

# IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM; NAGALAND; MIZOAM & ARUNACHAL  
PRADESH)

**WA 248/2012**

**THE STATE OF ASSAM**

REPRESENTED BY THE COMMISSIONER & SPECIAL SECY.  
TO THE GOVT. OF ASSAM, PUBLIC WORKS DEPTT., DISPUR, GUWAHATI-781006.

**THE SECY. TO THE GOVT. OF ASSAM,**  
PUBLIC WORKS DEPTT., DISPUR, GUWAHATI-781006

**THE UNDER SECY. TO THE GOVT. OF ASSAM,**  
ESTABLISHMENT (B) BRANCH, PUBLIC WORKS DEPTT., DISPUR, GUWAHATI-781006.

**THE CHIEF ENGINEER,**  
PUBLIC WORKS DEPTT. (ROADS/BUILDING),  
CHANDMARI GUWAHATI-781003.

.... APPELLANTS

versus

**JAYANTA KUMAR SARMA**  
S/O LATE DHIRENDRA NATH SARMA,  
R/O RUPNAGAR, GUWAHATI-781029.

**RANJIT SARMA BARDALAI**  
S/O LATE HARENDRA NATH SARMA, R/O BAGHARBARI,  
P.O. PANJABARI, GUWAHATI-781037.

**ABDUR RAHMAN CHOUDHURY**  
S/O HASAN ALI CHOUDHURY, R/O SUNDARBAN NAGAR,  
SOUTH NOTBOMA, GUWAHATI-781038

**DWIPENDRA KUMAR CHOUDHURY,**  
S/O LATE UMESH CHANDRA DEV CHOUDHURY,  
P.O. DHIRENPARA, DATALPARA, A.K. DEV ROAD, GUWAHATI-781025.

**MAKHAN CHANDRA DAS,**  
S/O LATE UTTAM CHANDRA DAS, R/O SANKARDEVA PATH, GUWAHATI-781025.

**HOMESWAR KALITA,**  
S/O LATE MANOHAR KALITA, R/O BHETAPARA, P.O. BELTOLA, GUWAHATI-781028.

.... RESPONDENTS

**WA 249/2012**

**THE STATE OF ASSAM**

REPRESENTED BY THE COMMISSIONER & SPECIAL SECY. TO THE GOVT OF ASSAM,  
PUBLIC WORKS DEPTT., DISPUR, GUWAHATI-781006.

**THE SECY. TO THE GOVT. OF ASSAM,**  
PUBLIC WORKS DEPTT., DISPUR, GUWAHATI-781006

**THE CHIEF ENGINEER,**  
PUBLIC WORKS DEPTT. (ROADS/BUILDING)  
CHANDMARI GUWAHATI-781003.

versus

**DHARMESWAR DEKA & 2 ORS,**  
S/O LATE BRAJA NATH DEKA, R/O T.C. BUILDING, PWD COLONY,  
GNB ROAD, GUWAHATI-781003, KAMRUP (METRO)

- Respondents

## P R E S E N T

**HON'BLE MR JUSTICE K. SREEDHAR RAO**  
**HON'BLE MR. JUSTICE P.K. SAIKIA**

Advocates present:

For the appellants	: Mr. I. Choudhury, Mr. P.N. Goswami, Mr. H. Dekka, Advocates
For the respondents	: Mr. SC Keyal, Mr. M. Bhuyan, Mr. U.K. Nair, Mr. S.S. Dey, Advocates
Date of hearing	: 30.01.2014
Date of judgment	: 30.01.2014

**JUDGEMENT AND ORDER****[O R A L]**

Heard learned counsel for the parties.

2. The petitioner-respondents were holding diploma in engineering and working in the Public Works Department, Government of Assam, as Junior Engineers. The qualification prescribed for the promotional post of Assistant Engineer is degree in engineering. The respondents-petitioners have taken B. Tech degree in Civil Engineering from the Institute of Advanced Studies and Education, Gandhi Vidya Mandir, Sadar Sahar, Rajasthan, a deemed university for the purpose of UGC Act, 1946. The said institute provides facility of distant educational learning and awards degree in engineering.

3. The petitioner-respondents have obtained the degree in engineering by pursuing the course of distant education learning and they have been awarded degree certificate by the institute. The said degree is said to be recognised by the Director of Technical Education, Govt. of Assam, as well as Ministry of Human Resource Development, Govt. of India.

4. The Service Rules envisage that whenever a diploma holder acquires a degree, he will be promoted to the vacant post of Assistant Engineer and such recruitment would be deemed to be a direct recruitment.

5. The facts of the cases reveal that in the other departments of Government of Assam like Water Resources, Public Health Engineering, Water Transport, persons, who are similarly placed, who had obtained degree from the institute of distant learning, were promoted to the vacant posts of Assistant Engineers.

6. The appellant-Department took a different view holding that B. Tech degree obtained from the distant learning institute is not a valid degree since it lacks approval of the AICTE. Therefore, the appellant-Department refused to promote the petitioner-respondents.

7. The learned Single Judge, in the writ petition, made the following observations:

*“From the above, there is no manner of doubt that the course that was undertaken by the petitioners is recognised by the UGC. Only question to consider is as to whether the said course is also recognised by the AICTE.*

*The public notice vide advertisement No. Legal /01(02)/09 to counter affidavit in WP(C) No.1741/2010) speaks of memorandum of understanding signed by the UGC, AICTE and DEC indicating that the universities including the Deemed Universities imparting technical education and technical institutions are required to obtain specific prior approval from the Joint Committee of UGC-AICTE-DEC for conducting programmes/courses in technical education through distance mode. In the public notice vide advertisement No. UB/03(03)/2010 speaks that qualification acquired by the individuals through distance education mode are recognised for the purpose of employment to posts and services under the Central Govt. subject to the condition that the same have been approved by the DEC-IGNOU, New Delhi, and wherever necessary by AICTE, New Delhi. By the said notices students were directed to check the approval of Joint Committee of DEC/UGC/AICTE.*

*From the above, what is seen is that the approval of the AICTE in respect of the course in question may not be in direct form, but is on the basis of the approval of the Distant Education Council and also in the form of Joint Committee meeting of DEC/UGC/AICTE.*

*In the instant case as noted above, both the petitioners completed their final examinations conducted in 2007 and 2008. As*

*per the aforesaid Joint Committee minutes, the Institute in question has already been approved ex post facto . For a ready reference, the resolution No. 3 of the meeting is quoted below:*

*“3. Instructions applied for ex-post-facto approval*

*The Joint Committee accepted the recommendations for the Committee appointed by Dec for examining the institutions that have applied for ex-post-facto approval to DEC. It accepted the recommendations of granting ex-post-facto approval to all the four institutions namely JRN Rajasthan Vidyapeeth, Allahabad Agriculture Institute Deemed University. Vinayaka Missions University, Punjab Technical University and IASE Deemed University up to the current academic year i.e. 2007-08 ad the suggestions made by the visiting Expert Committee should be made known to them which should be strictly adhered to. However, they need to apply for formal recognition to DEC for the next academic year.”*

*Above apart, another department of Govt. of Assam, Water Resources Department has already recognised the degree obtained from the Institute in question as will be evident from the letter dated 07.10.2009 (Annexure-14) addressed to the APSC by the Govt. of Assam in the said department. After such communication the candidates with the degree from the said Institute have already been promoted in the said department. Thus under the same Govt. there cannot be two different standards.*

*For all the aforesaid reasons, I am inclined to accept the prayer made by the petitioner for a direction to the State respondents to consider the case of the petitioners for promotion to the post of Assistant Engineer recognising B.Tech. (Civil Engineering) obtained by them from the Institute in question.*

*The writ petitions are allowed. However, there shall be no order as to costs.”*

8. From the above, there is no manner of doubt that the course was undertaken by the petitioner-respondents.

9. The stand of the appellant-Department is dubious and untenable. When the Director of Technical Education, Assam, has approved the degree and co-ordinated wings of the other departments have approved the degree obtained from the institute, in question, and granted promotions, it is untenable on the part of the appellant-Department to take a different stand. The appellant-Department, being a part of the Government of Assam, cannot take a divergent view. The contention that the degree is not approved by the AICTE has been considered by the learned Single Judge and has rightly found that the said contention is untenable.

10. In that view of the matter, we find no merit in the writ appeals and the same shall accordingly stand dismissed. No costs.

**JUDGE**

**JUDGE**

*[dutt]*