

GAHC010095112020



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

**Case No. : WP(C)/2843/2020**

SMTI. GITIMOLLIKA BORA  
W/O SHRI TIKEDRAJEET SAIKIA, R/O VILL-CHARINGIA GAON, P.O.-  
CHARINGIA, DIST-JORHAT, ASSAM, PIN-

VERSUS

THE STATE OF ASSAM AND 2 ORS  
REPRESENTED BY THE SECRETARY TO THE GOVT OF ASSAM,  
IRRIGATION DEPARTMENT, DISPUR, GUWAHATI-6

2:THE CHIEF ENGINEER  
IRRIGATION DEPARTMENT  
ASSAM  
CHANDMARI  
GUWAHATI-3

3:THE ADDITIONAL CHIEF ENGINEER  
ZONE-III  
IRRIGATION  
ASSAM  
JORHAT-1  
PIN-

4:THE ASSAM PUBLIC SERVICE COMMISSION  
GUWAHATI. REPRESENTED BY ITS SECRETARY  
GUWAHATI  
ASSAM

**Advocate for the Petitioner : DR. B AHMED**

**Advocate for the Respondent : SC, IRRIGATION**

Linked Case : WP(C)/3433/2020

KUNAL KASHYAP THAKURIA AND 10 ORS.  
S/O HIENDRA NATH THAKURIA  
R/O HOUSE NO. 7  
BATHOUTHANCHALIPATH  
NEAR M.P. ACCADEMY  
KHERAIKUSHI  
CHANDAN NAGAR  
GHORAMARA  
BELTOLA  
PIN-781040  
DIST. KAMRUP (M)  
ASSAM

2: HELINA NARZARY  
D/O JOTISH KUMAR NARZARY  
R/O UZAN BAZAR  
BAROWARI  
RLY. CLN. QTR. NO. L/124 B  
GUWAHATI-781004  
DIST. KAMRUP (M)  
ASSAM

3: GAYATRI CHOUDHURY  
D/O AJIT CHOUDHURY  
R/O TOWN-BORPARA  
BONGAIGAON  
WARD NO. 23  
PIN-783380  
DIST. BONGAIGAON  
ASSAM

4: DAVID BORKAKOTI  
S/O TARULATA BORKAKOTI  
R/O HOUSE NO. 172  
G.N.P. ROAD  
CHANDMARI COLONY  
NEAR SHEPHERD SCHOOL  
DIST. KAMRUP (M)  
ASSAM  
PIN-781003

5: KARAM VIR ISLARY

S/O ABHINASH ISARY  
R/O H. NO. 109  
HATHIMATHA ROAD  
KOKRAJHAR  
P.O. AND DIST. KOKRAJHAR  
ASSAM  
PIN-783370

6: DEEBAJEET BARMAN  
S/O KAMALISWAR BARMAN  
R/O A.I.D.C. NABIN NAGAR  
TRIBANI PATH  
HOUSE NO. 31  
NANAKVILLA  
DIST. KAMRUP (M)  
ASSAM  
PIN-781024

7: KISHORE KUMAR CHOUDHURY  
S/O DINO BANDHU CHOUDHURY  
R/O VILL. KALLIYAPARA  
P.O. MONIARI TINIALI  
PIN-781125  
DIST. KAMRUP  
ASSAM

8: KAMRUZ ZAMAN  
S/O NURUZ ZAMAN  
R/O NEAR TARAJAN HIGH SCHOOL JORHAT  
P.O. P.S AND DIST. JORHAT  
ASSAM  
PIN-785001

9: RITUPOBAN DOUL BARUAH  
S/O RAJEN DOUL BARUAH  
R/O MILAN NAGAR  
JORHAT  
P.O. P.S AND DIST. JORHAT  
ASSAM  
PIN-785001

10: MOON MOON TISSOPI  
D/O ROBIRAM TISSO  
R/O VILL. TUMPRENG TISSO GAON  
P.O. TUMPRENG  
PIN-782485  
DITS. WEST KARBI ANMGLONG

11: PRIYANUJ MAHANTA  
S/O ANIL MAHANTA  
R/O BARMUKH CHUTIYA GAON  
P.O. JOYRAPAR  
PIN-785697  
DIST. SIVASAGAR  
ASSAM  
VERSUS

THE STATE OF ASSAM AND 3 ORS.  
REP. BY THE CHIEF SECRETARY GOVT. OF ASSAM

2:SECRETARY  
TO THE GOVT. OF ASSAM PUBLIC HEALTH ENGINEERING DEPTT.  
3:ASSAM PUBLIC SERVICE COMMISSION  
REP. BY THE SECRETARY TO THE COMMISSION JOYANAGAR  
KHANAPARA  
GHY-22

4:CHIEF ENGINEER PUBLIC HEALTH ENGINEERING  
PUBLIC HEALTH ENGINEERING DEPTT. BAMUNIMAIDAN  
GHY-781021

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Advocate for : MR. D P CHALIHA  
Advocate for : GA  
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS.

**BEFORE**  
**HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER**

**22.02.2022**

Heard Mr. D.P. Chaliha, learned senior counsel for the petitioners. Also heard Mr. P.N. Goswami, learned Additional Advocate General appearing for the Public Health Engineering Department, i.e. State respondent nos. 1, 2 and 4 and Mr. K. Konwar, learned standing counsel for the Assam Public Service Commission (APSC for short), i.e. respondent no. 3.

2) The 11 (eleven) petitioners herein have joined together to agitate their common cause. In the writ petition it has been projected that all the petitioners had respectively obtained their 3 (Three) Year Diploma in Civil Engineering under the State Council for Technical Education, Assam. Thereafter, they had all respectively obtained their Bachelor Degree in Civil Engineering from various Colleges/ Institutes.

3) Pursuant to a selection process conducted by the APSC, all the petitioners were appointed as Junior Engineer (Civil) in the Public Health Engineering Department on regular basis vide order dated 25.02.2019 (wrongly mentioned in para 14 of the writ petition as 25.02.2029) and that in the said order, the names of the petitioners appear at serial no. 10, 13, 14, 21, 25, 36, 39, 40, 43, 60 and 64 respectively. The petitioners claim to be eligible for promotion to the next higher post of Assistant Engineer (Civil) in terms of Rule 11(5) of the Assam Health Engineering Service Rules, 1996 (wrongly mentioned in para 16 of the writ petition as Assam Health Engineer Rules, 1996), (hereinafter referred to as the "1996 Rules"). Some of the writ petitioners had submitted their application dated 15.11.2019 to the authorities to consider their cases for appointing them as Assistant Engineer (wrongly mentioned as Assistance Engineers in para 17 of the writ petition). However, as action was not taken as per Rule 13/14 of the 1996 Rules. However, the APSC vide an advertisement published in newspapers on 19.08.2020 proposed to fill up, *inter alia*, 62 vacant posts of Assistant Engineer (Civil) under Public Health Engineering Department, providing for applicable reservations as per law in force. Therefore, the aggrieved petitioners have filed this writ petition under

Article 226 of the Constitution of India, claiming that a right to be considered for promotion under the 1996 Rules ahead of their batch-mates who are not Graduate Engineers. In support of his submissions, reliance has been placed by the learned senior counsel on the case of *Dijen Sarmah & Anr. v. The State of Assam & Ors., W.P.(C) 3494/2007, decided on 30.04.2009.*

4) In the affidavit-in-opposition filed by the respondent no. 2, the stand taken is to the effect that the petitioners had rendered about  $1\frac{1}{2}$  (one and half year) service as Junior Engineers in the Public Health Engineering Department and that as per the gradation list of Junior Engineers dated 30.07.2020, the names of the petitioners appear between serial nos. 331 to 384. It has also been stated that on 05.08.2020, the Selection Board had recommended the names of 33 Junior Engineers to the post of Assistant Engineers whose names figured from serial no. 1 to 31 of the said Gradation List and three reserved category candidates whose names were at serial no. 68, 69 and 71 of the same Gradation List and that such promotion were not challenged. Accordingly, it has been stated that there are about 300 Junior Engineers whose names appear above the petitioners, some of whom might have Graduate Engineering Degree. It was further stated that the total cadre strength of Junior Engineer in Public Health Engineering Department is 653 and the total cadre strength of Assistant Engineer is 277 out of which 70% i.e. 194 posts are for direct recruitment to the cadre and remaining 30% i.e. 83 posts are for being filled up on promotion in accordance with the rules and that all 83 posts have already been filled up. In view of above, the learned Additional Advocate General has submitted that the petitioners can only be considered for promotion in accordance with the rules when their turn comes. It has also been

submitted that the petitioners can only claim promotion under the prescribed 30% quota for promotion and cannot claim any vested right to be considered for promotion under 70% quota earmarked in the rules for being filled up by direct recruitment. The learned Additional Advocate General has made extensive reference to Rules 5, 6, 11, 11(3), 11(5), 13 and 14 of the 1996 Rules. It is the specific stand of the respondent no. 2 to the effect that as per Rule 11(5) of the 1996 Rules, a Junior Engineer must acquire academic qualification for direct recruitment as Assistant being for promotion as Assistant Engineer i.e. graduation as per Rule 14 thereof against the next available vacancy and such promotion shall be treated as direct recruitment to the cadre of Assistant Engineer. Accordingly, it has been stated that the said clause in the said Rule 11(5) excludes the Junior Engineers who had acquired qualification prior to their joining in service. In this regard it has also been stated that if the Engineering Degree acquired prior to joining the service is taken into consideration for promotion, it would amount to deletion of word "acquiring" and amount to adding the word "acquired", which was not the legislative intent.

5) By referring to the stand taken in the affidavit-in-opposition of respondent no.2, it was submitted that under distinguishable facts W.P.(C) 3494/2007 was decided because in the said case, the State respondents had not taken the plea taken in this case and that there were examples of fast track promotion in Public Works Department, which was later on discontinued and that there is not a single instance of any fast track promotion in the Public Health Engineering Department to those Junior Engineers who had acquired Graduate Degree prior to induction in service.

- 6) The only issue in this case is whether the petitioners in this case would get the benefit of Rule 11(5) of the 1996 Rules.
- 7) At the outset, it may be mentioned that the learned counsel for the parties are *ad idem* that previously the (i) Public Works Department, (ii) Public Health Engineering, (iii) Irrigation Department, and Flood Control Department were under the Works Department of the State and thereafter, these three separate departments were created by the State and the services under these three departments are governed by separate service rules, viz., (i) Assam Engineering (Public Works Department) Service Rules, 1978, (ii) Assam Public Health Engineering Service Rules, 1996, (iii) Assam Engineering (Irrigation Department) Service Rules, 1978, and (iv) Assam Engineering (Flood Control Department) Service Rules, 1981.
- 8) The provisions of Rule 11(4)(c) of the Assam Engineering (Public Works Department) Service Rules, 1978 is nearly similar to Rule 11(5) of the herein before three other rules. The provisions of Rule 11(5) of the 1996 Rules reads as follows:-
- “11(5) Notwithstanding anything contained herein before in this rule on suitability, Junior Engineer of the Assam Subordinate Engineering Service (PHE) services on his acquiring the academic qualification, as prescribed for a direct recruit Assistant Engineer, shall be promoted as Assistant Engineer, in consultation with the Commission, as provided in Rule 14, against the next available vacancy in the cadre and such promotion shall be treated as direct recruitment to the cadre of Assistant Engineer for the purpose of these rules.”*
- 9) In the case of *Dijen Sarmah (supra)*, the fact situation is somewhat similar to the facts of this case. In the said case, the three petitioners



therein, who were employed as Junior Engineers in the Public Works Department had approached the Court seeking a direction for consideration of their claim for promotion / direct entry in the cadre of Assistant Engineers as per the provisions incorporated in Rule 11(4)(c) of the Assam Engineering (Public Works Department) Service Rules, 1978. The petitioners therein, by virtue of the higher Engineering Degree qualification which is the qualification prescribed for direct appointment into the cadre of Assistant Engineer (Civil), although they were recruited as Junior Engineers on the basis of the Engineering Diploma qualification. In the said case, it was also contended by the departmental counsel that the past practice in the department for promoting those Junior Engineers who had joined with additional qualification of Engineering Degree was discontinued after the department decided to stop referring promotional matters of Junior Engineers to the Assam Public Service Commission. Nonetheless, the Court did not accept the justification by the learned departmental counsel to justify the departure from the earlier practice as no corresponding change was found in Rule 11(4)(c) of the Assam Engineering (Public Works Department) Service Rules, 1978 by holding that the practice was discriminatory. Therefore, the said writ petition was allowed by directing the cases of the petitioners therein be considered for promotion under Rule 11(4)(c) of the aforesaid rules.

10) However, this case is based on dissimilar fact situation. In the instant case relating to Public Health Engineering Department, the specific stand of the respondents in their affidavit-in-opposition is that there was not a single instance of fast track promotion in the Public Health Engineering Department to those Junior Engineers who had acquired Graduate Engineering Degree prior to

induction in service.

11) Nonetheless, in the herein before referred case of *Dijen Sarmah (supra)*, the coordinate Bench of this Court had referred to the provisions of Rule 11(4)(c) of the Assam Engineering (Public Works Department) Service Rules, 1978, which as stated herein before, is nearly similar to the provisions of Rule 11(5) of the 1978 Rules and had observed and opined as follows:-

*“10. Rule 11(4)(c) obviously provides for a faster mode of entry into the higher cadre of Assistant Engineer for those serving as Junior Engineers. The Rule itself does not rule out considering of cases of those who had already acquired the higher academic qualification, prior to their entry into the service in the feeder cadre of Junior Engineer.*

*11. From the several instances of such fast track promotion given, it is apparent that the Department had all along been considering promotion for the Junior Engineers, who possesses or acquire the Graduate Engineer qualification, without making any distinction amongst those, who acquired the qualification before or after entering into service of Junior Engineers in the Department.*

*12. The Department tries to justify the abandoning of the above practice, because of replacing the practice of consulting the APSC by consulting the DPC for making promotion to the cadre of Assistant Engineer.*

*This explanation, furnished by the Department cannot in my view is acceptable, as no corresponding change in the Rules has been incorporated, to do away with the long standing practice followed by the Department. There is really no basis to make a distinction between those, who acquired higher qualification after they joined service and those who joined service in the lower cadre, with additional higher academic qualification. Therefore, non-consideration of the cases of the petitioners for promotion under Rule 11(4)(c) to the cadre of Assistant Engineer, is found to be discriminatory and the same therefore violates the petitioners' rights guaranteed under Article 14 and 16 of the Constitution of India.*

*13. In so far as the advertisement dated 27.3.2007 (Annexure 9), whereby 78 posts of Assistant Engineer (Civil) has been advertised for filling up the posts through direct recruitment, it is submitted by the Departmental counsels that the said direct recruitment exercise to the 78 posts, would not intrude into the 30% of the total cadre strength of Assistant Engineers, earmarked to be filled up by promotion of Junior Engineers (Subordinate Engineers). From the above submission, it can be understood that the 30% quota meant to be filled up by promotion in the cadre of Assistant Engineers, are available to be filled up by eligible serving Junior Engineers.*

*14. The petitioners herein are contenders for promotion on the basis of higher academic qualification under the provisions of Rule 11(4)(c) and not under the provisions of Rule 11(4)(a) and since such promotions are to be considered, subject to availability of vacancies in the cadre, I am of the opinion that directions should be issued to consider the cases of the 3 petitioners for promotion to the posts of Assistant Engineers under the provisions of Rule 11(4)(c), if vacancies in the promotional quota is available. It is ordered accordingly."*

12) It is seen that in the 1978 Rules, there is no scope of promotion of a Junior Engineer with Diploma in Engineering to be promoted to the next higher post. Therefore, it appears that Junior Engineers with Diploma in Engineering would otherwise stagnate. Perhaps for the said reason, the 1978 Rules provide for an opportunity to acquire Engineering Degree and then claim promotion to the post of Assistant Engineer and thereupon be treated as a direct recruit. Only thereafter, such Assistant Engineer would be eligible for any further promotion to the next higher post.

13) In light of above, in the considered opinion of the Court, the plain language of Section 11(5) of the 1978 Rules leaves no scope for any ambiguity as the said section specifically provides to the effect that "*... on his acquiring the academic qualification, as prescribed for a direct recruit Assistant Engineer, shall be promoted to as Assistant Engineer, in consultation with the Commission, as provided in Rule 14, against the next available vacancy in the cadre and such promotion shall be treated as direct recruitment to the cadre of Assistant Engineer for the purpose of these rules."*

14) Thus, on the basis of plain and unambiguous language of the provisions of Rule 11(5) of the 1996 Rules, the Court is unable to accept the contention of the learned senior counsel for the petitioner. Rather, the Court is

inclined to accept the stand of the learned Addl. Advocate General that if the interpretation sought to be given by the learned senior counsel for the petitioner is accepted it would amount to substitution of the word "acquiring" with the word "acquired", which was not the legislative intent. Moreover, in the considered opinion of the Court, promotions cannot be ordered to be made *dehors* the relevant service rules in force.

15) In connection with the principles of interpretation of statutes, it is too well settled that where there is no ambiguity in the words, literal meaning has to be applied. In this regard, we may refer to a recent judgment of the Full Bench of the Supreme Court of India in the case of *National Highways Authority of India v. Pandarinathan Govindarajulu & Anr.*, (2021) 6 SCC 693: AIR 2021 SC 560: 2021 STPL 35 SC. Para 9 thereof as appearing in STPL is quoted below:

*"9. It has been repeatedly held by this Court that where there is no ambiguity in the words, literal meaning has to be applied, which is the golden rule of interpretation. The words of a statute must prima facie be given their ordinary meaning. [Dental Council of India v. Hari Prakash, (2001) 8 SCC 61 and Harbhajan Singh v. Press Council of India, (2002) 3 SCC 722]."*

16) Thus, by applying the *golden principles of interpretation*, the Court is unable to accept the finding of the coordinate Bench of this Court in the case of *Dijen Sarmah (supra)* while examining the provisions of Rule 11(4)(c) of the Assam Engineering (Public Works Department) Service Rules, 1978 which is nearly similar to the provisions of Rule 11(5) as given in para 10 thereof to the effect that "... *The Rule itself does not rule out considering of cases of those who had already acquired the higher academic qualification, prior to their entry into the service in the feeder cadre of Junior Engineer..*"

17) Nonetheless, the Court is of the considered opinion that in the case of *Dijen Das (supra)*, the interpretation given to the provisions of Rule 11(4)(c) of the Assam Engineering (Public Works Department) Service Rules, 1978 was perhaps justified because as per fact situation as narrated in para 11 of the judgment in the case of *Dijen Sarmah (supra)*, the Public Works Department was all along been considering promotion for the Junior Engineers who possesses or acquire the Graduate Engineer qualification without making distinction amongst those who acquired the qualification before or after entering into service of Junior Engineers in the Department. The said practice, as per affidavit-in-opposition by the respondents, was never followed in the Public Health Engineering Department. Therefore, the Court is unable to adopt the interpretation of the provisions of Rule 11(4)(c) of the Assam Engineering (Public Works Department) Service Rules, 1978 for interpreting the provisions of Rule 11(5) of the 1996 Rules owing to distinctive facts of this case.

18) As per the pleadings in this writ petition, all the petitioners had obtained Three Year Diploma in Civil Engineering. Thereafter, the petitioners had obtained Degree of Bachelor of Engineering (Civil Engineering). Thereafter, on recommendation made by the APSC, the petitioners had been appointed as Junior Engineer (Civil) vide notification dated 25.02.2019. Thus, there is no dispute that all the petitioners had competed with Diploma Holders for being selected and appointed as Junior Engineer (Civil) in the Public Health Engineering Department despite holding Graduate Degree. It is not in dispute that the minimum qualification to be appointed as Junior Engineer is Diploma in Civil Engineering.

19) It is also not in dispute that ordinarily under Rule 11(4)(a) of the 1996 Rules, a Junior Engineer would qualify to be considered for promotion of having rendered 8 years of service as a Junior Engineer on the first January of the year of promotion, but a fast track promotion is permissible under Rule 11(5) of 1996 Rules on acquiring Graduate Degree.

20) In this case in hand, the petitioner having higher qualification of "Graduate Degree in Civil Engineering" though eligible to apply for direct recruitment to the post of Assistant Engineer, with eyes open, elected to be appointed as Junior Engineer which requires lesser qualification of "Diploma in Civil Engineering". Yet, after joining service is seeking fast track promotion to the next higher post of Assistant Engineers with a pre-existing Graduate Degree. Thus, by this method, the petitioner wants to steal a march over other Junior Engineers, who would otherwise become eligible for promotion to the next higher post of Assistant Engineer after rendering service of 8 years. This, in the considered opinion of the Court would amount to giving unfair advantage to the petitioner who had not exercised option for being selected and appointed as Assistant Engineer on the strength of their pre-existing Graduation Degree.

21) Therefore, respecting the well settled judicial discipline, the Court is of the considered opinion that as this coordinate Bench is unable to accept the interpretation rendered by another coordinate Bench regarding interpretation of Rule 11(4)(c) of the Assam Engineering (Public Works Department) Service Rules, 1978, which is nearly similar to the provisions of Rule 11(5) of the 1996 Rules, which is a question of law, it would be appropriate

for this subsequent Bench of coordinate jurisdiction to refer the matter to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate in the field. It is too well settled that no coordinate Bench can comment upon and/or sit in judgment over the discretion exercised or judgment rendered in a cause or matter before another coordinate Bench. If a coordinate Bench does not agree with the principle of law enunciated by another coordinate Bench, the matter has to be referred to a larger Bench. In this regard, we may refer to para 26 of the judgment of the Division Bench of this Court in the case of *Manmita Barman v. State of Assam & Ors., (2021) 1 GLT 300 (DB)*.

22) The point of determination referred to for consideration of the larger Bench is as follows:-

*“Whether the use of word “acquiring” as provided in Rule 11(5) of the Assam Public Health Engineering Service Rules, 1996 would exclude those Junior Engineers who had already acquired Graduate Degree in Engineering prior to joining service as Junior Engineer in the Public Health Engineering Department?”*

23) It is needless to mention that the Division Bench would have inherent and unfettered discretion to reframe the point of determination and/or to decide any other point that may arise in course of hearing.

24) The Registry shall place the matter before the Hon’ble The Chief Justice for his consideration to list this writ petition before the Division Bench for determination of the point of determination.

**JUDGE**

**Comparing Assistant**