



GAHC010146832011

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

Case No. : WP(C)/1245/2011

BIKASH RANJAN SHOME
S/O LT. PRABHAT CH. SHOME, PROJECT ROAD, P.O.PATHARKANDI, DIST
KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
REVENUE REGISTRATION DEPTT, DISPUR, GHY-6

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

REVENUE REGISTRATION DEPTT
DISPUR
GHY-6

3:THE INSPECTOR GENERAL OF REGISTRATION

ASSAM
BAMUNIMAIDAN
GHY-21

4:THE DIST REGISTRAR

KARIMGANJ DIST
KARIMGANJ
ASSAM

5:MD. ABDUL MATIN

OFFICE OF THE SUB REGISTRAR
PATHARKANDI
P.O.PATHARKANDI



DIST KARIMGANJ
ASSAM

Advocate for the Petitioner : MR .B MALAKAR

Advocate for the Respondent : MRK UDDIN

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 13.06.2023.

Date of judgment : 13.06.2023.

JUDGMENT & ORDER (Oral)

Heard Mr. B. K. Sen, learned counsel appearing for the writ petitioner. Also heard Mr. J. Handique, learned Standing Counsel, Revenue Department, Assam appearing for the respondent Nos.1, 2 and 3 and Mr. D. Borah, learned Government Advocate, Assam appearing for the respondent No.4. Mr. K. Uddin, learned counsel has appeared for the respondent No.5.

2. The writ petitioner herein has retired from service as a Lower Division Assistant (LDA) on attaining the age of superannuation with effect from 30.11.2015. The instant writ petition was filed in the year 2011 with the twin prayers of setting aside the order of promotion dated 29.01.2011 whereby, the respondent No.5 was promoted to the post of Upper Division Assistant (UDA) and also with a prayer to issue a writ of mandamus directing the respondents to absorb the petitioner in the cadre of LDA with retrospective effect from 01.08.1988 and thereafter, to give him promotion to the



post of UDA with all consequential benefits.

3. The facts of the case, in a nutshell, are that the petitioner was originally engaged as an Extra-Writer on daily wage basis with effect from 01.06.1976. Thereafter, pursuant to a policy decision of the Government dated 19.05.1989, the service of the writ petitioner along with a number of Extra-Writers, who had served for a continuous period of 7 years, were regularized with effect from 01.08.1988. The respondent No.5 was also originally engaged as an Extra-Writer and thereafter, his service was regularized in the post of LDA with effect from 01.09.1992. While serving as an LDA, by the notification dated 29.01.2011 the respondent No.5, along with two others, were promoted to the post of UDA. On the same date i.e. on 29.01.2011 the writ petitioner was promoted to the post of LDA from which post, he had retired from service on 30.11.2015, on attaining the age of superannuation.

4. Mr. Sen, learned counsel for the petitioner has argued that his client ought to have been absorbed in the cadre of LDA with effect from 01.08.1988 and not as an Extra-Writer. Had the same been done, then the writ petitioner would have ranked senior to the respondent No.5 in which event, the petitioner would have a better right of being promoted to the post of UDA ahead of the respondent No.5. As such, submits Mr. Sen, the writ petitioner would be entitled to notional fixation of pay by treating him as an employee who had retired from the post of UDA.

5. Mr. Sen has further argued that despite the retirement of the petitioner, the relief prayed for in the writ petition would be permissible in the eye of law even at this stage. In support of his above argument, Mr. Sen has relied upon the following

decisions of the Supreme Court :-

- 1) **1992 Supp (2) SCC 172** [*A. Sagayanathan and others vs. Divisional Personnel Officer, S.B.C. Division, Southern Railway, Bangalore*].
- 2) **(2012) 13 SCC 94** [*Gurpal Singh vs. High Court of Judicature of Rajasthan*].
- 3) **(2013) 12 SCC 171** [*Manoj Manu and another vs. Union of India and others*].
- 4) **(2014) 15 SCC 553** [*M. P. Singh Bargoti vs. State of Madhya Pradesh and another*].

6. Mr. J. Handique, learned departmental counsel, on the other hand, has argued that the petitioner had earlier approached this Court by filing writ petition bearing Civil Rule No.6384/1996 with the same prayer and the said writ petition was dismissed by the judgment and order dated 14.09.1999. Even the Writ Appeal preferred by the petitioner against the judgment dated 14.09.1999 was withdrawn with liberty to prefer representation before the departmental authorities. However, there is nothing on record to indicate as to whether such a representation was ever filed by the petitioner and if so, in what manner he had pursued the same. Mr. Handique submits that due to failure on the part of the petitioner to pursue his remedy and on account of long lapse of time, the relief prayed for by the petitioner cannot be granted in this case.

7. Mr. K. Uddin, learned counsel for the respondent No.5 has argued that his client was regularized in the post of LDA with effect from 01.09.1992. However, the writ petitioner was promoted to the post of LDA only on 29.01.2011. Therefore, the petitioner cannot claim seniority over the respondent No.5 in the cadre of LDA.



Consequently, the challenge made to the notification dated 29.01.2011 assailing the promotion given to the respondent No.5 in the post of UDA is not maintainable in the eyes of law.

8. I have considered the submissions advanced by the learned counsel for both the sides and have also gone through the materials available on record.

9. It is not in dispute that during the pendency of this writ petition the writ petitioner as well as the respondent No.5 had attained the age of superannuation and they have retired from service. In so far as the claim of the petitioner of being absorbed in the post of LDA with effect from 01.08.1988 i.e. the date on which he was regularly absorbed as Extra-Writer is concerned, the said prayer was made in C.R. No.6384/1996 instituted by the writ petitioner as the Assistant General Secretary of All Assam Extra-Writers Association. However, the prayer made by the petitioner was declined by the learned Single Judge by judgment dated 14.09.1999 by holding that the writ petition was frivolous and misconceived. Even the Writ Appeal bearing No.385/1999 preferred by the petitioner was withdrawn vide order dated 20.01.2006 with liberty to furnish particulars of the individuals seeking relief before the competent authorities. Mr. Sen submits that his client had submitted a representation and was awaiting the outcome of the process before the departmental authorities. Be that as it may, the fact remains that the writ petitioner had unsuccessfully agitated the same issue in the earlier round of litigation before this Court. Therefore, the issue as to whether the petitioner had a right to be absorbed in the cadre of LDA with effect from 01.08.1988 or not is no longer open to debate and therefore, cannot be gone



into in the present proceeding. The matter would have been different if the representation submitted before the departmental authorities in terms of the order dated 20.01.2006 passed in Writ Appeal No.385/1999 had been considered and determined by the authorities giving rise to a fresh cause of action.

10. It further appears that the respondent No.5 was regularly absorbed as an Extra-Writer with effect from 01.08.1988 on the strength of the order dated 18.11.2003 passed by the learned Single Judge in Civil Rule No.5402/1995. Thereafter, the respondent No.5 was promoted/absorbed in the post of LDA but such absorption of the respondent No.5 as LDA is not under challenge in the present proceeding. If that be so, there can be no doubt about the fact that the respondent No.5 was borne in the cadre of LDA on a date prior to the date of regularization of the petitioner's service in the cadre of LDA. Therefore, I do not find any justifiable ground to hold that the promotion of the respondent No.5 to the post of UDA ahead of the writ petitioner was illegal.

11. What is also significant to note herein that the writ petitioner did not take sufficient steps to pursue the remedy before this Court while he was in service. This fact, when viewed in the light of the fact that the writ petitioner had never challenged the order of regularization of the service of respondent No.5 in the cadre of LDA, would be sufficient grounds for this Court to hold that the writ petition is not maintainable in the facts and circumstances of the case. Moreover, the relief prayed for by the petitioner also cannot be granted to him at this distant point of time. This Court finds that there is substantial delay in filing the writ petition and such delay in



pursuing remedy by the petitioner, in the opinion of this Court, cannot be treated as innocuous delay.

12. Mr. Sen has relied upon decisions of the Supreme Court to convince this Court that even at this stage a direction can be issued to the authorities to promote the petitioner in the post of UDA and thereafter, direct notional benefits to be paid to him. I am afraid, such submission of Mr. Sen also cannot be accepted by this Court for the reasons stated herein above. Moreover, the decision relied upon by Mr. Sen appear to have been rendered in the facts of those cases. After a careful reading of the aforesaid decisions, I am of the view that those citations do have any relevant bearing in the facts and circumstances of the present case.

13. For the reasons stated herein above, this writ petition is held to be devoid of any merit and is accordingly dismissed.

Parties to bear their own cost.

JUDGE

T U Choudhury/Sr.PS

Comparing Assistant