

WP(C) 6243/2012

BEFORE

HON'BLE MR. JUSTICE UJJAL BHUYAN

Issue raised in all these writ petitions being identical, those have been heard together and are being disposed of by this common order.

In all the writ petitions, petitioners are serving as Grade-IV (khalasi) and they seek promotion to the post of Section Assistant (Grade-III).

Grievance expressed is that petitioners are serving in Grade-IV post for a long time without any promotional avenue. Respondents without considering such grievance of the petitioners have issued advertisements to fill up various vacancies in the post of Section Assistant through direct recruitment which are impugned in the writ petitions. For example, in WP(C) No. 3818/2013, advertisement dated 06.07.2013 issued by the Executive Engineer, Silchar Water Resources Divisions for direct recruitment to 17 vacancies in the post of Section Assistant is under challenge.

In the other writ petitions also, similar challenge has been made to such advertisements. It is contended that if the recruitment processes as per the advertisements are carried out, serious prejudice would be caused to the petitioners who are waiting for their promotion since last many years.

This Court while issuing notices had directed the respondents not to fill up the advertised vacancies in the post of Section Assistant.

In WP(C) No. 4435/2013, an affidavit has been filed on behalf of the Secretary to the Government of Assam, Water Resources Department. It is stated therein that an office order dated 25.11.2013 was issued by the Commissioner and Special Secretary to the Government of Assam, Water Resources Department reserving 10% of the total cadre strength of Section Assistant to be filled up by way of promotion from amongst Grade-IV (Khalasi). In other words, 90% of the post in Grade-III (Section Assistant) will be filled up by direct recruitment and 10% will be filled up by promotion from amongst eligible Grade-IV (khalasi). Promotion would be carried out in the manner as provided in the Assam Ministerial District Establishment Service Rules, 1967 in respect of promotion from Grade-IV to Grade-III.

The office order further indicates that persons holding personal posts would not come under the ambit of the said order.

Mr. B. Goswami, learned Standing Counsel, Water Resources Department submits that grievance of the petitioners have been redressed with the issuance of the said office order dated 25.11.2013 and therefore all the writ petitions may now be closed to enable the departmental authorities to proceed with the recruitment. For ready reference, office order dated 25.11.2013 is quoted here under in its entirety:-

The Governor of Assam is pleased to accept recommendations of the committee constituted for earmarking percentage of vacancies in Grade-III (S.A.) to be filled up on promotion from Grade-IV (Khalasi) under Water Resources Department as follows:-

The percentage of quota for Grade-IV (Khalasi) employees for promotion to Grade-III (S.A.) is fixed at 10% of the cadre strength of S.A. i.e. 90% posts of Grade-III (S.A.) will be filled up by direct recruitment and 10% posts will be kept reserved for eligible Grade-IV (khalasi) to be filled up by way of promotion in the manner as provided in The Assam Ministerial District Establishment Service Rules, 1967 in respect of promotion of Grade-IV to Grade-III in District Level Offices.

The conditions for filling up of the 10% promotional posts of Grade-III (S.A.) from Grade-IV (Khalasi) will be as follows:-

- 1) Minimum 8 (eight) years of continuous service in respect of those Khalasis who are H.S.L.C. passed or equivalent, at the time of entry in the Govt. service or have procured the qualification with due permission from the appointing authority and 70% promotional posts are to be filled up by these incumbents.
- 2) Minimum 10 (ten) years of continuous service in respect of those Khalasis who have read up to Class-X (ten) at the time of entry in the Govt. service or have procured the qualification with due permission from the appointing authority and 20% promotional posts are to be filled upon by these incumbents.

3) Minimum 15(fifteen) years of continuous service in respect of those Khalasis who have read up to Class-VIII (eight) and 10% promotional posts are to be filled up by these incumbents.

However, the persons holding Personal Posts do not come under the ambit of this order.

This order will come into force with immediate effect until further order and cancels all other previous office orders related to promotion of Grade-IV (Khalasi) to Grade-III (S.A.) issued by this Department.

In view of the aforesaid step taken by the Government, Court is of the view that grievance of the petitioners have been met, though according to the learned counsel for the petitioners, it has been met to a limited extent only. The complaint made in the writ petitions is that there is no scope for promotion from Grade-IV (Khalasi) to Grade-III (Section Assistant). That grievance of the petitioners have been addressed to a certain extent by the aforesaid office order dated 25.11.2013 by providing for promotional avenues from Grade-IV (Khalasi) to Grade-II I (Section Assistant) to the extent of 10% of the cadre strength of Section Assistant.

In view of the stand taken by the Government in the form of the office order dated 25.11.2013, all these writ petitions are disposed of by directing the Secretary to the Government of Assam, Water Resources Department and the Chief Engineer, Water Resources Department to ensure that the ratio prescribed by the office order dated 25.11.2013 is strictly followed. To ensure such compliance, they shall verify all the advertisements that have been issued and which have been impugned in the present bunch of cases. Only after they are satisfied that the ratio of 10:90 as prescribed by the office order dated 25.11.2013 has been complied with, consequential appointments pursuant to the advertisements under question shall be made.

Regarding the grievance expressed by Mr. A. M. Bujarbaruah, learned counsel for the petitioners in WP(C) No. 3358/2013 that reserving 10% of the cadre strength in the post of Section Assistant to be filled up by way of promotion from amongst eligible Khalasis is inadequate to meet the aspirations of the Khalasis, since the same is not the subject matter of the present litigation, the court refrains from making any observation thereon, however giving liberty to the petitioners to challenge the legality and validity of the said office order in an appropriate proceeding, if so advised.

Mr. M. Nath and Mr. D. C. Borah, learned counsel appearing for some of the petitioners have also made a grievance that those Khalasis who are holding personal posts have not been considered for promotion whereas one similarly placed Khalasi has been promoted in the Karimganj Division. Since the office order dated 25.11.2013 specifically debars persons holding personal posts from such promotion, the said grievance cannot be considered in this round of litigation in the absence of any challenge to the same. If any of the persons holding personal posts feel aggrieved by the office order dated 25.11.2013, they would also be at liberty to challenge the validity of the said office order in an appropriate proceeding, if so advised.

All the writ petitions are accordingly disposed of.