

GAHC010289062023



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

Case No. : I.A.(Civil)/3863/2023

BISWAJIT HAZARIKA,
S/O LATE DHARMESWAR HAZARIKA, R/O VILL. PUB JALUGUTI, P.O.
JALUGUTI, MORIGAON-782104, DIST. MORIGAON, ASSAM

VERSUS

MD. ARIFUL ISLAM AND 17 ORS
S/O- LT. M.A.WAHID, R/O- GANESH NAGAR, P.O. BAMUNIMADAM, P.S.
CHANDMARI, DIST.- KAMRUP (M), ASSAM.

2:DIP KUMAR DUTTA
S/O- LT. KUSHESWAR DUTTA
R/O- VILL- RAGHUBARI
P.O. DIKHOWMUKH
P.S. GAURISAGAR
DIST.- SIVASAGAR
ASSAM

3:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
TRANSPORT DEPARTMENT
DISPUR
GHY-6

4:THE SECY. TO THE GOVT. OF ASSAM
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5:THE COMM. OF TRANSPORT
ASSAM

PARIBAHAN BHAWAN
GHY-22

6:BHABA PRASAD KAKATI

ENFORCEMENT INSPECTOR
C/O- OFFICE OF THE COMMISSIONER OF TRANSPORT
ASSAM
PARIBAHAN BHAWAN
JAWAHAR NAGAR
KHANAPARA
GUWAHATI-22

7:DEBAJYOTI BARUAH
ASSTT. ENFORCEMENT INSPECTOR
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9:TRIDIV LOSSAN DUTTA
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10:RANJIT CHANDRA KALITA
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11:PARAG MONI BARUAH
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GHY-2

Advocate for the Petitioner : MR. K P PATHAK

Advocate for the Respondent : MR. D P BORAH

Linked Case : I.A.(Civil)/3819/2023

BHABA PRASAD KAKATI
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Advocate for : MR. B K DAS
Advocate for : SC

TRANSPORT appearing for MD. ARIFUL ISLAM AND 17 ORS.

Linked Case : I.A.(Civil)/3862/2023

SATYA NARAYAN BHUIHAR
S/O LATE KABI RAM BHUIHAR
R/O DEKA CHUBURI
TEZPUR
DEKARGAON
TEZPUR-784501
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Advocate for : MR. K P PATHAK
Advocate for : SC
TRANSPORT appearing for MD. ARIFUL ISLAM AND 17 ORS

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

02.02.2024

Heard Mr. K. P. Pathak, learned counsel for the applicants in I.A.(Civil) Nos.3862/2023 and 3863/2023. Also heard Mr. B. K. Das, learned counsel for the applicant in I.A.(Civil) No.3819/2023. Mr. M. Nath, learned senior counsel assisted by Mr. D. P. Borah, learned counsel for the writ petitioners/OPs as well as Ms. M. D. Borah, learned Standing Counsel, Transport Department, Assam are present on behalf of the opposite parties.

The applicants in I.A.(Civil) Nos.3862/2023 and 3863/2023 are impleaded as respondent Nos.4 and 6 respectively in the connected writ petition whereas, the sole applicant in I.A.(Civil) No.3819/2023 is impleaded as respondent No.5 in the writ petition. All these applicants have approached this Court by filing individual applications with a prayer to vacate/modify the interim order dated 21.12.2020 passed by the learned Single Judge in WP(C) No.5282/2020 whereby, the notification dated 21.11.2020, by means of which, the three applicants herein i.e. the respondent Nos.4, 5 and 6 in the writ petition, were promoted

from the post of Assistant Enforcement Inspector to the posts of Enforcement Inspector, was stayed. The writ petitioners/opposite parties are presently serving as Assistant Enforcement Inspector and are admittedly junior to the applicants/respondent Nos.4, 5 and 6 as per the date of entry in service. However, the writ petitioners/OPs have assailed the notification dated 21.11.2020 on the ground that on the date of holding the meeting of the Selection Committee, all the three applicants/respondent Nos.4, 5 and 6 were aged above 50 years and therefore, as per Rule 11(6)(i) of the Assam Transport Service Rules, 2003, they could not have been considered for promotion as they had completed 50 years of age as on the 1st day of January of the year in which the Selection Committee had met for promoting these respondents.

By referring to the relevant provisions of the Rules i.e. Rule 11(6)(i) as well as Rule 12 the learned counsel for the applicants have argued that the Rules of 2003 lay down a scheme for processing the promotion of Assistant Enforcement Inspector and since the vacancies are to be filled up on an year-wise assessment of the same and considering the fact that the vacancies against which the respondent Nos.4, 5 and 6 were promoted, arose in the year 2018/2019 on which date, they were admittedly below 50 years of age, the mere fact that the Selection Committee had met in the year 2020 would not denude them of the right under the Rules to be considered for promotion to the rank of Enforcement Inspector. The learned counsel for the applicants have further argued that in view of the interim order dated 21.12.2020 passed by the learned Single Judge, the promotion already given to the applicants were reversed and they were reverted back to the original post of Assistant Enforcement Inspector, thus causing serious prejudice to their interest.

By referring to the decision of the Supreme Court rendered in the case of **Union of India and another Vs. Hemraj Singh Chauhan and others** reported in **(2010)4 SCC 290** Mr. Pathak, learned counsel for the applicants has argued that clubbing the posts together for holding the selection process for promotion would be impermissible under the Rules and therefore, merely because the posts were clubbed together, the same cannot take away the right of the applicants/respondent Nos.4, 5 and 6 of being promoted since they were otherwise eligible for being promoted to the rank of Enforcement Inspector on the date on which the vacancies arose.

Responding to the above arguments Mr. M. Nath, learned senior counsel for the writ petitioners has placed heavy reliance on a decision of the learned Single Judge of this Court in the case of **Sri Chitra Kumar Nath and others Vs. State of Assam** and others [WP(C) 4424/2013] to submit that by interpreting the same set of Rules, the learned Single Judge has held that the age of the candidates on the first day of the year when the DPC is held will be relevant and unless the Government relaxes the upper age limit, the over aged candidates could not be considered for promotion.

Ms. M. D. Borah, learned Standing Counsel for the Transport Department, on the other hand, has opposed the stand of the writ petitioners and by relying upon a decision of the Supreme Court rendered in the case of **Jagadish Prasad vs. State of Rajasthan** reported in **(2011) 7 SCC 789**, she submits that clubbing of vacancies is done only for the purpose of calculating the arithmetical figure but the same would have to be filled up as year-wise vacancies.

I have considered the submissions made at the Bar and have gone through the materials available on record.

There is no doubt or dispute about the fact that the applicants herein, who were earlier promoted to the rank of Enforcement Inspector vide Notification dated 21.11.2020, did meet the eligibility requirement under the Rules including the age criteria on the date on which the respective vacancies had arisen. They had rendered 10 years of service. However, on 1st day of January, 2020 they had also crossed the upper age limit of 50 years. It is no doubt correct that in the decision of **Sri Chitra Kumar Nath (supra)** the learned Single Judge has expressed an opinion that in such an eventuality, the Government would have to relax the upper age limit of the candidates so as to make them eligible under the Rules, yet, on a careful reading of the observation and findings recorded by the Apex Court in the case of **Jagadish Prasad (supra)**, I find that a somewhat contrary opinion has been expressed in that case by the Supreme Court. In the case of **Jagadish Prasad (supra)** the Hon'ble Supreme Court has clearly observed in para 26.5 that the year-wise vacancies could be clubbed only for the purpose of calculating an arithmetical figure but those vacancies were required to be filled up considering the eligibility of the officers for promotion.

After going through the materials placed on record, this Court, on an interpretation of the Rules of 2003, is of the *prima facie* opinion that the eligibility of the officers for promotion under Rule 11(6)(i) of the Rules of 2003 would depend on their right to be considered for promotion on the 1st day of the year in which the vacancies had arisen and not on the 1st day of the year in which the Selection Committee had met. Such a view appears to be consistent with the law laid down by the Supreme Court in the case of **Jagadish Prasad (supra)**.

Therefore, whether the views expressed by the learned Single Judge in **Chitra Kumar Nath (supra)** is in conflict with the law laid down in the case of **Jagadish Prasad** (supra) and if so, whether the same calls for reconsideration by a larger Bench, is a matter that will have to be examined by this Court at the stage of final hearing of the writ petition.

However, having regard to the facts and circumstances of the case, this Court is of the opinion that the interim order dated 21.12.2020 passed by the learned Single Judge deserves to be vacated. Ordered accordingly.

Consequently, it would now be open for the departmental authorities not only to notify the promotion of the applicants herein i.e. the respondent Nos.4, 5 and 6 in the writ petition but also the writ petitioners or any other officer serving in the rank of Assistant Enforcement Inspector who is found to be eligible under the Rules, if vacancies are available. The candidature of all eligible candidates be considered for promotion to the next higher rank of Enforcement Inspector by following the mandate of Rule 11(6)(i) read with Rule 12 of the Rules of 2003. However, any promotion given, either to the applicants herein or any other departmental candidates, during the pendency of the connected writ petition, would be subject to the final orders that may be passed in the connected writ petition.

With the above observation, these three I.As. stand disposed of.

JUDGE

Comparing Assistant