
(2017) 02 GAU CK 0005
In the Gauhati High Court
Case No : WA No. 124 of 2015

Dilip Talukdar

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 10-02-2017

Acts Referred:

Citation : (2017) 2 GauLT 135

Hon'ble Judges : Mr. Hrishikesh Roy and Mr. Nelson Sailo, JJ.

Bench : Division Bench

Advocate : Mr. R. Islam, Mr. B. Ahmed, Mr. A.K. Azad, Mr. S.K. Talukdar, Mr. J.M.A. Choudhury and Mr. H. Das, Advocates, for the Appellants; Mr. B. Goswami, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Hrishikesh Roy, J. - Heard Mr. R. Islam, the learned Counsel appearing for the appellants in the WA No.124/2015. The Appellants in the WA No.111/2016 are represented by the learned Counsel Mr. S.K. Talukdar. The respondents are represented by Mr. B. Goswami, the learned Standing Counsel for the Water Resource Department.

2. The challenge in these two appeals is to the common judgment rendered on 16.3.2015 in the WP(C) NO.2416/2014 and in the WP(C) No.3416/2014, whereby, the learned Single Judge found no merit in the writ petitioners' claim for promotion from Grade-IV (Khalasi) to the post of Section Assistant (Grade-III) in the Water Resource Department. Thus the writ petitions came to be dismissed under the impugned judgment dated 16.3.2015.

3. The writ petitioners were serving as Work-Charge (WC)/Muster Roll (MR) workers since before 1.4.1993 and in pursuant to the Cabinet decision to regularise the service of this category, working in different Government departments, requisite number of posts were created for regularization of the eligible incumbents, under the communication dated 22.8.2005 of the Finance

(EC-II) Department. In the Guideline appended to the Government order, Clause-5 stipulated that the posts are personal to the respective WC/MR workers and will be abolished as soon as the incumbent relinquished the post in any manner.

4. Following the creation of posts as aforesaid and as per the conditions stipulated in the communicated dated 22.8.2005, regularization of the eligible WC/MR workers was allowed w.e.f. 22.7.2005 but it was specified in the regularization order of 7.10.2015 that the posts sanctioned is personal to the respective person holding the post and will stand abolished automatically as soon as the incumbent relinquish the posts, in any manner. It was further stipulated that the appointment/regularization is purely temporarily and liable for reversion/termination, at any time.

5. In the meantime, an exercise was started for earmarking a percentage of vacancies in Grade-III (SA) rank to be filled up through promotion from amongst the Grade-IV (Khalasis), under the Water Resource Department. The office order issued on 25.11.2013 stipulated that 90% of the post of Grade-III (SA) will be filled up by direct recruitment and balance 10% will be kept reserved for promotion of eligible Grade-IV (Khalasis). But those working in the Grade-IV (Khalasi) posts on personal basis, were excluded out of the purview of the promotion process, under the office order of 25.11.2013.

6. The exclusion of the incumbents holding Grade-IV (Khalasi) posts on personal basis, from the purview of promotion to the higher post of Grade-III (SA), came to be challenged in the High Court. The affected incumbents contended that exclusion of the Khalasis holding the posts on personal basis, from the purview of further promotion is arbitrary and unreasonable as those who were working in the regular cadre of Khalasis are entitled for promotion to the higher cadre. They submitted that at least one promotional opportunity in the service career should be provided to be regularized group.

7. In order to appreciate the contention raised by the writ petitioners, the learned Court dwelt on the backdrop to the policy decision of the Government to regularize the service of the WC/MR workers, in different works departments, who were in continuous service since before 1.4.1993. The circumstances leading to temporary creation of 5829 WC Grade-IV posts and 25069 Grade-IV posts w.e.f. 22.7.2005, for regularization of that many WC/MR workers, were considered. The Court also noted that the guideline issued by the Finance Department clearly stipulated that the posts were created as personal to the respective incumbent and will be abolished as soon as the concerned incumbent relinquish the post in any manner. Thus the temporary nature of the additional posts, was noted by the Court.

8. The Court analysed the concept of personal posts and noted that the regularization of service of the WC/MR workers, were not against any cadre posts of the department but the posts so created were to be treated as ex-cadre posts.

9. As promotion to higher rank can be considered only from the feeder cadre and since the writ petitioners were not en-cadred in the feeder cadre, the learned Judge opined that they are dis entitled to claim promotion to the higher cadre. The learned Judge found that regularization of the incumbents in the temporarily created personal posts, was accepted without protest, with the attendant terms and condition and therefore it was observed that the beneficiaries of the regularization order cannot turn around and assail the decision of the Government, which wanted to confer limited benefits, through the process of regularization.

10. On the plea of discrimination vis-a-vis those already en-cadred in the feeder cadre, the Court held that the incumbents regularized against the posts created personal to them are on a different footing as their posts being temporary in nature were not added to the cadre strength in the department. Thus the plea of discrimination was negated visa-a-vis those who were working in the posts within the notified cadre, of the department.

11. On the basis of above reasoning, the prayer for promotion made by the ex-cadre incumbents holding posts on personal basis, was found to be untenable and accordingly the cases came to be dismissed, under the common judgment dated 16.3.2015.

12. We have seen the reasons recorded by the learned Judge for the impugned verdict and find that the posts against which the writ petitioners were regularized were never added to the notified cadre in the department. Yet no plea was advanced for en-cadrement of the posts held by the affected parties. The promotion in the department can be considered only from the eligible employees in the feeder cadre and the writ petitioner being outside of the cadre, cannot have any enforceable right to claim promotion, particularly when, the regularization order itself stipulates that they are regularized in posts personal to them. Such temporary creation of post cannot automatically add to the cadre strength of the department and claim for promotion from a person holding an ex-cadre post, is not legally tenable. Therefore we see no basis to take a different view in the matter than the one taken by the learned Single Judge, in dismissing the cases.

13. From the above discussion and analysis, the Appeals are found devoid of merit and the same are accordingly dismissed by leaving the parties to bear their respective cost.