

GAHC010228132023



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

Case No. : WP(C)/5971/2023

GANESH CHOUDHURY
S/O- LATE KAMAKHYA CHOUDHURY, R/O- HOUSE NO. 8, TARINI BHANU
COMMERCIAL COMPLEX, NAKSHA BUILDING, MALIGAON CHARIALI,
DIST. KAMRUP(M), PIN- 781011, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, HOUSING AND
URBAN AFFAIRS DEPARTMENT, DISPUR, GUWAHATI-781006.

2:THE JOINT SECRETARY

HOUSING AND URBAN AFFAIRS DEPARTMENT
DISPUR
GHY-781006.

3:THE LEGAL REMEMBRANCER AND SECRETARY

JUDICIAL DEPARTMENT
GOVT. OF ASSAM
DISPUR
GHY-781006.

4:THE JOINT SECRETARY

PERSONNEL DEPARTMENT
GOVT. OF ASSAM
DISPUR
GHY-781006.

5:THE DIRECTOR OF TOWN AND COUNTRY PLANNING

ASSAM
DISPUR
GUWAHATI
PIN- 781006.

6:THE EXECUTIVE ENGINEER
DRAINAGE AND SEWERAGE DIVISION
DEPARTMENT OF TOWN AND COUNTRY PLANNING
DISPUR
PIN- 781006.

7:PRANAB SARKAR
OFFICE OF THE DEPUTY DIRECTOR
TOWN AND COUNTRY PLANNING
DISTRICT OFFICE - KOKRAJHAR
J.D. ROAD
NEAR SECRETARIAT
PIN- 783370

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

13.10.2023

Heard Shri U.K. Nair, learned Senior Counsel for the petitioner. The petitioner was appointed as a Junior Engineer (Civil) under the Directorate of Town & Country Planning in the year 2009.

It is the case of the petitioner that he was already holding the Bachelor of Engineering Degree which he acquired in the year 2006. By referring to the Assam Town and Country Planning Service Orders, 1990, Shri Nair, the learned Senior Counsel submits that as per Clause 7 (3), any Junior Engineer acquiring the academic qualifications for direct requirement to the post of Assistant

Engineer can be promoted to the said post and such promotions are to be treated as direct recruitment. The petitioner had accordingly made representations to consider himself under the said provision of law.

The learned Senior Counsel has also informed this Court that in a similar situation arising in the Public Works Department, there was a litigation being WP(C)/3494/2007 which was allowed by this Court on 30.04.2009.

It is however informed that in a subsequent case being WP(C)/2843/2020, a learned Single Judge of this Court had passed an order dated 22.02.2022 by referring the issue before the Hon'ble Division Bench as the proposition of law laid down in the case of ***Dijen Sarmah & Anr vs. The State of Assam & Ors.*** [WP(C) 3494/2007] [order dated 30.04.2009] was not agreed upon.

This Court however is of the *prima facie* opinion that the interpretation given in the order dated 30.04.2009 appears to be a reasonable interpretation.

Be that as it may, since a reference has been made to the Hon'ble Division Bench, this Court restrains from making any further observation on the issue.

Let notice be issued, returnable by 4 (four) weeks.

Shri R. Dhar, learned State Counsel accepts notice on behalf of the respondent nos. 1 to 6.

Let extra copies of the writ petition be served upon the learned counsel for the respondents within 3 (three) days.

Let steps be taken for service of notice upon the respondent no. 7 by registered post with A/D.

Steps within 3 (three) days.

Shri Nair, the learned Senior Counsel prays for an interim order.

Considering the aforesaid facts and circumstances and also the order by which the issue has been referred to a larger Bench, it is provided that any appointment given to the private respondent no. 7 to the post of Assistant Engineer would be subject to the outcome of the writ petition.

This Court also directs that in case the Department wishes to go ahead with the order of appointment, a clause would be inserted regarding the aforesaid observations.

JUDGE

Comparing Assistant