



GAHC010004312012

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

Case No. : WP(C)/1647/2012

SYED MUSLIMUDDIN AHMED
S/O LATE HORMUJ ALI, R/O SOULMARI, P.O. SALEDOL VIA BEZERA, P.S.
BAIHATA CHARIALI, PIN-781121, DIST- KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM, WATER
RESOURCES DEPARTMENT, DISPUR, GHY-6

2:THE DY. SECRETARY 1 TO THE GOVT. OF ASSAM
WATER RESOURCES DEPARTMENT
DISPUR
GHY-6

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FISHERY DEPARTMENT
DISPUR
GHY-6

4:PRANJAL KR. BHAGAWATI AT SERIAL NO.4

5:BADAN CH. GOSWAMI AT SERIAL NO.5

6:KHANINDRA BARMAN AT SERIAL NO.6

7:SANJAY KUMAR RAY AT SERIAL NO.7



8:SULEMAN ALI AHMED SERIAL NO.8

9:SOVAN SAHA AT SERIAL NO.9

10:ALIUL AKHTAR AT SERIAL NO.10

11:MD. MAHIBUR RAHMAN AT SERIAL NO.11

12:NAWAB REZWANUR AT SERIAL NO. 12

13:PINKU MAZUMDAR AT SERIAL NO.13

14:ABOU EUSUF MD. K. ZAMAN AT SERIAL NO.14

15:PRASENJIT BORAH AT SERIAL NO.15

16:BIPUL CHOUDHURY AT SERIAL NO.16

17:JITU ROY AT SERIAL NO.17

18:JAWAHARLAL ROY AT SERIAL NO.28

19:SUBHASH CH. DAS AT SERIAL NO.29

20:SUBRATA DAS AT SERIAL NO.71

21:IFTIKAR HUSSAIN AT SERIAL NO.8

22:RAMESH CH. KALITA AT SERIAL NO.16

23:MUKUL BORA AT SERIAL NO.27



24:PURNENDU CHANDA AT SERIAL NO.34

25:ASAD HUSSAIN AT SERIAL NO.47

26:DEBABRATA PAUL AT SERIAL NO.58

27:CHANDAN BORPATRA GOHAIN AT SERIAL NO.60

28:TIKENDRA NATH KAKATI AT SERIAL NO.6

Advocate for the Petitioner : MR.G Z AHMED

Advocate for the Respondent :

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri A. Chakraborty,
Advocate.

Advocate for the respondents : Shri B. Goswami, Addl.
Advocate General.
Shri P. Kakati, Advocate,
Water Resource Department.

Date of hearing : **11.09.2023**

Date of judgment : **11.09.2023**

JUDGMENT & ORDER

The extra-ordinary jurisdiction of this Court conferred by Article 226 of the Constitution of India is being sought to be invoked by the petitioner, who has filed the instant petition raising the issue of fixation of seniority position and also a notification by which promotions have been made. There is a checkered history of this case which is narrated in brief in the following manner.

2. An advertisement was published on 16.02.1997 for filling up 9 posts of Engineering Supervisor (C) under the Fish Farmers Development Agencies which is stated to be under the Department of Fisheries. The petitioner being a BE(C) and eligible under the same had applied for the said posts. It is the case of the petitioner that prior to the said advertisement, another advertisement was issued on 15.09.1996 for filling up of 12 posts of Assistant Engineer (C) in the Water Resources Department (erstwhile Flood Control Department) and the petitioner had also applied against the said advertisement. The recruitment for both the advertisements was conducted by the APSC which had held a combined written examination on 10.05.1998. It is the case of the petitioner that in the select list published for the 9 posts of Engineering Supervisor under the Fish Farmers Development Agencies on 23.04.1999, the petitioner was placed against Sl. No. 5 and on 02.11.1999, the petitioner was given temporary appointment as an Engineering Supervisor (C) which according to the petitioner is in the rank of Assistant Engineer (C). The petitioner continued in his service and vide an order dated 03.05.2007, the services of the petitioner was absorbed in the Water Resources Department in the cadre of Assistant Engineer (C) whereafter a provisional gradation list was published on 29.10.2009 in which, the position of the petitioner was 94. It is the case of the petitioner that there were many incumbents who had joined the Water resources Department after the date when the



petitioner had initially joined the service and still were put above the petitioner in the provisional gradation list. It is the specific contention of the petitioner that he had joined his service as Engineering Supervisor in the Fish Farmers Development Agencies on 04.11.1999 and therefore contends that in the provisional gradation list dated 29.10.2009 his position should have been in Sl. No. 12.

3. Being aggrieved, the petitioner had filed a writ petition before this Court which was registered as WP(C) No. 6062/2010 in which this Court had passed an order dated 15.11.2010 whereby notice was issued and interim order was granted directing that the said gradation list not be acted upon. The said writ petition however was withdrawn on 10.12.2010 which according to the learned counsel for the petitioner was done as assurance was given to him of due consideration. Subsequently, an order dated 27.01.2011 was issued with regard to the promotion in which the respondent nos. 4 to 20 were promoted to the exclusion of the petitioner. Petitioner contends that if the seniority is reckoned from the date of joining in the initial service, the petitioner is senior to the said respondents. In the year 2011, another gradation list was published and the petitioner was placed against Sl. No. 66. It is contended that in this list also, the names of the respondent nos. 21 to 28 were put above the petitioner in spite of the fact that they had joined their services subsequent to that of the petitioner. It is the aforesaid action which constitute the cause of action in this writ petition.

4. I have heard Shri A. Chakraborty, learned counsel who has been instructed by his senior to appear in this case. I have also heard Shri B. Goswami, learned Addl. Advocate General, Assam along with Shri P. Kakati for the Department.

5. Shri Chakraborty, the learned counsel for the petitioner has submitted that the impugned action is not only prejudicial but also erroneous inasmuch as the services rendered by the petitioner after his initial appointment as an Engineering Supervisor in

the Fish Farmers Development Agencies cannot be overlooked in determining the seniority. He submits that the qualification for the posts, which were advertised for two distinct/different Departments were almost equivalent and therefore a combined recruitment process was initiated by the APSC. It is further submitted that the advertisement did not stipulate that the posts in the Fish Farmers Development Agencies were temporary in nature and therefore it was deemed that the posts were sanctioned posts in which the petitioner was inducted by a due process of law. He submits that the absorption in the Water Resources Department could not have been done to the prejudice of the petitioner as such absorption was not done out of choice but was done by the government on their own without there being any option forwarded to the petitioner. Shri Chakraborty, the learned counsel accordingly submits that it is a fit case wherein interference be made and the seniority of the petitioner be directed to be reckoned by taking the initial date of joining into service which is 04.11.1999 in the Fish Farmers Development Agencies and on such reconsideration, the benefits be given to the petitioner based on the proper seniority.

6. *Per contra*, Shri B. Goswami, the learned Addl. AG, Assam has submitted that the induction of the petitioner in service as an Engineering Supervisor was under a Scheme in the Fish Farmers Development Agencies. He submits that no doubt the Scheme was under the Fisheries Department, the posts were dependant on the Scheme and could not have been permanent in nature. The State Counsel submits that when the Scheme has become defunct, taking into consideration the state of the incumbents who were appointed in the said Scheme, a move was made to absorb their services in the Water Resources Department. Shri Goswami, the learned State Counsel has emphasized that the induction in the Water Resources Department in the year 2007 was without any selection process and it was mainly to accommodate those incumbents whose services would otherwise required to have been retrenched. By drawing attention to the order of absorption, the learned AAG has submitted that the order, in unequivocal terms has stated that the post would be personal and the other



conditions have been imposed only for giving pay protection. Shri Goswami, learned AAG however points out that the absorption was done only to avoid a situation of retrenchment with a condition that the petitioner cannot claim seniority. He submits that to give pay protection, the length of service of the petitioner has been duly recognized. He accordingly submits that no case for interference is made out and the writ petition is liable to be dismissed.

7. Rejoining his submission, Shri Chakraborty, the learned counsel for the petitioner has submitted that in the advertisement where 9 posts were notified it was nowhere indicated that such posts were temporary in nature and therefore the absorption in another Department is required to be accompanied by protecting the seniority of the petitioner.

8. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

9. The present challenge is required to be traced back to the order dated 03.05.2007 by which the services of the petitioner was absorbed in the Water Resources Department in the cadre of Assistant Engineer (C). The said order which has been issued by the Department has reflected that the services of the petitioner were absorbed in the Water Resources Department from the date of taking over charge in the rank of Assistant Engineer (C) on certain terms and conditions laid down by the Personnel (B) Department. For ready reference, the conditions which have been mentioned in the order are extracted herein below:-

“1. Their seniority will be fixed just below the existing Asstt Engineers of Water Resources Deptt. As on May’ 2007.

2. Their pay will be personal to them so long they hold the posts and will not be entitled for fixation.



3. No senior Asstt. Engineer of Water Resources Deptt. can claim for equalization of pay at par with their juniors and their present pay will be protected.”

10. The petitioner was one of the three beneficiaries who got the benefit on such absorption being placed against Sl. No. 1.

11. A reading of the conditions would reflect that while making such absorption, the position of the beneficiaries with regard to the seniority were to be placed below the existing Assistant Engineer as on May, 2007. The Condition No. 2 also specifically lays down that the pay would be personal to them so long they hold the posts and will not be entitled for fixation. This Court has also noticed that the order also reflects that the duration of the services of the petitioner and the other two incumbents would be treated from their original date of joining the Fishery Department and the said expression finds in the portion where the copy of the order has been marked to the AG, Assam. The implication of such conditions is to give proper fitment in the service and post retirement benefits by taking the total length of service.

12. The grievance of the petitioner started from publication of the provisional gradation list in the year 2009. According to the petitioner, incumbents who had joined their services subsequent to the petitioner on 10.11.1999 were placed above the petitioner whereas the petitioner had joined his initial service on 04.11.1999 and therefore has contended that his name should have been in Sl. No. 12 above those incumbents and the said grievance was the subject matter of WP(C) No. 6062/2010. As reflected above, on 15.11.2010 not only notice of motion was issued, there was an interim order not to act upon the impugned provisional gradation list. What intrigues this Court is that the said challenge was withdrawn and the writ petition was dismissed on 10.12.2010. Such dismissal was done without any liberty to make any



fresh challenge. Though the learned counsel has submitted that the writ petition was withdrawn on certain assurance given by the Department, the order dated 10.12.2010 does not record any such submission or assurance from the learned Government Advocate. The subsequent promotion dated 27.01.2011 and publication of the gradation list in the year 2011 are mere offshoots of the provisional gradation list. As mentioned above, the petitioner had abandoned his challenge on the correctness of the said provisional gradation list. Under those circumstances, whether the present challenge is maintainable has itself become doubtful.

13. Nonetheless, this Court has noticed that though the APSC had conducted a common entrance test, the same were for two different recruitment processes, one for the post of Engineering Supervisor under the Fish Farmers Development Agency (under the Fisheries Department), the other one was for Water Resources Department. Though Shri Chakraborty, the learned counsel for the petitioner may be correct in contending that the requisite qualification was almost similar, the same will not lead this Court to come to a conclusion that it was one recruitment process. This Court has also noticed that in a communication dated 18.02.2010 issued by the Water Resources Department which has been annexed as Annexure-8 to the writ petition, it has been stated that the Agencies under which the petitioner was appointed had become defunct and therefore the three officers of the Fishery Department were required to be absorbed in the Water Resources Department. In the said communication made by the Water Resources Department to the Office of the AG, Assam, it was also stipulated that no claim for seniority with regular employees of the Water Resources Department and equalization of pay with the employees of the Water Resources Department would be there. The aforesaid facts, in the opinion of this Court are relevant to the issue. This Court is of the opinion that the absorption in the Water Resources Department by the Government was done only for the benefit of the 3 incumbents including the petitioner wherein maximum protection has indeed being



given to the petitioner without causing any prejudice of the regular employees of the Water Resources Department.

14. This Court has also noticed that the source of entry of the petitioner in the Water Resources Department is not by any recruitment process carried out in the open market but by way of absorption because of the eventuality that the scheme of the Fisheries Department under which the petitioner was inducted into the service had become defunct. As observed above, the action of the petitioner in abandoning the earlier challenge to the provisional gradation list dated 29.10.2009 which can be termed to be the basis of the present challenge is also a relevant factor which goes against the petitioner for maintaining the present writ petition.

15. Under the aforesaid facts and circumstances, this Court does not find any merit in this writ petition and accordingly the same stands dismissed. No order as to cost.

JUDGE

Comparing Assistant