petitioners is not in doubt as the Department had itself granted them the promotion on 10.01.2020 to the post of Assistant Engineer. It is made clear that the benefits to be granted to the petitioners would be only notional and they would not be entitled any back wages. Further, under the peculiar facts and circumstances, the present order would be confined only to the petitioners as the earlier direction passed by this Court on 15.05.2017 in WP(C)/279/2015 was only pertaining to them and accordingly, the present order would not be a precedent for any other candidates.

14. The writ petition accordingly stands allowed, in the manner indicated above.

15. No order as to costs.

JUDGE

Comparing Assistant