



GAHC010221712010

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

Case No. : WP(C)/6499/2010

THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
SECRETARIAT, ADMINISTRATIVE DEPTT, DISPUR, GHY-6

VERSUS

SMT.SWAPNA DUTTA AND ANR.
W/O SRI SIDDHARTHA DUTTA, R/O PUBALI HOUSING SOCIETY, GHY,
ASSAM

2:ACCOUNTANT GENERAL
(A. & E.)
ASSAM

Advocate for the Petitioner : JR. GA, ASSAM
Advocate for the Respondent : ADDL. AG, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

JUDGMENT & ORDER (ORAL)

Date : 03-05-2023

Heard Mr. D. Mazumder, learned Addl. Advocate General, Assam assisted by Ms. S. Nath, learned counsel for the writ petitioner. Also heard Mr. S.K. Ghosh, learned counsel appearing for the respondent No. 1 as well as Ms. P. Swargiary, learned standing counsel appearing for the newly impleaded respondent No. 2, i.e. A.G. (A&E), Assam.

2. By filing this writ petition, the State of Assam represented by the Secretary to the Govt. of Assam, Secretariat Administrative Department (SAD), has approached this Court assailing the judgment and order dated 04-05-2010 passed by the learned Assam Administrative Tribunal in case No. 2ATA/2009 whereby, the learned Tribunal had allowed the petition filed by the respondent No. 1 herein and has directed the State to step up the pay of the respondent No. 1 in the scale of 5725-11825 (pre-revised as on 16-09-1999) to the stage of pay drawn by the respondent No. 4 therein as on 16-09-1999 and thereafter, revise the pay of the respondent No. 1 (appellant) accordingly. The arrear amount due to her upon such revision of pay was also directed to be released.

3. The facts of the case, in a nutshell, are that the respondent No. 1 was initially recruited as a Stenographer Gr-III in the Assam Secretariat Administrative Department on 25-06-1983. She was thereafter appointed as Stenographer Gr-II (English) on 29-11-1986. After completing the qualifying period of service and on being successful in the prescribed tests, the respondent No. 1 was appointed as Stenographer Gr-I on 31-03-1992. The private respondent No. 4, in case No. 2ATA/2009, *i.e.* Smti. Basabi Bhattacharjee, on the other hand, was initially appointed as Stenographer Gr-III on 14-07-1983 and thereafter, as Stenographer Gr-II on 30-09-1985. The respondent No. 4 in Case No. 2ATA/2009 finally came to be appointed as Stenographer Gr-I in the month of September, 1999. However, although the respondent No. 4 in 2ATA/2009 was much junior to the present respondent No. 1 (*i.e.* the appellant in Case No. 2ATA/2009), yet, the respondent No. 1 was drawing a lesser pay scale than her junior. Noticing such disparity in pay fixation, the respondent No. 1 had submitted a representation before the

authorities which was rejected by the communication dated 19-08-2008. Aggrieved thereby, the respondent No. 1 had instituted Case No. 2ATA/2009 before the Assam Administrative Tribunal as appellant.

4. It would be relevant to mention herein that the Govt. of Assam, in the department of Finance (Establishment-A), Dispur, Guwahati had earlier issued an Office Memorandum dated 10-09-1997 providing for equalization of pay of senior Govt. employees or stepping up of pay of senior Govt. employees with juniors by laying down the criteria for doing so. The relevant portion of OM dated 10-09-1997 is extracted here-in-below for ready reference:

“Equalisation of pay of Sr. Govt. Employee or stepping up of pay of Sr. Govt. Employee with Jrs. is admissible on the following cases only. It is therefore, impressed upon all the Administrative Deptt. to examine each proposal carefully and refer to Finance Deptt. only those cases which fulfill the following points:-

- 1. Both the Sr. & Jr. Govt. Employee whose equalization/ stepping up of pay is proposed should be recruited to the same cadre post initially and should be promoted from the same source.*
- 2. When the disparity is attributed directly due to fixation of pay under FR 22 (I) (a)(1) or under any other provision of the FRs & SRs.*

No equalization/ stepping up of pay is admissible in the following cases & no such cases should be referred to Finance Department :-

- (i) When the pay of Jr. is fixed with the benefit of Advance increment(s) sanctioned under special orders/ existing provision.*
- (ii) When the Jr. gets pay protection for services rendered elsewhere prior to joining the present cadre post.*
- (iii) When the Jr. Govt. Servant promoted to a higher post prior to his Sr. as per special Rules/ Spl. orders, he can not claim equalization with his Jrs. who is in fact Sr. to him in the base post.*
- (iv) When disparity cropped up due to exercising option in different ways for fixation of pay under provision of FR & SR on promotion.*
- (v) When a new ROP Rules come into effect, anomaly occurred prior to the date of effect of the new pay Rules, will not be considered*

unless there is genuine ground for delay.

- (vi) *Claim of equalization will not be considered after one year of promotion in case of those for whom no pay slip from A.G. is necessary, and one year from the date of receipt of the pay slip, where A.G.'s pay slip is necessary for drawl of pay."*

5. By relying on the OM dated 10-09-1997, the learned Administrative Tribunal had held that although the relevant recruitment Rules used the word "direct recruitment", yet, the procedure involved in filling up the post of Stenographer Gr-I was that of promotion and to that extent, the recruitment of the respondent No. 1 has the trappings of an order of promotion and not direct recruitment. On such ground, it was held that the OM dated 10-09-1997 would be applicable in case of the respondent No. 1 and accordingly, granted her the relief. The observations and findings recorded by the learned Tribunal in support of the aforesaid conclusions are reproduced here-in-below for ready reference:-

"The facts projected in the appeal are not in dispute. The dates of entry into service and appointment to the various cadre of the service in the case of the appellant and the respondent No. 4 are also not disputed. It is seen that the appellant was appointed to the stenographer Grade-I of the service on 02.04.92 while the respondent No. 4 was so appointed only on 16.09.99. The appellant is senior to the respondent No. 4 in the cadre of stenographer Grade-I. In the normal course of things there being an admitted disparity as regards fixation of pay between a senior and a junior, the same could have been resolved by applying the express provisions of the office memorandum dated 10.09.97. However, in the present case a plea having been raised by the official respondents, that the said office memorandum cannot be applied to the dispute involved in the present proceedings on the ground that the said office memorandum only takes within it sweep disparity in fixation of pay resulting from promotions and not appointments as is the case in the present proceedings. For appreciating the said contention we have carefully perused the provision of the Assam Stenographers Service Rules, 1995. Although, the said Rules denote the advancement in service career of an incumbent recruited as stenographer Gr-I as appointments on his recruitment to stenographer Grade-II and stenographer Gr-I, we find that the word appointment denoted as regards the recruitment to the said cadres of Stenographer Grade-I is infact a promotion inasmuch as for being eligible for recruitment to the stenographer Grade-I, amongst other a candidate must figure in the cadre of stenographer Grade-II or stenographer Grade-III of the service. The said aspect of

the matter would show that stenographer Grade-II of stenographer Grade-III constitutes the feeder cadre for recruitment to stenographer Grade-I. The method of recruitment of stenographer Grade-I as provided for under the said rules of 1995 has all trappings of promotions. Accordingly, the use of the word appointment in the orders issued towards recruiting the appellant or the respondent No. 4 to the cadre of stenographer Grade-I of the Assam Secretariat Administration Service is in fact a promotion. Having reached the said conclusion as regards the objection raised about applicability of the office memorandum dated 10.09.97, we hold that the provisions of the said office memorandum is attracted to the facts involved in the present proceedings."

6. By referring to the judgment and order dated 04-05-2010 Mr. Mazumder, learned Addl. Advocate General, Assam has argued that Rule 6(1) of the Assam Stenographers Service Rules, 1995 makes it abundantly clear that the post of Stenographer Gr-I is required to be filled up by way of direct recruitment. Since the OM dated 10-09-1997 would have no application in case of direct recruitment and the same applies only in case of disparity in pay in case of promotion thereby permitting stepping up of pay so as to bring the salary of Sr. Govt. employee at par with what has been drawn by the junior, the learned Tribunal, according to Mr. Mazumder, had erred in law in granting the benefit to the respondent No. 1 under the OM dated 10-09-1997. Contending that the fixation of pay of the respondent No. 1 (or the respondent No. 4 in case No. 2ATA/2009) cannot be and could not have been made under FR 22(I)(a)(1) as both of them were appointed as Stenographer Gr-I by direct recruitment and not by promotion, Mr. Mazumder submits that anomaly in the pay drawn by both these employees was on account of certain additional allowances drawn by the junior employee while in the service as Stenographer Gr-II and not because any anomaly in fixation of pay. Contending that such additional pay and allowances for discharging any special duty is permissible in the eye of law, Mr. Mazumder has placed reliance on two decisions of the Supreme Court rendered in the

case of ***Calcutta Municipal Corporation & Anr. Vs. Sujit Baran Mukherjee & Ors.*** reported in ***(1997) 11 SCC 463*** and ***UoI & Ors. Vs. P. Jagdish & Ors.*** reported in ***(1997) 3 SCC 176.***

7. Mr. S.K. Ghosh, learned counsel for the respondent No. 1, on the other hand, submits that the reasons recorded in the impugned order dated 04-05-2010 passed by the learned Tribunal are sufficient and valid and are also in consonance with the legal provisions. Since the learned Tribunal has passed a reasoned order after considering all the relevant factors and since the opinion expressed in the impugned order is also reasonable, there is no scope for this Court to reverse the finding of the learned Tribunal on the basis of the materials available on record. On such ground, Mr. Ghosh has prayed for dismissal of the writ petition. The learned counsel for the respondent No. 2 submits that her client would have no submission to make in this case.

8. I have considered the arguments advanced by the learned counsel for the parties and have also gone through the materials available on record. As would be evident from the projection made hereinabove, the only point on which the State is seeking reversal of the order of the learned Tribunal is that in this case the recruitment of the respondent No. 1 was by way of direct recruitment and therefore, neither FR 22(I)(a)(1) nor the OM dated 10-09-1997 would have any bearing in the matter. In view of the above submission, it would be necessary to quote the relevant portion of Rule 6(1) of the Rules of 1995, as here under:-

“6(1) Appointment to the cadre of Stenographer Grade-III shall be made by direct recruitment and the cadre of Stenographer Grade-II and Stenographer Grade-I shall be filled up by recruitment in accordance with the procedure as

provided in this rule. For appointment to the Stenographer Grade-I from Stenographer Grade-II, one should complete 6 years of continuous service in either or in both the cadre in Stenographer Grade-II or/ and Grade-III. The appointing Authority shall make the appointments on the basis of the recommendation made by the Commission in accordance with the procedures hereinafter provided, namely:-

.....
.....”

9. A bare reading of Rule 6(1) of the Rules makes it amply clear that the expression “direct recruitment” has been made applicable only in case of appointment of Stenographer Gr-III whereas in case of Stenographers Gr-II and Gr-I, the expression used is merely appointment and not “direct recruitment”. As per the Rules of 1995, direct recruitment is not the prescribed mode of appointment in Grades- II & I Stenographers.

10. It is also apparent from the materials available on record that no open advertisement was issued by the department while appointing the respondent No. 1 (or the respondent No. 4 in case No. 2ATA/2009) in Grade-II or Grade-I nor was there any open selection conducted for filling up the said posts. On the contrary, it appears that the departmental authorities have merely confined the process of filling up the posts of Stenographer Gr-I to the eligible departmental candidates serving either in Gr-II.

11. From the above, it is crystal clear that the procedure adopted by the authorities for appointment of both the candidates in Grade-I was not one of “direct recruitment” but was one which is applicable for promotion. Moreover, as noticed above, there is nothing in the Rules of 1995 which mandates that the post of Stenographer Gr-I needs to be filled up by way of direct recruitment. If that be so, this Court does not find any justifiable ground to disagree with the views expressed by the learned Tribunal coming to the



conclusion that the process of appointment of the respondent No. 1 in the post of Stenographer Gr-I has all the trappings of order of promotion. If that be so, there can be no doubt or dispute about the fact that OM dated 10-09-1997 would be applicable for fixation of pay of the respondent No. 1 so as to step up her pay to bring it in parity with her junior. Since the respondent No. 1 is admittedly senior to Smti. Basabi Bhattacharjee but was drawing a lesser pay scale than her junior, she could legitimately claim stepping up of her pay by relying upon the OM dated 10-09-1997 so as to bring the same at par with the pay drawn by her junior. Therefore, by the impugned judgment and order dated 04-05-2010, the learned Administrative Tribunal has rightly allowed the prayer of the respondent No. 1.

In view of the above, this Court does not find any justifiable ground to interfere with the impugned order dated 04-05-2010. The writ petition is, accordingly, held to be devoid of any merit and the same is hereby dismissed.

Send back the LCR.

JUDGE

GS

Comparing Assistant