



GAHC010120602017

Page No.# 1/27



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

Case No. : WP(C)/235/2017

MD. NARUL HOQUE LASKAR
S/O. LT. TAWAKUL ALI LADKARA, R/O. WATER WORKS ROAD, LANE NO.5
AT SILCHAR, P.S. SILCHAR, DIST. CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM and 5 ORS.
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, HEALTH AND
FAMILY WELFARE DEPTT., DISPUR, GHY.-06.

Advocate for the Petitioner : MR.S SARMA

Advocate for the Respondent : SC, HEALTH & FAMILY

WP(C)/1408/2017

SAMARJIT MALAKAR
S/O LT. BIREN CH. DEKA R/O HAJO SAKTIBORI P.O. and P.S. HAJO DIST.
KAMRUP R
ASSAM PIN - 781102

VERSUS

THE STATE OF ASSAM and 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR
GUWAHATI -6



2:THE DEPUTY SECRETARY TO THE
GOVT. OF ASSAM
HEALTH and FAMILY WELFARE A DEPARTMENT
DISPUR
GUWAHATI -06.
3:THE DIRECTOR OF HEALTH SERVICES

ASSAM
HENGRABARI
GUWAHATI -36.

4:THE JT. DIRECTOR OF HEALTH SERVICES

MALARIA
NVBDCP
ASSAM
CHRISTIAN BASTI
GUWAHATI -05.
5:THE JOINT DIRECTOR OF HEALTH SERVICES

GOALPARA
DIST. GOALPARA
ASSAM
PIN - 783101.
6:THE DISTRICT MALARIA OFFICER

GOALPARA
DIST. GOALPARA
ASSAM
PIN - 783101

Advocate for : MR.S K SINGH
Advocate for : appearing for THE STATE OF ASSAM and 5 ORS.

WP(C)/7886/2016

JULEE SINHA @ JULEE SINGHA
W/O. SRI RADHA KANTA SINHA
R/O. HOUSE NO.31
CHANDAN NAGAR
BYE LANE NO.3
SURVEY
BELTOLA
GHY.-28.



VERSUS

STATE OF ASSAM and 10 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND F.W. A DEPTT.
GHY.
DIST. KAMRUP
ASSAM.

Advocate for : MR.J P DAS
Advocate for : appearing for STATE OF ASSAM and 10 ORS.

WP(C)/7703/2016

MONOJ DAS
S/O. LT. AMULYA DAS
R/O. VILL. GALIAHATI
BARPETA
P.O. and P.S. BARPETA - 781301
DIST. BARPETA
ASSAM.

VERSUS

THE STATE OF ASSAM and 5 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
HEALTH and FAMILY WELFARE DEPTT.
DISPUR
GUWAHATI-6.

2:THE DIRECTOR OF HEALTH SERVICES
ASSAM

HENGRABARI
GUWAHATI-36.

3:THE ADDITIONAL DIRECTOR OF HEALTH SERVICES H
CUM STATE PROGRAMME OFFICER

NVBDCP
ASSAM
GUWAHATI-36.

4:THE JOINT DIRECTOR OF HEALTH SERVICES
BARPETA.



5:DIST. MALARIA OFFICER OF THE OFFICE OF THE DIST. MALARIA
ERADICATION OFFICER

BARPETA

ASSAM.

6:THE INSPECTOR OF DRUGS

BARPETA.

Advocate for : MR.S SARMA

Advocate for : SC

HEALTH appearing for THE STATE OF ASSAM and 5 ORS.

WP(C)/7706/2016

MD. ABEDUL HAQUE

S/O. MD. TAZIZUL HAQUE

R/O. NALBARI TOWN

WARD NO.1

KHATAHARI

DIST. NALBARI

ASSAM.

VERSUS

THE STATE OF ASSAM and 5 ORS.

REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM

HEALTH AND FAMILY WELFARE DEPTT.

DISPUR

GHY.-06.

2:THE DIRECTOR

HEALTH SERVICES

ASSAM

HENGRABARI

GHY.-36.

3:THE JOINT DIRECTOR

HEALTH SERVICES H

CUM STATE PROGRAMME OFFICER

NVBDCP

ASSAM

GHY.-06.



4:THE JOINT DIRECTOR

HEALTH SERVICES

NALBARI.

5:DIST. MALARIA OFFICER

THE OFFICER OF THE DISTRICT
MALARIA ERADICATION OFFICER

NALBARI

ASSAM.

6:THE INSPECTOR OF DRUGS

NALBARI.

Advocate for : MR.S SARMA

Advocate for : SC

HEALTH appearing for THE STATE OF ASSAM and 5 ORS.

WP(C)/1414/2017

PANKAJ CHAMUAH and ANR.

S/O LT. DEBA CHAMUAH

R/O PANINDRA ROAD

W/NO.3

P.O. and P.S. NORTH LAKHIMPUR

PIN-787001

DIST- LAKHIMPUR

ASSAM

2: PHATIK BORA

S/O LT. TANKESWAR BORA

R/O RUP NAGAR

W/NO.11

K.B. ROAD

P.O.and P.S. NORTH LAKHIMPUR

DIST- LAKHIMPUR

ASSAM

PIN- 787001

VERSUS

THE STATE OF ASSAM and 5 ORS.

REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM

HEALTH and F.W. DEPTT.

DISPUR

GHY-6



2:THE DY. SECRETARY TO THE GOVT. OF ASSAM
HEALTH and F.W. A DEPTT.
DISPUR

GHY-6
3:THE DIRECTOR OF HEALTH SERVICES
ASSAM

HENGRABARI
GHY-36

4:THE JT. DIRECTOR OF HEALTH SERVICES MALARIA
NVBDCP
ASSAM

CHRISTIAN BASTI
GHY-5

5:THE JT. DIRECTOR OF HEALTH SERVICES
LAKHIMPUR
NORTH LAKHIMPUR

ASSAM
PIN-787001

6:THE DISTRICT MALARIA OFFICER
LAKHIMPUR
NORTH LAKHIMPUR

ASSAM
PIN-787001

Advocate for : MR.M K NEOG

Advocate for : appearing for THE STATE OF ASSAM and 5 ORS.

WP(C)/1283/2017

BABITA DAS
D/O- SRI DHARMESWAR DAS
W/O- HEMCHANDRA SARKAR
ORIGINAL R/O- PAILA
DIST.- NALBARI
AND PRESENT R/O VILL.- JALAKHATA
P.O.- DHANTOLA BAZAR
P.S.- ABHAYAPURI
DIST.- BONGAIGAON
ASSAM.

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPTT.



DISPUR
GHY- 6.

2:THE DIRECTOR OF HEALTH SERVICES
ASSAM

HENGRABARI
GHY- 36.

3:THE JOINT DIRECTOR OF HEALTH SERVICES
BONGAIGAON.

4:THE SUB-DIVISIONAL MEDICAL and HEALTH OFFICER
BOITAMARI

BPHC
BONGAIGAON
ASSAM.

Advocate for : MR.S SARMA

Advocate for : SC

HEALTH appearing for THE STATE OF ASSAM and 3 ORS.

WP(C)/7704/2016

JITUMONI KALITA

S/O LT. BHALA RAM KALITA R/O VILL- BATIKURIHA P.O. and P.S. BHELLA
PIN - 781309

DIST. BARPETA
ASSAM.

VERSUS

THE STATE OF ASSAM and 3 ORS.

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT

DISPUR
GUWAHATI-6.

2:THE DIRECTOR OF HEALTH SERVICES

ASSAM
HENGRABARI
GUWAHATI -36.

3:THE JOINT DIRECTOR OF HEALTH SERVICES

BARPETA.

4:DISTRICT MALARIA OFFICER



OF THE DISTRICT
MALARIA ERADICATION OFFICER
NALBARI
ASSAM.

Advocate for : MR. S SARMA
Advocate for : SC
HEALTH appearing for THE STATE OF ASSAM and 3 ORS.

WP(C)/7705/2016

SYEDA JURIMA AHMEDA
D/O SYED LATIF ALI
R/O VILL. and P.O. BHOGPUR
PIN-781366
P.S. GORESWAR
PRESENTLY R/O AT BARPETA
P.S. BARPETA
DIST- BARPETA
ASSAM

VERSUS

THE STATE OF ASSAM and 5 ORS.
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM
HEALTH AND F.W. DEPTT.
DISPUR
GHY-6

2:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABRI
GHY-36
3:THE JT. DIRECTOR OF HEALTH SERVICES M
CUM STATE PROGRAMME OFFICER
NVBDCP
ASSAM
GHY-36
4:THE JT. DIRECTOR OF HEALTH SERVICES

BARPETA
PIN-781301
5:DISTRICT MALARIA OFFICER OF
THE O/O THE DISTRICT
MALARIA ERADICATION OFFICER



BARPETA
ASSAM
PIN-781301
6:THE INSPECTOR OF DRUGS
BARPETA
PIN-781301

Advocate for : MR.S SARMA
Advocate for : SC
HEALTH appearing for THE STATE OF ASSAM and 5 ORS.

WP(C)/7879/2016

RAJA SARMA @ RAJA SARMAH
AGED ABOUT 37 YEARS
S/O. SRI BIBHASH SARMA
R/O. HENGRABARI PHE COMPLEX
HEALTH COMPLEX
QTR NO. 316
DISPUR
GUWAHATI-36.

VERSUS

STATE OF ASSAM and 6 ORS.
REPRESENTED BY THE UNDER SECRETARY TO THE GOVT. OF ASSAM
HEALTH and F.W. A DEPTT.
GHY
DIST. KAMRUP ASSAM.

2:THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM

HEALTH and F.W. DEPTT.
DISPUR
GUWAHATI-06
DIST. KAMRUP ASSAM.
3:THE DIRECTOR OF HEALTH SERVICES
ASSAM

HENGRABARI
GUWAHATI-781036.
4:THE JOINT DIRECTOR OF HEALTH SERVICES M
ASSAM
GHY.-6.



5:THE ENTOMOLOGIST-CUM-RESEARCH OFFICER FILARIA

NFCP
ASSAM
HENGRABARI
GUWAHATI-36.

6:THE JOINT DIRECTOR OF HEALTH SERVICES M-CUM-STATE
PROGRAMME OFFICER

NVBDCP
ASSAM
CHRISTIAN BASTI
GUWAHATI-781005.

7:THE JOINT DIRECTOR OF HEALTH SERVICES
KAMRUP

PANBAZAR
GUWAHATI-781001.

Advocate for : MR.J P DAS
Advocate for : appearing for STATE OF ASSAM and 6 ORS.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

Date : 09-03-2021

JUDGEMENT & ORDER

The subject matter of all the writ petitions being similar, the same are taken up together for disposal by this common judgment and order.

2. In this set of writ petitions, challenge has been made to the orders of reversion from Store Keeper/LDA or any other equivalent posts to the post of Surveillance Worker under the Health and Family Welfare Department, Assam. The petitioners have taken various grounds of challenge, including violation of the principles of natural justice before passing the impugned orders which, according to them, have adverse consequences. However, before coming to the issue at hand, it would be convenient to state the basic facts of each of the cases.



3. The petitioner, Shri Manoj Das in WP(C) No.7703/2016 was initially appointed as a Surveillance Worker (hereinafter referred to as the SW) vide appointment letter dated 26.05.1998 issued by the Joint Director of Health Services. During the tenure of his services, he had obtained his diploma in type writing (both in English and Assamese). Since a post of Store Keeper was lying vacant, the petitioner made a prayer for upgrading his services as Store Keeper. It is the case of the petitioner that his post of SW was subsequently designated as Store Keeper in the same scale of pay vide an order dated 05.05.2008 issued by the Addl. Director of Health Services, Assam. The petitioner was thereafter transferred to Barpeta vide an order dated 19.03.2013. Since then, the petitioner claims to be continuously working as LDA. However, by the impugned orders dated 30.11.2016 and 12.12.2016, the petitioner along with other incumbents were reverted back to the post of SW. It is the case of the petitioner that neither any reasons were assigned for such reversion nor he was given any opportunity or notice.

4. The petitioner, Shri Jitumoni Kalita in WP(C) No.7704/2016 was initially appointed as a SW vide appointment letter dated 17.12.2005 issued by the Director of Health Services, Assam. During the tenure of his services, he had obtained qualification in computer and had also completed his M.Sc. in Information and Technology. It is the case of the petitioner that his post of SW was subsequently designated as Store Keeper in the same scale of pay vide an order dated 04.06.2013 issued by the authorities. Since then, the petitioner claims to be continuously working as LDA. However, by the impugned orders dated 30.11.2016 and 12.12.2016, the petitioner along with other incumbents were reverted back to the post of SW. It is the case of the petitioner that neither any reasons were assigned for such reversion nor the petitioner was given any opportunity or notice.

5. The petitioner, Ms. Syeda Jurima Ahmeda in WP(C) No.7705/2016 was initially appointed as a SW vide appointment letter dated 11.04.2008 issued by the Director of Health Services, Assam. During the tenure of her services, she was deputed to the office of the District Malaria Officer, Barpeta in the leave vacancy of an LDA. The said post was subsequently designated as LDA in the same scale of pay vide an order dated 25.01.2010



issued by the authorities. Since then, the petitioner claims to be continuously working as LDA. However, by the impugned orders dated 30.11.2016 and 12.12.2016, the petitioner along with other incumbents were reverted back to the post of SW. It is the case of the petitioner that neither any reasons were assigned for such reversion nor the petitioner was given any opportunity or notice.

6. The petitioner, Md. Abedul Haque in WP(C) No.7706/2016 was initially appointed as a Basic Health Worker (hereinafter referred to as the BHW) vide appointment letter dated 06.05.1995 issued by the District Malaria Officer, Nalbari. It is the case of the petitioner that his post of BHW was subsequently designated as Store Keeper in the same scale of pay vide an order dated 28.06.2006 issued by the Joint Director of Health Services, Assam. In the meantime, the petitioner also served as Nodal Officer, NRC Cell, Nalbari and was appointed as Booth Level Officer, issued by the Electoral Registration Officer. However, by the impugned orders dated 30.11.2016 and 12.12.2016, the petitioner along with other incumbents were reverted back to the post of BHW. It is the case of the petitioner that neither any reasons were assigned for such reversion nor the petitioner was given any opportunity or notice.

7. The petitioner, Shri Raja Sarma @ Raja Sarmah in WP(C) No.7879/2016 was initially appointed as a SW vide appointment letter dated 09.12.1998 issued by the Joint Director of Health Services, Assam. On 07.12.1999, the petitioner was transferred and posted in the same capacity of SW to the District Malaria Office, Kamrup against a vacant post. It is the case of the petitioner that the Under Secretary of the Department wanted to know whether the present proposal of transfer of cadre from SW to LDA will hamper the field work which was replied in the negative. The same was followed by a letter dated 06.05.2004 conveying no objection of the Government in respect of change of cadre of LDA subject to the condition that seniority as SW will not be counted in the cadre of LDA. Thereafter vide order dated 17.05.2004 the petitioner was transferred at his own request and posted as LDA. On 31.05.2007, the petitioner had prayed for his transfer as LDA under the Joint Director of Health Services (Malaria) and consequently, on 19.07.2007, the petitioner was transferred and posted at the disposal of the Joint Director of Health Services. In the meantime, vide order



dated 21.09.2012, the petitioner was confirmed. Since then, the petitioner claims to be continuously working as LDA. However, by the impugned orders dated 30.11.2016 and 12.12.2016, the petitioner along with other incumbents were reverted back to the post of SW. It is the case of the petitioner that neither any reasons were assigned for such reversion nor the petitioner was given any opportunity or notice.

8. The petitioner, Smt. Julee Sinha in WP(C) No.7886/2016 was initially appointed as a SW vide appointment letter dated 11.04.2008 issued by the Director of Health Services, Assam. After serving for long, vide letter dated 16.02.2011, appropriate action was directed to be taken by following Rules and procedures. On 01.03.2011, in anticipation of Government approval, the petitioner was, however, converted to the post of LDA in the same scale of pay with the condition that her seniority will be counted with effect from the date of joining in the present post of LDA. However, by the impugned orders dated 30.11.2016, the petitioner along with other incumbents was reverted back to the post of SW. It is the case of the petitioner that though she had submitted a representation, the same has not been considered. It is the case of the petitioner that neither any reasons were assigned for such reversion nor the petitioner was given any opportunity or notice.

9. The petitioner, Md. Nurul Hoque Laskar in WP(C) No.235/2017 was initially appointed as a SW vide appointment letter dated 05.01.2005 and was posted at Silchar for a period of three months which was extended for another period of three months vide order dated 27.06.2005. Finally, vide order dated 17.01.2007, the services of the petitioner was regularized. It is the case of the petitioner that subsequently, he was designated as a Store Keeper and his services have been utilized as such. However, by the impugned orders dated 30.11.2016 and 12.12.2016, the petitioner along with other incumbents were reverted back to the post of SW. It is the case of the petitioner that neither any reasons were assigned for such reversion nor the petitioner was given any opportunity or notice.

10. The petitioner, Ms. Babita Das in WP(C) No.1283/2017 was initially appointed as a Surveillance Worker (hereinafter referred to as the SW) vide appointment letter dated

11.04.2008 issued by the Director of Health Services, Assam. On 07.12.2016, the petitioner was placed as LDA in the office of the Joint Director of Health Services, Bongaigaon as the petitioner had the requisite qualification and had also made a request. Subsequently, the petitioner's post of SW which was attached with the office of the SDMHO Block PHC, Boitamari was redesignated as LDA in the same scale of pay vide order dated 07.12.2012 which the petitioner joined and has been continuously discharging her duties since then. However, in spite of working continuously in the capacity of LDA for more than 4 years, the Authorities had suddenly passed an order dated 20.02.2017 by which the present post for the petitioner was withdrawn and she was reverted back to her original post of SW. It is the case of the petitioner that neither any reasons were assigned for such reversion nor the petitioner was given any opportunity or notice.

11. The petitioner, Shri Samarjit Malakar in WP(C) No.1408/2017 was initially appointed as a SW vide appointment letter dated 11.04.2008 issued by the Director of Health Services, Assam. On 23.09.2009, he was transferred to the office of the Joint Director of Health Services, Goalpara in the same post of SW which was later designated as LD Assistant vide memo dated 01.01.2014 which post, the petitioner was continuing to hold. However, vide the impugned memo dated 20.02.2017, the Director of Health Services, Assam withdrew the earlier 'promotion' order and reverted back the petitioner to his earlier post of SW from LD Assistant. It is the case of the petitioner that neither any reasons were assigned for such reversion nor the petitioner was given any opportunity or notice.

12. The petitioners, Shri Pankaj Chamuah and Shri Phatik Bora in WP(C) No.1414/2017 were initially appointed as SWs on 27.07.2001 and 26.02.1985 issued by the Director of Health Services, Assam and District Malaria Officer, Lakhimpur, respectively. The posts of the petitioners were redesignated as LDA vide order dated 03.11.2007 so far as the petitioner no. 1 is concerned and so far as the petitioner no. 2, the redesignation was done on 23.09.2009 as Store Keeper and was posted in the office of the District Malaria Officer, Lakhimpur on 05.12.2016. Though the petitioners claim to be continuously serving since then, vide the impugned communication dated 20.02.2017, the posts of LDA were withdrawn and the

petitioners were reverted back to the post of SWs. It is the case of the petitioners that neither any reasons were assigned for such reversion nor the petitioners were given any opportunity or notice.

13. I have heard Shri S Sarma, learned counsel for the petitioners in WP(C) Nos.7703, 7704, 7705 & 7706/2016 and WP(C) No.235 & 1283/2017; Shri JP Das, learned counsel for the petitioners in WP(C) Nos.7879 & 7886/2016 and Shri MK Neog, learned counsel for the petitioners in WP(C) Nos.1408 & 1414/2017. I have also heard Shri B Gogoi, learned Standing Counsel, Health & Family Welfare, Government of Assam. The materials placed before this Court have been carefully examined.

14. The common grounds of challenge, as urged by the learned counsel for the petitioners may be culled out in the following manner:

- i) By working for a long period of time in the cadre/post of Store Keeper/LDA, the petitioners have accrued a right to continue in the same post till their services are regularized.
- ii) The initial appointment of the petitioners in the post of SW/BHW was after the due process of law and the respondent authorities in their wisdom, having utilized the services of the petitioners as Store Keeper/LDA in the office, the impugned decision to revert the petitioners back to the original posts of SW/BHW is arbitrary and unreasonable.
- iii) The nature of duties performed as Store Keeper/LDA being confined to office work, which is wholly different from the duties of SW/BHW which is related to the field, the impugned reversion would cause immense hardship and inconvenience.
- iv) The reversion appears to be a part of the consequence of an order of the High Court in which the petitioners were not parties.
- v) In any case, the said reversion was not preceded by affording any opportunity and therefore, there is gross violation of the principles of natural justice.
- vi) In few of the cases, as a condition for joining as LDA/Store Keeper, the seniority in the cadre of SW was forfeited and on such

reversion, the said petitioners would be junior to the other incumbents.

15. Elaborating the aforesaid grounds, the learned counsel for the petitioners submit that reversion having adverse civil consequences, the same could not have been done without grant of an opportunity to the petitioners. It is further contented that it is the legitimate expectation of the petitioners that they would at least be allowed to continue in the post of Store Keeper/LDA in which post, they have attained sufficient experience. Shri JP Das, learned counsel for the petitioners also submits that the impugned action is violative of Article 311(2) of the Constitution of India. Shri MK Neog, learned counsel for the petitioners also cited two cases wherein no action of reversion has been taken with regard to similarly situated persons.

16. In support of the submissions made, the following decisions have been referred to by Shri S Sarma, learned counsel for the petitioners:

- i) *Balbir Singh Vs. State of HP & Ors.*, reported in (2000) 10 SCC 166;**
- ii) *S Sumnyan Vs. Limi Niri & Ors.*, reported in (2010) 6 SCC 791;**
- iii) *Himadri Das & Anr. Vs. State of Assam*, reported in 2012 (5) GLT 568.**

Shri JP Das, learned counsel additionally relied upon the decision of this Court in the case of -

- iv) *Rubu Opo Vs. State of AP & Ors.*, reported in 2011 (3) GLT 544.**

17. In the case of ***Balbir Singh*** (*supra*), the interference of the Court was on account of reversion from a higher post to which the incumbent was promoted after a conscious decision. In the case of ***S Sumnyan*** (*supra*), the aspect of seniority of SW was taken into consideration. This High Court in the case of ***Himadri Das & Anr.*** (*supra*), had interfered with the decision to revert to a lower grade on the ground of violation of the principles of natural justice. In the said case, the petitioners, who were earlier Muster Roll Workers, were

upgraded to Khalasi, which is admittedly a higher post, and accordingly, reversion to the post of Muster Roll Worker without issuing show cause notice was held to be bad in law. The case of **Rubu Opo** (supra), was pertaining to an order of transfer which was on political interference wherein this Court had allowed the petition by observing that the impugned order was not in accordance with law and even the normal tenure of two years was not complete.

18. Shri B Gogoi, learned Standing Counsel, Health Department submits at the outset that though affidavit-in-opposition has not been filed in all the cases, those filed would cover the other cases as well. The learned Standing Counsel submits that it is the direction of this Court which forms the basis of the decisions to repost the petitioners as SW/BHW. He clarifies that the expression 'reversion' has to be understood in the facts and circumstances of the case wherein there is no change in the scale of pay or other service benefits and therefore, by such reversion, no legal rights of the petitioners have been adversely affected. That being the position, the aspect of following the principles of natural justice becomes redundant. Shri Gogoi elaborates that it is only when an adverse action is taken against an incumbent, the aspect of following the principles of natural justice would come in, and in the instant case, no adverse action has been taken against the petitioners.

19. Shri Gogoi, learned Standing Counsel submits that in **WP(C) No.148/2015 (Birabrata Acharjee Vs. State of Assam & Ors.)**, this Court was considering the case of the petitioner who was similarly placed like the present petitioners with the additional fact that due to his medical condition, he was not in a position to work in the field as SW. This Court in paragraph 10 of the judgment and order 19.11.2019 had framed the following issue:

“ 10. Therefore, the only point of determination in this writ petition is whether a writ in the nature of mandamus can be issued for directing the authorities to convert the post of Surveillance Worker (i.e., field worker), which is held by the petitioner to the post of LDA/Junior Assistant or Store-Keeper, etc. (i.e., office work):”

After discussing the case of ***Shri Mengutuo Kense & Ors. Vs. State of Nagaland & Ors.***, reported in **(2017) 0 Supreme (Gau) 379 : 2018 STPL 8331 (Gau)**, this Court had dismissed the writ petition by making the following observation:

“ 13. *In the case of Shri Mengutuo Kense & Ors. Vs. State of Nagaland & Ors., (2017) 0 Supreme (Gau) 379 : 2018 STPL 8331 (Gau), this Court has held that it is Government who creates post as per its needs and it also submitted that post and services are created to serve public interest and not to serve individual interest or interests of a group of people. In the present case in hand, no right or rights of the petitioner under Articles 14 and 16 of the Constitution of India has been violated by the refusal of the respondents to convert the post of Surveillance Worker held by the petitioner to LDA/Junior Assistant. Resultantly, if no legal or constitutional right of the petitioner has been violated, he is not entitled to a writ of mandamus in terms of prayers made in this writ petition.*

14. *Viewed with the said angle, there appears to be no merit in the claim made by the petitioner and, as such, the petitioner is not entitled to any relief in this writ petition and, as such, this writ petition stands dismissed. However, leaving the parties to bear their own cost.”*

15.

20. However, this Court made some additional observation in the aforesaid judgment and order dated 19.11.2019 which is extracted hereinbelow:

“ 15. *However, before parting with the records, having noticed that the officials under the Health & Family Welfare Department and under the Directorate of Health Services had concerted the posts of several Surveillance Workers to LDA/Junior Assistant or Store Keeper and that the learned Standing Counsel had submitted that one wrong in the past cannot be a ground to commit another wrong. Moreover, in their*

affidavit-in-opposition, the respondent no. 2 had cited that there are no rules permitting such conversion. Therefore, it is made clear that if in future, any such conversion by the respondents comes to the notice of the petitioner, if so advised, he shall have the liberty to approach this Court again to ventilate his grievance and claim to be treated equally and or at par.”

21. Shri Gogoi submits that in view of such categorical observation to treat all similarly placed incumbents in the rank of SW/BHW at par, the present action has been taken.

22. On merits, it is the submission of the Department that the post of SW is under a particular scheme, known as National Vector Borne Disease Control Programme (NVBDCP) and is an ex-cadre post *qua* the Service Rules governing the other employees under the Health & Family Welfare Department. Therefore, the post of SW is never the feeder cadre for promotion to the post of Store Keeper/LDA which is a Post within the cadre under the Service Rules. That apart, the arrangement of allowing the petitioners to hold the post of Store Keeper/LDA was in the same scale of pay and only there were certain changes in the nature of the duties performed. Shri Gogoi further submits that most of the aforesaid arrangements were done on the request of the incumbents and therefore, no grievance can be raised when they are put back in their original posts which was necessitated by the judgment dated 19.11.2019 of this Court passed in the case of ***Birabrata Acharjee*** (*supra*). Shri Gogoi accordingly submits that no legal rights of the petitioners have been infringed and therefore, the writ petitions deserve to be dismissed.

23. In support of his submissions, Shri Gogoi, learned Standing Counsel relies upon the following decisions:

i) *State of Orissa and Ors. Vs. Mamata Mohanty*, reported in (2011) 3 SCC 436;

ii) *Dilip Talukdar and Ors. Vs. State of Assam and Ors. (DB)*, reported in

2017 (2) GLT 135;

iii) **Motiur Rahman Laskar Vs. State of Assam and Ors.**, Order dated 16.03.2015 in **WP(C) No.4254/2014.**

24. In the case of **Mamata Mohanty** (*supra*), the settled legal proposition regarding the positive aspect of Article 14 has been reiterated. For ready reference, the relevant paragraph of the judgment is extracted hereinbelow:

“ 36. *It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Administration and Anr. v. Jagjit Singh and Anr. MANU/SC/0136/1995 : AIR 1995 SC 705; Yogesh Kumar and Ors. v. Government of NCT Delhi and Ors. MANU/SC/0191/2003 : AIR 2003 SC 1241; Anand Buttons Ltd. etc. v. State of Haryana and Ors. MANU/SC/1054/2004 : AIR 2005 SC 565, KK Bhalla v. State of MP and Ors. MANU/SC/0234/2006 : AIR 2006 SC 898; Maharaj Krishan Bhatt and Anr. v. State of Jammu & Kashmir and Ors. MANU/SC/7902/2008 : (2008) 9 SCC 24; Upendra Narayan Singh (supra); and Union of India and Anr. v. Kartick Chandra Mondal and Anr. MANU/SC/0043/2010 : AIR 2010 SC 3455).*

This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. While dealing with a similar issue, this Court in Hotel Balaji and Ors. v. State of AP and Ors. MANU/SC/0148/1993 : AIR 1993 SC 1048 observed as under:

... To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter

(AMY at page 18: 'a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn : great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors. (See also In Re : Sanjiv Datta, Dy. Secy., Ministry of Information & Broadcasting MANU/SC/ 0697/1995 : (1995) 3 SCC 619; Nirmal Jeet Kaur v. State of MP and Anr, MANU/SC/ 0695/2004 : (2004) 7 SCC 558; and Mayuram Subramanian Srinivasan v. CBI MANU/SC/ 8200/2006 : AIR 2006 SC 2449)."

25. A Division Bench of this Court in the case of ***Dilip Talukdar and Ors.*** (*supra*) with regard to rights accrued, if any, by the petitioner who was outside the cadre had made the following observations:

“10. On the basis of above reasoning, the prayer for promotion made by the ex-cadre incumbents holding posts on personal basis, was found to be untenable and accordingly the cases came to be dismissed, under the common judgment dated 16.03.2015.

11. We have seen the reasons recorded by the learned Judge for the impugned verdict and find that the posts against which the writ petitioners were regularized were never added to the notified cadre in the department. Yet no plea was advanced for encadrement of the posts held by the affected parties. The promotion in the department can be considered only from the eligible employees in the feeder cadre and the writ petitioner being outside of the cadre, cannot have any enforceable right to claim promotion, particularly when, the regularization order itself stipulates that they are regularized in posts personal to them. 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. Therefore we see no basis to take a different view in the

matter than the one taken by the learned Single Judge, in dismissing the cases. From the above discussion and analysis, the Appeals are found devoid of merit and the same are accordingly, dismissed by leaving the parties to bear their respective cost.”

26. In the case of **Motiur Rahman Laskar** (supra), this Court was examining the concept of personal post and had observed as follows:

“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 noticed. 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.

In the present case, the impugned decision as above, cannot be said to be arbitrary or unreasonable, it being a condition of regularization. WPC Nos. 4254, 3116, 3461, 6569, 2416/2014 & 4922/2013 Page 9 of 10 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.

Regarding reversion of the two petitioners in WP(C) Nos.4922/2013 and 4254/2014, while it is true that before reversion the two petitioners ought to have been put on notice, but at the same time it cannot also be overlooked that given the factual scenario, even if opportunity of hearing would be granted to those two petitioners, it would not have made any material difference to the final outcome of reversion. The two petitioners were not entitled to promotion to the post of Section Assistant and, therefore, they had to be reverted back. In such a case, even if compliance to the principles of natural justice is insisted upon, it would not make any material difference to the final outcome. Interference with the order of reversion on the ground of violation of the principles of natural justice will lead to revival of the order of promotion, which was an illegal order. Principles of natural justice cannot be pressed into service to revive and restore an illegality:”

27. Clarifying the contentions of the petitioners that certain persons were not brought back to the post of SW, Shri Gogoi, learned Standing Counsel submits that from the reply dated 15.03.2019 to the RTI application, only those persons who had retired in the meantime were not brought back to the original post of SW and that would not give any right to the petitioners.

28. This Court has given its anxious consideration to the rival contentions of the learned



counsel for the parties. The core issue which requires determination is as to whether the action of bringing back the petitioners to their original posts of SW/BHW is justified. To answer the said issue, it is necessary to remind ourselves that the post of SW is a post under a particular programme, namely, NVBDCP and is not a cadre post under the Service Rules of the Health Department. The relevant point which is required to be noted is that the subsequent postings of the petitioners as Store Keepers/LDAs were in the **same scale of pay** of SW / BHW and therefore, cannot, by any stretch of imagination, be treated to be a promotion. In any event, the post of SW being an *ex-cadre* post, promotion cannot be envisaged. The action of the authorities in permitting the petitioners to discharge duties as Store Keeper / LDA in the same scale of pay was mostly out of the own request of the petitioners and due to administrative convenience and by that, no indefeasible right to continue in the said post of Store Keeper / LDA has vested upon the petitioners.

29. Though an argument has been advanced on behalf of the petitioners that action could not have been taken on the basis of the directions of this Court in the case of ***Birabrata Acharjee*** (*supra*) on the ground that the present petitioners were not parties in the said case, this Court is not inclined to accept the said submission inasmuch as the cause of action espoused by the petitioner in that case was his own with which the present petitioners are not at all connected. Rather, this Court finds sufficient force in the contention of the Department that a rectification exercise was performed by the Department which was in compliance with the observation of this Court made in the said case.

30. As regards the arguments of violation of the principles of natural justice, this Court finds force in the submissions of Shri Gogoi, learned Standing Counsel, Health Department that the orders impugned in this writ petitions do not have any adverse civil consequences upon the petitioners and therefore, there is no requirement to give any prior notice or opportunity. As has been observed, it was under the same scale of pay as SW/BHW that the petitioners were given while serving as Store Keeper / LDA. In any case, adherence to the principles of natural justice would only amount to an 'useless formality', as has been explained by the Hon'ble Supreme Court in the case of **Aligarh Muslim University & Ors.**



Vs. Mansoor Ali Khan, reported in **(2000) 7 SCC 529**, the relevant paragraph being quoted hereinbelow:

“ 23. Chinnappa Reddy, J. in *S.L.Kapoor's case*, laid two exceptions (at p.395) namely, " if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In *K.L. Tripathi Vs. State Bank of India* (1984(1) SCC 43), *Sabyasachi Mukherji, J.* (as he then was) also laid down the principle that not mere violation of natural justice but *de facto* prejudice (other than non-issue of notice) had to be proved. It was observed: quoting *Wade Administrative Law*, (5th Ed.PP.472-475) as follows: (para 31)

"[I]....it is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as their scope and extentThere must have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth".

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in *State Bank of Patiala Vs. S.K. Sharma* (1996(3) SCC 364). In that case, the principle of 'prejudice' has been further elaborated. The same principle has been reiterated again in *Rajendra Singh Vs. State of M.P.* (1996 (5) SCC 460).

25. The 'useless formality' theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above,- there has been considerable debate of the

application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Stroughton L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, De. Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said, that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via-media rules. We do not think it necessary, in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.”

31. This Court also holds that since the regular process of appointment to the rank of Store Keeper / LDA is prescribed in the Rules and the petitioners not being borne in the said cadre of Store Keeper / LDA by undergoing the aforesaid recruitment process, no right, whatsoever has accrued upon them to claim continuance in the said post of Store Keeper / LDA.

32. As discussed above, none of the case laws relied upon by the petitioners would come to their aid as those cases pertain to demotion from a higher post to a lower post with a higher scale of pay which is not the situation in the present case.

33. While not being inclined to accept the principal submissions made on behalf of the petitioners, one of the submissions which has been emphasized by Shri Das, learned counsel for the petitioner needs to be considered and answered. It has been contended that in the case of WP(C) No.7879/2016 (Shri Raja Sarmah @ Raja Sarmah), one of the conditions for allowing the petitioner to serve as LDA was to forfeit his seniority in the original post of BHW. It was accordingly argued that if the impugned orders are given effect to, the petitioner would be deprived of their seniority.

34. In view of the above discussions and taking into consideration all the facts and circumstances, this Court is of the view that the petitioners have not been able to make out any case for interference by this Court in exercise of its extra ordinary powers. It is, however,



directed that none of the petitioners should be deprived of their seniority from their original dates of their posting as SW / BHW and such seniority be restored on the date from which the petitioners would render service in the substantial post of SW / BHW.

35. The writ petitions are accordingly dismissed. No order as to costs.

Comparing Assistant

JUDGE