

GAHC010257482013



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

Case No. : WP(C)/4995/2013

1: SHIRIN ASRAF CHOUDHURY and 2 ORS.
W/O ALI AHMED CHOUDHURY R/O TARUN NAGAR, BYE LANE NO. 1,
HOUSE NO. 16, GUWAHATI-6, DIST. KAMRUP, ASSAM.

2: RAJIB BORDOLOI
S/O. LATE HARANATH SARMAH BORDOLOI
C/O. DEEPAK KALITA BEHIND OF NEW GUWAHATI SBI KARBI-NAGAR
BAMUNIMAIDAN GUWAHATI-2 DISTRICT- KAMRUP ASSAM

3: SYEDA MUNIRA BEGUM
W/O. SYED ZALILUR RAHMAN R/O. NABAJYOTI NAGAR BYE LANE NO.1
HOUSE NO.3 PANJABARI GUWAHATI-37 DISTRICT- KAMRUP ASSAM

VERSUS

1: THE STATE OF ASSAM AND 19 ORS REP. BY THE COMMISSIONER AND
SECRETARY TO THE GOVT. OF ASSAM, PWD R DEPARTMENT, DISPUR,
GUWAHATI-6.

2: THE CHIEF ENGINEER
PWD ROADS ASSAM CHANDMARI GUWAHATI-3

3: THE EXECUTIVE ENGINEER
PWD ROADS GUWAHATI N.E.C. DIVISION CHANDMARI GUWAHATI-3

4: THE ASSISTANT EXECUTIVE ENGINEER
PWD ROADS GUWAHATI N.E.C. SUB-DIVISION CHANDMARI GUWAHATI-3

5: RANJU PHUKAN

6: SMTI. INDANA GOGOI

7: SMTI. ARCHANA BHATTACHARJEE

8:SMTI. PRATIVA DAS

9:SMTI. PRANITA DEVI

10:SRI SUKU RAM BORO

11:SRI DILIP KUMAR SARMA

12:SRI JITEN KAKATI

13:SMTI. ANJALI BORDOLOI

14:SRI NAGEN BASUMATARY

15:SRI ANIL BHAGABOTY

16:SMTI MANJULA GOSWAMI

17:SRI CHANDRA MOHAN KALITA

18:SRI ATUL DEKA

19:SRI GOPI RAM DAS

20:SRI ISRAR KHAN

ALL ARE EMPLOYEES OF THE OFFICE OF THE CHIEF ENGINEER P.W.D.
ROADS ASSAM GUWAHATI-

Advocate for the Petitioner : MR.I CHOUDHURY

Advocate for the Respondent : SC, PWD

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

ORDER

Date : 01-02-2024

Heard Mr. I. Choudhury, learned counsel for the petitioners. Also heard Mr. N. Khataniar, learned counsel, representing the respondent Nos.5 to 13. None appears for the respondent Nos.1 to 4.

The petitioners have approached this Court by way of instituting the present proceeding making a grievance with regard to an order dated

04.07.2011 issued by the Chief Engineer, PWD (Roads), Assam, by which the respondent authorities had promoted the private respondent Nos.5 to 13 to the post of Sub-Engineer (Technical) Grade-II.

The petitioners, who were working as Tracers in various District Level Offices at the relevant point of time, contend that the cadre of Tracer both in the Directorate, i.e. the Chief Engineer's Office, and in various Divisional Offices was one and in support thereof, the petitioners have placed reliance on a Gradation List published on 10.04.2006 by the Additional Chief Engineer, PWD (P), Assam, wherein the names of the petitioners find mention and they have been shown to be senior to the respondent Nos.5 to 13. It is the grievance of the petitioners that the cadre being one, the respondent authorities could not have proceeded to issue the order dated 04.07.2011 promoting only the Tracers working in the Office of the Chief Engineer, PWD (Roads), Assam to the post of Sub-Engineer (Technical) Grade-II ignoring the cases of the petitioners. The petitioners contend that the promotion as effected in the cases of the respondent Nos.5 to 13 were so effected without even not considering the cases of the petitioners herein inspite of the fact that they possess all the requisite qualifications for such promotion and were in fact senior to the persons so promoted.

The respondent authorities had brought their stand on record by way of filing an affidavit, wherein it was contended that earlier the cadre of Tracer, both at the level of the Office of the Chief Engineer as well as in the various Divisional Offices, were considered to be one cadre. However, in the year 2008, a policy decision was taken wherein the Government had required fixation of seniority of Tracers separately at the Directorate as well as in the District Level. The said decision was communicated to all vide a communication dated

10.07.2018. Thereafter, from the materials available on record, it is seen that separate Gradation List for the Directorate Office as well as for the Divisional Offices were being published regularly. The names of the respondent Nos.5 to 13 figuring in the Gradation List of the Directorate, they were so considered for promotion against the vacancies in the cadre of Sub-Engineer (Technical) Grade-II available in the Directorate and vide order dated 04.07.2011, they were so promoted.

The petitioners in the writ petition have not assailed the said policy decision to prepare separate Gradation Lists in the cadre of Tracers both in the Office of the Chief Engineer, i.e. Directorate Level, as well as of the various Divisional Offices. The petitioners although being in receipt of such Gradation List prepared from time to time had not assailed the same before this Court in the present proceeding. The petitioners having not assailed the said policy decision as contained in the communication dated 10.07.2008 and the subsequent separate Gradation List being prepared from time to time by the authorities, this Court is not in a position to interfere with the promotions as effected in the case of the respondent Nos.5 to 13 basing on such policy decision. The petitioners in their affidavit-in-reply have also not disputed the existence of such policy decision and the preparation of separate Gradation List. The only contention being that the preparation of the separate Gradation List is illegal and such contention was so made without putting the policy decision in place under challenge.

The manner and method for recruitment is in the domain of the respondent authorities and if it is not demonstrated that such a decision taken with regard to the manner of recruitment to any post is arbitrary and illegal, it is not open for this Court to interfere with such policy decisions. The

petitioners in the present proceedings have not assailed the manner of recruitment to the post of Sub-Engineer (Technical) Grade-II, and as such, the policy in this connection holding the field, the petitioner are not entitled to any direction for promotion to the said post by interfering with the promotion of the respondent Nos.5 to 13.

In view of the above position and also considering the fact that the petitioners in the meantime have all retired from their services on reaching the age of superannuation, this writ petition stands closed.

JUDGE

Comparing Assistant