

(2025) 03 GAU CK 0461
In the Gauhati High Court
Case No : WP(C) Of 4007 Of 2012

Md. Nuruzzaman Ahmed And 3 Ors

APPELLANT

Vs

The State Of Assam And Ors

RESPONDENT

Date of Decision : 06-03-2025

Acts Referred:

Assam Engineering (Public Works Department) Service Rules, 1978 @mdash; Rule 6(1), 11(4), 22(3), 22(c)

Citation : (2025) 03 GAU CK 0461

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : P Sharma, S K Goswami, Msp Medhi, A Chetry, S Saikia, S P Nair, U K Nair

Final Decision : Dismissed

Judgement

Suman Shyam, J

1. Heard Mr. S.K. Goswami, learned counsel appearing for the writ petitioners. Also heard Mr. P. Nayak, learned standing counsel, PWD appearing for the respondent Nos. 1 to 3 and Mr. M.P. Sarma, learned counsel representing the private respondent Nos. 4 to 7.

2. The judgment and order dated 31-03-2012 passed by the learned Assam Administrative Tribunal (AAT) in Case No. 22ATA/2011 allowing the appeal preferred by the private respondents as appellants granting their prayer to treat the promotions as Assistant Engineer (Civil) from a prior date i.e. prior to appointment of the direct recruits/ the writ petitioners, has been put under challenge in the present writ petition.

3. The facts of the case, in a nutshell, are that on 01-09-2001, the Assam Public Service Commission (hereinafter referred to as the APSC) had issued an advertisement notice inviting applications for filling up 187 vacant posts of Assistant Engineer (Civil) under the PWD. The writ petitioners herein, having the

requisite qualification to apply for the aforesaid posts, had submitted their applications. On conclusion of the selection process the APSC had recommended appointment of the petitioners pursuant where to, by the order of appointment dated 23-06-2003 issued in respect of the respective writ petitioners, they were appointed as AE(C) in the PWD. Accordingly, petitioners had joined in their respective posts and since then, have been serving under the PWD.

4. At the relevant point of time, the private respondent Nos. 4 to 7 were working as Junior Engineers (JE) under the PWD. In order to be promoted/ appointed to the rank of Assistant Engineer a Bachelors degree in Engineering (BE) is a must under the rules. Since the private respondents did not possess a Bachelors degree in Engineering, hence, their cases could not be considered for promotion to the post of AE(C). However, realizing the said situation, private respondents had sought permission from the departmental authorities to appear/ acquire the higher qualification and eventually, all four of them had acquired Bachelors Degree in Engineering (BE) in the year 2003. Thereafter, in a meeting of the Departmental Promotion Committee (DPC) held on 26-12-2003, the candidature of the four private respondents were considered for promotion to the post of AE(C) and they were recommended for promotion. Based on the said recommendation of the DPC, by notification dated 03-01-2004 all the four private respondents were promoted to the rank of AE(C) under the PWD.

5. It appears that a gradation list of AE(C) was prepared by the department wherein, the names of the private respondents were placed below the writ petitioners, i.e. the direct recruits. Aggrieved thereby the private respondent Nos. 4 to 7 as appellants had approached the learned AAT by filing Case No. 22AAT/2011. What would be noteworthy herein is that although the appellants/ respondent Nos. 4 to 7 had for all practical purpose sought seniority over the direct recruits in the cadre of AE(C), yet, none of the present petitioners were made parties in the said proceeding. Notwithstanding the same, after hearing the submission of the appellants' counsel, the learned Tribunal had allowed their plea by the impugned judgment and order dated 31-03-2012. The operative part of the judgment dated 31-03-2012 is reproduced here-in-below for ready reference:-

"The conclusions reached by us with regard to the effect to be given to the promotion to the appellants to be cadre of Assistant Engineer (Civil) and having held that their such promotion be deemed to have been so effected during the year 2003, the seniority of the appellant in the cadre of Assistant Engineer (Civil) is now required to be fixed by the respondents in accordance with the provisions of Rule 22(3) of the Assam Engineering (Public Works Department) Service Rules, 1978. Necessary exercise in this connection shall be carried out and the required notifications be issued re -fixing the seniority of the appellants in the cadre of Assistant Engineer (Civil), in the manner required herein above, within a period of 3 (three) months from the date of receipt of a copy of this order."

6. The judgment and order dated 31-03-2012 has been assailed by the

petitioners primarily on two counts. Firstly, the said judgment has been rendered in utter violation of the principles of natural justice and behind the back of the writ petitioners. Secondly, there was no justifiable ground for the learned Tribunal to hold that the promotion of the private respondents is to be given effect from a prior date by relying upon Rule 22(3) of the Assam Engineering (Public Works Department) Service Rules, 1978 by treating their promotion to have been effected during the year 2003.

7. Mr. Goswami submits that the recruitment of the writ petitioners is by way of APSC selection against the vacancies which were advertised in the year 2001. At that point of time, the respondent Nos. 4 to 7 did not even have the requisite qualification for being appointed/ promoted as AE(C). Moreover, the writ petitioners having been borne in the cadre of AE(C) prior to the private respondents, there was no scope to declare the respondent Nos. 4 to 7 as senior to the writ petitioners by resorting to Rule 22(3).

8. Mr. M.P. Sarma, learned counsel for the private respondents has placed heavy reliance on Rule 6(1) of the Rules of 1987 read with Rule 11(4)(C) to submit that the respondent authorities ought to have assessed the vacancy that arose in the year 2003 and ought to have completed the selection process in the year 2003 itself, in which event, his clients would have got the benefit of provision of Rule 22(3) which lays down that a member appointed by promotion against a vacancy occurring in a year shall be senior to a member appointed by direct recruitment of that year. It is also the submission of Mr. Sarma that as per Rule 6(2) of the Rules of 1987 a select list can remain valid only for twelve calendar months. Therefore, the writ petitioners cannot be treated to have been appointed against the vacancies arising in the year 2001-02. The learned counsel submits that even if such a view is adopted even then the select list, having validity of only 12 months, their appointments made in the year 2003 cannot be treated as valid.

9. Mr. P. Nayak, learned standing counsel, PWD has submitted, in his usual fairness, that the dispute pertaining to seniority of the private respondents, which has been raised about eight years after the direct recruitments of the writ petitioners was not maintainable in law. Therefore, the views of the learned Tribunal holding that priority to be given to the private respondents by treating their promotion to take effect from 2003 is not only untenable but the same is also contrary to the mandate of the Rules of 1987.

10. I have considered the submission made at the bar and have also gone through the materials available on record. At the very outset, it is to be noted herein that by filing the petition before the learned Tribunal, the private respondent Nos. 4 to 7 were actually seeking seniority over the writ petitioners in the cadre of AE(C). Notwithstanding the same, the writ petitioners or any other direct recruits were not made parties in that proceeding. If that be so, the relief prayed for by the private respondents, as appellants, could not have been granted by the Tribunal without serving notice upon the effective parties. Notwithstanding the same, no such notice was served. As such, the impugned

judgment and order is liable to be set aside on such count alone.

11. As regards the other arguments made by Mr. Sarma is concerned, here also, I find that the vacancies against which the writ petitioners were appointed were the subject matter of advertisement issued in the month of September, 2001. The APSC could not have issued the advertisement unless the vacancies were in existence in the year 2001, i.e. on the date of advertisement. If that be so, I am unable to agree with the argument of Mr. Sarma that the vacancies against which the writ petitioners and the private respondents were accommodated all arose in the year 2003. Rather, I am of the view that the vacancies against which the writ petitioners have been appointed arose in the year 2001 if not prior to that. At that point of time, the private respondents did not even have the eligibility for being considered for appointment/ promotion to the post of AE(C). As a matter of fact, they had acquired the eligibility only in the year 2003. Therefore, the argument made by Mr. Sarma by relying upon Rule 6(1) read with Rule 11(4) as well as Rule 22(3), in the facts of the case, does not merit any consideration by this Court.

12. In order to get the benefit of Rule 22(c) it was incumbent upon the appellants to establish, by adducing cogent materials, that the vacancies against which the writ petitioners and the respondent Nos. 4 to 7, i.e. the appellants were appointed, arose in the same year, i.e. year 2003. However, the appellants had failed to demonstrate the same before the learned Tribunal. If that be so, Rule 22(c) of Rules of 1987, in the opinion of this Court, did not have any bearing in the facts of this case.

For the above reason, I am of the view that the impugned judgment and order dated 31-03-2012 is unsustainable in the eyes of law and the same is accordingly set aside. It will now be open for the departmental authorities to take further consequential action in the matter as per law, if so advised.

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Parties to bear their own cost.