



GAHC010168892019

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

Case No. : WP(C)/5180/2019

NUR JAMAN BIN FARID AND 2 ORS.

S/O.- SHAIKH FARID, P.O. SANIADI, P.S. HAJO, DIST.- KAMRUP(R),
(ASSAM).

2: MUMIEUDDIN AHMED

S/O PUTUL AHMED

R/O- VILL. KORDOIGURI

P.O. SUKANPUKHURI

P.S. SIVSAGAR

DIST.- SIVSAGAR

(ASSAM).

3: HASMAT ALI

S/O- ANSAR ALI

R/O- VILL. BARBALURCHAR

P.O. MARAGADADHAR

P.S. GOLAKGANJ

DIST.- DHUBRI

(ASSAM)

VERSUS

THE STATE OF ASSAM AND 3 ORS.

REP. BY THE ADDL. CHIEF SECRETARY, SOCIAL WELFARE DEPTT.,
DISPUR, GUWAHATI-6.

2: THE SECRETARY

SOCIAL WELFARE DEPTT.

DISPUR

GHY.-6.

3: THE DIRECTOR

SOCIAL WELFARE

ASSAM



UZAN BAZAR
GHY.-1.

4:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GUWAHATI
ASSAM

Advocate for the Petitioner : MR G BAISHYA

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioners : Shri I Ahmed, Advocate.

For the Respondents : Shri D Bora, Govt. Advocate, Assam.

Dates of Hearing : 22.04.2024.

Date of Judgment : 22.04.2024.

Judgment & Order

Heard Shri I Ahmed, learned counsel for the petitioners. Also heard Shri D Bora, learned State Counsel, Assam appearing on behalf of all the respondents.

2. The petitioners, who are three in numbers, have approached this Court with a prayer to give effect of their joining in service as Statistical Assistant in

the Directorate of Social Welfare w.e.f. 20.02.2016.

3. The fact projected is that pursuant to a recruitment drive vide an advertisement dated 24.02.2014 for the post of Statistical Assistant in the Directorate of Social Welfare, the petitioners had offered their candidatures.

4. It is the case of the petitioners that for filling up of 24 nos. of vacancies, the written test was held on 13.12.2015 in which, the petitioners had come out successful and were accordingly called for the viva-voce. After completion of the process, the final results were declared on 17.02.2016 in which, the petitioners were held to be selected. It is contended that on such selection, the petitioners were appointed and they had joined the services on 20.02.2016.

5. The problem, however, has started when one of the unsuccessful candidates, namely, one Tunmoni Bora had instituted a writ petition before this Court, being WP(C)/1235/2016 challenging the selection with the specific allegation that 4 nos. of candidates who were held to be selected and includes the present petitioners did not appear in the written test. Accordingly, on 24.02.2016, an order was passed by this Court staying the appointment orders.

6. It is the contention of the petitioners that they were not made parties in the said writ petition and accordingly, the petitioners got themselves impleaded in the said writ petition in the year 2018. Subsequently, on 21.06.2018, the aforesaid WP(C)/1235/2016 was dismissed and the stay order was vacated. Thereafter, the petitioners were given their postings on 10.08.2018.

7. Shri Ahmed, learned counsel for the petitioners has submitted that while the allegations in the WP(C)/1235/2016 were against the 4 nos. of candidates, so far as one candidate is concerned, he was given a place of posting prior to the order of stay and therefore, he had continued. However, though the petitioners had joined the services on 20.02.2016, they were not given their places of postings which were subsequently given on 10.08.2018. The learned counsel, accordingly submits that the petitioners are entitled to service benefit from the date of their joining in service. It is further submitted that the gap in the interregnum was not because of any fault of the petitioners but because of a proceeding in this Court which was instituted by an unsuccessful candidate in which the petitioners were not even made parties. Subsequently, the said writ petition was also dismissed on 21.06.2018 and only thereafter the petitioners were allotted places of postings.

8. Shri Bora, learned State Counsel submits that though affidavit-in-opposition has not been filed, there is a communication dated 27.09.2019 by the Director to the Department in connection with the present case. The Director had also opined that though the petitioners had joined on 20.02.2016 since, they were not in service for the gap period w.e.f. 20.02.2016 to 09.08.2018, they may be entitled for notional benefits.

9. After consideration of the rival submissions made by the learned counsel for the parties, this Court is of the opinion that there is no dispute with regard to the selection and appointment of the petitioners. The issue which was tried to be raised on their selection has also been put to rest by this Court in

dismissing WP(C)/1235/2016 vide order dated 21.06.2018. It is also not disputed that though the allegations in the aforesaid WP(C)/1235/2016 were against the 4 nos. of candidates, including the present petitioners, since 4th candidate was, in the meantime, given a place of posting, his service has been held to be continuous since such date of posting and only the petitioners have been deprived of their continuity in service because of the court proceedings. It is a settled law that orders of this Court or pendency shall not be a prejudice to any parties. The dismissal of WP(C)/1235/2016 vide the order dated 21.06.2018 and vacation of the the initial order of stay would also be a relevant factor. In the opinion of this Court, the petitioners cannot be faulted with the delay in their allotment of places of postings and it is only a matter of chance for which though they had joined their services on 20.02.2016, their places of postings could not be given immediately and in the meantime, there was a stay order of this Court on 24.02.2016 which was in operation till 21.06.2018.

10. The Hon'ble Supreme Court in the case of ***Cantonment Board, Meerut Vs. KP Singh & Ors.***, reported in **(2010) 2 SCC 516** has explained the maxim '*Actus Curiae Neminem Gravabit*' to mean that no party should be prejudiced by any order of Court.

11. In view of the aforesaid discussions, this Court is of the opinion that a case for interference is made out. It is, accordingly directed that the petitioners be deemed to be in continuous service since 20.02.2016 i.e. the date of their joining as Statistical Assistant in the Department of Social Welfare, Assam. However, such direction is to be restricted only to give the notional benefits, including the present Fitment and would not include the aspect of any back



wages.

12. The writ petition accordingly stands disposed of in the manner indicated above.

JUDGE

Comparing Assistant