

GAHC010065102021



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

Case No. : WP(C)/2663/2021

JITEN BHUYAN AND 4 ORS
S/O- LT. MADAN BHUYAN, R/O- VILL- BORPATHAR NO.2, DHOLAIBIL, P.S.
JAMUGURIHAT, DIST.- SONITPUR, ASSAM

2: RANJIT BORA
S/O- LT. DEBEN BORA
R/O- VILL- KALITAGAON
P.O. BIHORUGI
P.S. TEZPUR
DIST.- SONITPUR
ASSAM

3: GULAP NATH
S/O- LT. BUDHIRAM NATH
R/O- VILL- JAMIDARICHUK
P.O. NANDIKESWAR
P.S. JAMUGURIHAT
DIST.- SONITPUR
ASSAM

4: DILIP NATH
S/O- LT. LALIT NATH
R/O- VILL- CHAPARIPUKHURI
P.O. RANGACHAKUA
P.S. JAMUGURIHAT
DIST.- SONITPUR
ASSAM

5: PADMA KANTA NATH
S/O- RABINDRA NATH
R/O- VILL- NANDI KISHORE
P.O. JAMUGURI
DIST.- SONITPUR
ASSA

VERSUS

THE STATE OF ASSAM AND 2 ORS
THROUGH- THE COMM. AND SECY., TO THE GOVT. OF ASSAM,
IRRIGATION DEPTT., DISPUR, GHY-06

2:THE CHIEF ENGINEER
IRRIGATION DEPTT.
ASSAM
CHANDMARI
GHY-05

3:THE EXECUTIVE ENGINEER
IRRIGATION DEPTT.
ITAKHULA DIVISION
IRRIGATION TEZPUR
DIST.- SONITPUR
ASSA

For the petitioner (s) : Ms. A. Borah, Advocate

For the respondent (s) : Mr. N. Upadhyay, SC, Irrigation

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

11.11.2024

Heard Ms. A. Borah, the learned counsel appearing on behalf of the petitioners and Mr. N. Upadhyay, the learned counsel appearing on behalf of the Irrigation Department.

2. The petitioners herein have approached this Court seeking directions upon the respondents to consider the petitioners for promotion to the next higher posts.

3. From the materials on record, it is seen that the services of

the petitioners herein were regularized vide the order dated 06.10.2005 whereby the posts to which the petitioners were regularized were personal to them and with the stipulation that such posts shall be abolished as soon as the incumbents relinquish their posts in any manner.

4. Mr. N. Upadhyay, the learned counsel appearing on behalf of the Irrigation Department submitted that the issue involved in the instant proceedings is squarely settled by the judgment of the learned Division Bench of this Court in the case of ***Dilip Talukdar & Others vs. State of Assam & Others***, reported in **2017 (2) GLT 135**. This Court has duly takes note of the said judgment. Paragraph Nos.7 to 10 of the said judgment being relevant are reproduced herein under:-

“7. In order to appreciate the contention raised by the writ petitioners, the learned Court dwelt on the backdrop to the policy decision of the Government to regularize the service of the WC/MR workers, in different works departments, who were in continuous service since before 1.4.1993. The circumstances leading to temporary creation of 5829 WC Grade-IV posts and 25069 Grade-IV posts w.e.f. 22.7.2005, for regularization of that many WC/MR workers, were considered. The Court also noted that the guideline issued by the Finance Department clearly stipulated that the posts were created as personal to the respective incumbent and will be abolished as soon as the concerned incumbent relinquish the post in

any manner. Thus the temporary nature of the additional posts, was noted by the Court.

8. *The Court analyzed the concept of personal posts and noted that the regularization of service of the WC/MR workers, were not against any cadre posts of the department but the posts so created were to be treated as ex-cadre posts.*

9. *As promotion to higher rank can be considered only from the feeder cadre and since the writ petitioners were not en-cadred in the feeder cadre, the learned Judge opined that they are disentitled to claim promotion to the higher cadre. The learned Judge found that regularization of the incumbents in the temporarily created personal posts, was accepted without protest, with the attendant terms and condition and therefore it was observed that the beneficiaries of the regularization order cannot turn around and assail the decision of the Government, which wanted to confer limited benefits, through the process of regularization.*

10. *On the plea of discrimination vis-à-vis those already en-cadred in the feeder cadre, the Court held that the incumbents regularized against the posts created personal to them are on a different footing as their posts being temporary in nature were not added to the cadre strength in the department. Thus the plea of discrimination was negated visa-a-vis those who were working in the posts within the notified cadre, of the department."*

5. In view of the settled position of law as held by the learned Division Bench of this Court in the case of **Dilip Talukdar** (supra),

the writ petition so filed is devoid of any merit for which the instant writ petition stands dismissed.

JUDGE

Comparing Assistant