

GAHC010054952024



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

Case No. : WP(C)/1512/2024

ABHINANDAN DUTTA
S/O- C.K.DUTTA, R/O- NEW AMOLAPATTY, P.O. AND P.S. GOLAGHAT, DIST.-
GOLAGHAT, ASSAM- 785621

VERSUS

ASSAM POWER GENERATION CORPORATION LTD AND 2 ORS
REPRESENTED BY ITS CHAIRMAN, BIJULEEBHAWAN, PALTAN BAZAR,
GUWAHATI- 781001

2:THE MANAGING DIRECTOR
ASSAM POWER GENERATION CORPORATION LIMITED
BIJULEEBHAWAN
PALTAN BAZAR
GUWAHATI- 781001

3:THE GENERAL MANAGER (HR)
ASSAM POWER GENERATION CORPORATION LIMITED
BIJULEEBHAWAN
PALTAN BAZAR
GUWAHATI- 78100

Advocate for the Petitioner : MR. S BISWAS, MS S BORUAH,MS D DEVI

Advocate for the Respondent : SC, APGC,

**BEFORE
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR**

ORDER

Date : 09.02.2026

Heard Mr. S Biswas, learned counsel appearing for the petitioner, also heard Mr. D. Nath, learned Standing counsel APGCL, assisted by H.R. Das.

2. The petitioner claims that he should be paid the leave salary in accordance with the provisions of Rule 39 D of the CCS leave Rule 1972. The case projected in writ petition is that, the NLC India Limited had floated an advertisement calling for applications for different posts where, as per the advertisement itself, the opening of online registration of application was fixed on 25.08.2022, closing of online registration of application was on 23.09.2022, last date for online payment of fees was given on 23.09.2022, and the last date for online submission of application from candidates who had already registered and paid fees within the time limit was given on 24.09.2022.

3. The petitioner who was in service with the APGCL at the relevant point of time filed his application. Thereafter the petitioner was called for to participate in the interview/written examination for the Post of Executive Engineer (Civil) against the aforesaid advertisement.

4. The petitioner was, to that effect, issued a no objection certificate by the APGCL on 11.01.2023, declaring that, there was no objection for the petitioner to appear in the interview/written examination for the aforesaid post. The petitioner thereafter

was offered appointment by the NLC India Ltd. On the basis of his performance in the interview, and he was selected accordingly tendered his resignation in the APGCL and joined the NLC India Ltd. on 07.07.2023.

5. Having tendered his resignation from the APGCL, the petitioner thereafter approach the APGCL for his DCRG benefits to be paid to him and when the same was not paid to him he approached this Court by WP(C)/3534 of 2024, which was disposed of on 03.06.2025 requiring the respondents to consider the claim for the petitioner gratuity under the provisions of the payment of Gratuity Act, 1972, with effect from the date on which the same would be applicable and forthwith release the same.

6. The petitioner had also made representation to the APGCL for release of his leave salary accumulated with the APGCL where he was paid the half of the accumulated leave salary to his credit

by the APGCL. The petitioner raised a grievance before the APGCL that he would be entitled to the full leave salary at his credit; since his case would be covered by Clause 2 (I) of the Office Memorandum dated 24.11.2022 issued by the Ministry of Personnel, Public Grievances and Pension, Government of India and would also stand covered by the Provisions of Rule 39-D of the CCS (Leave Rules 1972).

7. The stand of the respondents in the affidavit-in-opposition is that the APGCL Board had approved the policy pertaining to leave encashment benefits in respect of resigned employees of APGCL in accordance with Rule 39 (6) (a) (ii) of the CCS Leave Rules 1972 and the Provisions of Rule 39-D of the CCS Leave Rules 1972 were not approved or adopted by the APGCL.

8. The other stand taken in the affidavit-in-opposition filed by respondent is that even if Rule 39-D of the Rules 1972 are

assumed to be applicable to the case of the petitioner, the case of the petitioner did not fulfill the conditions as laid down in Rule 39-D, and he would not be entitled to the benefits of Rule 39-D. The primary contention in the affidavit is that the petitioner's case does not fall in the category of permanent absorption as required under Rule 39 D.

9. Mr. S. Biswas, the learned counsel for the petitioner has submitted that the letter dated 11.01.2023 issued by the APGCL expressing no objection to the petitioner for appearing in the interview/written examination for the Post of Executive Engineer (Civil) at NLC India Ltd. Chennai, was documentary proof of the fact that the application of the petitioner had been processed through proper channel for the purposes of the petitioner to be entitled to the benefits of Provisions of Rule 39 (D) of the CCS (Leave Rules 1972) and Clause 2-(I) of the Office Memorandum dated 24.11.2022.

10. The learned counsel for the petitioner has further submitted that once the application of the petitioner has been found to be made through proper channel, as per Clause 2-(i) of the Office Memorandum of 24.11.2022, the resignation of the petitioner has to be treated as a technical formality and it is at that point of time that Provisions of Rule 39-D of the CCS Rules 1972 would come into play to deem the appointment of the petitioner in the NLC India Ltd. to be a case of permanent absorption, thus entitling him to the benefits of the entire leave encashment standing to his credit in the APGCL.

11. The learned counsel for the petitioner has further submitted that, it cannot be said that the respondents could be allowed to adopt only a part of the Rules of 1972 and to discard the applicability of Rule 39-D of the Rules of 1972.

12. Per contra Mr. D. Nath, has submitted that as the matter today stands only the Provisions of Rule

39 (6) (a) (ii) of the Rules of 1972 which had been adopted and as per the said rules the petitioner would be entitled to only half of the leave salary standing to his credit.

13. The learned counsel for the APGCL, has further submitted that there is no iota of evidence brought on record in the present writ petition that the petitioner had applied through proper channel in response to the advertisement that and the no objection certificate issued by the APGCL was only to the extent of expressing the absence of objection for him to appear in the interview or written test process.

14. The learned counsel for the respondent has submitted that such certificate would not fulfill the requisite of having to file an application through proper channel. In those circumstances, the learned counsel for the respondent APGCL has submitted that provisions of Clause-2 (i) of the Office Memorandum dated 24.11.2022 and the Provisions of Rule 39-D of the Rules of 1972, even if assumed to be applicable to the Corporation, would not come at of the petitioner to claim the entire leave salary standing to his credit for his service rendered in the APGCL.

15. The learned counsel for the respondent has also placed reliance on the order dated 30.06.2025 passed in WP(C) No. 3534/2024 to bring attention of this Court that on earlier occasion, the issue of technical resignation by the petitioner had been addressed by the Court. The interpretations sought to be projected before the Court by the petitioner that the resignation tendered by him was effectively a technical resignation was negated.

16. This Court at this stage does not comment on the same since it also notices that the said observation was made with reference to Rule 36-D of the Leave Rules and not with reference to the possession of 39 D of the Leave Rules of 1972, on which the petitioner has based his entire case. On pointed query by this Court as to whether the application of the petitioner for the post to which he had applied in the NLC India Ltd. was filed through a proper channel or not, Mr. Biswas, has sought for a accommodation to have his instruction.

17. List this matter again on 17th of February, 2026, on which day Mr. Biswas, shall have the instructions as to whether the application of the petitioner had been preferred through proper channel and was forwarded accordingly when the petitioner made his application for the Post of Executive Engineer, NLC India Ltd.

The matter having been substantially heard and would be taken up for disposal.

JUDGE

Comparing Assistant