

GAHC010159862023



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

Case No. : WA/304/2023

1: ASHIM DEB AND 2 ORS.

S/O. LATE SUKHAMOY DEB, R/O. N.S. AVENUE,
P.O. AND P.S.- SILCHAR, DIST. CACHAR, ASSAM, PIN- 788005.

2: SIDDHARTHA RANJAN DEY

S/O LATE SUSHIL RANJAN DEY R/O SUBHASH NAGAR
P.O.- SUBHAS NAGAR SILCHAR DIST.- CACHAR ASSAM PIN- 788004.

3: GAUSEL AMIN LASKAR

S/O SARIF ALI LASKAR R/O P.O. AND P.S.- NAIRGRAM
DIST.- CACHAR ASSAM PIN- 788713

VERSUS

1: THE STATE OF ASSAM AND 5 ORS. (B) REP. BY THE COMMISSIONER
AND SPECIAL SECRETARY TO THE GOVT. OF ASSAM, PUBLIC WORKS
DEPTT., DISPUR, GUWAHATI- 6.

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

3: THE SUPERINTENDING ENGINEER P.W.D.(ROADS)
CACHAR CIRCLE SILCHAR DIST. CACHAR ASSAM-788001.

4: THE EXECUTIVE ENGINEER PWD SILCHAR RURAL ROADS DIVISION
CACHAR SILCHAR DIST.- CACHAR ASSAM- 788001.

5: THE DIRECTOR OF EMPLOYMENT AND CRAFTSMAN TRAINING
ASSAM REHABARI GHY- 8.

6: THE ASSISTANT DIRECTOR OF EMPLOYMENT DISTRICT EMPLOYMENT
EXCHANGE CACHAR SILCHAR DIST.- CACHAR ASSAM-788001

For the Appellant(s) : Mr. I.H. Saikia, Advocate.

For the Respondent(s) : Mr. D. Nath, Senior Government Advocate, Assam.

– **B E F O R E** –
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

06.05.2024
(Vijay Bishnoi, CJ)

This writ appeal is filed by the appellants challenging the order dated 25.05.2023 passed by the learned Single Judge in WP(C) No.989/2018, whereby the learned Single Judge has dismissed the writ petition *qua* the appellants, wherein they sought direction for the respondents to promote them on the posts of Junior Assistant/LDA (Grade-III).

The facts which are not in dispute are that the appellants were initially engaged as Muster Roll Workers from the period running from 01.03.1983 to 11.09.1990. Their services were regularized as Grade-IV employees, i.e. from 22.07.2005, by an order dated 27.10.2005 issued by the Executive Engineer, Silchar Rural Road Division, Silchar. The appellants have demanded that they should be promoted to the posts of Junior Assistant/LDA (Grade-III). The said demand was rejected by the respondent Department and being aggrieved with the same, they approached this Court by way of filing WP(C) No.989/2018. However, the learned Single Judge has refused to grant them the said relief while relying on the Division Bench judgment of this Court rendered in ***Dilip Talukdar & Ors. -Vs- State of Assam & Ors.*** (Writ Appeal No.124/2015 and Writ Appeal No.111/2016, decided on 10.02.2017), reported in **2017 (2) GLT 135** while holding that the appellants were apparently regularized in the Grade-IV posts held by them which posts were personal to them and, therefore, their cases cannot be considered for promotion to the next higher Grade.

The learned counsel for the appellants has tried to impress upon this Court that with the regularization of the services of the appellants on the Grade-

IV posts, the posts which they were holding were encadred and, therefore, they are entitled for promotion on the posts of Grade-III.

We have considered the submission made on behalf of the appellants but for rejection only.

From the perusal of the order dated 27.10.2005, whereby the services of the appellants were regularized on the Grade-IV posts, it is clear that those posts were personal to them and were required to be abolished on relinquishing the services by the appellants in any manner.

A Coordinate Bench of this Court in the case of **Dilip Talukdar** (supra), reported in **2017 (2) GLT 135** has observed as under:-

“7. In order to appreciate the contention raised by the writ petitioners, the learned Court dwelt on the backdrop to the policy decision of the Government to regularize the service of the WC/MR workers, in different works departments, who were in continuous service since before 1.4.1993. The circumstances leading to temporary creation of 5829 WC Grade-IV posts and 25069 Grade-IV posts w.e.f. 22.7.2005, for regularization of that many WC/MR workers, were considered. The Court also noted that the guideline issued by the Finance Department clearly stipulated that the posts were created as personal to the respective incumbent and will be abolished as soon as the concerned incumbent relinquish the post in any manner. Thus the temporary nature of the additional posts, was noted by the Court.

8. The Court analyzed the concept of personal posts and noted that the regularization of service of the WC/MR workers, were not against any cadre posts of the department but the posts so created were to be treated as ex-cadre posts.

9. As promotion to higher rank can be considered only from the feeder cadre and since the writ petitioners were not en-cadred in the feeder cadre, the learned Judge opined that they are disentitled to claim promotion to the higher cadre. The learned Judge found that regularization of the incumbents in the temporarily created personal posts, was accepted without protest, with the attendant terms and condition and therefore it was observed that the beneficiaries of the regularization order cannot turn around and assail the decision of the Government, which wanted to confer limited benefits, through the process of regularization.

10. On the plea of discrimination vis-à-vis those already en-cadred in the feeder cadre, the Court held that the incumbents regularized against the

posts created personal to them are on a different footing as their posts being temporary in nature were not added to the cadre strength in the department. Thus the plea of discrimination was negated visa-a-vis those who were working in the posts within the notified cadre, of the department.

11. *On the basis of above reasoning, the prayer for promotion made by the ex-cadre incumbents holding posts on personal basis, was found to be untenable and accordingly the cases came to be dismissed, under the common judgment dated 16.3.2015.*

12. *We have seen the reasons recorded by the learned Judge for the impugned verdict and find that the posts against which the writ petitioners were regularized were never added to the notified cadre in the department. Yet no plea was advanced for en-cadrement of the posts held by the affected parties. The promotion in the department can be considered only from the eligible employees in the feeder cadre and the writ petitioner being outside of the cadre, cannot have any enforceable right to claim promotion, particularly when, the regularization order itself stipulates that they are regularized in posts personal to them. Such temporary creation of post cannot automatically add to the cadre strength of the department and claim for promotion from a person holding an ex-cadre post, is not legally tenable. Therefore we see no basis to take a different view in the matter than the one taken by the learned Single Judge, in dismissing the cases.”*

The case of the appellants is akin to the case decided by the Division Bench of this Court and, therefore, we do not find any illegality in the impugned judgment, whereby the learned Single Judge has refused to grant relief to the appellants.

In view of the above discussion, we do not find any merit in this writ appeal and the same is, therefore, dismissed.

JUDGE

CHIEF JUSTICE