

GAHC010134852018



2026:GAU-AS:88

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

Case No. : WP(C)/4302/2018

SWAPAN KR. DAS AND 4 ORS.
S/O- RABINDRA KR DAS, R/O- BANAMALI ROAD, KARIMGANJ, P.O AND
DIST- KARIMGANJ, ASSAM

2: BIDHU BHUSAN DAS
S/O- LATE BARINDRA DAS
R/O- MAIN ROAD
KARIMGANJ
P.O AND DIST- KARIMGANJ
ASSAM

3: HRITENDRA BISWAS
S/O- SANTI LAL BISWAS
R/O- L B ROAD
KARIMGANJ
P.O AND DIST- KARIMGANJ
ASSAM

4: ASHUTOSH DAS
S/O- LATE SANTOSH DAS
R/O- SUBHASNAGAR PWD (COLONY)
DIST- KARIMGANJ
ASSAM

5: PRANAB SHUKLA
S/O- PIYARI MOHAN SUKLA
NAYABARI
TILABAZAR
DIST- KARIMGANJ
ASSA

VERSUS

THE STATE OF ASSAM AND 5 ORS

REP. BY THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVT OF
ASSAM, PUBLIC WORKS DEPTT, DISPUR, GUWAHATI- 06

2:THE CHIEF ENGINEER PWD (ROADS)
ASSAM
CHANDMARI
GHY- 03

3:THE SUPERINTENDING ENGINEER
PWD (ROADS)
CACHAR CIRCLE
SILCHAR
DIST- CACHAR
ASSAM

4:THE EXECUTIVE ENGINEER
PWD
KARIMGANJ RURAL ROADS DIV
KARIMGANJ
DIST- KARIMGANJ
ASSAM

5:PRANAB RANJAN DHAR
S/O- LATE PRANESH CH DHAR
C/O- OFFICE OF THE ASSTT EXECUTIVE ENGINEER PWD (RR)
SUBDIVISION
KARIMGANJ
P.O AND DIST- KARIMGANJ
ASSAM
PIN- 788710

6:SANJOY ROUTH
S/O- LATE SHYAMLAL ROUTH
R/O- SUBHASNAGAR PWD COLONY
P.O AND DIST- KARIMGANJ
ASSAM
PIN- 78871

Advocate for the Petitioner : MR. M DUTTA, MR S DAS,MR. S HAQUE

Advocate for the Respondent : GA, ASSAM, MS B DEVI(R-6),MR. S P CHOUDHURY (R-6),MS.
S. SHARMA (S.C.PWD),MR. S K GHOSH (R6),MS F AHMED (R6)

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 05.01.2026

Heard Mr. M. Dutta, learned counsel for the petitioners. Also heard Mr. R. Dhar, learned Standing Counsel, PWD(Roads), Assam, appearing for the respondent nos.1, 2, 3 and 4. Also heard Mr. S. P. Choudhury, learned counsel, appearing for the respondent no.6.

2. The petitioners in the present proceedings have prayed for a direction upon the respondent authorities for considering their respective cases for promotion to the post figuring in the Grade-III cadre of the service in terms of the provisions of the Assam Ministerial District Establishment Service Rules, 1967.

3. The petitioners, herein, were initially recruited against post figuring in Grade-IV in the establishment of the Executive Engineer, Public Works Department, Karimganj Rural Roads Division. The petitioners having served in such capacity for a long period of time and their cases not being considered for promotion to the next higher grades of the service, had approached this Court, along with other similarly situated persons, by way of instituting writ petitions being WP(C).No.5606/2010, WP(C).No.6103/2010 and WP(C).No.6232/ 2010.

A co-ordinate Bench of this Court, vide order dated 03-11-2015, proceeded to dispose of the said writ petitions by directing the respondent authorities to work out the year-wise vacancies in respect of the posts available in Grade-III category including the posts of Lower Division Assistant and Section Assistant. On such determination of year-wise vacancies available for promotion from Grade-IV category, by

applying the ratio of 90:10, as provided for in the provisions of Rule 6 of the Assam Ministerial District Establishment Service Rules, 1967, to fill up the said vacant posts.

Before the issuance of the said directions by the co-ordinate Bench of this Court, the provisions of the Assam Ministerial District Establishment Service Rules, 1967, were amended by the Amendment Rules of 2015, which was notified on 15-10-2015. In terms of the Amendment now brought into effect, for an incumbent in the Grade-IV cadre to be eligible for being considered for promotion to the promotional posts identified in the Grade-III cadre of the services he must have a graduate qualification.

The petitioners in the present proceedings do not have a graduate qualification. In terms of the directions passed by the co-ordinate bench of this Court vide the said order dated 03-11-2015, the Commissioner and Special Secretary, Public Works Road Department proceeded vide a speaking order dated 06-12-2017 to reject the claim of the petitioners for being considered for promotion to the next higher grade of the service on the ground that they did not possess the minimum requisite qualification for being extended with such consideration.

Being aggrieved the petitioners have instituted the present writ petition.

4. Mr. M. Dutta, learned counsel for the petitioners, after reiterating the facts noticed, hereinabove, has submitted that this Court having directed for working out the vacancies arising year-wise, such determination now being required to be made for a period prior to 2015, the Rules as it stood prior to 2015 would be required to be applied in the matter and accordingly, the Rules having mandated possession of a HSLC qualification, which the petitioners possess, they are entitled to have their respective cases considered for promotion with retrospective effect against the vacancies so identified for the purpose, for such

promotion. He submits that the respondents, herein, only by referring to the amended provisions of the Assam Ministerial District Establishment Service Rules, 1967, have denied to the petitioners a due consideration of their respective cases for promotion to the post figuring in the Grade-III cadre of the service. He submits that the non-consideration of the cases of the petitioners for promotion to the Grade-III cadre has resulted in violation of their fundamental rights in this connection.

5. In the above premises, Mr. Dutta, submits that the respondents be directed to implement the directions passed by the Co-ordinate Bench of this Court vide the order dated 03-11-2015 and consider the cases of the petitioners against the identified vacancies so arising in the matter prior to 2015.

6. Per contra, Mr. R. Dhar, learned counsel for the respondents, submits that the cases of the petitioners not being considered prior to 2015, their consideration now would be required to be extended by applying the amended provisions of the Rules of 1967. He submits that the amended provisions of the Rules coming into effect, w.e.f., 15-10-2015, having mandated that for being extended with such consideration an incumbent in the cadre of Grade-IV must have a Graduate qualification, the petitioners admittedly not having such qualifications, they would not be entitled to be extended with such considerations. He submits that co-petitioners who were involved in the earlier round of litigations along with the petitioners, herein, in the writ petitions which were disposed of vide order dated 03.11.2015, who had the graduate qualifications were considered for promotion to the Grade-III post as available and they were subsequently promoted. However, similar consideration in respect of the petitioners was denied only on account of the fact that they did not possess the requisite qualifications.

7. I have heard the learned counsel for the parties and perused the materials available on record.

8. The petitioners admittedly are working as Grade-IV employees in the regular cadre in the establishment of the respondent no.5. In terms of the provisions of the Rules 5(b) of the said Rules of 1967, an incumbent in the Grade-IV cadre would be entitled to be considered for promotion to the post figuring in the Grade-III of the service, in the event, he possesses the qualification of HSLC and/or had completed 7 (seven) years of continuous service in the District establishment, the quota reserved for promotion was 10% of the vacancies arising in a particular year.

9. The cases of the petitioners not being considered for promotion to the post figuring in the Grade-III cadre identified for promotion from Grade-IV cadre, had approached this Court earlier by way of instituting WP(C).No.5606/2010, WP(C).No.6103/2010 and WP(C).No.6232/ 2010. A Co-ordinate Bench of this Court vide order dated 03.11.2015 proceeded to dispose of the said writ petition by issuing the following directions;

“That being the position, respondents are directed to work out the year wise vacancies and thereafter to fill up the said vacancies by applying the ratio of 90:10 and in accordance with the provisions contained in the Assam Ministerial District Establishments Service Rules, 1967. The post of Section Assistant will also be included in Gr-III posts alongwith Lower Division Assistant (Junior Assistant), only after the proportion of vacancies to be filled up by the above ratio is work out, respondents may proceed to fill up the same in the manner indicated above.”

10. Before passing of the said order dated 03.11.2015 the Rules of 1967, was amended by the provisions of the Assam Ministerial District Establishment Service Rules (amended Rules), 2015, which came into force w.e.f., 15.10.2015. In terms of the provisions of Rule 7 as

amended, for promotion to the cadre of Grade-III, an incumbent in the Grade-IV cadre is now required to possess a degree qualification. Admittedly the petitioners in the present proceedings do not possess such qualification.

11. The above being the position, the matter on being examined, the Commissioner and Special Secretary, Public Works Department, Dispur, proceeded to reject the claim of the petitioners, herein, by issuing a speaking order dated 06.12.2017. The claim of the petitioners were rejected only on the ground that they did not possess the graduate qualification which was mandated in terms of the amended provisions of the Rules of 1967.

12. The learned counsel for the petitioners had submitted that this Court vide the order dated 03.11.2015 having required the respondent authorities to work out the year wise vacancies by applying the 90:10 ratio as provided for in the Rules of 1967 and thereafter to effect promotions, the case of the petitioners, herein, must be considered by applying the Rule that was so applicable on the date, the vacancies so identified had come into effect, inasmuch as, it is a settled position of law that right to be considered for promotion is a fundamental right. The said submission of the learned counsel for the petitioners is being considered only to be rejected, inasmuch as, the Hon'ble Supreme Court in the case of **State of Uttar Pradesh and Ors. Vs. Rachna Hills & Ors.** reported in (2023) SCC online **SC 506** by considering its decisions in the case of **State of Himachal Pradesh Vs. Raj Kumar & Ors.** reported in **2023 3 SCC 773** had held as follows;

“32. In a recent decision, in State of Himachal Pradesh v. Raj Kumar, after reviewing a number of decisions on the same subject, this Court formulated the following principles:

"70. A review of the fifteen cases that have distinguished Rangaiah would

demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in Rangaiah. The findings in these judgments, that have a direct bearing on the proposition formulated by Rangaiah are as under:

- 1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah's case must be understood in the context of the rules involved therein.*
- 2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates.*
- 3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government. There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit. The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.*
- 4. The principle in Rangalah need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.*
- 5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to amendment, the State cannot be directed to consider the cases.*

(emphasis supplied)

33. In view of the clear enunciation of the law, we have no hesitation in rejecting the submission made by the learned counsels for the Respondents, that the vacancies that existed prior to the amendment of Regulation 17 of Chapter II, must be governed by unamended rules."

13. In terms of the said decisions of the Hon'ble Supreme Court, it is a

settled position of law that even if the vacancies are found to be existing prior to 2015, the consideration that would now be required to be extended to the petitioners would be a consideration in terms of the amended provisions of the Rules of 1967, i.e., the Rule position existing after 2015. On application of the provisions of the amended Rules, the petitioners, herein, are found to be not eligible for being extended with such consideration.

The petitioners not having the requisite eligibility criteria for being considered for promotion to the post figuring in the Grade-III cadre, no right of the petitioners can be said to have been violated, in not considering their cases for promotion to the cadre of Junior Assistant.

14. In view of the above conclusions, this Court finds that the speaking order dated 06.12.2017 passed by the Commissioner and Secretary, PWD (Roads) Department, Dispur, Assam, is not erroneous and accordingly the same would not mandate any interference.

15. In view of the above discussions, the present writ petition is held to be devoid of any merit and accordingly the same stands dismissed, however there would be no order as to costs.

JUDGE

Comparing Assistant