

GAHC010220252021



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

Case No. : Review.Pet./115/2021

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM, IRRIGATION DEPARTMENT, DISPUR, GUWAHATI-06.

2: THE CHIEF ENGINEER
IRRIGATION
ASSAM
CHANDMARI
GUWAHATI-03.

3: THE SUPERINTENDING ENGINEER
NORTH KAMRUP CIRCLE (I)
NALBARI
P.O. AND DIST.- NALBARI
PIN- 781335.

4: THE EXECUTIVE ENGINEER
IRRIGATION DEPARTMENT
NALBARI DIVISION
SAUKUCHI
P.O. MILANPUR
DIST.- NALBARI
ASSA

VERSUS

PRANAB GOSWAMI
S/O- LATE PRAKASH GOSWAMI, R/O- GOPAL BAZAR, P.O. AND P.S.
NALBARI, DIST.- NALBARI, ASSAM, PIN- 781353.

Advocate for the Petitioner : SC, IRRIGATION

Advocate for the Respondent : MR. A MOBARAQUE

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

08.01.2024

Heard Mr. N. Upadhyay, learned counsel for the review petitioners. Also heard Mr. A. Mobaraque, learned counsel representing the sole respondent/writ petitioner.

This review petition has been filed by the departmental authorities seeking review/recall of the order dated 31.10.2018 passed by the learned Single Judge in WP(C) No.6859/2018 whereby, a direction was issued to promote the petitioner to the higher post of Section Assistant on the strength of the recommendation made by the selection committee in favour of the petitioner. The aforesaid direction was issued by the learned Single Judge by relying upon a decision of this Court rendered in the case of **Badan Das Vs. State of Assam and others [WP(C) 2277/2014]** .

Mr. Upadhyay submits that the writ petitioner/respondent was appointed against a post which was personal to him and therefore, he was not entitled for promotion under the Rules. However, the said fact could not be brought to the notice of the Court when the order dated 31.10.2018 was passed. He further submits that the decision in the case of **Badan Das (supra)** is not applicable to the facts of this case. Therefore, an error has occurred in the order which, if not corrected, would create serious disruption within the department.

Mr. Mobaraque has not disputed the said assertion of the learned counsel for the review petitioner but submits that since there are already orders passed by

this Court granting relief to similarly situated candidate, the review petition be dismissed.

After considering the submissions advanced by learned counsel for both the sides, I find that a *prima-facie* case is made out to the effect that the respondent/writ petitioner was not holding a cadre post but was appointed against a post which was personal to him. Since promotion is a creature of statute (Rules), it is evident that unless a candidate is entitled under the Rules for being promoted, no direction can be issued by the Court to promote such a candidate. However, the said aspect of the matter was not examined while issuing the order dated 31.10.2018 passed by the learned Single Judge. This Court is, therefore, of the opinion that the writ petition requires reconsideration. In other words, there are sufficient grounds for this Court to recall/review the order dated 31.10.2018. As such, the order dated 31.10.2018 is hereby recalled. Registry to list WP(C) No.6859/2018 for orders after three weeks. Review Petition stands allowed.

JUDGE

Comparing Assistant