

GAHC010008252014



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

Case No. : WP(C)/1912/2014

NIRMAL NATH
S/O NONDA LAL NATH, W/C CHOWKIDAR, O/O THE ASSISTANT
EXECUTIVE ENGINEER, PWD, PATHARKANDI BRC SUB DIVISION UNDER
BODARPUR BRC DIVISION, P.O. PATHARKANDI, PIN-788724, DIST-
KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE UNDER SECRETARY TO THE GOVT. OF ASSAM,
PWD ESSTT B BRANCH, DISPUR, ASSAM, SACHIVALAYA, GHY-6

2:THE CHIEF ENGINEER
PWDROADS
ASSAM
CHANDMARI
GHY-3

3:THE CHIEF ENGINEER
PWDBORDER ROADS and N.E.C. WORKS
ASSAM
CHANDMARI
GHY-3

4:THE SUPDT. ENGINEER
PWD
KARIMGANJ
BRC CIRCLE
KARIMGANJ
PIN-788710

5:THE EXECUTIVE ENGINEER

PWD
BODARPUR BRC DIVISION
BODARPUR
DIST- KARIMGANJ
ASSAM

6:THE ASSTT. EXECUTIVE ENGINEER

PWD
GUMRAH BRC SUB DIVISION
UNDER BODARPUR BRC DIVISION

7:AMALENDU SEN
JUNIOR ASSTT. CUM TYPIST
LDA IN THE O/O ASSTT. EXECUTIVE ENGINEER
PWD
BRC SUB DIVISION
UNDER BODARPUR BRC DIVISION
PATHARKANDI
PIN-788724
DIST- KARIMGANJ
ASSAM

8:THE D.C.
KARIMGANJ
ASSA

Advocate for the Petitioner : MR.R DAS

Advocate for the Respondent : MR.G R DEV

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

JUDGMENT & ORDER(ORAL)

Date : 19.03.2024

Heard Mr. A. J. Ghosh, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned Standing Counsel for the PWD and Mr. A. R. Shome, learned counsel appearing for the respondent no. 7.

2. The petitioner, by instituting the present proceeding has presented a challenge to an order dated 03.10.2013, by which the respondent authorities had promoted the respondent no. 7 to the post of Junior Assistant-cum-Typist. The petitioner has further prayed for his promotion as a Junior Assistant with effect from the date, the respondent no. 7 was promoted i.e., w.e.f. 03.10.2013.

3. The petitioner was initially engaged as a W/C Chowkidar vide an order dated 06.06.1992. It is the contention of the petitioner that while serving as a W/C Chowkidar, the respondent authorities vide an order dated 30.12.1994 had engaged the petitioner for works of clerical nature and accordingly, the petitioner continued to perform clerical jobs in the establishment where he was so engaged. In terms of a policy decision adopted by the respondent authorities, the case of the petitioner was considered for regularization of his services and accordingly, the services of the petitioner came to be regularized w.e.f. 22.07.2005, by issuance of

an office order dated 17.11.2005.

4. It is to be noted that the said regularization of the services of the petitioner was in terms of the policy so effected against a personal post created by the Government vide an order dated 13.09.2005. As per the mandate behind the creation of such personal posts, the same would, stand abolished on the date of the retirement of the holder of such personal posts or, on the date when he resigns or dies in harness. Accordingly, the post as created for regularization of the services of the petitioner was an ex-cadre post.

5. On the other hand, the respondent no. 7, had joined his services on 05.04.1999 against a regular post. The case of the respondent no. 7 was considered for promotion to the next higher cadre post of LDA-cum-Typist (now called as JA) and on such consideration, the respondent no. 7 being found to be eligible, was so promoted vide an order dated 03.10.2013. The petitioner being senior in service, although initially placed in the W/C establishment has raised a grievance with regard to the promotion as effected in the case of the respondent no. 7 and has instituted the present proceeding assailing the said promotion along with a further prayer that he should be so considered for promotion to the next higher cadre of LDA-cum-Typist.

6. The issue that arises for consideration in the present proceeding is as to whether the petitioner being a holder of personal posts would be entitled to have his case considered for promotion for the next higher

grades of the service. The said issue is no longer res integra and this Court, in the case of *Matiur Rahman Laskar & Anr Vs. State of Assam & Ors.*, reported in *2015 SCC Online GAU 113*, after considering the purport of the term “personal posts” concluded that the persons holding ex-cadre post being not holders of cadre post are not entitled to promotion to the next higher grades of the service. The conclusions as arrived at by this Court in the case of *Matiur Rahman Laskar (supra)* being relevant are quoted herein below:

“15. As already indicated at the outset, the point for consideration is whether Khalasis (Grade-IV) holding personal posts are entitled to promotion to the post of Section Assistant. (Grade-III).

16. To appreciate the controversy in the light of the above issue, it would be apposite to briefly refer to the policy decision of the Government.

17. It is seen from the documents placed on record that the Cabinet in its meeting held on 22.7.2005 decided to regularized the services of Work Charged/Muster Roll workers of different State Government departments, who were prior to 1.4.1993 and were in continuous service without any interruption/break, irrespective of their length of service. Consequent upon the Cabinet decision, Finance Department gave concurrence on 22.8.2005 to the creation of 5,829 numbers of different Work Charged Grade IV posts and 25,069 numbers of different Grade-IV posts w.e.f. 22.7.2005 for regularization of the services of 5,892 Work Charged employees and 25,069 numbers of Muster Roll workers. The Finance Department laid down certain guidelines for the purpose of regularization and it was clarified that such guidelines should be strictly adhered to. As per guideline No. 5, the posts created are personal to the respective Work Charged employees/Muster Roll workers and will be abolished as soon as the incumbents relinquished the posts in any manner.

18. Pursuant to the Finance Department concurrence dated 22.8.2005, the Water Resources Department issued consequential order dated 1.10.2005 sanctioning the allotted posts to the Department for the purpose of regularization of the Work Charged employees and Muster Roll workers. Thereafter, orders were issued by the concerned Executive Engineers wherein, it was clarified that the posts sanctioned are personal to the respective employees/workers holding the posts and would stand automatically abolished as soon as the incumbent relinquishes, his/her post in any manner.

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22. Question is what do we understand by personal posts. The background which led to regularization of service of the petitioners as Grade-IV (Khalasi) against personal posts has already been notiled. Finance Department had made it clear/which has-been reiterated by the administrative department that the regularization of service of the petitioners 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 petitioners, i.e., the personal posts are outside the cadre of Grade-IV (Khalasi). Therefore, personal posts would mean ex-cadre posts. In other words, petitioners 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, he cannot claim promotion-to the higher cadre Since petitioners 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 petitioners 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, petitioners 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.”

7. The said decision of this Court in the case of *Matiur Rahman Laskar (supra)* was assailed by the petitioners therein before a Division Bench of this Court in the case of *Dilip Talukdar & Ors. Vs. State of Assam & Ors.*, reported in *2017 (2) GLT 135*. The Division Bench of this Court, on considering the decision of this Court in the case of *Matiur Rahman Laskar*

(*supra*) came to uphold the same holding that the promotions in the department can be considered only from eligible employees in the feeder cadre and the writ petitioner being outside the cadre cannot have any enforceable right to claim promotion, particularly when, the regularization order itself stipulates that he was regularized in a post personal to him. It was further held that such temporary creation of post cannot automatically add to the cadre strength of the department and claim for promotion from a person holding an ex-cadre post, is not legally tenable.

8. Applying the ratio of the decisions of this Court in the case of *Matiur Rahman Laskar (supra)* and in case of *Dilip Talukdar (supra)*, it is seen that the petitioner being a holder of a personal post cannot claim to have his case considered for promotion to the next higher grades in the service. Accordingly, the petitioner not placed against a post in the feeder cadre of the promotional post of LDA, his case for such promotion to the post of LDA cannot be directed. Accordingly, the claim made by the petitioner for promotion to the higher post of LDA is required to be rejected.

9. The petitioner having been held to be not eligible for being considered to the higher grades of LDA brings this Court to consider the challenge made by the petitioner to the promotion so effected in the case of the respondent no. 7.

10. It is to be noted that the respondent no. 7 was appointed in his services as a regular employee and had joined the office of the Executive

Engineer, PWD, Bodarpur Division against a sanctioned post of peon on 05.04.1999. The respondent no. 7 having joined in the establishment of the Executive Engineer, PWD, Bodarpur Division against a sanctioned vacant post, he would have to be treated to be an incumbent in the feeder post for promotion to the cadre of LDA. Accordingly, the promotion as effected in the case of the respondent no. 7 vide order dated 03.10.2013 to the cadre of LDA, being so effected by following the norms governing such transfer and by treating the respondent no. 7 to be a holder of a post in the feeder cadre for promotion to the grade of LDA, the promotion as effected in the case of the respondent no. 7 does not call for any interference.

11. In view of the conclusions as reached herein above, the contentions raised by the petitioner in the writ petition does not merit acceptance.

12. The writ petition is held to be devoid of any merit and accordingly, the same stands dismissed. However, there would be no order as to costs.

JUDGE

Comparing Assistant