

GAHC010293512023



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

Case No. : WP(C)/237/2024

NABIN CHANDRA KALITA AND ANR
S/O- LATE BALO RAM KALITA,
VILL- BARBELBARI,
P.O.- JARKONA, P.S.- TAMULPUR,
PIN- 781376, DISTRICT- TAMULPUR (BAKSA),
ASSAM.

2: SURENDRA MOHAN GOSWAMI
SON OF RAMA KANTA GOSWAMI

RESIDENT OF RANGIA BHUTAN ROAD

NEAR RANGIA HINDI H.S. SCHOOL

WARD NO. 5
P.O. AND P.S.- RANGIA

DISTRICT- KAMRUP
ASSAM
PIN- 781354

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
IRRIGATION DEPARTMENT, ASSAM SECRETARIAT,
DISPUR, GUWAHATI, ASSAM- 781006.

2:CHIEF EXECUTIVE ENGINEER

IRRIGATION DEPARTMENT
KRISHNA NAGAR
CHANDMARI
GUWAHATI
781003.

3:EXECUTIVE ENGINEER
TAMUKPUR (BOROLIA) DIVISION
IRRIGATION DEPARTMENT
TAMULPUR
VILLAGE- BARKHATA

P.O.- PASCHIM JHARGAON
P.S.- TAMULPUR

DISTRICT- BAKSA
BTC
ASSAM

PIN- 781367.

4:COUNCIL HEAD OF DEPARTMENT (IRRIGATION)
BODOLAND TERRITORIAL COUNCIL SECRETARIAT
KOKRAJHAR
BODOLAND TERRITORIAL REGION (BTR)

PIN- 783370

Advocate for the Petitioner : MR. S P SHARMA

Advocate for the Respondent : SC, IRRIGATION

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For petitioners : Mr. S. P. Sarma, Adv.

For respondents : Mr. N. Upadhaya, SC, Education.

: Mr.P. Nayak, SC, BTC.

Date of hearing & Order : 17.07.2024.

ORDER (ORAL)

Heard Mr. S. P. Sarma, learned counsel for the petitioners. Also heard Mr. N. Upadhaya, learned Standing Counsel for the Education Department representing respondent Nos. 1 and 2 and Mr. P. Nayak, learned Standing Counsel for the BTC representing respondent Nos. 3 and 4.

2. The case of the petitioners is that they were initially appointed as Muster-roll workers, and in course of time pursuant to the Government order dated 22.08.2005, the service of the petitioners were regularized under Borolia Division, Irrigation, Tamulpur for which a separate order dated 05.10.2005 was issued. w.e.f. 22.07.2005. The grievance of the petitioners is that they were never considered for promotion and therefore, they had submitted a representation to the respondent authorities to consider their promotion to the post of Section Assistant/Lower Division Assistant. It is also projected that there were 3 (three) posts of Section Assistant/LDA in the Office of Borolia Irrigation Division, Tamulpur. On the receipt of a representation by the petitioners, the Executive Engineer, Tamulpur, Borolia Division, had sent a proposal to the Council Head of Department (Irrigation), BTC (respondent No. 4) for promoting the petitioners to the post of Section Assistant. As the respondent No. 4 has not constituted DPC for considering the candidature of the petitioners for promotion, the petitioners have approached this Court by filing this writ petition under Article 226 of the Constitution of India.

3. The learned counsel for the petitioners have submitted that many other similarly situated persons under the Irrigation Department were holding

personal posts pursuant to their respective regularization of service and had been promoted to the next higher post of Section Assistant/ Lower Division Assistant. Accordingly, it is submitted that the non-consideration of the candidature of the petitioners for promotion is detrimental to the legal and fundamental rights of the petitioners. In support of his submissions, that similarly situated persons were promoted, the learned counsel for the petitioners has placed reliance upon the Office order No. 88 dated 02.02.2022, issued by the Executive Engineer (PHE), Irrigation Division, Rangia to project that 8 (eight) similarly situated persons same as the petitioners were promoted.

4. The learned Standing Counsel for the Irrigation Department as well as the learned Standing counsel for the BTC have submitted that as the service of the petitioners were regularized from Muster-roll workers to the post of Khalasi which is a Grade-IV post and the appointment orders make it clear that the posts were personal to the incumbent concerned who are holding the post and be abolished as soon as the concerned incumbent relinquish their post in any manner. Accordingly, it is submitted that the petitioners have not yet borne in the Grade-IV cadre for being promoted to the next higher post of Section Assistant/LDA which is a Grade-III post.

5. Upon hearing the submissions, we have relied on the decision of this Court in the case of *Harendra Chandra Lahkar Vs The State of Assam and Ors, WP(C) No. 8985/2019* which was decided by this Court on 05.10.2021. The petitioners therein were also Muster-roll workers and their service was regularized w.e.f. 22.07.2005 under the Irrigation Department and the post to which they were regularized was a personal post. The petitioners therein were promoted to the next higher post and thereafter the petitioners were reverted back to their

original post and accordingly a challenge was made, which was negated by this Court by holding that promotion to a higher rank can be considered only from a feeder cadre and as the petitioners therein were not en-carded in the feeder cadre, they were dis entitled to claim promotion to the next higher cadre and accordingly, it was also held that the petitioners were not even born in the Grade-IV posts and that the personal posts which they were holding was an ex-cadre post and therefore, they could not be promoted to the post of Junior Assistant which was a Grade-III post.

6. The Court finds that the petitioners are situated similar to the petitioners in WP(C) No. 8985/2019. As the petitioners are not even born in the Grade-IV post, petitioners do not have a indefeasible right to be considered for promotion to the next higher post.

7. Accordingly, this writ petition is found devoid of any merit and is therefore, dismissed.

JUDGE

Comparing Assistant