



GAHC010131102020

Page No.# 1/10



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

Case No. : WP(C)/3797/2020

DINESH KUMAR SINGH
S/O- LT. SUKHNANDAN SINGH, E AND D COLONY, QUARTER NO UNIT-IX,
CHANDMARI, GHY-03

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE SECY. TO THE GOVT. OF ASSAM, WATER RESOURCES DEPTT.,
GOVT. OF ASSAM, DISPUR, GHY-06

2:THE DY. SECRETARY TO THE GOVT. OF ASSAM
WATER RESOURCES DEPTT.
DISPUR
GHY-06

3:THE UNDER SECRETARY (E) TO THE GOVT. OF ASSAM
WATER RESOURCES DEPTT.
DISPUR
GHY-06

4:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
SECRETARIAT ADMINISTRATION DEPTT.
DISPUR
GHY-06

5:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
SECRETARIAT ADMINISTRATION DEPTT.
DISPUR
GHY-06

6:THE DY. SECRETARY TO THE GOVT. OF ASSAM
SECRETARIAT ADMINISTRATION (NAZARAT) DEPTT.



DISPUR
GHY-06

7:THE ADMINISTRATIVE OFFICER
SECRETARIAT ADMINISTRATION (NAZARAT) DEPTT.
GOVT. OF ASSAM
DISPUR
GHY-0

For the Petitioner :

Mr. H.K. Das, Adv.

For the Respondents:

Mr. B. Goswami, AAG, Assam (for R/1, 2 & 3),
Mr. P. Nayak, SC, GAD, Assam (for R/ 4 to 7).

**BEFORE
THE HON'BLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 15/06/2023.

Date of judgement : 15/06/2023

JUDGEMENT AND ORDER (ORAL)

1. Heard Mr. H.K. Das, learned counsel for the writ petitioner. Also heard Mr. B. Goswami, learned Additional Advocate General, Assam, appearing on behalf of the respondent nos. 1, 2 & 3 and Mr. P. Nayak, learned Standing Counsel, General Administration Department (GAD), Assam, appearing for the respondent nos. 4 to 7.

2. The case of the petitioner, in a nutshell, is that he was initially appointed in a Grade-IV post (Peon) under the Flood Control Department (now renamed as Water Resources Department) on compassionate ground, by the order dated 01/08/1997, issued by the Under Secretary to the Government of Assam, Flood Control Department, Guwahati. Since the time of his appointment, the petitioner has been serving in the Assam Secretariat in a Grade-IV post. It appears that the petitioner was promoted to the post of Daftry, which is also a Grade-IV post. The grievance of the petitioner is that although he was entitled to be promoted to the Grade-III post of Junior Administrative Assistant (JAA), yet, he has not been considered for promotion to the said post although his junior have been promoted as JAA long back.

3. It appears that the condition of service of the petitioner at the time of his recruitment was governed by the "Assam Secretariat Grade-IV and Record Suppliers Service Rules, 1963" (*herein after*

referred to as the Rules of 1963). The Rules of 1963 provides for promotion of Grade-IV category employees to the next higher grade i.e. Grade-III. As per the Rules of 1963, one of the eligibility requirement for promotion to Grade-III post of JAA was that the candidate should be HSSLC passed. However, the Rules of 1963 was amended on 19/20-10-2012. Under the amended Rules, it was provided that the educational qualification for promotion to the Grade-III post would be graduation. It appears that at the relevant point of time, there were as many as 9(nine) departmental candidates serving in Grade-IV post, who were entitled to be considered for promotion to the post of JAA (Grade-III) but they did not possess the qualification of graduation. As such, aggrieved by the amendment carried out to the Rules of 1963, as notified on 19/10/2012, as many as 9(nine) Grade-IV employees including the writ petitioner herein, had approached this Court by filing WP(C) 4647/2013, inter-alia, contending that they were entitled to be considered against the 9 (nine) vacancies in the Grade-III post of JAA under the pre-amended Rules since the vacancies arose prior to the amendment of the Rules of 1963. The petitioners had also contended that the authorities were duty bound to hold selection for filling up those vacancies year-wise. It was also canvassed on behalf of the writ petitioners in WP(C) 4647/2013 that as per the Rules of 1963, 10% of the posts in Grade-III category were reserved for being filled up by promoting the Grade-IV category employees and, therefore, if the 10% ear-marked quota is applied, then there would be as many as 9(nine) vacancies, which had arisen prior to the amendment of the Rules.

4. After taking note of the facts and circumstances of the case and upon hearing the arguments advanced by the learned counsel for both the sides, the learned Single Judge had disposed of the writ petition being WP(C)4647/2013 by the judgement and order dated 27/11/2014, *inter-alia*, holding that the authorities would be bound to apply the pre-amended Rules so as to fill up the 9 (nine) vacancies which were existing prior to the amendment of the Rules. The aforesaid conclusion was recorded by relying upon the decision of the Hon'ble Supreme Court in the case of **Y. V. Rangaiah and others Vs. J. Sreenivasa** reported in **(1983) 3 SCC 284**. The contention of the department that the provisions of the amended rules will also be applicable to the vacancies arising prior to amendment of the Rules, though canvassed, was not accepted by this Court. The learned Single Judge had accordingly, issued the following directions by order dated 27/11/2014, which are quoted herein below for ready reference :-

“12. In view of the above, the writ petition is disposed of directing the respondents to consider the following :

1. Whether in view of the fact that the vacancies in question have fallen vacant prior to the amendment brought on 19-20/10/2012, the same would be governed by

the pre-amended rules.

2. *Whether the respondents were required to hold the selection every year or could club the vacancies in a single selection. Depending upon the outcome of the consideration of the case in the above manner, the further course of action will be undertaken.*

Let the required exercise be carried out and completed as expeditiously as possible, preferably within 31/01/2015.”

5. It appears that pursuant to the judgement and order dated 27/11/2014, the departmental authorities had considered the case of all the 9 (nine) writ petitioners and thereafter, promoted as many as 7 (seven) of them. However, the case of the writ petitioner was rejected on the ground that he was not appointed by the S.A. (Nazarat) Branch. The said decision of the Secretariat Administration Department (SAD) was communicated to the petitioner by the letter dated 19/09/2015.

6. It further transpires from the materials available on record that around the same time, another person, viz. Gajindra Kumar Ray, who was also appointed in a Work Department in a Grade-IV post, had approached this Court by filing writ petition bearing No. WP(C) 564/2015 seeking a direction upon the authorities to consider his case for promotion. The aforesaid writ petition was initially disposed of by the judgement and order dated 22/04/2015. However, the State had preferred a review of the judgement dated 22/04/2015, which was allowed. Consequently, WP(C) 564/2015 was re-heard and disposed of by the judgement and order dated 29/08/2018. While disposing of WP(C) 564/2015, the learned Single Judge had taken note of the observations made in the judgement and order dated 27/11/2014 in WP(C) 4647/2013 and disposed of the said writ petition directing the authorities to consider the case of the writ petitioner i.e. Gajendra Kumar Ray for promotion to a Grade-III post of JAA as per the Rules of 1963 against vacancies which had occurred prior to the amendment of the Rules carried out in the year 2012. It appears that Sri Gajindra Kumar Ray was also not appointed by the S.A. (Nazarat) Department. The operative part of the judgement and order dated 29/08/2018 passed in WP(C) 564/2015 is reproduced herein below for ready reference :-

“13. In view of the stand taken by the State respondents that the promotion of the petitioner from Grade-IV to the post of JAA will have to be done by the Secretariat Administration (Nazarat) Department and that the 1963 Rules would be applicable for considering the promotion of the petitioner, the Secretariat Administration (Nazarat) Department is directed to consider the promotion of the petitioner from Grade-IV to Grade-III JAA post as per the 1963 Rules and 1999 Rules as the vacancies occurred

before the 2012 Rules came into force. The same should be done within a period of 2 (two) months from the date of receipt of a certified copy of this order. In the event it is found that the juniors of the petitioner have already been promoted, the State respondents shall promote the petitioner with effect from the date his juniors have been promoted."

7. In terms of the judgement and order dated 29/08/2018, the Government of Assam in the department of SAD had issued order dated 11/09/2019 promoting Sri Gajindra Kumar Ray to the post of JAA in the pay band of Rs. 14,000 – 49,000/- plus Grade Pay of Rs. 8700/- by taking resort to Rule 8(3) of the Rules of 1963. However, since the case of the writ petitioner, who was similarly situated as Gajindra Kumar Ray and was also senior to him in service, was rejected by the authorities the petitioner had approached this Court for the second time by filing the present writ petition with a prayer to consider his case for promotion to the post of JAA against the vacant post which arose prior to the amendment of the Rules of 1963.

8. By referring to the materials available on record, Mr. Das, learned counsel for the writ petitioner submits that although the initial appointment of the petitioner is by the Under Secretary, Flood Control Department, yet, the petitioner had all along rendered his services under the Secretariat Administration Department. Not only that, according to Mr. Das, the petitioner is similarly situated as the 8 (eight) other writ petitioners in WP(C) 4647/2013. Notwithstanding the same, all other candidates have been promoted as JAA by leaving aside the present petitioner. Mr. Das has further argued that in view of the directions passed by the learned Single Judge in WP(C) 4647/2013, the authorities ought to have considered the case of the petitioner for promotion to the post of JAA against one of those 9(nine) vacancies, which arose prior to the amendment of the Rules vide notification dated 19/10/2012. The same not having been done, the respondents have acted in clear violation of the legal and fundamental rights of the petitioner by meting out him a discriminatory treatment. Mr. Das, therefore, has made a prayer to set aside the communication dated 19/09/2015 issued by the Joint Secretary to the Government of Assam, communicating the decision of the department not to consider the petitioner's case since he was not appointed by the S.A. (Nazarat) Department and to issue a direction to consider the case of the petitioner for promotion to the post of JAA by giving effect to such promotion from the date on which his junior was promoted.

9. The above submission of the petitioner's counsel has been strongly opposed by Mr. P. Nayak, learned Standing Counsel, GAD, who had lead the arguments on behalf of the respondents so as to contend that although the appointment of the petitioner was under the Rules of 1963, yet, the

question of considering his case for promotion can only be dealt under by another set of Rules i.e. under Rule 8(3) of the "Assam Secretariat Subordinate Service Rules, 1963". Mr. Nayak has submitted that under the Rules of 1963, the PWD Secretariat is not included in the definition of Assam Secretariat but under the "Assam Secretariat Subordinate Service Rules, 1963", the Public Works Department Secretariat is included. It is on such count, Mr. Nayak has argued that the writ petitioner cannot claim any right to be promoted under the Rules of 1963 since his original appointment was in a Works Department, which department was not a part of the Secretariat under the Rules. The learned departmental counsel, however, could not throw any light as to under which Rules the appointment of the petitioner was initially made.

10. Be that as it may, by referring to a decision of the Supreme Court rendered in the case of ***State of Himachal Pradesh and others Vs. Raj Kumar and others*** reported in ***2022 SCC Online SC 680*** as well as the subsequent decision rendered in the case of ***The State of Uttar Pradesh and others Vs. Rachna Hills and others [Civil Appeal No. 1882/2023]***, Mr. Nayak has argued that the decision rendered in the case of ***Y.V. Rangaiah (Supra)***, relied upon by the learned Single Judge while delivering the judgement and order dated 27/11/2014 has since been over-ruled and, therefore, it is no longer the law that the Rules applicable when the vacancy arose alone will have to be applied for filling up the posts. As such, submits Mr. Nayak, the amended Rules will come into play even if the petitioner's case is to be considered for promotion to any vacancy arising before the notification dated 19/10/2012 was issued amending the Rules of 1963.

11. The learned departmental counsel has further argued that out of the 9(nine) vacancies of JAA which had arisen prior to the amendment of the Rules of 1963, made in the year 2012, as many as 2 (two) of those posts were reserved for ST(H) category candidates and, therefore, the writ petitioner being the 9th candidate in order of seniority, his case could not have been considered against one of those two vacancies. It is on such count, the learned departmental counsel has prayed for dismissal of the writ petition.

12. Mr. B. Goswami, learned AAG, Assam, has submitted that he does not dispute the contentions advanced by Mr. Nayak, learned Standing Counsel, GAD but merely submits that if a direction is issued by the Court to consider the case of the petitioner as per the provisions of the Rules, the same will be complied with, with reference to the vacancy position arising at the relevant point of time.

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

14. The basic facts of the case are more or less admitted, It is not in dispute that the writ

petitioner was originally appointed on compassionate ground in the Flood Control Department, Assam, vide notification dated 01/08/1997 and since then, he has been continuously serving against a Grade-IV post in the Secretariat Establishment of the Government of Assam. A perusal of the notification dated 01/08/1997 goes to show that the same was issued by the Under Secretary to the Government of Assam in the Nazarat Branch of the Flood Control Department.

15. As noted above, the writ petitioner was one of the 9 (nine) petitioners, who had approached this Court by filing WP(C) 4647/2013, which was disposed of by the judgement and order dated 27/11/2014. There is no dispute about the fact that save and except the writ petitioner, all the other eligible candidates had been promoted to the post of JAA in terms of the judgement dated 27/11/2014, without insisting on the enhanced educational qualification of Bachelors Degree introduced by the amended Rules notified on 19/10/2012. The case of the petitioner was not rejected because he did not meet the eligibility requirement or that there was no vacancy available but on account of the fact that he was not appointed by the S. A. (Nazarat) Department. It is apparent from the communication dated 19/09/2015 that the petitioner's case was not considered merely because he was not appointed by the Secretariat Administration (Nazarat) Department. However, it is not in dispute that Shri Gajindra Kumar Ray, who was also not appointed by the Secretariat Administration (Nazarat) Branch but was serving in a Grade-IV post at the Secretariat Administration, Assam and was junior to the petitioner, was duly considered for promotion to the post of JAA as per Rules of 1963, in terms of the directions issued by this Court by order dated 29/08/2018.

16. I also find from the materials available on record that a meeting was held by the Department with the Assam Secretariat Grade-IV Employees Association under the Chairmanship of the Commission and Secretary, SAD on 15/05/2015 wherein, it was decided that only those Grade-IV employees who were appointed by the S. A. (Nazarat) Department would be included in the Gradation List of Grade-IV employees. The said decision was to take effect prospectively. In the Gradation List prepared by the Department and circulated vide notification dated 28/01/2011, the name of the writ petitioner finds place in the list of eligible Grade-IV employees for being promoted to the post of JAA and the name of Shri Gajindra Kumar Ray appears below the petitioner. Therefore, the minutes of the meeting held on 15/05/2015 could not have any retrospective effect on the Gradation List circulated on 28/01/2011 so as to deny promotion to the writ petitioner.

17. It also appears that on 20/06/2019, another meeting at the departmental level was held under the Chairmanship of the Secretary to the Government of Assam, Secretariat Administration Department, so as to consider the matter of promotion of Grade-IV employees to the post of JAA. The minutes of the meeting held on 20/06/2019 reflects that the department had considered various

aspect of the matter including the issue pertaining to the promotion of Sri Gajindra Kumar Ray and the orders passed by this Court in WP(C) 564/2015. After a threadbare discussion of the matter, the committee had resolved as follows :-

“Views of Deputy Secretary to the Government of Assam, W.P.T. & B.C. Department was also sought for on the matter of availability of 2 (two) nos. of posts which is reserved for ST(H) and are to be filled up by H.s. passed candidates as per pre-amended Rules. He opined that those 2 (two) posts had to be de-reserved.

After threadbare discussion, the Secy. to the Govt. of Assam, Sectt. Admn. Department, was of the opinion that in this matter views of Judicial Department had been sought for wherein they had advised to follow Hon’ble Court’s Order. Later on, he was of the view that after recommending that single case of Sri Gajindra Kr. Ray, Gr-IV, it would be closed forever by amending the Assam Secretariat Subordinate Service Rules, 1963, in order not to promote any GR-IVs who were appointed other than S.A. (Nazarat) Department. Finally it was decided to place the entire matter in Selection Committee as and when convened.”

18. From a conjoint reading of the Minutes of Meeting dated 15/05/2015 as well as 20/06/2019, what transpires is that the department had taken a conscious decision to close the channel of promotion of Grade-IV employees, who were appointed other than by the S.A. (Nazarat) Department but such decision was to take prospective effect from 20/06/2019. It must be noted that the right of the petitioner to be considered for promotion against one of the vacancies in the post of JAA, which arose prior to amendment of the Rules, had crystallised under the judgement and order dated 27/11/2014 whereunder, similarly situated candidates were considered for promotion. Therefore, by the subsequent decision taken in the aforementioned meeting, as recorded by the MoM dated 15/05/2015 and 20/06/2019, the right which had accrued in favour of the petitioner under the judgement and order dated 27/11/2014, could not have been taken away with retrospective effect. In other words, since the judgement and order dated 27/11/2014 had attained finality in the eyes of law, respondent authorities were duty bound to consider the case of the petitioner in the spirit of the said judgement and extend similar benefit to him, which was evidently not done in this case.

19. The question as to whether the Grade-IV employees in order to be considered for promotion, would have to be appointed by the S.A. (Nazarat) Department was neither agitated in WP(C) 4647/2013 nor was the said aspect of the matter gone into by this Court. Therefore,

subsequently, the department cannot take such a stand which tends to negate the consideration that flows from the order passed in the WP(C) 4647/2013, instituted by the writ petitioner and eight others.

20. Coming to the next issue raised by the departmental counsel to the effect that there were only 7 (seven) vacancies available and the other two vacancies were meant for reserved category ST(H) candidates, the said argument made by Mr. Nayak is found to be untenable on the face of the record, inasmuch as, the minutes of the meeting dated 20/06/2019 itself goes to show that the two posts meant for ST(H) were already de-reserved. The aforesaid stand also contradicts the fact that Sri Gajindra Kumar Ray was evidently appointed against one of these two vacancies although, he was not a candidate belonging to the ST(H) category.

21. Mr. Nayak has also argued that the decision in the case of ***Y.V. Rangaiah (Supra)*** has been over-ruled and, therefore, the decision rendered by the learned Single Judge by judgement and order dated 27/11/2014, need not be complied with. I am afraid, such a stand of the departmental counsel cannot be accepted. A judgement, which had attained finality in the eyes of law whereunder, the right of the petitioner had crystalised and some of the petitioners, having been granted relief, the department cannot now take a different stand in the matter by contending that the order of the learned Single Judge need not be implemented in respect of only one of the petitioners.

22. Before concluding, it would be pertinent to note herein that it is a matter of public record that in the State of Assam, the original Works Department was the Public Works Department (PWD), which continued to deal with all types of works required in the State of Assam. With the passage of time and with the demand of various kinds of works raising in the State, the Public Works Department was bifurcated from time to time so as to give work to several other departments including the Flood Control Department (Water Resources Department), Public Health Engineering Department, Irrigation Department etc. Therefore, since the Assam Subordinate Secretariat Service Rules, 1963 clearly includes the PWD Secretariat within its fold, it cannot be said that the Water Resources Department should be treated to be outside the purview of the Rules. In any event since the petitioner has continuously served in the Secretariat Branch of the State of Assam, his services must be treated to be one under the control of the Secretariat Administration Department, now renamed as General Administration Department (GAD). Therefore, the respondents cannot refuse to consider the petitioner's case for promotion by taking the plea that his initial appointment was not made by the S.A. (Nazarat) Department.

23. For the reasons stated herein above, the writ petition succeeds and is accordingly allowed. The respondent nos. 1 and 4 are directed to consider the case of the writ petitioner for promotion to



the post of JAA by extending similar consideration as has been done in the case of Gajindra Kumar Ray, in the light of the judgement and order dated 27/11/2014 and 29/08/2018 passed by this Court. The exercise be completed within a period of 4 (four) weeks from the date of receipt of a certified copy of this order.

There would be no order as to costs.

JUDGE

Sukhamay

Comparing Assistant