

GAHC010295122023



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

Case No. : WP(C)/14/2024

NAGENDRA KALITA AND ANR
S/O LT. KALINDRA KALITA R/O PUBERAN APARTMENT LAKHIMI NAGAR
PATH PS HATIGAON GUWAHATI 781038 DIST. KAMRUP M ASSAM

2: HIREN DAS
S/O LT KARUNA KANTA DAS HOUSE NO. 14 OPPOSITE HINDUSTANI
KENDRIYA VIDYALAYA DINESH OJHA ROAD RAJGARH ROAD
BHANGAGARH GUWAHATI ASSAM PIN78100

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP BY THE CHIEF SECRETARY TO THE GOVT OF ASSAM DISPUR
GUWAHATI 781006

2:THE SPECIAL COMMISSIONER AND SPECIAL SECRETARY
TO THE GOVT OF ASSAM PUBLIC WORKS ROADS DEPTT DISPUR
GUWAHATI 6

3:THE SPECIAL COMMISSIONER AND SPECIAL SECRETARY
TO THE GOVT OF ASSAM PUBLIC WORKS BUILDING AND NH WORKS
DEPTT DISPUR GUWAHATI 6

4:THE SECRETARY
TO THE GOVT OF ASSAM PUBLIC WORKS ROADS DEPTT DISPUR
GUWAHATI 6

5:THE SECRETARY
TO THE GOVT OF ASSAM PUBLIC WORKS ROADS DEPTT DISPUR
GUWAHATI 6

6:THE DEPUTY SECRETARY
TO THE GOVT OF ASSAM ESTABLISHMENT AND CONFIDENTIAL CELL
PWRD DISPUR GUWAHATI

Advocate for the Petitioner : MR. D P BORAH

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 10-01-2024

Heard Mr. M. Nath, learned Sr. counsel assisted by Mr. D.P. Borah, learned counsel for the writ petitioners. Also heard Mr. P. Nayak, learned standing counsel, Finance Department, Assam and Mr. C.S. Hazarika, learned Govt. Advocate, Assam appearing for the official respondents.

The two writ petitioners herein are holding the post of Addl. Chief Engineer in the Public Works Department (PWD), Assam. The petitioner No. 1 is due for retirement on attaining the age of superannuation w.e.f. 31-01-2024 whereas the petitioner No. 2 is due for retirement w.e.f. 31-05-2024.

The grievance of the petitioners is that, although there are as many as five vacancies in the rank of Chief Engineer available in the department and notwithstanding the fact that several rounds of Departmental Promotion Committee (DPC) meetings have already been held for promoting the Superintending Engineer to the post of Addl. Chief Engineer, the process is yet to be held so as to finalised the candidates for promotion to the vacant posts of Chief Engineer, as a result of which, the interest of the petitioners have suffered serious prejudice.

Mr. Nath submits that the petitioner No. 1 is the second senior most candidates in the gradation list of Addl. Chief Engineer and the petitioner No. 2 is the fifth senior most candidates in the said list. Therefore, since there are five vacancies available in the rank of Chief Engineer, PWD and considering the fact that the petitioners come within the zone of consideration, the respondent authorities ought to have considered their candidature and finalised the promotion process for filling up the vacancies in the rank of Chief Engineers. Mr. Nath has also invited the attention of this Court to the order dated 16-06-2023 passed by this Court in W.P.(C) No. 3445/2023 instituted by similarly situated departmental candidates seeking similar relief, as well as the decision rendered in the case of ***Syed Habibur Rahman Vs. The State of Assam & 02 Ors. [W.P.(C) No. 688/2014]*** to submit that the petitioners have a fundamental right to be considered for promotion and as such, denial of consideration for promotion would amount to violation of their fundamental rights guaranteed under Article 14 and 16 of the Constitution of India.

Mr. Nayak submits that the DPC process is under progress and decision in the matter is expected shortly. Therefore, he would have no objection if the writ petition is disposed of by providing that the cases of the petitioners be considered for promotion in a time bound manner.

In the case of ***Syed Habibur Rahman (Supra)***, this Court, while considering the right of the candidate for being considered for promotion, had made the following observations in paragraph 11, which are reproduced herein below for ready reference:-

“11. Law is well settled that the right to be considered for promotion is a

facet of fundamental right. Whether a particular candidate is entitled to be promoted or not is a matter that would depend on application of the promotional criteria to the candidature of such candidate, i.e. in the facts and circumstances of each case. But if there are vacancies available for being filled up by way of promotion and there are eligible departmental candidates who had a right to be considered for promotion to such posts, the authorities cannot deny such candidates, coming within the zone of consideration, an opportunity of being promoted and thereby deprive them not only of the satisfaction of career progression but also the consequential pecuniary benefits."

I also find that there is no dispute regarding the eligibility of the petitioners for being considered for promotion to the post of Chief Engineer, PWD. Since the petitioners are due for retirement in near future, it is evident that there is considerable urgency in the matter. Therefore, a writ of mandamus, in the opinion of this Court, would lie, directing the respondents to expeditiously consider the case of the petitioners for promotion.

In view of the above, this writ petition stands disposed of by providing that the DPC would consider and take a final decision on the question of promotion of the writ petitioners to the post of Chief Engineer, PWD, along with other eligible candidates, who are also within the zone of consideration. The process be carried out as expeditiously as possible, preferably within 10 days from today and the decision in respect thereof, be communicated to the petitioners within 02 days thereafter.

A copy of this order be produced before the departmental authorities for necessary compliance.

With the above observation, this writ petition stands disposed of.

JUDGE

GS

Comparing Assistant