

GAHC010089452021



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

Case No. : WA/148/2021

MADHAB DEKA AND 3 ORS
S/O LATE KHITISH CHANDRA DEKA, R/O DURGA SAROBAR, GUWAHATI,
KAMRUP, ASSAM, PIN-781009

2: MD. SALAMUDDIN AHMED
S/O LATE ALI AKBAR ALI
R/O HAJO
MUSLIM PATTY
P.O. AND P.S.-HAJO
KAMRUP
ASSAM
PIN-781102

3: SMTI. ANJUMONI SARMAH
W/O SRI PRADIP CHAKRAVORTY
R/O BASISTHA
RIVER RESEARCH COLONY
GUWAHATI
KAMRUP
ASSAM
PIN-781029

4: HITENDRA NATH SHARMA
S/O LATE BISWANATH SARMA
R/O PUTHIMARI
HARIPUR
KAMRUP
ASSAM
PIN-78138

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE

GOVERNMENT OF ASSAM, WATER RESOURCES DEPARTMENT, DISPUR,
GUWAHATI-781006

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT
GOVT. OF ASSAM
CHANDMARI
GUWAHATI-781003

4:THE EXECUTIVE ENGINEER
GUWAHATI WEST WATER RESOURCE DIVISION
BHARALUMUKH
GUWAHATI-781009

5:THE COMMITTEE
CONSTITUTED FOR EARMARKING PERCENTAGE OF VACANCIES IN
GRADE -III TO BE FILLED UP ON PROMOTION FROM GRADE-IV
REPRESENTED BY ITS CHAIRMAN
OFFICE OF THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
DISPUR
GUWAHATI-781006

6:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-781006

7:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL DEPARTMENT
DISPUR
GUWAHATI-78100

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, WATER RESOURCE

- B E F O R E -

**HON'BLE THE CHIEF JUSTICE MR. SUDHANSHU DHULIA
HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

ORDER

11-06-2021

(Sudhanshu Dhulia, CJ)

The matter is taken up through video conferencing.

Heard Mr. K.N. Choudhury, learned senior counsel for the appellants. Also heard Mr. D. Saikia, learned Advocate General, Assam, appearing for the respondents.

This writ appeal has been filed by the petitioners against the judgment & order dated 18.05.2021 passed by the learned Single Judge in WP(C) No.8072/2019.

The case of the petitioners in short is that most of the petitioners were recruited in the late 80's and 90's as Muster Roll workers and Work Charge employees and their services were subsequently regularised on 26.10.2005 by Government order, as "Khalasi". They were subsequently given temporary promotion to the next higher post of Section Assistant in the year 2010, but later they were to be reverted on the post of *Khalasi*, as their appointment to the post of *Khalasi* was not on regular vacancies and these posts were called as "personal posts".

Subsequent to the show cause notice being given to the petitioners, the same was challenged before the learned Single Judge of this Court. The writ petition did not find favour of the learned Single Judge on various grounds but primarily on the ground that even earlier the view taken by the learned Single

Judge of this Court in the similar matter was that since the very birth of the petitioners in the cadre of *Khalasi* was illegal inasmuch as it was not an appointment against any posts and, more importantly, it was not done in accordance with law inasmuch as there was no vacancies advertised, no procedure adopted, such persons are not liable to be promoted to the next higher post inspite of regularisation of their services. Presently, the situation is that the petitioners are working on the posts of Section Assistant and are now liable to be reverted.

Mr. K.N. Choudhury, learned senior counsel for the petitioners has submitted that there is nothing like a personal post in law. At best the salary which can be given to an employee can be categorised as a personal salary. Moreover, in any case, even though initially the appointment of the petitioners would have been irregular but had been subsequently regularised in the year 2005 and in case they are not to be considered for promotion to the next higher posts, it would be violative of the fundamental rights under Articles 14 and 16 of the Constitution of India inasmuch as at least a consideration for promotion is a fundamental right.

Mr. D. Saikia, learned Advocate General, Assam, on the other hand, would oppose this argument on various grounds including that it is clearly against the law laid down by the Constitution Bench of the Hon'ble Apex Court in the case of ***Secretary, State of Karnataka & Ors. -Vs- Uma Devi & Ors. (3)***, reported in ***(2006) 4 SCC 1*** and several other decisions and the petitioners have absolutely no right for promotion, considering their very nature of induction.

On these rival submissions, however, as this matter cannot be heard finally today but purely on considerations of the fact that the petitioners had been working as Section Assistants since 2010, even though by way of a

temporary promotion, and more importantly they had been getting salary on the post of Section Assistant, we make a limited intervention at this stage. The petitioners shall continue to be given salary of Section Assistants until further orders of this Court. However, they would presently have no lien on the posts of Section Assistant. The Department concerned shall be at liberty to take the work from the petitioners, as the contingency demands the work of a Section Assistant or that of a *Khalasi*. The petitioners will duly abide by the same, till the matter is heard on its merit.

List for final hearing on **4th August, 2021.**

JUDGE

CHIEF JUSTICE

Comparing Assistant