



GAHC010181682022

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

**Case No. : WP(C)/5902/2022**

RANJAN BORDOLOI AND 2 ORS.  
S/O LATE ASHOK BORDOLOI, R/O HOUSE NO. 224, NORTH GUWAHATI,  
MADHYAMKHANDA, GUWAHATI-781030, DIST-KAMRUP(M), ASSAM

2: KARAMJIT NATH  
S/O SIDDHESWAR NATH  
R/O SATGAON  
DALBARI  
GUWAHATI-781171  
DIST-KAMRUP(M)  
ASSAM

3: MANOJ KR. BARUAH  
S/O JITEN BARUAH  
R/O HOUSE NO. 22  
ASOMI PATH  
GUWAHATI-781006  
DIST-KAMRUP(M)  
ASSA

VERSUS

THE STATE OF ASSAM AND 7 ORS.  
REPRESENTED BY THE COMMISSIONER AND SECRETARY, DEPARTMENT  
OF FOREST AND ENVIRONMENT, DISPUR, GUWAHATI-781005

2: THE CHAIRMAN  
POLLUTION CONTROL BOARD  
BAMUNIMAIDAM  
GUWAHATI-781021

3: THE MEMBER SECRETARY  
POLLUTION CONTROL BOARD  
BAMUNIMAIDAM



GUWAHATI-781021

4:ANOL BARMAN  
ASSISTANT ENVIRONMENTAL SCIENTIST  
POLLUTION CONTROL BOARD  
BAMUNIMAIDAM  
GUWAHATI-781021

5:MD. RABIUL HAQUE  
ASSISTANT ENVIRONMENTAL SCIENTIST  
POLLUTION CONTROL BOARD  
BAMUNIMAIDAM  
GUWAHATI-781021

6:GAKUL TAMULI  
ASSISTANT ENVIRONMENTAL SCIENTIST  
POLLUTION CONTROL BOARD  
BAMUNIMAIDAM  
GUWAHATI-781021

7:AMARENDRA CHOUDHURY  
ASSISTANT ENVIRONMENTAL SCIENTIST  
POLLUTION CONTROL BOARD  
BAMUNIMAIDAM  
GUWAHATI-781021

8:MS. MEENAKSHI GOHAIN  
ASSISTANT ENVIRONMENTAL SCIENTIST  
POLLUTION CONTROL BOARD  
BAMUNIMAIDAM  
GUWAHATI-78102

**BEFORE**

**HON'BLE MR. JUSTICE KALYAN RAI SURANA**

For the petitioner: Mr. M.K. Choudhury, Senior Advocate  
Mr. A. Barkataki, Mr. P. Bhardwaj,  
Ms. Anasuya C, Mr. M. Sarma, Adv.  
For the respondents: Mr. M. Talukdar, Mr. K.R. Patgiri, Md. S. Hoque,  
Mr. M. Smith, Mr. N. Borpatragohain,  
Mr. J. Barman, Mr. F.A. Farooque.  
Date of hearing : 27.09.2023.  
Date of judgment : **10.11.2023.**

**JUDGMENT AND ORDER**

(C.A.V.)

Heard Mr. M.K. Choudhury, learned senior counsel, assisted by Mr. M. Sarma, and Mr. T. Chakraborty, learned counsel for the petitioners. Also heard Mr. R.R. Gogoi, learned standing counsel for Forest and Environment Department, representing respondent no.1, Mr. S. Baruah, learned standing counsel for the Pollution Control Board, Assam, representing respondent nos. 2 and 3, Mr. S. Hoque, learned counsel for the respondent no. 5 and Mr. A.C. Borbora, learned senior counsel, assisted by Mr. M. Smith, learned counsel for the respondent no.8. The respondent nos. 4, 6 and 7 have remained unrepresented.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioners have challenged the office order dated 27.07.2022, by which they were demoted from the rank of Environmental Scientist to the rank of Assistant Environmental Scientist in the Pollution Control Board, Assam (hereinafter referred to as "PCBA" for short). Consequently, the petitioners have also prayed for directing the respondent authorities to allow them to discharge their duty as Environmental Scientist.

**Case of the petitioners, in brief:**

3) The case of the petitioners, in brief is that in the year 1994-95, when they were appointed as Scientific Assistant in the PCBA, they were having the requisite B.Sc. Degrees. Although by office order dated 23.09.2013, pending approval of the PCBA the petitioners were upgraded to the newly created post of Environmental Scientist, but the petitioners maintain that they were promoted and not 'upgraded'. Thereafter, vide office order dated 12.08.2014,

their service was regularized in the rank and post of Environmental Scientist. However, by the office order dated 27.07.2022, they were demoted to the rank and post of Assistant Environmental Scientist. The case of the petitioner is that the provision of Regulation 9(III)(a) and (c) of the Pollution Control Board, Assam (Employees' Service) Regulation, 2012 (hereinafter referred to as "2012 Regulation" for brevity) has been applied to them retrospectively.

*Submission of the learned counsel for the petitioners:*

4) The learned senior counsel for the petitioners had submitted that on 23.09.2013, not only the posts of Assistant Environmental Scientists in the Board were upgraded to the level of Environmental Scientist, but the petitioners, who were then holding the posts of Assistant Environmental Scientists, were also upgraded to the level of Environmental Scientist. It was submitted that the said office order dated 23.09.2013, did not contain any direction that the petitioners would be required to obtain higher educational qualification of Masters Degree in Physical/ Chemical/ Biological/ Environmental Science.

5) It was submitted that it was also mentioned in the said office order dated 23.09.2013 that "*the pay and other promotional benefit will accrue to these Scientists with retrospective effect only after approval of upgradation by the Board.*"

6) It was also submitted that under Regulation 1(3) of the 2012 Regulation, it was provided that "*These Regulations shall be applicable to all whole-time regular employees of the Board whether appointed on a time scale of pay or on fixed monthly pay or salary appointed either before or after these regulations come into force.*"

7) Accordingly, in his reply submissions, the learned senior counsel for the petitioners had submitted that neither the office order dated 23.09.2013 nor the 2012 Regulation does not contain any clause that Assistant Environmental Scientists who were up-graded to the post of Environmental Scientists would have to obtain higher educational qualification. Accordingly, it was submitted that the interpretation sought to be given by the learned departmental counsel, learned senior counsel for respondent no. 8 and the learned counsel for the respondent no. 5 cannot be accepted to be correct interpretation of Regulation 1(3) of the 2012 Regulations.

8) By referring to Table-1 of 2012 Regulations, it was submitted that the post of Environmental Scientist was Class-I post. As per the said Table-1, in respect of the post of Environmental Scientist, when the Regulation was published, filled up post was '0' (zero); there were 3 (three) vacant posts; new posts created was 7 (seven); total revised cadre strength of the post of Environmental Scientist in the year 2013 was 10 (ten). Therefore, it was submitted that irrespective of the fact that the nomenclature used in office order dated 23.09.2013 was that the 7 (seven) Assistant Environmental Scientists, including the petitioners were up-graded, but in fact the petitioners had actually been promoted to the post of Environmental Scientist.

9) Moreover, it was submitted that the final draft 2012 Regulation was approved in the 94<sup>th</sup> Board meeting of the PCBA, held on 20.03.2013. Hence, it was submitted that the promotion of the petitioners was saved by operation of Regulation 52(b) of the 2012 Regulations.

10) In support of his submissions, the learned senior counsel for the petitioners has cited the following cases, viz., (i) *Tejshree Ghag & Ors. v.*



*Prakash Parashuram Patil, (2007) 6 SCC 220, (ii) Chairman, Railway Board & Ors. v. C.R. Rangadhamaiah & Ors., (1997) 6 SCC 623, (iii) Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602.*

11) Para-26 of the case of *Hitendra Vishnu Thakur (supra)*, which was referred to by the learned senior counsel for the petitioners is quoted below:-

*“25. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the Court. From the law settled by this Court in various cases, the illustrative though not exhaustive, principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:*

(i) *A statute which affects substantive rights is presumed to be prospective in operation, unless made retrospective, either expressly or by necessary intendment, whereas a Statute which merely affects procedure, unless such a construction is textually impossible is presumed to be retrospective in its application, should not be given an extended meaning, and should be strictly confined to its clearly defined limits.*

(ii) *Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal, even though remedial, is substantive in nature.*

*(iii) Every litigant has a vested right in substantive law, but no such right exists in procedural law.*

(iv) *A procedural Statute should not generally speaking be applied retrospectively, where the result would be to create new disabilities or obligations, or to impose new duties in respect of transactions already accomplished.*

(v) *A Statute which not only changes the procedure but also creates a new rights and liabilities, shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."*

12) Para 12, 13 and 19, of the case of *Tejshree Ghag (supra)*, which were relied by the learned senior counsel for the petitioners are quoted below:-

**12.** *The terms and conditions of their service, thus, unless altered expressly, would be governed by the rules which were in existence at the time when the impugned orders were passed. It is true that the State has the power to alter the*



*terms and conditions of service even with retrospective effect by making rule framed under proviso appended to Article 309 of the Constitution of India, but it is also well settled that the rules so made ordinarily should state so expressly.*

**13.** *It has been contended that 2005 Rules are retrospective in nature or have retroactive operation.*

**19.** *In this case we are not concerned with enforcement of the Rules. They were brought in force at a later stage. It is for the State to apply the provisions of the said rules only if any occasion arises therefor but keeping in view the fact that the said rules have not been given a retrospective effect, the impugned orders cannot be supported by reason thereof or otherwise."*

13) Para 20 and 24 of the case of *Chairman, Railway Board (supra)*, which has been referred to by the learned senior counsel for the petitioner are quoted below:-

*“20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.*

**24.** *In many of these decisions the expressions "vested rights" of "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse affect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon v. Union of India, AIR 1967 SC 1889, B.S. Yadav v. State of Haryana, (1980) Supp SCC 524, and State of Gujarat v. Raman Lal Keshav Lal Soni and Ors., (1983) 2 SCC 33.*

*Submissions by the learned counsel for the petitioner nos. 2 and 3:*

14) It may be mentioned herein that the petitioner nos. 3 and 4 along

with two others, namely, Karuna Thakuria and Hiten Sarma were arrayed as respondent nos. 3, 5, 7 and 9 respectively in W.P.(C) Nos. 5061/2021. The above named Karuna Thakuria and Hiten Sarma were also arrayed as respondent nos. 4 and 5 in W.P.(C) 8263/2022. The said two writ petitions were filed by Md. Rabiul Islam, who is arrayed as the respondent no. 5 in W.P.(C) 5902/2022. These three writ petitions were being heard analogously. However, in course of hearing, on 27.09.2023, W.P.(C) Nos. 5061/2021 and 8263/2022 were withdrawn. The learned counsel for the petitioner nos. 2 and 3 on being allowed by the Court had also made his submissions by supporting the submissions made by the learned senior counsel for the petitioners.

15) It was submitted that in para-20 of the affidavit-in-opposition filed by the respondent nos. 2 and 3 in W.P.(C) 8263/2022, they had specifically admitted as follows:-

*“... Rest of the respondent of the said writ petition, namely, Sri Ranjan Bordoloi, Sri Karamjit Nath, Sri Jibon Sarkar and Sri Monoj Baruah along with 3 others were upgraded to the post of Environmental Scientist vide order no. WB/E-101/09-10/176 date 23/09/2013 (Annexure-XIX) subject to approval of the Board and accordingly they joined as Environmental Scientist on 23/09/2013. Subsequently the Board in its 96<sup>th</sup> meeting approved the upgradation of Sri Ranjan Bordoloi, Sri Karamjit Nath, Sri Jibon Sarkar and Sri Monoj Baruah only with effect from their date of joining i.e. from 23.09.2013 i.e. prior to the date of the 'Pollution Control Board, Assam (Employees' Service) Regulation- 2012' came into force w.e.f. 24<sup>th</sup> February, 2014 (Annexure-I).”*

16) It was also submitted that in paragraphs 21 and 22 of the affidavit-in-opposition filed by the respondent nos. 2 and 3 in W.P.(C) 8263/2022, it was stated as under:-

*“21. That ... the deponent begs to state that there is a Writ Petition No. 5061/2021 Rabiul Haque vs. State of Assam & others in the Gauhati High Court. It is a fact that PCBA, though the Environmental Scientists who were promoted prior to the Regulation came into force vide office order No. WB/E-09-10/176 date 23/09/2013*

*(Annexure-XIX), i.e. prior to the Regulation came into force were reverted back to its original cadre vide Office Order circulated vide No. WB/G-16/ 22-23/05-D/922 date 27/07/2022 (Annexure-XX). Being considered aggrieved Sri Ranjan Bordoloi, Sri Karamjit Nath, and Sri Monoj Baruah has filed a write (sic.) petition No. W.P.(C) No. 5049 of 2022 in the Hon'ble Gauhati High Court which still pending in the Gauhati High Court.*

*22. That ... it is reiterated that the respondent no. 4 & 5 were promoted prior to the Regulation came into force and hence the applicability of the Regulation in their promotion that has been done prior to 24/02/2014 does not arise."*

17) Hence, it was submitted that the contrary stand of the respondent nos. 2 and 3 in this present writ petition ought not to be accepted. Moreover, doubt was raised on the neutrality of the respondent nos. 2 and 3.

*Stand of the respondent nos. 2 and 3 in their respective affidavit-in-opposition:*

18) It was stated that the petitioner nos. 1 and 2 were appointed as Scientific Assistant vide office order dated 31.12.1994 and the petitioner no. 3 was appointed Scientific Assistant vide office order dated 27.11.1995. In the year 1996, the post of Scientific Assistant was re-designated as Assistant Chemist. By three separate office orders dated 02.03.2007, the petitioners were promoted to the next higher post of Chemist. Thereafter, vide office order dated 07.04.2012, the post of Chemist was re-designated as Assistant Environmental Scientist. Moreover, a post of Environmental Scientist was created between the post of Assistant Environmental Scientist and Assistant Executive Environmental Scientist. It was also stated that the post of Environmental Scientist is to be filled up by Director Recruitment and Promotion in the ration of 2:1.

19) It was stated that the post of 7 (seven) nos. of Assistant Environmental Scientist were provisionally upgraded to the post of Environmental Scientist vide office order dated 23.09.2013, which was subject to approval by the Board. However, pursuant to the decision taken in the 96<sup>th</sup>



Board Meeting of PCBA held on 05.08.2014, vide office order dated 12.08.2014, the office order dated 23.09.2013 was annulled and four persons including the three petitioners were allowed to hold the upgraded post of Environmental Scientist. It was also stated that the said decision did not have any impact on the provisions of Regulation 9(III) of the 2012 Regulation.

20) It was stated that by letter written to 6 (six) employees including the petitioners, they were asked to inform if they had applied for permission for pursuing Post Graduate course from a recognized University, which was a pre-requisite qualification to hold the post of Environmental Scientist under the 2012 Regulation. Thereafter, by letter dated 29.06.2016, the petitioners were informed about initiation of action against them for failure to comply with the relevant provision of the 2012 Regulation. Thereafter, show cause notices dated 08.12.2016 were issued to the petitioners to show cause as to why appropriate action should not be initiated against them for non-compliance to the relevant provisions of 2012 Regulation, to which the petitioners had submitted a joint reply dated 14.12.2021 and by invoking Regulation 49, applied for relaxation of the provision of Regulation 9(III)(c) of 2012 Regulation on the ground that the said 2012 Regulation had come into existence on 24.02.2013, i.e. after their provisional upgradation to the rank of Environmental Scientist on 22.09.2013. It was also stated that after 2012 Regulation had come into force, the condition contained in the office order dated 07.04.2012 became redundant. It was further stated that as per 2012 Regulation and as per decision of the 104<sup>th</sup> Board Meeting of PCBA held on 02.07.2022 and considering the view of their learned standing counsel, the service of the petitioners and another were reverted back to the rank of Assistant Environmental Scientist with immediate effect. It was also stated that vide letter dated 03.08.2022, the petitioners had

filed an appeal against the order dated 27.07.2022, by which the petitioners were reverted back to the post of Assistant Environmental Scientist, but as the same was done pursuant to decision of 104<sup>th</sup> Board Meeting and 2012 Regulation, the said appeal had no merit. Thus, according to the respondent nos. 2 and 3, the writ petition was liable to be dismissed.

*Submissions by the learned counsel for the respondent nos. 2 and 3:*

21) It was submitted that in the 94<sup>th</sup> Board Meeting of PCBA held on 20.03.2013, in which the 2012 Regulation was approved. Regulation 1(3) covers all the employees appointed in the PCBA before or after the said Regulation came into force. The Government's approval was given on 24.02.2014.

22) It was submitted that the petitioners were aware that they had to acquire M.Sc. Degree in Physical/ Chemical/ Biological/ Environmental Science and therefore, vide their reply letter dated 14.12.2021, the petitioners had prayed for exemption/ relaxation of Regulation 9(III)(c) of the 2012 Regulation, which is also one of the prayers made in this writ petition. It was submitted that the power of the PCBA to relax is provided for in Regulation 31.

23) It was submitted that the petitioners were given an opportunity to acquire Degree of Master in Science in Physical/ Chemical/ Biological/ Environmental Science, which they did not. Hence, it was submitted that the reversion of the petitioners to their previous cadre of Assistant Environmental Scientist was legal and justified.

*Stand of the respondent no. 5 in his affidavit-in-opposition:*

24) The respondent no. 5 had taken a stand that the notification dated 07.04.2012, which has been issued as per the decision of the 90<sup>th</sup> Board Meeting dated 03.03.2012 is false and baseless because in the Board decision

there was no whisper of creating or re-designation of the Scientific posts in the PCBA, but the said decision was taken in the 91<sup>st</sup> Board Meeting of PCBA as agenda item no. 4. The posts had been mentioned in form of the following chart:-

Sl. No.	Present designation	Re-designation
1.	Board Analyst	Senior Environmental Scientist.
2.	Deputy Analyst	Executive Environmental Scientist.
3.	Assistant Analyst	Assistant Executive Environmental Scientist.
4.	Environmental Scientist	[Newly Created post]
5.	Chemist	Assistant Environmental Scientist.

25) It was projected that the entry level of officer for Scientific Cadre in the PCBA would be at the level of Environmental Scientist in the grade pay of Assistant Engineers of the PCBA or PHE Department and minimum qualification would be Post Graduate Degree in Physical/ Chemical/ Biological/ Environmental Science. It was also provided that at this level direct recruitment and promotion quota of Chemist (approved to be re-designated as Assistant Environmental Scientist) would be in the ratio of 2:1.

26) It was also stated that the respondent no. 5 was having Post Graduate Degree in Environmental Science and was qualified to be promoted to the newly created post of Environmental Scientist as per the 91<sup>st</sup> Board resolution of PCBA, and the 2012 Regulation, which was approved in the 94<sup>th</sup> Board meeting of PCBA held on 20.03.2013 and that he was illegally reverted back to the post of Assistant Environmental Scientist vide order dated 12.08.2014.

27) It was stated that the petitioners were provisionally up-graded to the post of Environmental Scientist vide office order dated 23.09.2013, after the Draft 2012 Regulation was adopted in the 94<sup>th</sup> Board Meeting of PCBA held on 20.03.2013. The 2012 Regulation came into force after its approval by the Government by communication dated 24.02.2014. The upgradation of the petitioners was approved vide office order dated 12.08.2014. Hence, petitioners could not escape from complying with Regulation 9 (III) (a) and (c) of 2012 Regulation. Thus, according to the respondent no. 5, the impugned order was justified as the petitioners did not acquire Post graduate Degree as per prescription of Regulation 9(III)(c) within the stipulated time. Accordingly, it was prayed that the writ petition be dismissed.

Submissions of the learned counsel for respondent no. 5:

28) The learned counsel for the respondent no. 5 had made submissions in consonance with the stand taken in the affidavit-in-opposition filed by the respondent no. 5. Moreover, he had adopted the submissions made by the learned counsel for the respondent nos. 2 and 3.

Stand of the respondent no. 8 in her affidavit-in-opposition:

29) The stand of the respondent no. 8 was somewhat similar to the one taken by the respondent no. 5 to the effect that as per the requirement of Regulation 9(III)(c), Post graduate Degree was essential qualification to be appointed to the post of Environmental Scientist and that the petitioners were required to obtain such qualification within 5 (five) years of their upgradation in the year 2014. It was also stated that before passing the impugned order, the authorities of the PCBA had asked the petitioners to respond as to whether they had sought for permission to undertake Post Graduate Course as per the said

Regulation. Hence, according to the respondent no. 8, the reversion of the petitioners to the post of Assistant Environmental Scientist was justified. It was stated that she has the requisite educational qualification of M.Sc. and therefore, she has the requisite eligibility to be promoted to the post of Environmental Scientist. Hence, it was prayed that the writ petition be dismissed.

*Submissions of the learned senior counsel for the respondent no. 8:*

30) The learned senior counsel for the respondent no. 8 had also reiterated the submissions made by the learned standing counsel for the respondent nos. 2 and 3.

31) It was submitted that the petitioners were Assistant Environmental Scientist. As the said posts were upgraded to Environmental Scientist, the petitioners were merely allowed to hold charge of their upgraded post of Environmental Scientist. It was submitted that 'promotion' and 'allowed to hold charge' were different and cannot be treated of having same effect. Hence, it was submitted that the reversion of the petitioners back to their own substantive post cannot be said to be demotion, as projected by the petitioners.

32) Extensive reference was made to the various schedules appended to the 2012 Rules to show the prescribed educational qualification. By referring to the provision of Rule 9(F)(III) relating to *Qualification, experience and promotion of employees of Laboratory and Scientific Service* of the 2012 Rules, it was submitted that the Rules prescribed that for recruitment to the cadre of Environmental Scientist, the minimum qualification shall be Master's Degree in Chemical/ Biological/ Life or Environmental Sciences from any Indian or Foreign University or Institution recognized by the Government of India. Thus, it was submitted that as the petitioners did not obtain Master's Degree in Chemical/

Biological/ Life or Environmental Sciences, they would not be entitled to any relief in this writ petition.

*Stand of the petitioners in their affidavit-in-reply against the affidavit-in-opposition filed by the respondent nos. 2 and 3:*

33) It was stated that the promotion of the petitioners to the post of Environmental Scientist was under Executive Instructions dated 23.09.2013 and that vide office order dated 12.08.2014, their service was regularized in the rank and post of Environmental Scientist. Accordingly it was stated that their promotion was not done under the 2012 Regulation.

*Reasons and decision:*

34) As per the 2012 Regulation, the hierarchy in Laboratory and Scientific Service under PCBA are as follows, viz., (1) Chief Environmental Scientist (CES), (2) Additional Chief Environmental Scientist (ACES) (3) Senior Environmental Scientist (SES); (4) Executive Environmental Scientist (EES); (5) Assistant Executive Environmental Scientist (AEES); (6) Environmental Scientist (ES); (7) Assistant Environmental Scientist (AES); (8) Scientific Assistant I (SA-I); (9) Scientific Assistant-II (SA-II) (Old Field Assistant); (10) Scientific Assistant-III (SA-III) (Old Laboratory Assistant).

35) The date-wise sequence of events that are relevant to the case are as follows:-

- a. In the year 1996, the post of Scientific Assistant was re-designated as Assistant Chemist (now SA-I).
- b. By three separate office orders dated 02.03.2007, the petitioners were promoted to the next higher post of Chemist.
- c. Thereafter, vide office order dated 07.04.2012, the post of Chemist was re-designated as Assistant Environmental Scientist.

- d. 94<sup>th</sup> Board meeting of PCBA held on 20.03.2013, where the 2012 Regulation was approved. The minutes was signed by the then Chairman, PCBA on the same date and circulated.
- e. It was noticed by the PCBA that the 2012 Regulation that was approved in the 94<sup>th</sup> Board Meeting of PCBA contained some typographical omission. Therefore, the corrigendum to the 2012 Regulation was circulated by a letter dated 02.08.2013, issued by the Member- Secretary, PCBA.
- f. As per the office order dated 23.09.2013, subject to approval of the Board, the posts of Assistant Environmental Scientists in the Board were upgraded to the level of Environmental Scientist. Moreover, the following Assistant Environmental Scientists, namely, (1) Karuna Thakuria; (2) Ranjan Bordoloi (petitioner no.1); (3) Karamjit Nath (petitioner no.2); (4) Jibon Sarkar (5) Manoj Baruah (petitioner no.3); (5) Anol Barman (respondent no.4); (6) Md. Rabiul Haque (respondent no.5); (7) Gakul Tamuli (respondent no.6) were upgraded to the level of Environmental Scientist. In the said order it was mentioned that the pay and other promotional benefit will accrue to these scientists with retrospective effect only after approval by the PCBA.
- g. The 2012 Regulation came into force after its approval by the Government was conveyed by the Environment and Forest Department by communication dated 24.02.2014.
- h. 96<sup>th</sup> Board Meeting of PCBA was held on 05.08.2014. In the said meeting, as per resolution taken in respect of agenda no. 5, the upgradation of Ranjan Bordoloi (petitioner no.1); (3) Karamjit Nath (petitioner no.2); (4) Jibon Sarkar and (5) Manoj Baruah (petitioner

no.3), being four senior- most personnel were approved.

i. By office order dated 12.08.2014, the office order dated 23.09.2013 was annulled and four persons including the three petitioners were allowed to hold the up-graded post of Environmental Scientist.

36) At the outset, it may be stated that the learned counsel for the respondent no. 5 had stated that in the two copies of the 2012 Rules, there was a difference in the entries made in serial nos. 3 and 4 of Appendix-III relating to Senior Environmental Scientist and Executive Environmental Scientist. In this case, we are not concerned with the said entries. Nonetheless, we do not make any comment thereon because it has been brought to the notice of the Court that the 2012 Regulation was approved in the 94<sup>th</sup> Board meeting of PCBA held on 20.03.2013. The minutes was signed by the then Chairman, PCBA on the same date and circulated. Later on, it was noticed by the PCBA that the 2012 Regulation that was approved in the 94<sup>th</sup> Board Meeting of PCBA contained some typographical omission. Therefore, the corrigendum to the 2012 Regulation was circulated by a letter dated 02.08.2013, issued by the Member-Secretary, PCBA. Therefore, the PCBA has some explanation regarding existence of two sets of 2012 Regulations, one as originally approved and the other after corrigendum was incorporated vide letter dated 02.08.2013. Hence, the said point is kept open to be decided in a more appropriate case. However, it is provided that this order shall not be a bar for the respondent authorities to issue their clarification in the matter, if so advised.

37) The qualification, experience and promotion of employees of Laboratory and Scientific Service under PCBA is as per the provision of

Regulation 9(III)(c) of the 2012 Regulation. It would be appropriate to quote Regulation 9(III) (a) to (d) thereof:-

- a. For recruitment to the cadre of Environmental Scientist, the minimum qualification shall be Master's Degree in Chemical/ Biological Life or Environmental Sciences from any Indian or Foreign University or Institution recognized by the Government of India.
- b. The promotional criteria for Assistant Environmental Scientist (AES) & Environmental Scientist (ES) to the higher cadre shall be as per **Table-3 in Appendix-III**
- c. All those AES of the Board who possess the minimum Educational Qualification for ES as stipulated in clause (a) above) or have completed a minimum of 5 years of service in the Board as AES (or Chemist) shall be brought under the category of ES along with the post provided that they acquire post graduate qualification within 5 years of their service in disciplines stated in (clause a) above.
- d. The promotion from the level of ES to AEES and EES shall be on time scale basis subject to availability of post and suitability of the person(s) as considered by the Selection Committee.
- e. \* \* \*
- f. \* \* \*
- g. \* \* \*

38) In Appendix-III to the 2012 Rules, in column nos. 5 and 6 relating to the column for "promotional avenues", it has been mentioned against the post of Environmental Scientist (ES) as follows – "Direct recruitment of M.Sc. or promotion from AES (i.e. Assistant Environmental Scientist) with 10 years experience in the ratio 2:1.

39) On a conjoint reading of the provisions of Regulation 9(III)(a) to (d) as well as Appendix-III of the 2012 Regulation, it appears that the provisions of Regulation 9(III)(a) is applicable for direct recruitment. Regulation 9(III)(c) requires all those AES of the Board who possess the minimum educational qualification for ES as stipulated in Clause (a) [of Regulation 9(III)(a)] or have completed a minimum of 5 (five) years of service in the Board as AES (or Chemist) shall be brought under the category of ES along with the post

provided that they acquire post graduate qualification within 5 years of their service in disciplines stated in Clause (a) [of Regulation 9(III)(a)].

40) Therefore, there is no doubt that as per Regulation 9(III)(c) of the 2012 Regulation, there are twin requirement for an Assistant Environmental Scientist (AES) to be promoted to the post of Environmental Scientist (ES), and they are (a) the Assistant Environmental Scientist must possess educational qualification prescribed for Environmental Scientist; or (b) the Assistant Environmental Scientist must have completed 5 years of service in the said post and they must acquire post graduate qualification within 5 years of their service in disciplines stated in Regulation 9(III)(a) of the 2012 Regulation.

41) However, there appears to be variance in the educational qualifications as provided in Regulation 9(III)(c) of 2012 Regulation, as mentioned herein before and Appendix-III to the 2012 Regulation. Relevant row nos. 4 to 7 and relevant column nos. 1, 2, 3, 5, 6, 8 and 9 of Table 3 of Appendix-III are quoted below:-

Sl.	Service Cadre and designation of the post	Education al qualification	Promotion from the post of	Promotion to the post of	Minimum year of experience	Remarks
1	2	2	5	6	8	9
*	*	*	*	*	*	*
4	Ex. Env. Scientist (EES)	M.Sc. in Chemical/ Biological / Life/Environmental Science	AEES	EES	5 years of service as AEES in the Board	For promotee Scientists the qualification shall be B.Sc. only.
5.	Asstt. Ex. Env. Scientist (AEES)	- do -	ES	AEES	5 years of service as ES in the Board	- do -

6.	Env. Scientist (ES)	- do -	Direct recruitment of M.Sc. or from AES years experience ratio	2:1	-----	-----
7.	Asstt. Env. Scientist (AES)	B.Sc. in Chemistry / Botany/ Zoology/ Env. Sc.	100% promotion from SAI	AES	Min. 5 years experience as SAI	-----

42) From the above, it appears to be strange that for being promoted to the higher post of Assistant Executive Environmental Scientist, the requirement is that a candidate must have 5 years experience as Environmental Scientist in the Board, and that for promotee Scientists, the prescribed qualification is B.Sc. only. However, if the herein before referred Table-3 at Annexure-III of 2012 Regulation and Regulation 9(III)(c) is perused, the educational qualification is M.Sc. as per Regulation 9(III)(a).

43) The next promotional post of Environmental Scientist (ES) is the Assistant Executive Environmental Scientist (AEES). In other words, the post of Environmental Scientist (ES) is the feeder post for Assistant Executive Environmental Scientist (AEES). For Environmental Scientist, the educational qualification is Master's Degree in Science as per Regulation 9(III)(a) of the 2012 Regulation. As per Regulation 9(III)(c), a non-post-graduate promotee Environmental Scientist would have to obtain Master's Degree within 5 (five) years. Therefore, under the 2012 Regulations, all Environmental Scientist must be a Master Degree holder in Chemical/ Biological/ Life or Environmental Sciences from any Indian or Foreign University or Institution recognized by the Government of India. Then, when all persons in feeder posts is Master Degree holders, it remains unexplained how come it is prescribed in Table-3 of

Annexure-III of the 2012 Rules that to hold the post of Assistant Executive Environmental Scientist (AEES), the educational qualification for promotee Scientists shall be B.Sc. only.

44) Coming to the claim of the petitioners that they were promoted from the post of Assistant Environmental Scientist (AES) to the promotional post of Environmental Scientist (ES) before the 2012 Regulation came into force. In this regard, the learned counsel for the petitioners have heavily relied on the statement made by the respondent nos. 2 and 3 in their affidavit-in-opposition filed in connection with W.P.(C) 8263/2022, which is referred to herein above and therefore, not repeated again.

45) The 2012 Regulation came into force after its approval by the Government was conveyed by the Environment and Forest Department by communication dated 24.02.2014. However, the 96<sup>th</sup> Board Meeting of PCBA was held on 05.08.2014. In the said meeting, as per resolution taken in respect of agenda no. 5, the upgradation of Ranjan Bordoloi (petitioner no.1); (3) Karamjit Nath (petitioner no.2); (4) Jibon Sarkar and (5) Manoj Baruah (petitioner no.3), being four senior- most personnel were approved. The PCBA in its 96<sup>th</sup> Board meeting, failed to consider the provisions of 2012 Regulation, including educational qualification prescribed for the post of Environmental Scientists.

46) The 2012 Regulation had come into force after its approval by the Government was conveyed by the Environment and Forest Department by communication dated 24.02.2014. Therefore, the Court is inclined to hold that the resolution taken in the 96<sup>th</sup> Board Meeting of PCBA held on 05.08.2014, under agenda no. 5, thereby approving the "upgradation" of 4 (four) senior-

most personnel, namely, Ranjan Bordoloi (petitioner no.1); (3) Karamjit Nath (petitioner no.2); (4) Jibon Sarkar and (5) Manoj Baruah (petitioner no.3), without requiring the said four personnel including the petitioners to obtain the prescribed educational qualification within 5 (five) years, was done in violation of the educational qualification prescribed under Rule 9(III) (a) to 9(III)(c) of the 2012 Regulation.

47) It is reiterated even at the cost of repetition that by office order dated 23.09.2013, pending approval of the PCBA the petitioners were upgraded to the newly created post of Environmental Scientist. Therefore, as the approval of the upgradation of the petitioners and another personnel vide 96<sup>th</sup> Board resolution of PCBA under agenda no.5 is not found sustainable.

48) The Court is of the considered opinion that the PCBA was bound by the 2012 Regulations, which had come into force on 24.02.2014, when the Government granted approval for the same. It could not be shown that on 05.08.2014, when 96<sup>th</sup> Board meeting of the PCBA was held, it had been vested power to wish away the essential requirement of the petitioners to obtain the essential educational qualification of Master's Degree in Chemical/ Biological/ Life or Environmental Sciences in terms of Regulation 9(III)(c) of 2012 Regulation within 5 (five) years of their service as Environmental Scientists. Therefore, the approval granted in respect of the upgradation of the petitioners and another personnel is held to be not in accordance with the requirement and/ or prescription of the 2012 Regulation. Therefore, such approval cannot create an indefeasible right in favour of the petitioners.

49) In view of the above, the cases of (i) *Tejshree Ghag (supra)*, (ii) *Chairman, Railway Board (supra)*, and (iii) *Hitendra Vishnu Thakur (supra)*, do

not help the petitioners in any way.

50) Therefore, in light of the discussions above, the petitioners are not found entitled to any relief in this writ petition, which fails and is dismissed.

51) Before parting with the records, it is clarified that nothing contained in this order shall preclude the PCBA to invoke its power to relax under Regulation 49 of the 2012 Regulation, and to grant opportunity to the petitioners to obtain Master's Degree and on acquiring such educational qualification, it would be open to the PCBA to reconsider the candidature of the petitioners for upgradation from Assistant Environmental Scientist to Environmental Scientist.

52) Moreover, when the feeder cadre of Environmental Scientist is required to have minimum educational qualification of M.Sc., the PCBA may, if it is so advised, revisit the column 9 of row no. 4 and 5 of Table 3 of Annexure-III to the 2012 Regulation, prescribing B.Sc. as educational qualification for promotees to hold the post of Assistant Executive Environmental Scientist (AEES) and Executive Environmental Scientist (EES). A scientist in superior position of EES and AEES, but having educational qualification lower than ES appears to be unconscionable. This is left to the wisdom of the respondent nos. 2 and 3 of the PCBA.

53) The parties are left to bear their own respective cost.

**JUDGE**

**Comparing Assistant**