

(2019) 05 GAU CK 0062
In the Gauhati High Court
Case No : Writ Petition (C) No. 3843 Of 2015

Giridhar Barman And 2 Ors

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 16-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Assam Agricultural Engineering Service Rules, 2007 Rule 12(3)(d)

Citation : (2019) 05 GAU CK 0062

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : T Chutia, R K D Choudhury

Final Decision : Disposed Off

Judgement

1) Heard Mr. M. Biswas, learned counsel for the petitioners. Also heard Mr. R.K.D. Choudhury, learned Senior Government Advocate, appearing for all the State respondents.

2) By filing this writ petition filed under Article 226 of the Constitution of India, the 3 (three) petitioners herein have questioned the denial of promotion to the petitioners to their next higher grade, despite meeting all the required eligibility criteria as prescribed under the Assam Agricultural Engineering Service Rules, 2007.

3) The case projected by the petitioners is that they were appointed as Overseer (Agriculture Engineering) in the Office of the Sub- Divisional Agriculture Engineer, Roha and Kokrajhar respectively. In course of their service, the Agriculture Department of the Govt. of Assam vide Memo dated 25.01.2006 had sanctioned 22 numbers of ex- cadre posts of Assistant Agriculture Engineer (AAE for short) to promote 22 Junior Engineers as per the incumbency list. Thereafter, by notification dated 23.05.2006, consequent upon creation of 22 ex- cadre posts of AAE, the herein before referred 22 Junior Engineer (Agri) including the

petitioners, who had completed 20 years of service in the same post were allowed to officiate on promotion temporarily to the ex-cadre post of AAE and the said posts were made personal to the said 22 promotees. Thereafter, vide notification dated 18.09.2014, 8 numbers of ex- cadre AAE's including the three petitioners herein were promoted from ex- cadre AAE's to cadre of AAE and they were also given their respective places of posting. In this writ petition, the grievance of the petitioners is that the authorities have not initiated any process for promotion of the petitioners to the post of Assistant Executive Engineer (Agri) [AEE (Agri) for short] in spite of the fact that as on the date of filing of this writ petition, the petitioners had rendered over 9 (nine) years of service in the same post of AAE. The further grievance of the petitioners is that the Government is contemplating to promote officers who are junior to them to the post of AEE (Agri). Hence this writ petition.

4) The learned counsel for the petitioners has submitted that the authorities have knowingly deprived the petitioners of their rights, including right to be timely considered for promotion because after the petitioners had rendered 20 years of unblemished service as JE (Agri), they were promoted to ex-cadre AAE, and thereafter shown to be promoted to the cadre of AAE, which was palpably illegal. It is submitted that by this elaborate tactics, the authorities have made the petitioners to suffer stagnation in their respective service career on one hand, and on the other hand the petitioners would be further deprived if the authorities promote their juniors. It is submitted that the nature of work and service rendered by the petitioners are same as any encadred JE (Agri) and AAE and that the petitioners were getting equal pay of an encadred JE (Agri) and AAE. Hence, it is submitted that the petitioners have been discriminated against and therefore, the learned counsel for the petitioners has prayed for a direction to the respondents to immediately initiate the process of promotion of the petitioners to the post of AEE (Agri) as well as other reliefs as prayed for in the writ petition.

5) Per contra, the learned Senior Govt. Advocate has referred to the stand taken by the State respondents in the case and it is submitted that the initial appointment letter dated 03.11.1981 would reveal that the petitioners were considered as outsiders while temporarily appointing them to officiate as Overseer (Agri. Engineering) and it was further made clear that the post of Overseer as filled up were under Agricultural Engineering Scheme (Non- Plan) and that pay and T.A., etc. were to be drawn from the Scheme. In course of time, the post of Overseer was re-designated as JE (Agri). Thereafter, considering the length of service rendered by the petitioners, they were promoted from the ex- cadre post of JE (Agri) to ex- cadre post of AAE, which was created to accommodate the petitioners as these posts were made personal to the petitioners and accordingly, the posts of JE (Agri) that had become vacant were kept in abeyance. Thereafter, the petitioners were promoted to the cadre post of AAE. Accordingly, the petitioners were borne in the cadre of AAE for the first time on and the date of taking over the charge of AAE pursuant to the

notification dated 18.09.2014. Accordingly, it is submitted that the petitioners have not held the Cadre post of AAE for 9 years as projected, but the petitioners have not crossed the benchmark of 5 years of service as AAE to come within the zone of consideration for being appointed in the said promotional post. By referring to the case of State of Orissa V. Jagabandhu Panda, (2013) 11 SCC 631, it is submitted that as in that case, the post of Overseer (Agri), to which the petitioners were initially appointed was outside the existing cadre and even the petitioners were outsiders in terms of their appointment order dated 03.11.1981 and that post was created under a Scheme. Accordingly, when the petitioners had accepted their promotion to the ex-cadre post of JE (Agri) to Ex- Cadre post of AAE, the petitioners had done so with open eyes. Hence, it is submitted that following the ratio laid down in the said case, no right is conferred to seek promotion to the post of AEE (Agri) if the petitioners have not got requisite qualifying 5 years of service.

6) Having considered the submissions as well as the materials available on record, from the contents of the order dated 03.11.1981, by which the petitioners were initially appointed, it is crystal clear that the petitioners were termed as outsiders, and that they were appointed to officiate in the post of Overseer (Agri. Engineering) and that the said posts were created under a Scheme, i.e. Agricultural Engineering Scheme and that their salary, etc. were to be drawn from such scheme. However, in course of time, the petitioners were borne into the cadre post of AAE on and from the date of taking over the charge of AAE pursuant to the notification dated 18.09.2014. With such a crystal clear position, this Court is unable to accept that the appointment made outside the cadre post of AAE on and from notification dated 23.05.2006 ought to be treated as encadred post to calculate the total length of service rendered by the petitioners in the post of AAE and to hold that the petitioners has rendered more than 5 years of qualifying service to be eligible for being considered for their next promotion to the post of AEE (Agri).

7) In respect of the said opinion of this Court, the ratio laid down in the case of Jagabandhu Panda (supra), cited by the learned Senior Govt. Advocate is found to squarely apply both on similarly situated facts and law. The relevant paragraphs 23 to 25, as extracted herein below is self explanatory:-

"23. It is not in dispute that the post of Ore-dressing Engineer was created on the basis of proposal initiated from the Commissioner level under a Scheme "Applied Mineral Research 1981-82". In the said proposal it was mentioned that the assessment of the mineral resources of the State constituted a most important objective of the Directorate of Mines. In order to take up the investigation with regard to the study of minerals it was proposed to create a post of Ore-dressing Engineer under a scheme. It is, therefore, clear that the post of Ore-dressing Engineer was created and appointment was made outside the existing cadre of mining engineers. It was so understood by the respondent that from the inception that he was holding an ex-cadre post there had been a

special reason for recruiting an Ore-dressing engineer for a specific purpose temporarily outside the ex- cadre of mining engineer. It is well settled that a cadre may consist of permanent as well as temporary post and there may be permanent vacancies in permanent as well as temporary post, but it does not follow that appointment made outside the very service and outside the cadre must be considered to be made to temporary post borne on the cadre merely because, the post was likely to continue indefinitely.

24. In T.N. Administrative Service Officers Association and Another vs. Union of India and Others (2000) 5 SCC 728 this Court was considering a case where the Members of the State Administrative Services made a claim that a number of ex-cadre or temporary posts which were temporary in nature and some of them were created under the State Enactments which required their manning by IAS Officers. It was contended that on account of failure of the Central Government to timely review the cadre strength as statutorily required, the promotion of the promotees got inordinately delayed and they lost their seniority in the promoted cadre. The rule does not confer any right on the petitioners to seek a Mandamus for encadring those ex-cadre/temporary posts. Any such Mandamus would run counter to the statutory provisions governing the creation of cadre and fixation of cadre strength which was held that asking the State or the Central Government for encadrement of the ex-cadre/temporary posts will amount to asking the Government to create more posts.

25. In the background of the law well settled by this Court, we are of the definite opinion that the direction issued by the Tribunal and the order of the High Court affirming the order of the Tribunal is wholly without jurisdiction. The impugned orders passed by the Tribunal as also by the High Court are, therefore, liable to be set aside."

8) It is seen that under the provisions of Rule 12(3)(d) of the Assam Agricultural Engineering Service Rules, 2007 it has been provided that for promotion to the rank of AEE (Agri) the officer must have rendered minimum continuous service in the cadre of AAE for 5 (five) years on the 1st day of January of the year of promotion and has successfully undergone training and had passed the Departmental Examination as prescribed for the purpose of promotion. Thus, as the petitioners are found to have entered in the cadre of AAE on their respective dates of joining the promotional post in terms of notification No. AGA 81/2014/79 dated 18.09.2014, as on this present date, this Court finds that the petitioners do not possess the first requirement of having rendered 5 (five) years of continuous service in the cadre of AAE to become entitled to be considered for promotion to the rank of AEE (Agri). In so far as the second condition prescribed in the above referred Rule 12(3)(d) of 2007 Rules is concerned to the effect that the person must have successfully undergone departmental training, no material has been brought on record before this Court that the petitioners have undergone such training successfully. Thus, as on this date, this Court is unable to hold that the petitioners have suffered violation of any legal or fundamental

right whatsoever. The non- consideration of the case of the petitioners for promotion is not found to be vitiated by any arbitrariness. This Court also does not find that the petitioners have been unequally treated merely because the authorities are contemplating to promote encadred AAE to the cadre post of AEE (Agri). Having borne into the cadre of AAE on their respective dates of joining the said post pursuant to notification dated 18.09.2014, this Court is unable to accept that the length of service rendered by the petitioners in the ex- cadre post of AAE is required to be counted as service rendered in the encadred post of AAE.

9) Thus, in the considered opinion of this Court, the present writ petition is premature as no cause of action has arisen for the petitioners to be aggrieved by not being considered for promotion. In this regard, this Court is of the considered opinion that as all the three petitioners were borne in the cadre of AAE either on 18.09.2014, the date of notification, or their respective dates of joining in the said post, whichever is later. Thus, in view of the discussions above, the petitioners are not entitled to any relief in this writ petition.

10) However, before parting with the records, it is made clear that this order shall not be a bar for the petitioners to follow up their cause to claim to be considered for promotion upon fulfilling the prescribed eligibility conditions.

11) With the aforesaid observation, this writ petition stands disposed of. The Rule stands discharged. There shall be no order as to cost.

12) Let the record of W.P.(C) 3843/2015 (disposed of), which was tagged along with this case be de-tagged.