

**(2018) 11 GAU CK 0018**  
**In the Gauhati High Court**  
**Case No : Civil Writ Petition No.3196 Of 2014**

Bimal Chandra Tamuli And 2 Ors

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

**Date of Decision :** 15-11-2018

**Acts Referred:**

Assam Inland Water Transport Services Rules 2009 — Rule 5(6)(b), 12(4), 12.4(i)(b), 14

**Citation :** (2018) 11 GAU CK 0018

**Hon'ble Judges :** Nelson Sailo, J

**Bench :** Single Bench

**Advocate :** Mrg Deka,

**Final Decision :** Allowed

## Judgement

NELSON SAILO

1. Heard Mr. PKR Choudhury, the learned counsel for the petitioners. Also heard Mr. Y Doloi, the learned Standing Counsel appearing for the

Transport Department and Mr. UK Nair, the learned senior counsel appearing for the respondent Nos. 5 and 6.

2. This writ petition was filed on 24.06.2014 by the writ petitioner on being aggrieved with the Judgment and Order dated 11.12.2012, passed by the

Assam Administrative Tribunal in Case No. 53 ATA/2010 and the consequential Notification dated 22.11.2013, issued by the Transport Department

giving the private respondent Nos. 5 and 6 the benefit of being considered for promotion to the post of Assistant Engineers with retrospective effect

from 18.08.2010 alongwith seniority in terms of the decision of the Assam Administrative Tribunal. The further prayer of the petitioners is also for

regularization of their services as Assistant Engineer since they were only given

officiating promotion to the post of Assistant Engineers vide

Notification dated 27.09.2013.

3. Be it stated herein that the petitioner No.1 was allowed to officiate as work charge Junior Engineer under the Directorate of Inland Water

Transport Department vide order dated 13.05.1986. Thereafter, vide Office order dated 24.04.1990, the petitioner No.1 was appointed as Junior

Engineer (Civil) under the Directorate. Petitioner Nos. 2 and 3 were appointed to the same posts under Regulation-3(f) of the Assam Public Service

Commission (Limitation and Function) Regulation, 1951 vide Office Orders dated 21.09.1985 and 26.07.1985 respectively. Petitioner Nos. 2 and 3

were regularized in the said post vide office order dated 23.03.1990 and the petitioner No.1 was regularized vide Office Order dated 19.06.1990.

4. The Transport Department on 07.08.2012 came up with a Notification by which the gradation list of Junior Engineers working under the Directorate

of Inland Water Transport was published. As per the gradation list, the petitioner Nos. 1, 2 and 3 were placed at serial Nos. 3, 2 and 11 respectively.

As for the respondent No. 5, he was placed at serial No. 12. Thereafter, the petitioners were promoted on officiating basis to the post of Junior

Engineers vide Notification dated 27.09.2013 and subsequently, vide Notification dated 17.1.2013 they were allowed to hold additional charge of

Assistant Executive Engineer and vide Office Order dated 19.10.2013, the petitioners were given additional charge.

5. As already aforementioned, the grievance of the petitioners is that the Assam Administrative Tribunal vide Judgment and Order dated 11.12.2012

passed in Case No.53 ATA/10 directed the Department concerned to hold a review selection committee meeting in continuation with the selection

that was held on 18.08.2010, to consider their promotion in the cadre of Assistant Engineers with retrospective effect from 2010 along with seniority

but however with only a notional fixation of their pay w.e.f. 2010. The said Judgment and Order was complied with by the Department by issuing a

Notification on 22.11.2013. It is the case of the petitioners that the private respondents have obtained their Bachelors Degree in Engineering and

Technology by means of distance education mode and that since there was no approval of the Distance Education Council and thus, without they

having obtained their Degrees from Government recognized Universities, they

could not have been granted the benefit of being appointed to the post of Assistant Engineer in terms of Rule-12 (4) of the Assam Inland Water Transport Services Rules 2009 (Service Rules of 2009). The petitioners being appointed to the post of Junior Engineers prior to them in the year 1990, the private respondent Nos. 5 and 6 cannot be considered for promotion prior to them. Moreover, as per the gradation list published vide Notification dated 07.08.2012, the petitioners are senior to the private respondents. Consequently, the petitioners have sought for interference of this Court for setting aside the impugned Judgment and Order dated 11.12.2012 and the Notification issued by the Transport Department on 22.11.2013. The petitioners have also prayed for a direction to the authorities to regularize their services as Assistant Engineers.

6. Against the writ petition, the respondent Nos. 1, 2 and 3 have filed their affidavit-in-opposition on 21.06.2016 whereby, it is contended that the private respondents having obtained the requisite degree for being considered for direct recruitment to the post of Assistant Engineer under the provision of Rule-12.4 (i) (b) of the draft service rules, they were promoted to the said post. The impugned Notification dated 22.11.2013 was issued in compliance with the Judgment and Order passed by the Assam Administrative Tribunal. Similarly, the respondent No. 4 has filed an affidavit in-opposition on 07.03.2017 wherein a similar stand has been taken.

7. Mr. PKR Choudhury, the learned counsel for the petitioner at this stage submits that the issue with regard to recognition of the Degrees obtained by way of a distance mode was under the consideration of this Court as well as the Apex Court for quite some time. The same has finally been settled by the Apex Court with the pronouncement of its verdict on 03.11.2017 in Orissa Lift Irrigation Corporation Ltd. vs- Rabi Sankar Patro & Ors, reported in (2018) 1 SCC 468. By referring to the same Judgment, the learned counsel submits that the Apex Court has held that all the Degrees in Engineering awarded by deemed Universities concerned through distance education mode after the academic Sessions of 2001-05 is to be recalled. It was further directed that all the benefits which a candidate had secured by obtaining degree in Engineering through a distance mode such as promotion or advancement in career are to be recalled. However, monetary benefit or advantage obtained by such candidate if any is not to be

recovered by the Department or employer concerned. He therefore submits that such being the position, the benefit of promotion and seniority granted to the private respondents will only have to be recalled. In so far as the petitioners are concerned since they were not considered for promotion to the post of Assistant Engineers from the post of Junior Engineers despite having the experience of 8 years in the lower post, a suitable direction be issued to the respondent authorities to consider their promotion from the day they become eligible to be considered.

8. Mr. Y Doloi, the learned Standing Counsel for the Transport Department submits that besides the petitioners, there may be other eligible candidates to be considered for promotion in the post of Assistant Engineers and therefore, Court may leave the matter to be considered by the Transport Department.

9. Mr. UK Nair, the learned senior counsel for the private respondents submits that in view of the decision rendered by the Apex Court in the case of Orissa Lift Irrigation (supra), the private respondents cannot have any argument as undisputably, the private respondents obtained their Bachelors Degree in Engineering and Technology through distance mode. However, he submits that the monetary benefits and other advantages gained by the private respondents in the meantime, may not be disturbed as observed by the Apex Court in the said decision. He submits that the private respondents after opting voluntary retirement scheme have since retired from service.

10. I have heard the submissions made by the learned counsel for the parties and I have perused the materials available on record including the decision rendered by the Apex Court in the case of Orissa Lift Irrigation (supra).

11. It may be noticed that as per Rule-5(6) (b) of the Rules of 2009, 50% of the post of Assistant Engineers is to be filled up against the vacancies occurring in a calendar year from the post of Junior Engineers having 3 years diploma in Civil/ Mechanical/Electrical from a Government recognized Institute and 8 years of experience in the cadre. Promotion is to be considered in terms of Rule-14 of the same Rules. As can be seen, the petitioners admittedly were regularized sometime in the year 1990 and therefore upon their completion of 8 years of service in the Grade, they became eligible to be considered for promotion to the post of Assistant Engineers. However, they were only promoted on officiating basis vide Notification dated

27.09.2013. On the other hand, in case of private respondents in view of them having obtained Bachelors Degree in Engineering in the year 2007-

2008, they were given the benefit of promotion by way of direct recruitment w.e.f. 18.08.2010. However, the issue with regard to acceptability of

Bachelors Degree in Engineering by way of Distance Education having already been considered and decided by the Apex Court, this issue be dealt

separately. In so far as the petitioners are concerned, it is apparent that they were eligible to be considered on completion of 8 years of their services

under the Rules of 2009. That being the position, they deserve to be considered. The respondent authorities are hereby directed to consider the

petitioners for their promotion with effect from the date they became eligible for promotion to the post of Assistant Engineers in terms of Rule-5 (6)

(b) of the Rules of 2009 along with other eligible candidates subject to availability of vacancies. Such consideration should be carried out as

expeditiously as possible and preferably within the period of 3 months from the date of receipt of a certified copy of this order. In so far as the private

respondents are concerned, since they have admittedly retired from services after having opted for the voluntary retirement scheme, the financial and

other advantages including pension and pensionary benefits should not be disturbed.

12. With the above observations and directions, the writ petition stands accordingly allowed.