
(2022) 06 GAU CK 0031

Gauhati High Court

Case No: Writ Petition (Civil) No. 3021, 4958 Of 2021

Debajit Das

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision: June 29, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 166, 166(1), 166(2), 166(3)
- Assam Rules of Executive Business, 1968 - Rule 9, 11, 12
- General Clauses Act, 1897 - Section 21
- Guwahati Metropolitan Development Authority Act, 1985 - Section 5(l)

Hon'ble Judges: Michael Zothankhuma, J

Bench: Single Bench

Advocate: U.K. Nair, A. Chakraborty, D. Mazumder, P. Nayak, A. Phukan

Final Decision: Disposed Of

Judgement

1. Heard Mr. U.K. Nair, learned Senior Counsel assisted by Mr. A. Chakraborty, learned counsel for the petitioner. Also heard Mr. D. Mazumder,

learned Additional Advocate General, Assam assisted by Mr. P. Nayak, learned Standing Counsel, PWD for the respondents. Mr. A. Phukan, learned

counsel appears for the respondent No. 8.

Both the writ petitions being inter-related are taken up together for disposal.

2. The petitioner is aggrieved by the impugned order dated 27.04.2021, issued by the Commissioner & Special Secretary to the Government of Assam,

PWRD, wherein, the following decision had been made:

1) To exclude the name of the petitioner (Sri Debajit Das) from the Provisional inter-se seniority list of Executive Engineer (C), PWD

issued vide Notification No.CON.34/2013/137, dated 25.02.2020, and finalize the inter-se seniority list in accordance to Assam Engineering

(PWD) Service Rules, 1978.

2) To retrospectively abolish the ex-cadre post of Executive Engineer created solely for Sri Debajit Das to restore legality, pursuant to the

judgment dated 23.10.2018 of the Hon'ble Supreme Court.

3. To revert Sri Debajit Das to the post of Assistant Executive Engineer (AEE) to restore rule. Necessary corrections to be done in the

relevant inter-se seniority list of AEE as Sri Debajit Das was given undue benefit of promotion from AE to AEE on 19.12.2002 by clubbing

vacancies of 2001 & 2002 which was also one of the findings of the Enquiry Report of Sri Subhash Ch. Das, the then Chief Secretary,

Personnel Department and the same has been endorsed by the Hon'ble Gauhati High Court and the Hon'ble Supreme Court

subsequently.

4) To re-fix the inter-se seniority of Sri Debajit as Assistant Executive Engineer (Civil) in parity with other incumbents in the said cadre on

the basis of the inter-se seniority list of Assistant Engineers (C) notified vide Government Notification No.RBEB.132/2002/6 dated

31.05.2002, wherein Sri Debajit Das was at Sl. No.164 just below Sri Hrishikesh Goswami and above Fakrul Islam-II. Correspondingly,

position of Sri Debajit Das in the cadre of Assistant Executive Engineer (Civil) should be at Sl. No.210 below Sri Hrishikesh Goswami, who

is at Sl. No.209 in the inter-se seniority list notified dated 20.02.2019

3. The petitioner's case is that he was appointed as an Assistant Engineer in the PWRD, Govt. of Assam on 30.09.1996 and he was promoted to

the post of Assistant Executive Engineer (A.E.E.) on 19.12.2002. The petitioner was thereafter, promoted to the ex-cadre post of Executive Engineer

(E.E.) on 02.04.2005. The post of E.E. to which the petitioner was promoted to was created on 02.04.2005 as an ex-cadre post and was personal to

the petitioner. The promotion order of the petitioner stated that the said ex-cadre post was to stand abolished, as soon as the petitioner got regular

promotion as E.E., PWD into the parent cadre.

4. The petitioner's service as E.E. (ex-cadre) was thereafter regularized and he was en-cadred into the grade of regular E.E., PWD on

07.09.2005. The petitioner's service was confirmed as E.E., vide order dated 27.11.2009 w.e.f. 01.02.2008.

5. The petitioner was promoted to the post of Superintending Engineer (S.E.) on 28.10.2014, on the basis of recommendation of the DPC meeting

minutes dated 17.10.2014.

6. As complaints had been submitted against the petitioner's regularization/encadrement into the regular grade of E.E. and subsequent promotion

as S.E., the State Government constituted a committee under Mr. S.C. Das, Ex-Chief Secretary to make an enquiry. The Committee under Mr. S.C.

Das gave its report on 16.12.2014. The report observed that the petitioner got the benefit of promotion from A.E. to A.E.E., PWD in the year 2002,

because of the clubbing of vacant posts of the year 2001 & 2002. However, since more than 12 (twelve) years had elapsed, the S.C. Das committee

report dated 16.12.2014 recommended that the promotion of the petitioner to the post of A.E.E. need not be reopened and that his further promotion to

the ex-cadre post of E.E. should be maintained. However, it recommended that the regularization/encadrement/promotion to the regular grade of E.E.

and further promotion to the post of S.E. should be interfered with.

7. The findings and recommendations of S.C. Das Committee were as follows:

Findings & Recommendations:-

(1) Shri Debajit Das got the benefit of promotion from Assistant Engineer to Assistant Executive Engineer, PWD in the year 2002 because of

clubbing of the vacant posts of the year 2001 & 2002. However, since more than 12 years have elapsed since his last promotion and in the

meantime, he has been given an ex-cadre post of Executive Engineer personal to him, this matter may not be re-opened.

(2) The en-cadrement of Shri Debajit Das and his regular promotion to the post of Executive Engineer is irregular and it has been done by

the Selection Board meeting on 27-07-2005 without any authority and therefore, he has to be considered being an Executive Engineer in

the ex-cadre post and the PWD is to re-examine all the minutes of meetings of Selection Board held after 27-07-2005 and see if Shri Debajit

Das has in the meantime become eligible for regular promotion. Till such time he is given the regular promotion, he has to be treated to be

in an ex-cadre post of Executive Engineer, PWD.

(3) The six (6) vacancies of 2011 are to be filled up by holding review meetings of the Selection Board for the years 2011, 2012, 2013 &

2014. The officers who have been already promoted are to be re-adjusted in the posts of Superintending Engineer, PWD based on the

recommendations of the review meetings of the Selection Board. If PW Department decides to treat these 6 (six) vacancies as fresh

vacancies in light of Court order etc. at best there will be maximum of 10 (ten) vacancies. But it is recommended that the Selection Board

meetings be held afresh for 2011, 2012, 2013 and 2014. If any officer who is already promoted to the rank of Superintending Engineer,

PWD is to be demoted because of his name being not recommended in review meetings, he or she should be given a due opportunity of

being heard before he or she demoted.

(4) At present the Selection Board in the department is headed by the Secretary, though there are three (3) officers senior to him, namely,

Additional Chief Secretary, PWD, Commissioner and Special Secretary, PWD (Roads), & Commissioner and Special Secretary, PWD (B &

NH). As per Assam Rules of Executive Business 1968, Secretary includes Additional Chief Secretary/Commissioner and Special Secretary/

Secretary. It is suggested that all Selection Board meeting of the PWD henceforth should be chaired by the Sr. most Secretary in the PWD as

was done till 2011.

(5) It is seen that Shri JN Sarmah, Secretary, PWD was the Deputy Secretary, PWD when the Selection Board meeting dated 27-07-2005

was held and the notification No.CON.39/2001/PT-I/176 dated 7th September, 2005 was issued. Shri JN Sarma h, Secretary, PWD was also

the Chairman of the Selection Board meeting held on 17-10-2014. It is recommended that Shri JN Sarmah, Secretary, PWD should not be

involved in the review meetings as recommended above. Further on perusal of the records, it appears that Shri JN Sarmah, Secretary, PWD

has substantially contributed to the incorrect interpretations of endorsements of Personnel and Finance Department and assessment of the

vacancy position for the meeting of Selection Board held on 17-10-2014. The agenda note for the meeting on 17-10-2014 is not signed by

any officer of the PW Department. The Chairman, Selection Board should have acted on an authenticated agenda note and should have

given due cognizance to the letter No. CON.29/2011/Pt.-III/15 dated 17-10-2014 from Commissioner & Spl. Secretary, PWD (Roads) giving

the total number of vacancies.

(6) The Department may also re-examine the grading/making system for promotions as it appears that this system of awarding marks against

ACR grading has not been able to do justice to all the efficient and senior officer.

8. WP(C) No.4293/2014 was filed against the petitioner by one Mr. Dipu Dutta (A.E.E.), who challenged the regularization/encadrement of the

petitioner into the regular grade of E.E. WP(C) No.4293/2014 was dismissed vide order dated 19.09.2014 due to laches and delay.

Thereafter, 3 (three) writ petitions were filed against the writ petitioner, i.e., WP(C) Nos. 7/2013, 2958/2014 and 5470/2014.

WP(C) No. 07/2013 (Tilak. Ch. Das & Ors. vs- State of Assam & Ors.) had been filed by some Assistant Executive Engineers who were senior

to the petitioner in the cadre of Assistant Executive Engineer, praying for quashing of the encadrement order dated 07.09.2005 of the petitioner to the

post of Executive Engineer and praying for their promotion to the post of Executive Engineer. WP(C) No. 2958/2014 (Pranab Kumar Rabha vs-

State of Assam & Ors.) was filed by an Assistant Executive Engineer challenging the encadrement of the petitioner to the post of Executive Engineer

and praying for his promotion to the post of Executive Engineer. WP(C) No. 5470/2014 (Akbar Kader vs- State of Assam & Ors.) was filed by

one Executive Engineer, who challenged the selection and promotion of the petitioner to the post of Superintending Engineer.

9. Thereafter, the State respondents took a decision to constitute a Selection Board in the year 2014 to review the promotions of the petitioner. As the

petitioner's representation against the holding of a Review Selection Board did not yield fruit, the petitioner filed WP(C) No. 5/2015 challenging

the decision of the State respondents to hold a Review Selection Board, who were to review the promotions of the petitioner.

In the meantime the Review Selection Board which was constituted, considered the S.C. Das committee report and came to a finding vide notification

dated 05.01.2015, that the petitioner was not eligible for promotion to the regular cadre of E.E. and also to the post of S.E., as he was not found to be

in the zone of consideration in terms of the Assam Engineering (Public Works Department) Service Rules, 1978. The Review Selection Board thus

held that the petitioner's subsequent promotion to S.E. was based on misrepresentation and misinterpretation.

10. The findings and recommendations of S.C. Das Committee were accepted by the Govt vide notification dated 05.01.2015. The State Govt.

thereafter took into consideration the findings of the S.C. Das Committee and the Review Selection Board, which was to the effect that the

encadrement of the petitioner and his regular promotion to the post of Executive Engineer was irregular and that the petitioner was not eligible for

regular promotion to the cadre of E.E. and S.E. due to his low position in the inter-se-seniority position in the feeder post of A.E.E. The State Govt.

thereafter issued notification dated 05.01.2015, under the order of the Governor, wherein it states as follows:

“No.CON. 42/2012/35 Dated Dispur the 5 th January 2015

Order by the Governor

Notification

Whereas the Assam PWD Engineers Service Association had submitted a complaint indicating grievances of the engineers in Assam Public

Works Department because of the undue repeated promotions given to Shri Debajit Das, one of the engineers of PWD, Shri S.C. Das,

Additional Chief Secretary, Personnel Department was asked to conduct necessary enquiry so that promotions are given to the deserving

officers.

And whereas in the enquiry conducted by Shri S.C. Das, Addl. Chief Secretary, Personnel Department, it has been established that Shri

Debajit Das got the benefit of promotion from Assistant Engineer to Assistant Executive Engineer PWD in the year 2002 because of

clubbing of the vacant posts of year 2001 and 2002. However, since more than 12 years have elapsed since his last promotion and in the

meantime, he has been given an ex-cadre post of Executive Engineer personal to him, the enquiry report has recommended that this matter

may not be opened.

And whereas the enquiry report has further found that the encadrement of Shri Debajit Das and his regular promotion to the post of

Executive Engineer is irregular and it has been done by the Selection Board meeting on 27. 07.2005 without any authority and therefore, he

has to be considered being an Executive Engineer in the ex-cadre post and the PWD is to re-examine all the minutes of meeting of Selection

Board held after 27.07.2005 and see if Shri Debajit Das has in the meantime become eligible for regular promotion. The enquiry report has

further recommended that till such time he is given the promotion, he has to be treated to be in an ex-cadre post of Executive Engineer,

PWD.

And whereas the enquiry report has further recommended that six (6) vacancies of 2011 are filled up by holding review meeting of the

Selection Board for the years 2011, 2012, 2013 and 2014 of the officers who have already been promoted as to be readjusted in the posts

of Superintending Engineer, PWD based on the recommendation of the review meeting of the Selection Board.

And whereas the Government has accepted the recommendations of the enquiry report and accordingly the Selection Board in its review

meeting held on 05.01.2015 at 10-00 Am in the office chamber of the Additional Chief Secretary, P.W.D. (Roads) and P.W.D. (Building &

NH).

And whereas the Selection Board has found that the encadrement of Sri Debajit Das and his regular promotion to the post of Executive

Engineer is irregular and it has been done by the Selection Board meeting held on 27.05.2005 without any authority and by misinterpreting

the Personnel Department's endorsement for which the concerned officer responsible for misinterpretation has been reported under

suspension and departmental proceedings has also been initiated against him.

And whereas the Selection Board, after examining all the records, has found that Shri Debajit Das is not eligible to get his regular

promotion to the cadre of Executive Engineer because his inter-se-seniority position in the feeder post (in the rank of Assistant Executive

Engineer) for promotion to the rank of Executive Engineer is at Sl.318, while the inter-se-seniority position of the last officer (in the rank

of Assistant Executive Engineer) who was under the zone of consideration to the Cadre of Executive Engineer is at Sl.152.

And whereas the Selection Board after review of the minutes of the Selection Board for promotion to the post of Superintending Engineer

for the years 2011, 2012, 2013 and 2014 has also concluded that the regular promotion of Shri Debajit Das to the post of Executive

Engineer and also his subsequent promotion to the post of Superintending Engineer is based on misrepresentation and misinterpretation.

The Governor of Assam is pleased to decide that the Notification No.CON 39/2001/Pt/176 Dated 7th September, 2005 regularizing the

services of Shri Debajit Das from an excadre post to cadre post is ab initio void and therefore the subsequent promotion of Shri Debajit

Das vide Notification

No.CON.68/2013/Pt./32-A Dated 28th October 2014 temporarily promoting and allowing him to officiate him as Superintending Engineer

(C) is also erroneous as Sri Debajit Das was on the date of the issue of the said notification was not even eligible for regular promotion to

the Cadre of Executive Engineer, the feeder post for promotion to the rank of Superintending Engineer. Moreover, the Selection Board

meeting held on 17.10.2014 has also clubbed the year wise vacancies for 2011 and 2014 violating the Assam Engineering (Public Works

Department) Service Rules, 1978, and out of turn Shri Debajit Das was promoted to the rank of Superintending Engineer and therefore is

also ab initio void.

In view of the above, both the mentioned notifications no.CON 39/2001/Pt/176 Dated 7th September, 2005 and no.CON 68/2013/Pt./32-A

Dated 28th October 2014 are hereby cancelled.

Consequent to the above, the Governor of Assam is pleased to revert Sri Debajit Das to the Ex-cadre post of Executive Engineer, PWD

created in 2005 with immediate effect.

By order and in the name of the Governor of Assam

Sd/- illegible

(V.K. Pipersenia)

Additional Chief Secretary to the Govt. of Assam,

P.W.D. (Roads) and P.W.D. (Building & NH).

11. The four writ petitions, i.e., WP(C) Nos. 05/2015, 5470/2014, 2958/2014, 07/2013 (herein after referred to as WP(C) No. 05/2015 etc.)

were disposed of by a common judgment & order dated 30.04.2015, holding that there was no infirmity in the decision of the State respondents in

reverting the petitioner to the ex-cadre post of Executive Engineer, PWD. The above judgment & order dated 30.04.2015 has been reported in 2015

(2) GLT 899 (Debajit Das & Ors. Vs. State of Assam & Ors.). Paragraph No. 57 of the common Judgment & Order dated 30.04.2015 is reproduced

below:-

“57. There is one more aspect of the matter. In the cadre of Assistant Executive Engineer petitioner's position in the gradation list was

318. He leaped over 300 officers in the said grade while securing promotion to the cadre of Executive Engineer. This was done by adopting

a novel method. Firstly, an ex-cadre post of Executive Engineer was created and petitioner was promoted to that post. Thereafter, he was

encadred which amounted to regular promotion to the post of Executive Engineer though he was not even eligible as he had not completed

5 years as Assistant Executive Engineer. As per condition imposed by the Personnel (B) Department, petitioner was to be placed in the cadre

of Executive Engineer in the last position till all his seniors in the feeder-cadre of Assistant Executive Engineer got promoted to Executive

Engineer..But this was not done and petitioner was finally placed wrongly at a higher position at Sl. No. 52 in the gradation list of

Executive Engineer above Shri Debabrata Naug at Sl. No. 53 whereas in the cadre of Assistant Executive Engineer,,Shri Debabrata Naug

was 300 position above the petitioner at Sl. No. 17. Not only that in the final gradation list of Executive Engineer dated 14.10.2014 the last

ranked officer is Shri Binoy Kumar Bora at Sl. No. 131. His position in the gradation list of Assistant Executive Engineer was at Sl. No. 71.

This shows that officers in the cadre of Assistant Executive Engineer from Sl.No. 72 to 317 barring the reserve category candidates are yet

to be promoted to the cadre of Executive Engineer. The Apex Court in the case of Bal Kishan Vs. Delhi Administration and another reported

in 1989 Supp. (2) SCC 351 held that no junior shall be confirmed or promoted without considering the case of his senior. Any deviation

from this principle will have demoralizing effect in service apart from being contrary to Article 16(1) of the Constitution. Petitioner could

not show that his seniors in the cadre of Assistant Executive Engineer were not suitable for promotion when he was promoted to Executive

Engineer. He also could not show that they were considered before being superceded by the petitioner. Petitioner's promotion to Executive

Engineer was therefore ex-facie illegal and had to be corrected. There is a distinction between a judicial approach and the approach by an

administrative authority while considering delay in matters of seniority and promotion. Test applied in judicial proceeding is very strict in as

much as in a judicial proceeding there is assertion of one's right and adjudication based thereon. Therefore, before entertaining such

challenge the Court looks into various aspects, such as, delay and laches as belated interference by the Court may upset settled positions as

because of the delay interest of third parties may get ripened. Such belated interference may also lead to administrative dislocation causing

serious complication. Therefore, belated challenge or stale claims to seniority and promotion are ordinarily not entertained by the Courts.

But that is not the case here. Firstly, without any Court intervention, in view of the indisputable facts leading to only one possible

conclusion, the State decided to review the promotions of the petitioner and accordingly, Review Selection Board was constituted which has

recommended reversion of the petitioner. Secondly, reversion of the petitioner to the ex cadre post of Executive Engineer will not cause any

administrative complication or dislocation. Rather, it will only restore some sanity and orderliness in the Department, thereby removing the

grievance of a large number of engineers.

12. Being aggrieved by the common judgment & order dated 30.04.2015 passed by the learned Single Judge in WP(C) No. 05/2015 etc., the petitioner

preferred an appeal before the Division Bench of this Court, which was registered as W.A. No. 138/2015. The Division Bench vide order dated

07.08.2015 passed in W.A. No. 138/2015, directed the authorities not to upset the then position of the petitioner, i.e., his promotion to the rank of

Superintendent Engineer, PWD.

13. Being aggrieved by the order dated 07.08.2015 passed in W.A. No. 138/2015, the State Government, private individuals and the respondent No. 8

went in appeal to the Apex Court vide Civil Appeal Nos. 10662/2018, 10663/2015 and 10664/2018. The Civil Appeals were disposed of by the Apex

Court vide order dated 23.10.2018 passed in Ajit Kumar Bhuyan & Ors. vs- Debajit Das, reported in (2019) 12 SCC 275, by holding inter alia that:

(i) creation of the ex-cadre post of Executive Engineer was nothing but an act of favouritism;

(ii) the petitioner was given regular promotion in the cadre post of Executive Engineer showing undue favour to him by wrongly informing the Board

about the number of vacancies;

(iii) the facts reflect clear manipulation of the system at various stages to give out of turn promotion to the petitioner by bestowing undue favour and

that with the flyover promotions the petitioner parachuted from the post of Assistant Executive Engineer to the post of Superintending Engineer by

bypassing many senior colleagues in the cadre of Assistant Engineer;

(iv) that the favouritism shown to the petitioner was clearly a case of fraud and that fraud vitiates every action and should not be under the carpet on

the ground that the action challenged was belated, more so when there was reasonable explanation for the delay.

The Civil Appeals were accordingly allowed and the impugned judgment dated 07.08.2015 passed by the Division Bench in W.A. No. 138/2015 was

set aside and the common judgment and order of the learned Single Judge dated 30.04.2015 passed in WP(C) No. 05/2015 etc., was restored.

14. Paragraph Nos. 28 & 29 of the Apex Court judgment passed in Ajit Kumar Bhuyan & Others (Supra) is reproduced below:-

“28. We are of the opinion that it was virtually a case of fraud, at least on three counts. First, by creating ex-cadre post of Executive

Engineer only for respondent No.1 and giving him that post when he was much junior to many others. Second, encadrement of respondent

No.1 as Executive Engineer by showing that there were thirteen posts when, in fact, there were only ten posts of Executive Engineer on that

date. This was done obviously with the purpose of accommodating him. Third, the promotion was given when respondent No.1 was not even

eligible as per Rules as he Page No.# 6/8 had not put in minimum service of five years. Fraud vitiates every action and cannot be kept under

the carpet on the ground that the action challenged was belated, more so when there is a reasonable explanation for such delay.

29. We, accordingly allow these appeals, set aside the impugned judgment dated August 07, 2015 of the Division Bench of the High Court

and restore the judgment of the learned Single Judge.”

15. Subsequent to the above events, the respondents published a provisional inter-se seniority list of E.E. (Civil), PWD on 25.02.2020 wherein, the

petitioner was placed at Sl. No.100. The petitioner submitted an objection, vide representation dated 10.12.2018, against the said provisional inter-se-

seniority list, which was not considered by the respondents.

16. As the petitioner's objection, vide representation dated 10.12.2018, to re-consider the provisional seniority list had not been re-considered by

the State respondents, the petitioner filed interim application, registered as I.A. (Civil) No.1237/2020 before the Division Bench of this Court in the

disposed off Writ Appeal No.138/2015. I.A. (Civil) No.1237/2020 was disposed of vide order dated 22.07.2020, with a direction being given to the

State respondents, to take a decision on the petitioner's objection submitted by way of above representation within 2 months, after giving an

opportunity of hearing to those who were likely to be effected by the decision to be given by the authorities.

17. As the order dated 22.07.2020 passed in I.A. (Civil) No.1237/2020 was not complied with, the petitioner approached the Division Bench again by

way of I.A. (Civil) No.1422/2020, which was dismissed vide order dated 08.09.2020, with an observation that it was within the domain of the

administrative authorities to refer to various factors in the context of inter-se seniority of the 123 persons mentioned in the provisional seniority list

dated 25.02.2020 and take a decision in regard to their final seniority.

18. The State respondents thereafter issued the final inter-se-seniority list of E.E. (Civil), PWD vide Notification dated 05.05.2021, wherein the

petitioner's name does not find mention. However, it is mentioned in the last para of the Notification dated 05.05.2021 that the petitioner's

inter-se-seniority in the cadre of A.E.E. will be determined at a later date. The last paragraph of the notification dated 05.05.2021 states as follows:-

"In pursuant to the Order of the Hon'ble Gauhati High Court in I.A(C) No.1237/2020 and I.A(Civil) No.1374/2020 and pursuant to

the Speaking Order No.CON.19/2020/297 dated " 27.04.2021 of the PWRD, the name of Sri. Debajit Das is excluded from the above

inter-se-seniority list and his position as Asstt. Executive Engineer (C), PWRD, in the concerned Inter-se-seniority list will be determined at a

later date."

doubted in the affidavit of the State Government, because of the clubbing of the vacancies for the years 2001 and 2002, neither the State Government

nor the other respondents had contested the promotion of the petitioner from the post of Assistant Engineer to the post of Assistant Executive

Engineer. Accordingly, the learned Single Judge, in his order passed in WP(C) No. 05/2015 etc., had not made any comment on the validity or

otherwise of the said promotion order of the petitioner. He further submits that the learned Single Judge, while disposing of WP(C) No. 05/2015 etc.,

had only held that the petitioner's promotion to the encadred post of Executive Engineer and Superintending Engineer was ex facie illegal and had

to be corrected. Further, the learned Single Judge did not disturb the position with regard to the petitioner holding the ex-cadre post of Executive

Engineer and the State Government Notification dated 05.01.2015 was also upheld by the learned Single Judge.

22. The petitioner's counsel submits that the Apex Court while holding that fraud vitiates everything, had in the last Paragraph of the order passed

in Ajit Kumar Bhuyan (supra), restored the judgment of the learned Single Judge in WP(C) No. 05/2015 etc., without making any modification to the

judgment passed by the learned Single Judge. He submits that the impugned speaking order dated 27.04.2021 has recorded its findings and decision, by

selectively reading the order dated 30.04.2015 passed in WP(C) No. 05/2015 etc., and the order of the Apex Court in Ajit Kumar Bhuya (supra). He

further submits that the impugned order dated 27.04.2021 did not consider the State Government Notification dated 05.01.2015. He also submits that

the impugned order dated 27.04.2021 has been issued by the Commissioner & Special Secretary, Government of Assam, PWD, without the same

being approved by the Minister-in-Charge, as can be seen from the note-sheets annexed to the additional affidavit and the impugned speaking order

which states that the same has been issued by the order of the Governor of Assam. However, the State Government Notification dated 05.01.2015

had been issued in the name of the Governor, after the same was approved by the Minister in charge.

23. The learned senior counsel for the petitioner submits that in terms of Rules 9, 11 and 12 of the Assam Rules of Executive Business, 1968 read

with Article 166 of the Constitution of India, the impugned order dated 27.04.2021 is without any authority or jurisdiction and, as such, cannot be acted

upon. Rule 9, 11 & 12 of the Assam Rules of Executive Business, 1968 states as follows:-

“9. Without prejudice to the provisions of Rule 7, the Minister-in-charge of a Department shall be primarily responsible for the disposal

of the business appertaining to that Department.

11. All orders or instruments made or executed by or on behalf of the Government of Assam shall be expressed to be made or executed in

the name of the Governor of Assam.

12. Every order or instrument of the Government of the State shall be expressed to be made in the name of the Governor and shall be signed

either by a Secretary, an Additional Secretary, a Special Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or such

other Officer as may be specially empowered in that behalf and such signature shall be deemed to be proper authentication of such order

or instrument.”

24. The learned senior counsel for the petitioner submits that as the promotion of the petitioner from the post of Assistant Engineer to the post of

Assistant Executive Engineer in the year 2002 had not been the subject matter in issue in the earlier round of litigation and as the same has been

upheld by the State Government in the Notification dated 05.01.2015, which was upheld by the learned Single Judge in its order dated 30.04.2015

passed in WP(C) No. 05/2015 etc., and by the Apex Court in Ajit Kumar Bhuyan (supra), the petitioner’s seniority in the grade of Assistant

Executive Engineer would have to be counted from the date of the promotion order, i.e. 09.12.2002 and the date of joining. Accordingly, his seniority

in the grade of Assistant Executive Engineer should be just below the seniority position of Tomiz Ali and the petitioner should be granted further

consequential promotion to the post of Executive Engineer etc. by counting his seniority in the cadre of Assistant Executive Engineer, from the date of

his appointment/date of joining the post of Assistant Executive Engineer. He further submits that the impugned order dated 27.04.2021 has been

passed on the basis of the order dated 22.07.2020 passed by the Division Bench of this Court in I.A. (Civil) No. 1237/2020 (Debajit Das & vs- State

of Assam & 12 Ors.), which was filed by the petitioner and, as such, the State respondents could not have gone beyond the issue raised in I.A. (Civil)

No. 1237/2020.

The petitioner's counsel thus submits that though the respondents have reverted the petitioner to the grade of A.E.E., his seniority position in the

final seniority list for A.E.E. (Civil) should be from the date of his promotion order, i.e., 09.12.2002.

The petitioner's counsel further submits that the petitioner has subsequently been promoted to the post of E.E. (Civil), PWD on 28.06.2021. He

submits that the said promotion had been made by placing him in the zone of consideration and by taking into account the petitioner's seniority

position in respect to his position in the grade of A.E. (Civil), PWD. He submits that the petitioner's promotion to the post of A.E.E. (Civil), PWD

was not the subject matter of dispute in any of the earlier writ petitions and as such, his seniority position in the grade of A.E.E. (Civil) would have to

be counted w.e.f. 19.12.2002. He accordingly submits that his promotion to regular grade of E.E. needs to be reviewed and promotion should be given

to him, from the date his immediate junior in the grade of A.E.E. was considered for promotion to the regular grade of E.E.

25. Mr. D. Mozumder, learned Additional Advocate General, Assam submits that as the Apex Court in the case of Ajit Kumar Bhuyan (supra), had

held that fraud vitiates everything and as the petitioner had been illegally promoted to the post of Assistant Executive Engineer, due to the illegal

clubbing of vacancies for the year 2001 and 2002, the petitioner had superceeded his seniors in the cadre of Assistant Engineers. He also submits that

as the State Government has the power to review its own decision at any stage and especially when there is a fraud committed, there was no infirmity

in the respondents issuing the impugned order dated 27.04.2021. In this regard, the learned Additional Advocate General has relied upon Section 21 of

the General Clauses Act and the judgment of the Apex Court in the case of Jai Singh Dalal & Ors. vs- State of Haryana & Ors., reported in 1993

Supp (2) SCC 600.

26. The learned Additional Advocate General submits that though the issue before the Court in the earlier round of litigation was only with respect to

encadrement of the petitioner in the post of Executive Engineer and subsequent promotion to the post of Superintending Engineer, the fact that the

illegal promotion of the petitioner started from the illegal clubbing of the vacancies for two years, i.e. 2001 and 2002, goes to show that the promotion

of the petitioner to the post of Assistant Executive Engineer itself was illegal and had to be corrected. He submits that an order that is bad in its

inception cannot be sanctified at a later stage as the illegality strikes at the root of the matter, i.e. the order of promotion from Assistant Engineer to

Assistant Executive Engineer. In support of his submission, the learned Additional Advocate General has relied upon the judgment of the Apex Court

in the case of State of Orissa & Anr. vs- Mamata Mohanty, reported in (2011) 3 SCC 436. Mr. Mazumder further submits that there was no

approval of the learned Single Judge in WP(C) No. 05/2015, to the promotion of the petitioner from the post of Assistant Engineer to the post of

Assistant Executive Engineer and, as such, the review of the promotion order and the petitioner's seniority position in the cadre of A.E.E. by the

State was permissible. He also submits that the impugned order dated 27.04.2021 has been passed in terms of Rule 11 and 12 of the Assam Rules of

Executive Business, 1968.

27. Mr. A. Phukan, learned counsel for the respondent no.8 submits that the impugned order dated 27.04.2021 is a well reasoned order and no

interference with the same is called for. He submits that the impugned order has been passed on the basis of the representations submitted by the

respondent No. 8 and as such, the respondent No. 8 is a necessary party in WP(C) No. 3021/2021. He submits that the petitioner has suppressed

material facts from this Court, inasmuch as, the petitioner has not brought to the notice of this Court that after the Apex Court had disposed of the

case of the petitioner, i.e. Ajit Kumar Bhuyan & vs- Debajit Das, reported in (2019) 12 SCC 275, the petitioner had filed a review petition being

Review Petition (C) No. 3916-18/2018 in Civil Appeal No. 10662-10664/2018, which was dismissed by the Apex Court on 08.01.2019. He submits

that the writ petition should be dismissed due to suppression of material facts and in this regard, he has relied upon the judgment of the Apex Court in

the case of K.D. Sharma & vs- Steel Authority of India Lt. & Ors., reported in (2008) 12 SCC 481.

28. Learned counsel for the respondent No.8 further submits that the impugned order dated 27.04.2021 had been passed in pursuance to the decision

of the Apex Court in Ajit Kumar Bhuyan (supra) and the representations of the respondent no. 8. He submits that vide order dated 08.09.2020 passed

in I.A. (Civil) No. 1374/2020 in W.A. No. 138/2015 (D/O), the respondent No.8 was allowed to withdraw I.A. (Civil) No. 1374/2020 and to make

representations to the State authorities with regard to the illegal promotions given to the petitioner. He submits that the reason for placing the

petitioner's seniority position at Serial No. 164, vide the impugned order dated 27.04.2021, in the cadre of Assistant Executive Engineer on the

basis of inter-se seniority of Assistant Engineers (C) notified vide Notification dated 31.05.2000, just below Rishikesh Goswami and above Fakarul

Islam (II), has not been challenged by the petitioner. He submits that as no specific pleading or prayer has been made by the petitioner in that regard,

this Court should not grant the reliefs which are not prayed for. The learned counsel for the respondent no.8 has relied upon the decision of the Apex

Court in the case of S.S. Sharma & Ors. vs- Union of India & Ors., reported in (1981) 1 SCC 397 and in the case of Bharat Amratlal Kothari &

Anr. vs-Dosukhan Samadkhan Sindhi & Ors., reported in (2010) 1 SCC 234 in support of his above submissions.

29. Learned counsel for the respondent no.8 submits that in the case of Employers in Relation to the Management of Bhilwara Area (Now Kustore

Area) of M/s. Bharat Coking Coal Ltd. vs- Workmen being Represented by Janta Mazdoor Sangh, reported in 2021 SCC OnLine SC 671, the

Apex Court has held that fraudulent practice to gain public employment cannot be countenanced to be permitted by a Court of law. The workmen

having hoodwinked the Government Undertaking in a fraudulent manner, must be prevented from enjoying the fruits of their ill-gotten advantage. He

thus submits that because of the representations submitted by the respondent No.8, the issue of the petitioner's seniority in the grade of Assistant

Executive Engineer was re-opened by the Government and as it was found that the petitioner's promotion from the post of Assistant Engineer to

the post of Assistant Executive Engineer was due to the illegal clubbing of vacancies of the years 2001 and 2002, the petitioner had illegally

superceded his seniors. The learned counsel for the respondent No.8 submits that as the petitioner had been illegally promoted to the post of Assistant

Executive Engineer and to the ex-cadre post of Executive Engineer, which was rectified by the impugned order dated 27.04.2021, the said order

should be upheld.

30. As can be culled out from the facts narrated above, the grievance of the petitioner is that though the petitioner had been allowed to remain in the

ex-cadre post of E.E. in terms of the order passed by this Court in WP(C) No.5/2015 etc., which had not been interfered with by the Apex Court in

Civil Appeal No.10662/2018, the respondents have unsettled a settled position. In support of his submission that the Judgment & Order dated

30.04.2015 passed in WP(C) No. 05/2015 etc., had attained finality, he has relied upon the order dated 19.12.2018 passed in I.A. (Civil)

No.3894/2018. The facts in I.A.(Civil) No. 3894/2018 in WP(C) No. 5479/2018 was with regard a journalist seeking a writ of Quo Warranto against

the notification dated 27.07.2016 by which the petitioner had been placed at the disposal of Guwahati Development Department as Chief Engineer i/c

Guwahati Metropolitan Development Authority w.e.f. the date of taking over charge. The challenge of the notification dated 27.07.2016 was on the

ground that the Provisions of the Guwahati Metropolitan Development Authority Act, 1985 has been violated more particularly Section 5(l). This Court

while disposing I.A.(Civil) No. 3894/2018 held that the cumulative effect of the decisions of this Court and the Hon'ble Supreme Court was that

the petitioner would remain as E.E in the ex-cadre post. The relevant paragraphs of the order dated 19.12.2018 passed in I.A.(Civil) No. 3894/2018

states as follows:-

“7) Though, the Hon'ble Supreme Court had made certain scathing observations about the way the respondent No.8 was appointed

to the Ex-cadre post of Executive Engineer, in the operative portion of the judgment, the Hon'ble Supreme Court had set aside the

judgment of the Division Bench of this Court and restored the judgment of learned Single Judge. The aforesaid operative portion of the

judgment reads as follows:

“We, accordingly allow these appeals, set aside the impugned judgment dated August 07, 2015 of the Division Bench of the High Court

and restore the judgment of the learned Single Judge.”

8) The effect of the aforesaid judgment of the Hon'ble Supreme Court is that the judgment of the learned Single Judge has been upheld,

thus the decision of the learned Single Judge in WP (C)5/2015 in which the reversion of the respondent No .8 from the post of

Superintending Engineer to Executive Engineer (Ex-cadre) was not interfered.

9) The cumulative effect of the decisions of this Court as well as Hon'ble Supreme Court is that Debajit Das the respondent No. 8,

would remain as Executive Engineer holding an Ex-cadre post in the PWD.

10) Though his functioning in the Ex-cadre post of Executive Engineer PWD has not been disturbed, the problem has arisen after the

respondent No. 8 has been given charge of the post of Chief Engineer in GMDA which is the matter of challenge in WP (C) 5479/2018.

11) In that context, an interim order was passed by this Court on 21.08.2018. It is the clarification of aforesaid interim order for which this

application has been filed.

12) This Court after hearing the parties is of the view that though the appointment of the respondent No. 8 as In-charge as Chief Engineer

has been challenged, but he continues to hold certain Ex-cadre post in the grade of Executive Engineer, this ought not to effect the power

and functions of the respondent No. 8 at least in the rank of Executive Engineer in the Ex-cadre post of Executive Engineer. Accordingly, it

is clarified that the aforesaid interim order will not come in the way of exercising of such power by the Respondent No.8 as Executive

Engineer which he is holding against an Ex-cadre post in PWD in respect of any financial and technical power attached to the post of

Executive Engineer in the Public Works Department.

13) With the above clarification, this I.A. is disposed of.

31. As can be seen from the facts of the case, the learned Single Judge in the common judgment & order dated 30.04.2015 passed in WP(C) No.

05/2015 etc., had not disturbed the promotion of the petitioner from the post of Assistant Engineer to the post of Assistant Executive Engineer as it

was never an issue before the learned Single Judge or before the Apex Court. The learned Single Judge has also recorded in Paragraph No. 37 of the

judgment & order dated 30.04.2015 that neither the State nor the other respondents had contested the promotion of the petitioner from the post of

Assistant Engineer to the post of Assistant Executive Engineer. The learned Single Judge thereafter came to a decision that the petitioner's

promotion to the post of Executive Engineer was ex facie illegal and had to be corrected and, as such, the learned Single Judge upheld the Notification

dated 05.01.2015 issued by the State respondents in the name of the Governor, which did not touch upon the petitioner's promotion to the post of

Assistant Executive Engineer. Even before the Division Bench in W.A. No. 138/2015, no issue was raised by any of the parties with regard to the

petitioner's promotion to the post of Assistant Executive Engineer. Though the Apex Court in Ajit Kumar Bhuyan (supra) has reflected on the

"flyover promotion" of the petitioner, parachuting from the post of Assistant Executive Engineer to the post of Superintending Engineer, the

petitioner's promotion to the post of Assistant Executive Engineer was never an issue. In fact, the Apex Court has restored the common judgment

and order dated 30.04.2015 passed in WP(C) No. 05/2015 etc. As such, there is a finality to the promotion of the petitioner from the post of Assistant

Engineer to the post of Assistant Executive Engineer on 19.12.2002, which is reflected in the judgment and order dated 23.10.2018 passed by the

Supreme Court, when it says in the penultimate paragraph of its judgment that the judgment of the learned Single Judge is restored.

32. The State respondents thereafter published a provisional inter-se-seniority list of Executive Engineer (Civil), PWD vide notification dated

25.02.2020, whereby the petitioner's name was reflected at Sl. No. 100. Being aggrieved with his placement at Sl. No. 100, the petitioner

preferred a representation dated 07.03.2020 contending that as he had been confirmed in the post of Executive Engineer (Civil), PWD vide order

dated 27.11.2009 w.e.f. 01.02.2008, his placement in the provisional inter-se-seniority list of Executive Engineer should have been in conformity with

his date of confirmation, i.e., 01.02.2008. As the petitioner's representation was not being considered by the State respondents, the petitioner

approached the Hon'ble Division Bench by filing I.A.(C) No. 1237/2020 in the disposed of Writ Appeal, i.e., W.A. No. 138/2015, praying that a

direction should be issued to the respondent authorities to consider the petitioner's representation for giving seniority to the petitioner in the post of

E.E. w.e.f. 01.02.2008. The Division Bench disposed of I.A.(C) No. 1237/2020 vide order dated 22.07.2020, by directing the respondents therein to

take a decision on the complaint/objection raised by the petitioner in his representation dated 07.03.2020. It also direct the State respondents to take a

decision after giving a hearing to all concerned persons, who were likely to be effected by the decision to be taken. As the order dated 22.07.2020

passed in I.A.(C) No. 1237/2020 was not being complied with, the petitioner filed I.A.(C) No. 1422/2020 in W.A. No. 138/2015 (D/O), seeking some

minor clarification in the order dated 22.07.2020.

33. I.A.(C) No. 1422/2020 was dismissed vide order dated 08.09.2020, stating that it was not for the Court to decide as to the seniority to be provided

to the petitioner in the cadre of Executive Engineer w.e.f. the date of confirmation of his service in the said post of Executive Engineer i.e., on

01.02.2008. The Division Bench held that it was for the State respondents to consider the said issue.

34. The respondent No. 8 in the meantime had also filed I.A.(C) No. 1374/2020, with a prayer to direct the respondent authorities to consider the

representations dated 21.12.2018, 07.03.2020 and 26.06.2020 made by the respondent No. 8 Association, for fixing the petitioner's seniority in the

cadre of AEE and consider him for promotion to the post of E.E., only after his seniors were promoted in accordance with the judgment passed by the

Apex Court in Ajit Kumar Bhuyan (supra). The same was allowed to be withdrawn by the Division Bench vide order dated 08.09.2020.

35. However, in pursuance to the order passed by the Division Bench in I.A.(C) No. 1237/2020 & I.A.(C) No. 1422/2020 and by taking recourse to

the observation of the Apex Court that fraud vitiates everything, the State respondents have gone beyond the issues raised before the learned Single

Judge, the Division Bench and the Supreme Court, to hold that even the promotion of the petitioner to the post of Assistant Executive Engineer was

illegal, as there had been clubbing of vacancies of two years, i.e., 2001 and 2002, which could not be allowed in terms of the existing Service Rules.

On considering the fact that the Apex Court had held that creation of an ex-cadre post of E.E. for the petitioner was nothing but an act of favouritism

and his promotion to the cadre post of E.E. was an undue favour, by manipulating the system at various stages, giving fly over promotion to the

petitioner from the post of A.E.E. to E.E., by by-passing many senior colleagues in the cadre of E.E., this Court is of the view that the decision taken

by the State Government in the impugned order dated 27.04.2021, (1) excluding the name of the petitioner from the provisional inter-se-seniority list of

E.E (C), PWD, (2) retrospectively abolishing the ex-cadre post of E.E created solely for the petitioner, besides (3) reverting the petitioner to the post

of A.E.E., cannot be faulted. However, whether the decision of the State respondents to re-fix the inter-se-seniority of the petitioner in the cadre of

A.E.E., on the basis of inter-se-seniority in the cadre of A.E. is arbitrary, is the issue to be decided. In view of the above reason, this Court is of the

view that the petitioner's prayer for setting aside the impugned notification dated 05.05.2021, which is the final inter-se-seniority list of E.E. (Civil),

PWD and to restore the posting of the petitioner to the ex-cadre post of E.E., with all the consequential benefits cannot be granted. The

petitioner's prayer for setting aside the impugned speaking order dated 27.04.2021 and the impugned notification dated 29.05.2021, which is the

provisional inter-se-seniority list of A.E.E., wherein the petitioner's seniority position has been made as per his seniority position in the cadre of

A.E., would have to be considered, keeping in mind the fact that a settled position has been un-settled by the impugned speaking order dated

27.04.2021.

36. Thus, the question that has to be decided is as to whether the observation of the Apex Court that fraud vitiates everything would be a valid ground

for the State respondents to open up a settled issue, which had attained finality in terms of the common judgment and order passed by the learned

Single Judge in WP(C) No. 5470/2014 etc., and which judgment had been restored by the Apex Court in Ajit Kumar Bhuyan (supra).

37. In the present case, the S.C. Das Committee was well aware that the petitioner had got the benefit of clubbing of the vacancies for the year 2001

and 2002 at the time of his promotion to the post of Assistant Executive Engineer. However, the report of the S.C. Das Committee dated 16.12.2014

held that since more than 12 years had elapsed since his last promotion, and as in the meantime the petitioner had been given the ex-cadre post of

Executive Engineer personal to him, the matter may not be reopened. This recommendation of the S.C. Das Committee was considered and accepted

by the State Review Board and subsequently, the Notification dated 05.01.2015 was issued by the State respondents in the name of the Governor,

which accepted the recommendation of the S.C. Das Committee and the Review Selection Board. Thus, the State Government had, vide its order

dated 05.01.2015, taken a conscious decision not to re-open the issue of the petitioner's promotion from the post of Assistant Engineer to the post

of Assistant Executive Engineer. The State Government had also not made it an issue before the Courts. However, vide the impugned order dated

27.04.2021, the State respondents have opened the issue of the petitioner's promotion from the post of Assistant Engineer to the post of Assistant

Executive Engineer, 19 years after his promotion to the post of A.E.E. Though the State respondents have not disturbed the promotion of the petitioner

from the post of Assistant Engineer to the post of Assistant Executive Engineer, the petitioner has been given his seniority position in the cadre of

Assistant Executive Engineer, as per his seniority position in the cadre of Assistant Engineer.

38. The above facts give rise to a question as to whether an administrative action or decision in the form of the impugned speaking order dated

27.04.2021, can nullify or make redundant a decision of this Court and the Hon'ble Apex Court, wherein the issue of the petitioner's

promotion to the post of Assistant Executive Engineer was never an issue and had attained finality.

39. In the case of State of Orissa and Another Vs. Mamata Mohanty, (2011) 3 SCC 436 , the Apex Court has held that if an order is bad in its

inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception,

for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would

be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all

further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful

origin.

40. In the case of State of Uttaranchal and Another Vs. Shiv Charan Singh Bhandari and Others, (2013) 12 SCC 179, the Apex Court has held that

the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time.

41. On considering the submissions of the counsels for the parties with regard to the petitioner's promotion from the post of Assistant Executive

Engineer to the post of Executive Engineer, it is quite clear that there should not have been clubbing of vacancies of different years, as it was

irregular. As stated earlier, neither the State Government nor the members of the respondent no.8 had made any issue out of the same, in the earlier

round of litigation. As such, the issue of the promotion of the petitioner from A.E. to A.E.E. and his seniority position in the grade of A.E.E. had

attained finality. However, vide the impugned order dated 27.04.2021, the State respondents have re-opened a settled issue after 19 (nineteen) years,

as the petitioner had been promoted from A.E. to A.E.E. on 19.12.2002. The judgment of the Single Bench in WP(C) No. 05/2015 etc., had been

restored by the Apex Court and as such, it was not proper for the State respondents to go behind the order of the Apex Court.

In the judgment & order dated 30.04.2015 passed by this Court in WP(C) No. 05/2015 etc., which has been given a finality by the Apex Court, this

Court had stated in paragraph no. 37 that the petitioner was the beneficiary of clubbing of vacancies for the years 2001 & 2002 and that because of

the long lapse of time, the Enquiry Officer suggested that such promotion may not be re-opened. This Court further stated that neither the State nor

the other respondents had contested the promotion of the petitioner from A.E. to A.E.E. Thus, the promotion of the petitioner from A.E. to A.E.E. had

laid to rest the infirmity that occurred in the promotion of the petitioner from the post of A.E. to A.E.E., and his seniority position in the grade of A.E.E

from the date of his being born into the cadre of A.E.E. The State respondents had also taken a conscious decision not to re-open the issue of the

petitioner's promotion from the post of A.E. to A.E.E. as per the notification dated 05.01.2015, after considering the S.C Das Committee

recommendations/and the Selection Board report/recommendations. As such, this Court is of the view that a settled position could not have been

unsettled.

In the case of Jai Singh Dalal & Ors.(supra), the Apex Court had, in the facts of the above case pertaining to recruitment, held that the State

Government had the power to rectify or correct a mistake it had committed. This Court is aware that a mistake can be corrected. However, as the

State Government had already taken a decision, vide its notification dated 05.01.2015 not to re-open the issue of promotion of the petitioner from A.E.

to A.E.E., the flip-flop made by the Government in re-opening the said issue on the basis of the representations submitted by the respondent no. 8 in

the year 2020 is not proper, as there is no proof that the clubbing of the 2001 & 2002 vacancies in the cadre of A.E.E. was the handiwork of the

petitioner. As such, this Court is of the view that the decision rendered in Jai Singh Dalal & Ors.(supra) and K.D. Sharma (supra) are not applicable

to the facts of this case.

42. In the case of Shiba Shankar Mohapatra and Others vs. State of Orissa and Others reported in (2010) 12 SCC 471, the Apex Court has cited the

decision of the Constitution Bench of the Supreme Court in Ramchandra Shankar Deodhar and others vs. State Of Maharashtra and Others, reported

in (1974) 1 SCC 317, which considered the effect of delay in challenging a promotion and the seniority list, wherein the Constitution Bench held that

any claim for seniority at a belated stage should be rejected, inasmuch as, it seeks to disturb the vested rights of others regarding seniority, rank and

promotion which have accrued to them during the intervening period. The Apex Court in the above noted case held that a party should approach the

Court just after accrual of the cause. While deciding the said case, the Apex Court placed reliance upon its earlier judgments, wherein it observed that

the principle on which the Court proceeds in refusing relief to the petitioner on the ground of delay or laches is that the rights which have accrued by

the reason of delay in filing a writ petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay.

43. In the present case, the respondent no. 8 never made a challenge in the earlier round of litigation, with respect to the petitioner's promotion

from A.E. to A.E.E. As such, the State respondents could not have acted upon the late representations made by the respondent No. 8 with regard to

the petitioner's promotion to A.E.E. and to the petitioner's consequential seniority in the cadre of A.E.E. Further, knowing fully well that the

petitioner had been promoted from A.E. to A.E.E., due to clubbing of vacancies of 2 (two) years, the State respondents having decided not to act

upon the same earlier, cannot be now allowed to act 19 years after the petitioner's promotion in the cadre of A.E.E., on the basis of the

representations dated 21.12.2018, 07.03.2020 and 26.06.2020 submitted by the respondent No. 8, after the Supreme Court had restored the judgment

in WP(C) No. 5/2015 etc. This Court is of the view that due to the restoration of the judgment rendered in WP(C) No. 5/2015 etc, the State

respondents could not have set at naught the judgment rendered in WP(C) No. 5/2015 etc and the Supreme Court judgment in Ajit Kumar Bhuyan

(Supra) by an administrative decision, i.e. the impugned Order dated 27.04.2021, especially when the petitioner's promotion from A.E. to A.E.E.

was never an issue and as it was a closed chapter. The State respondents cannot be allowed to open a closed issue, after closing the chapter on the

petitioner's promotion from A.E. to A.E.E., vide notification dated 05.01.2015 and after the Apex Court judgment in Ajit Kumar Bhuyan (Supra).

This Court is accordingly of the view that the opening of a closed issue, thereby giving a go-by to finality of an issue is arbitrary and would set off a

bad precedent.

44. The State respondents were to decide the petitioner's representation dated 07.03.2020, with regard to his prayer for placement of his seniority

in the provisional inter-se-seniority list of E.E., from the date of his confirmation as E.E., i.e., on 01.02.2008, in terms of the order dated 22.07.2020

passed in I.A(C) No. 1237/2020 and the order dated 08.09.2020 passed in I.A(C) No. 1422/2020. However, the State respondents went beyond the

issue to be decided in the petitioner's representation dated 07.03.2020, vide the impugned order dated 27.04.2021, apparently on the basis of the

representations submitted by the respondent no. 8 in the year 2020.

This Court is of the view that the State respondents could not have acted upon delayed representations submitted by the respondent no. 8, based on

stale claims.

45. With respect to the stand taken by the petitioner's counsel that the Minister in charge of the Public Works Department (Road) had not given

approval to the decisions enumerated in the impugned Order dated 27.04.2021, in terms of Rule 9, 11 and 12 of the Assam Rules of Executive

Business, 1968, this Court finds that no approval had been given by the Minister in charge in the Note Sheets annexed to the additional affidavit of the

petitioner.

As per Article 166(1) of the Constitution of India, all executive actions of the Government of a State is required to be taken in the name of the

Governor of the State concerned.

Orders and other instruments made and executed in the name of the Governor of a State is required to be authenticated in such manner, as may be

specified in rules to be made by the Governor under Article 166(2). Article 166 (3) states that the Governor shall make rules for the more convenient

transaction of the business of the Government of the State, and for the allocation among the Ministers to the said business in so far as it is not business

with respect to which the Governor is by or under the Constitution required to act in his discretion.

The Apex Court in the case of State of Bihar & Others Vs. Kripalu Shankar & Others, reported in (1987) 3 SCC 34 held that the functioning of

Government in a State is Governed by Article 166 of the Constitution, which lays down that there shall be a Council of ministers with the Chief

Minister at the head, to aid and advise the Governor in the exercise of his functions, except where he is required to exercise his functions under the

Constitution, in his discretion.

Thus, unless an order is expressed in the name of the Governor and it is authenticated in the manner prescribed by the rules, the same cannot be

treated an order made on behalf of the Government. In the present case, Rule 9 of the Assam Rules of Executive Business, 1968 provides that the

Minister in charge of the Department shall be primarily responsible for the disposal of business appertaining to that Department. However, the

Minister in charge has apparently not given his approval (signature) to the decisions taken and spelt out in the impugned Order dated 27.04.2021.

Further, the impugned Order dated 27.04.2021 has been made by the order of the Governor and not in the name of the Governor. The Governor has

issued an order, which has not been approved by the Minister in charge of the concerned Department, though the Minister in Charge is primarily

responsible for the business pertaining to the concerned Department. Be that as it may, a decision has been taken by the State respondents which has

not been cancelled or withdrawn by the Minister in Charge or Government till date. As the petitioner's promotion from A.E. to A.E.E. and his

consequential seniority in the cadre of A.E.E. had not been interfered with by the State respondents, vide their Notification dated 05.01.2015, the

Judgment dated 30.04.2015 passed by the learned Single Judge in WP(C) No. 5/2015 etc. and by the Apex Court in Ajit Kumar Bhuyan (Supra), this

Court is of the view that the settled position with regard to the petitioner's seniority in the cadre of A.E.E., from the date he was born into the

cadre of A.E.E. cannot be unsettled by way of the impugned Order dated 27.04.2021.

46. In view of the reasons stated above, the impugned Order dated 27.04.2021 is set aside, to the extent that the inter-se-seniority of the petitioner as

A.E.E. (Civil) has been re-fixed in parity with the other incumbents in the said cadre, on the basis of inter-se-seniority list of Assistant Engineer(C)

notified vide Government Notification No. RBEB.132/2002/6 dated 31.05.2002, wherein the petitioner was placed at serial No. 164, just below Sh.

Hrishikesh Goswami and above Fakrul Islam-II.

47. The impugned Notification dated 29.05.2021, wherein the petitioner is placed at serial No. 64 in the provisional inter-se-seniority list of Assistant

Executive Engineer (Civil), PWD, in so far as it relates to the petitioner is set aside and the petitioner's seniority position in the inter-se-seniority of

A.E.E. will have to be counted from the date he was promoted/joined in the cadre of A.E.E. Consequently, the petitioner's promotion to the post

of E.E. and further promotion would have to be reckoned/considered on the basis of his seniority position in the cadre of A.E.E. from the date he was

promoted/joined the cadre of A.E.E. This would naturally require the State respondents to constitute Review DPC(s) to consider the case of the

petitioner.

The writ petitions are accordingly disposed of.