

GAHC010261652013



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

Case No. : WP(C)/5964/2013

MRS DEEPIKA GOSWAMI
D/O TIKENDRA GOSWAMI VILL- DOUKA SAPARI P.O. JAMUGURIHAT DIST.
SONITPUR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP.BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
PWD, DISPUR, GUWAHATI-6, ASSAM.

2:UNDER SECRETARY

TO THE GOVT. OF ASSAM
PWD BLDG and NH GENERAL BRANCH
DISPUR
GUWAHATI-6
ASSAM.

3:THE CHIEF ENGINEER

PWD BUILDING CHANDMARI
GUWAHATI-3
ASSAM

4:EXECUTIVE ENGINEER

P.W.D. PCC DIVISION
DISPUR
GUWAHATI-6

Advocate for the Petitioner : MR.D KONWAR

Advocate for the Respondent : SC, PWD

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

JUDGMENT & ORDER (ORAL)

Date : 16-02-2024

Heard Mr. R. Goswami, learned counsel for petitioner. Also, heard Mr. P. Nayak, learned counsel for the respondents in the Public Works Department.

2. The petitioner had instituted the present proceedings praying for a direction upon the respondent authorities to upgrade/promote her to the post of LDA/Typist in the manner such promotion was effected in respect of a similarly situated employee Shri Diganta Sarma.

3. The petitioner claims that she was appointed as a Muster Roll Worker on 24.07.1992 in the establishment of the Executive Engineer, PWD, PCC Division, Guwahati. The case of the petitioner for regularization of her services was considered in terms of a policy decision of the Government to regularize the services of Muster Roll Worker/Work Charge Employees engaged prior to 01.04.1993 and who were working as of 2005 in their respective establishment. Accordingly, the case of the petitioner being considered, approval was granted by the competent authority vide communication dated 30.09.2005 to regularize the services of the petitioner. The Respondent No. 4, vide his order dated 05.10.2005 proceeded to regularize the services of the petitioner in terms of the approval as granted vide the said communication dated 30.09.2005. The petitioner thereafter continued to serve in the establishment in such capacity till the date of institution of the present proceedings. It is to be noted that the petitioner was so regularized in her services by creating post

personal to her. It is the contention of the petitioner in the writ petition that the petitioner although was regularized in her service against a Grade-IV post, however, her service was all along utilized for works of clerical nature. It is the contention of the petitioner that there was a process initiated for upgrading the services of qualified Grade-IV employees to the post of LDA working in the establishment of the respondent no. 4. However, ignoring the case of the petitioner, one Diganta Sarma who was contended to be junior to the petitioner came to be promoted to the post of LDA-cum-Typist vide issuance of an order dated 20.01.2011. The petitioner, further contended that her case for such promotion/upgradation was, placed before the Government by the Divisional authorities, however, the said process so initiated was not taken to its logical conclusion. Being aggrieved, the petitioner has instituted the present proceedings.

4. The learned counsel for petitioner has reiterated the facts as noted, hereinabove and has contended that the petitioner being senior to said Diganta Sarma, the petitioner was entitled to be promoted to the cadre of LDA-cum-Typist w.e.f the date of promotion of her junior. Accordingly, it is prayed that the petitioner having been deprived of her due promotion, necessary directions are required to be issued to the respondent authorities for effecting promotion in the case of the petitioner in the manner as was done in respect of said Diganta Sarma and such promotion was again prayed to be so effected with effect from the date said Diganta Sarma was so promoted with all consequential benefits.

5. The respondent authorities have brought their stand on record by way of filing affidavits and therein, have contended that the seniority of the regularized Muster Roll Workers is determined by reckoning the date of their initial engagement as a Muster Roll Worker in the establishment. By applying the said principle, it was contended that said Diganta Sarma who had joined as a Muster Roll Worker on 24.07.1991 ranks senior to the petitioner, herein, who had joined her such services only on 01.04.1992.

Accordingly, it is contended that no junior of the petitioner having been promoted, the petitioner cannot have any grievance with regard to the promotion as effected in the case of Diganta Sarma.

6. The stand of the respondents as evident from the affidavits filed by them, reflects that the said Diganta Sarma was senior to the petitioner, herein and accordingly, his case for such promotion was considered by the respondent authorities and he came to be so promoted to the post of LDA basing on the *inter-se* seniority of the regularized Muster Roll Workers in the establishment. Such stand of the respondents reflects that the contention of the petitioner in the writ petition that a person junior to her i.e. said Diganta Sarma was promoted to the cadre of LDA by superseding her does not merit consideration.

7. In the case on hand it is to be noted that the services of the petitioner having been regularized as per policy decision of the Government against a personal post created for the purpose of such regularization; she is not entitled for being considered for further promotion. The promotion from Grade-IV post to that of Grade-III in the establishment of the respondent no. 4 is governed by the provisions of *The Assam Ministerial District Establishment Services Rules, 1967*, wherein 90% of the posts of LDA is to be filled up by way of direct recruitment and 10% by way of promotion from Grade-IV staff working in the organization. The petitioner being a holder of a personal post she cannot be deemed to be a member of the feeder cadre for the purpose of promotion to the post of LDA. The petitioner is a holder of an ex-cadre post and as such would not come within the purview of the said Rules of 1967 and accordingly, would not be entitled to be considered for promotion to the cadre of LDA.

8. In this connection, reference is made to the decision of this Court in the case of ***Matiur Rahman Laskar and Anr. versus State of Assam and Ors.***, reported in ***(2015) 5 GLR 320***, wherein, this Court after referring to the case of ***Netralal Pandit & Ors. Vs. State of Assam & Ors. [WP(C) No.3818/2013]*** had

concluded that holders of personal posts were not eligible for promotion to the next higher cadre of the service. The conclusions of this court in the case of ***Matiur Rahman Laskar*** (supra) relevant to the issues arising in the present proceedings are extracted herein below:

"...20. Having noticed the above, the impugned office order dated 25.11.2013 may now be adverted to:

" OFFICE ORDER

Dated Dispur, The 25th November, 2013

No.WR(E)144/2013/246 : The Governor of Assam is pleased to accept recommendations of The Committee constituted for earmarking percentage of vacancies in Grade-III (SA) to be filled up on promotion from Grade-IV (Khalasi) under Water Resources Department as follows :-

The percentage of quota for Grade-IV (Khalasi) employees for promotion to Grade-III (SA) is fixed at 10% of the cadre strength of SA i.e., 90% posts of Grade-III (SA) will be filled up by direct recruitment and 10% posts will be kept reserved for eligible Grade-IV (Khalasi) to be filled up by way of promotion in the manner as provided in "The Assam Ministerial District Establishment Service Rules, 1967" in respect of promotion of Grade-IV to Grade-III in District Level Offices.

The conditions for filling up of the 10% promotional posts of Grade-III (SA) from Grade-IV (Khalasi) will be as follows:

1) Minimum 8 (eight) years of continuous service in respect of those Khalasis who are HSLC passed or equivalent at the time of entry in The Govt. Service or had procured the qualification with due permission from the appointing authority and 70% promotional posts are to be filled up by These incumbents.

2) Minimum 10 (ten) years of continuous service in respect of those Khalasis who have read upto Class-IX (ten) at the time of entry in The Govt. service or have procured the qualification with due permission from the appointing authority and 20% promotional posts are to be filled up by these incumbents.

3) Minimum 15 (fifteen) years of continuous service in respect of those Khalasis who have read upto Class-VIII (eight) and 10% promotional posts are to be filled up by these incumbents.

However, the persons holding Personal Posts do not come under the ambit of this order.

This order will come into force with immediate effect until further order and cancels all other previous office orders related to promotion of Grade-IV (Khalasi) to Grade-III (SA) issued by the Department.

Sd/-

(RC Sarma)

*Commissioner & Special Secretary to Govt. of Assam,
Water Resources Department, Dispur, Guwahati-6. "*

21. From a perusal of the aforesaid office order dated 25.11.2013, it is seen that 90% of the posts in the cadre of Section Assistant is to be filled up by way of direct recruitment and 10% of the posts are to be filled up by way of promotion from amongst Grade-IV (Khalasi). The promotion is to be carried out in the manner as provided in The Assam Ministerial District Establishment Service Rules, 1967. The eligibility conditions for such promotion are mentioned in the impugned order. However, what is more relevant in the context of the lis involved in the present litigation is the exclusion of persons holding personal posts from such promotion.

22. Question is what do we understand by personal posts. The background which led to regularization of service of the petitioner as Grade-IV (Khalasi) against personal posts has already been noticed. Finance Department had made it clear, which has been reiterated by the administrative department that the regularization of service of the petitioner would be against personal posts and these posts would stand abolished the moment the incumbents relinquished their posts in any manner. This would mean that the posts held by the petitioner i.e., The personal posts are outside the cadre of Grade-IV (Khalasi). Therefore, personal posts would mean ex-cadre posts. In other words, petitioner are ex-cadre posts. They are not part of the cadre of Khalasi (Grade-IV). In service jurisprudence, promotion is necessarily from the feeder cadre to the higher cadre in the service, since respective cadres form part of the service. Unless one is encadred in the feeder cadre, she cannot claim promotion to the higher cadre. Since petitioner are holding ex-cadre posts and are not encadred, they are not entitled to promotion to the next higher

cadre which is the cadre of Section Assistant. This was also a condition of their regularization. The petitioner having accepted their regularization with all the terms and conditions, including the aforesaid condition that they would be regularized against personal posts sanctioned only for the purpose of regularization and, therefore, would be holding personal posts, which decision has been followed by the administrative department, petitioner cannot now turn around and assail such decision as being arbitrary and discriminatory.

23. In The present case, the impugned decision as above, cannot be said to be arbitrary or unreasonable, it being a condition of regularization. Those holding cadre post in the cadre of Khalasi and those holding ex-cadre post of Khalasi are not similarly situated. They cannot be treated alike for the purpose of promotion. Therefore, question of discrimination does not arise."

9. The decision of this court in the case of **Matiur Rahman Laskar** (supra) squarely applies to the issues arising in the present proceedings and accordingly the petitioner having been regularized against a personal post it is to be held that she would not figure in the feeder cadre for promotion to the cadre of LDA and as such no direction can be issued requiring the respondents to consider the case of the petitioner for promotion to the cadre of LDA.

10. This brings this Court to consider the claim of the petitioner that said Diganta Sarma being similarly situated, was promoted to the post of LDA vide the order dated 20.01.2011 and accordingly, she is also entitled to similar benefit. It is to be noted that although contentions with regard to the promotion as effected in the case of said Diganta Sarma came to be made in the writ petition, the petitioner has not challenged the order of promotion dated 20.01.2011 nor made said Diganta Sarma a party respondent in the present proceedings. Accordingly in the absence of a challenge to the promotion of said Diganta Sarma and he not being present before this court in the present proceedings no interference with the said order dated 20.01.2011 can be made by this Court.

11. In view of the discussions and conclusions as reached hereinabove, this writ

petition is held to be without any merits and the same, accordingly, stands dismissed. However, there will be no order as to cost.

JUDGE

Comparing Assistant