

GAHC010019222016



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

Case No. : WP(C)/3843/2016

JAYANTA ROY CHOWDHURY
S/O- LT. AROBINDA BIKASH ROY CHOWDHURY, R/O- OPP. D.S./10
BUILDING, REST CAMP, PANDU, P.O. and P.S.- JALUKBARI, GHY- 12, DIST.-
KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECY., TRANSPORT DEPTT., GOVT. OF
ASSAM, DISPUR, GUWAHATI, ASSAM, PIN- 781006.

2:THE DIRECTOR OF INLAND WATER TRANSPORT
ULUBARI
GHY- 7
DIST.- KAMRUP M
ASSAM.

3:THE UNION OF INDIA
REP. BY THE SECY.
MINISTRY OF HUMAN RESOURCE DEVELOPMENT
DEPTT. OF HIGHER EDUCATION
GOVT. OF INDIA
SHASTRI BHAWAN
NEW DELHI.

4:THE MEMBER SECRETARY
ALL INDIA COUNCIL FOR TECHNICAL EDUCATION
INDIRA GANDHI SPORTS COMPLEX
I.P. ESTATE
NEW DELHI
110002.

5:THE SECRETARY
THE INSTITUTE OF CIVIL ENGINEERS INDIA "CAREER HOUSE"
4
EAST PARK ROAD
KAROL BAGH
NEAR NEW ROHTAK ROAD
NEW DELHI- 110005

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocates for the petitioners : Shri A. Ganguly, Advocate.

Advocates for respondents : Ms. M.D. Bora, SC, Transport Department.
Shri S.S. Roy, C.G.C.

Date of hearing : 24.04.2024

Date of judgment : 24.04.2024

Heard Shri A. Ganguly, learned counsel for the petitioner. Also heard Ms. M.D. Bora, learned Standing Counsel, Transport Department. Shri S.S. Roy, learned C.G.C. is also present.

2. Though Shri Ganguly, the learned counsel for the petitioner has prayed for some time to take instructions in this matter, considering that this writ petition is

pending since the year 2016, the said prayer is rejected. This Court has also noticed that time to seek instructions was given long back on 16.03.2018 which was extended on 22.03.2018 and lastly on 10.02.2020 and in spite of the direction of this Court, no additional affidavit has been filed.

3. In view of the said position, this Court has no other option but to go ahead with the adjudication of this writ petition which is pending for the last about 8 years.

4. The facts projected is that the petitioner had completed his Diploma in Civil Engineering from the Silchar Polytechnic and was appointed as Work-Charge Junior Engineer (Civil) on 28.03.1992 in the establishment of the Inland Water Transport Division, Silchar. The aforesaid arrangement of Work-Charge was regularised in the year 2004. The petitioner claims to have passed the Section A & B of Associate Membership Examination (AMICE) (I) in Civil Engineering from the Institute of Civil Engineers (India), Ludhiana in the year 2013. It is the case of the petitioner that such qualification is equivalent to a Degree which is recognized by the Ministry of Human Resource Development, Government of India which was notified on 06.11.2007 in the Gazette. It is also submitted by the learned counsel that the Degree obtained by the petitioner is also approved by the All India Council for Technical Education for the purpose of employment to the post of service under the Central Government in the appropriate field.

5. On the strength of such Degree, the petitioner had submitted a representation on 31.10.2013 to the respondent no. 2 for his promotion. It is contended that certain similarly situated persons who were denied promotion

had approached this Court by way of writ petitions. The said writ petitions namely, WP(C)/331/2011 and WP(C)/746/2012 were disposed of vide orders dated 29.02.2011 and 29.03.2012 directing the respondents to consider their cases. It is further contended that in the meantime vide notification dated 22.11.2013, two Junior Engineers were promoted to the post of Assistant Engineer and one of the said incumbent was junior to the petitioner. Subsequently, another 14 numbers of Junior Engineers were given the promotion to Assistant Engineer in the Public Works Department. However, the petitioner was not considered.

6. Vide a letter dated 31.10.2015, the views of the respondent no. 4 was sought for with regard to the genuinity of the Degree acquired by the petitioner. The petitioner being aggrieved has thereafter approached this Court.

7. Shri Ganguly, the learned counsel has submitted that the Degree obtained by him from the Institute of Civil Engineers (India), Ludhiana is a recognized degree and therefore, the same is to be considered as fulfilling the eligibility criteria in terms of qualification for his promotion to the post of Assistant Engineer.

8. *Per contra*, Ms. Bora, the learned Standing Counsel has submitted that to resolve the issue, this Court vide order dated 16.03.2018 had granted the learned counsel for the petitioner to obtain instructions as a specific objection was raised by the State Counsel that the AICTE does not recognize the qualification obtained by the petitioner through distant mode. For ready reference, the order dated 16.03.2018 is extracted herein below:

“16.03.2018

The petitioner claims promotion to the post of Assistant Engineer on the strength of the Civil Engineering Degree secured by him from the Institution of Civil Engineers (India), Ludhiana, Punjab, He relies upon the Notification dated 06.11.2007, issued by the Joint Director to the Government of India to support his submission that the degree is recognized by the Government.

On the other hand, Mr. M.R Adhikari has produced a letter dated 15.03.18, issued by the Deputy Secretary to the Government of Assam, Transport Department, Public Notice issued by the AICTE and letter dated 22.05.2017, issued by the Director of Technical Education, to project that the AICTE does not recognize the qualification secured by the petitioner through distant education mode.

The petitioner's counsel prays for time to obtain instructions and to also enquire whether the degree was acquired through distant mode education.

List the matter on 22.03.2018.”

9. The matter had come up for consideration on 22.03.2018 when the submission of the learned counsel for the petitioner was recorded that the Institute of Civil Engineers (India), Ludhiana does not give degrees through distant education mode and it only gives degrees after the candidate participates in regular post / academic session. This Court has accordingly directed the petitioner to file an additional affidavit as to how he could attend classes in Ludhiana while working under the Government of Assam since 1992.

10. The contents of the order being crucial, the same is also extracted herein below:

“22.03.2018

Mr. A. Ganguly, counsel for the petitioner submits that he has taken instructions from his client and has been informed that the Institution of Civil Engineers (India), Ludhiana, does not give degrees through distant education mode. It only gives degrees after the candidates participate in the regular course / academic session.

In view of the above submissions made by the petitioner’s counsel, the petitioner has to clarify as to how he could take part in the regular course for obtaining his Civil Engineering Degree in Ludhiana, while working under the Government of Assam since 1992.

The petitioner shall file an additional affidavit in this regard, giving specifics as to how he had attended Classes in Ludhiana, while working under the Government of Assam since 1992.

Two weeks time is granted to the petitioner to file the additional affidavit.

List the matter after 2 (two) weeks.”

11. The matter had come up for consideration after about 2 years on 10.02.2020 and this Court had observed that no additional affidavit was filed and on the prayer made on behalf of the petitioner, further time was granted. The matter has been listed today after more than 4 (four) years and till now no additional affidavit has been filed. The crucial issue which was noted and observed by this Court in the order dated 22.03.2018 is on an assertion made

by the petitioner that the Institution in question does not give degrees through distant education mode and only give degrees in regular post. The petitioner has failed to place anything on record or give any plausible and acceptable explanation as to how he could obtain such regular degree from Ludhiana while working under the Government of Assam since the year 1992. The aforesaid aspect which was considered by this Court would be a relevant factor which would go to the root of the matter wherein the conduct of the petitioner would itself be questionable.

12. This Court being a Court of Equity, the conduct of the parties in a *lis* is of paramount importance and in this case, the conduct of the petitioner does not appear to be above board and *bona fide*.

13. Writ petition accordingly stands dismissed.

JUDGE

Comparing Assistant