



GAHC010003022022

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

Case No. : WP(C)/121/2022

PRASANTA BARUA
S/O. LT. PONARAM BARUA, NEAR NAVODAYA JATIAYA VIDYALAYA,
HENGRABARI, P.O. HENGRABARI, GUWAHATI-36, DIST. KAMRUP.

VERSUS

THE UNION OF INDIA AND 4 ORS
REP. BY THE SECRETARY, MINISTRY OF COMMERCE AND INDUSTRY
GOVT. OF INDIA, UDYOG BHAWAN, NEW DELHI-110107.

2:THE RUBBER BOARD OF INDIA

P.B NO.1122
SUB JAIL ROAD
KOTTAYAM
REP. BY ITS SECRETARY
KERELA
PIN-686002.

3:DEPARTMENTAL PROMOTION COMMITTEE

SELECTION COMMITTEE DEVELOPMENT OFFICER
PIN-686002
RUBBER BOARD
KOTTAYAM
REP. BY ITS CONVENER AND CHAIRMAN
KERELA
PIN-686002.

4:THE EXECUTIVE DIRECTOR
THE RUBBER BOARD
(ADMINISTRATION DEPTT.) MINISTRY OF COMMERCE AND INDUSTRY



P.B. NO.1122
SUB-JAIL ROAD
STATE- KERALA
PIN-686002.

5:D SURESH
DEVELOPMENT OFFICER
RUBBER BOARD REGIONAL OFFICE SHIVAMOGGA
P.O. SHIVAMOGGA
DIST. SHIVAMOGGA
STATE KARNATAKA
PIN-577201

Advocate for the Petitioner : MR. M J BARUAH

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

Dates of hearing : **23.05.2023 & 29.05.2023.**

Date of judgment : **29.05.2023.**

JUDGMENT & ORDER (Oral)

Heard Mr. Y. S. Mannan, learned counsel appearing for the petitioner. Also heard Mr. S. K. Medhi, learned Central Govt. Counsel appearing for the respondent No.1 and Mr. D. Nath, learned counsel representing the respondent Nos.2, 3 and 4. Mr. S. R. Rabha, learned counsel has appeared for the respondent No.5.

2. Assailing the Office Memorandum dated 01.11.2021, by means of which, the respondent No.4 i.e. the Executive Director of the Rubber Board had disposed of the representation dated 26.04.2021 submitted by the respondent No.5 by restoring his



seniority in the cadre of Development Officer (DO) with effect from 29.10.2014 although his promotion to the post of DO was given only on 01.07.2021, the present writ petition has been filed by the petitioner who is serving as a DO and claims seniority over the respondent No.5. This case has a checkered history. However, the facts necessary for disposal of the writ petition on merit, are briefly stated herein below.

3. The writ petitioner herein was initially appointed as a Junior Field Officer (JFO) under the Rubber Board of India i.e. the respondent No.2 on 15.02.1989. Thereafter, he was promoted to the post of Field Officer (FO) on 16.04.1996. On 02.06.2006 the writ petitioner was promoted to the post of Assistant Development Officer (ADO). Finally, he was promoted to the post of Development Officer (DO) on 06.05.2021 in which post he is presently serving.

4. The respondent No.5 belongs to Scheduled Caste (SC) category. His initial entry in the Rubber Board was on 29.10.1993 and thereafter, on being promoted, the respondent No.5 became ADO on 04.12.2009 along with 25 other departmental candidates. In the year 2014 a vacancy arose in the grade of DO due to the demise of an incumbent viz., T. S. Unnikrishnan, who belonged to the SC category. As such, the authorities had promoted the respondent No.5 in the vacant post of DO by taking note of the fact that he belongs to the SC category. Accordingly, the respondent No.4 had issued order dated 29.10.2014 promoting the respondent No.5 to the post of DO. However, since such order was issued without holding a regular DPC for filling up the vacant post of DO, the writ petitioner herein along with another ADO, viz., Pradip



Kumar Goswami, had approached this Court by filing WP(C) No.5815/2014 assailing the order dated 29.10.2014.

5. It appears that around that time, another departmental candidate viz. Smt. Rashmi Rekha Mazumdar had filed as many as three writ petitions being aggrieved by the promotions given to the departmental candidates. WP(C) No.7777/2016 was filed by Smt. Rashmi Rekha Mazumdar assailing the promotion given to her juniors in the rank of ADO in the year 2009. The promotions given to her juniors earlier to that was also put under challenge in WP(C) Nos.3717/2016 and 6901/2014. It would be relevant to mention herein that the present respondent No.5 was also impleaded as respondent No.12 in WP(C) No.6901/2014. All these writ petitions, along with WP(C) No.5815/2014, were taken up together for disposal and by the common judgment and order dated 23.03.2021, the learned Single Judge had dismissed the writ petitions filed by Smt. Rashmi Rekha Mazumdar. However, WP(C) No.5815/2014 preferred by the present writ petitioner and his departmental colleague, who has since retired from service, was allowed by setting aside the order dated 29.10.2014 by means of which, the respondent No.5 was promoted to the post of DO. It would be pertinent to mention herein that although by order dated 29.10.2014 the respondent No.5 was promoted to the post of DO, yet, in view of the interim order of status-quo dated 14.11.2014 passed in WP(C) No.5815/2014 the respondent No.5 could not join as DO. The operative part of the judgment and order dated 23.03.2021 passed in WP(C) No.5815/2014 is reproduced herein below for ready reference :-

“17) In connection with W.P.(C) No. 5815/2014, the respondent nos. 1 to 3 (i.e. Rubber Board) has not been able to show that in order to promote the

private respondent no. 13, namely D. Suresh, any DPC or Supplementary DPC was held. Hence, the challenge to the promotion of respondent no. 13 in W.P. (C) No. 3717/2016 is sustained and, as such, the impugned OM No. 3/23/1(1)/2014/EST dated 29.10.2014 in respect of respondent no.13 therein is set aside by making the interim order dated 14.11.2014 passed in W.P.(C) 5815/2014 absolute. The other prayers made in the writ petition stands refused.”

6. Pursuant to the judgment and order dated 23.03.2021, as referred to above, a review DPC was held for considering the case of the respondent No.5 for promotion to the post of DO. Thereafter, by order dated 01.07.2021 the respondent No.5 was promoted to the post of DO.

7. It appears from the record that the respondent No.5 had submitted a representation dated 26.04.2021 with a request to restore his seniority on the basis of his earlier promotion dated 29.10.2014. Another departmental candidate viz., Smt. Valsala Mathukkal, who was also promoted as DO with effect from 01.07.2021 against the reserved category vacancy (SC) had submitted a representation for fixing her seniority. When no action was taken by the authority, Smt. Valsala Mathukkal had approached the High Court of Judicature at Kerala by filing WP(C) No.16557/2021 which was disposed of with a direction upon the respondent No.4 to consider her representation and pass appropriate order.

8. The impugned order dated 01.11.2021 has been passed by the respondent No.4 restoring the seniority of the respondent No.5 in the post of ADO with effect from 14.11.2014 i.e. the date on which this High Court had passed the order of status-quo in WP(C) No.5815/2014. In the order dated 01.11.2021 it has also been mentioned that for the purpose of further promotion the residency period of the respondent No.5 in



the post will be considered with effect from 14.11.2014. The aforesaid order dated 01.11.2021 is under challenge in the present proceeding.

9. Mr. Mannan, learned counsel for the writ petitioner submits that after the learned Single Judge had set aside the order dated 29.10.2014 promoting the respondent No.5 to the post of ADO, the exercise was carried out afresh whereafter, the respondent No.5 was promoted to the post of DO on 01.07.2021. Therefore, his seniority in the cadre of DO could not have been fixed from a date prior to 01.07.2021. It is also the submission of Mr. Mannan that roster point applicable to reserved category vacancies cannot be used to fix seniority of a departmental candidate pursuant to his promotion against a reserved category vacancy.

10. Mr. D. Nath, learned counsel for the respondent Nos.2 to 4 submits that the authorities had taken the above stand in the matter on a bonafide interpretation of the orders of the Court as well as on consideration of the representation submitted by the departmental candidates. As such, the impugned order does not call for any interference.

11. Mr. S. R. Rabha, learned counsel for the respondent No.5 has also argued that the controversy involving promotion of departmental candidates had been finally set at rest by the judgment and order dated 23.03.2021 passed by the learned Single Judge disposing of as many as four writ petitions and therefore, there is no scope for reopening the issue of promotion and seniority once again at this point of time. According to Mr. Rabha, the respondents have applied the correct principles to fix the seniority of the respondent No.5 with effect from 14.11.2014.

12. I have considered the submissions made by the learned counsel for the parties and have also gone through the materials available on record.

13. The basic facts of this case are more or less admitted. There is no dispute about the fact that the writ petitioner had joined the Rubber Board prior to the respondent No.5. There is also no dispute about the fact that the writ petitioner was promoted as DO on 06.05.2021 whereas the respondent No.5 was promoted to the post of DO only on 01.07.2021 i.e. after the writ petitioner. The controversy originally arose in this case when the respondent No.5, despite being junior to the petitioner in the gradation list, was promoted to the post of DO by order dated 29.10.2014. The aforesaid order was apparently issued in view of the fact that the erstwhile incumbent in the cadre of DO, who had expired, was from the SC category and therefore, the respondent No.5 alone would be eligible to fill up the said promotional post by virtue of his being an SC category candidate. It is, however, the undisputed position of fact that the order dated 29.10.2014 was issued without holding any DPC for filling up the vacant post of DO.

14. Be that as it may, as noted above, the order dated 29.10.2014 was set aside by the learned Single Judge by judgment and order dated 23.03.2021 passed in WP(C) No.5815/2014. None of the respondents had preferred any appeal against the aforesaid judgment and order passed in WP(C) No.5815/2014 as a result of which, the judgment of the learned Single Judge has attained finality in the eyes of law. Not only that, the respondents have also implemented the judgment and order dated 23.03.2021 by holding a review DPC so as to promote the petitioner to the post of DO

with effect from 01.07.2021. The only question that would, therefore, arise for consideration of the Court in the present proceeding is as to whether, the respondents could have given seniority to the respondent No.5 in the post of DO with effect from 14.11.2014 so as to cover that period of service during which he was not even borne in the cadre of DO.

15. Since the respondents have taken a stand that such a recourse was adopted so as to give adequate representation to the reserved category candidates in the cadre of DO, it would be necessary for this Court to discuss the law laid down in the case of **Bimlesh Tanwar vs. State of Haryana and others** reported in **(2003) 5 SCC 604** and in **Manoj Parihar & others vs. State of Jammu & Kashmir & others** reported in **2022 0 Supreme (SC) 556**. While addressing an issue as to whether reservation roster can be applied for fixation of seniority of the reserved category candidates, the Supreme Court has made the following observations in the case of **Bimlesh Tanwar** (supra) in paragraph 40 :-

“40. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of class of citizenry who are socially or economically backward. Article 16 of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority is, thus, not to be fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in P.S. Ghalaut [(1995)5 SCC 625] does not lay down a good law.”

16. After taking note of the various previous judgments of the Supreme Court dealing with the subject including the decision in the case of **Bimlesh Tanwar** (supra)

the Supreme Court has made the following observations in a recent decision rendered in the case of **Manoj Parihar & others** (supra) as follows :-

“29. Thus, the principle of law discernible from all the aforesaid decisions of this Court is that the roster system is only for the purpose of ensuring that the quantum of reservation is reflected in the recruitment process. It has nothing to do with the inter-se seniority among those recruited. To put it in other words, the roster points do not determine the seniority of the appointees who gain simultaneous appointments; that is to say, those who are appointed collectively on the same date or are deemed to be appointed on the same date, irrespective when they joined their posts. The position of law as discussed about could be said to be prevailing even while the High Court of Jammu & Kashmir decided by a Full Court Resolution to determine the seniority on the basis of roster points.”

17. From the aforesaid decisions what is crystal clear is that while the mandate of reservation as provided under Article 16(4) of the Constitution of India can be used for giving adequate representation to the socially and economically backward category of the citizenry, the said provision cannot, however, be used to fix seniority in service. Such a view has also been expressed by this Court in a recent decision rendered in the case of **Bharati Dastidar vs. The State of Assam and 3 others** vide order dated 09.05.2023 [WP(C) 2109/2019]. Therefore, there cannot be any doubt about the fact that having promoted a candidate against a vacancy reserved for SC/ST category, the seniority of the candidate in the cadre cannot be fixed on the basis of the roster point applicable to the reserved category vacancies.

18. In the present case, the respondents have not only given promotion to the respondent No.5 based on the roster point but have even gone a step further by

extending the benefit of seniority to him with effect from a date, on which he was not even borne in the cadre of DO. What would also be significant to note herein is that in the order dated 01.11.2021, the respondent No.4 has repeatedly referred to the interim order dated 14.11.2014 passed by this Court in WP(C) No.5815/2014 so as to justify the order dated 01.11.2021 by projecting that it was due to the interim order dated 14.11.2014 that the respondent No.5 could not get the benefit of the promotion order dated 29.10.2014. However, there is not even a whisper in the order dated 01.11.2021 about the final order passed in the said proceeding whereby, the order of promotion dated 29.10.2014 had been set aside by the learned Single Judge. Therefore, it is evident from the materials on record that the respondent No.4 has selectively taken note of the facts so as to justify the decision reflected in the impugned order dated 01.11.2021.

19. On a careful examination of the materials available on record this Court also finds there is nothing on record to show any relevance of the order dated 14.11.2014 for the purpose of fixing the seniority to the respondent No.5 with effect from the said date. It is, therefore, clear that in issuing the impugned order dated 01.11.2021 the respondent No.4 had acted with the singular objective of extending undue benefit of seniority to the respondent No.5. The order dated 01.11.2021, in the opinion of this Court, not only lacks bona-fide but the same also appears to be contemptuous on the face of it, meriting appropriate action against the respondent No.4. However, since the petitioner has not filed any contempt case against the respondent No.4, this Court refrains from making any further observation in this regard.

20. What would be significant to mention herein that law is firmly settled that seniority cannot be granted to an employee from a date when he was not borne in a cadre. In the case of **Ganga Vishan Gujrati and others vs. State of Rajasthan and others** reported in **(2019) 16 SCC 28**, the Supreme Court has categorically observed in paragraph 45 that retrospective seniority cannot be granted to an employee from a date when he was not borne in a cadre. Seniority amongst members of the same grade has to be granted from the date of initial entry into the grade.

21. Applying the law laid down in the case of **Ganga Vishan Gujrati and others** (supra) it can be said that in the present case the seniority of the respondent No.5 in the cadre of DO could at best have been fixed with effect from 01.07.2021 and not from any date prior to that since the respondent No.5 was not even borne in the cadre of DO prior to 01.07.2021. In that view of the matter, the impugned order dated 01.11.2021 is found to be arbitrary, illegal and discriminatory in nature. The same is accordingly, set aside.

22. The respondents would be at liberty to carry out a fresh exercise for determining the seniority of the respondent No.5 in the cadre of DO in the light of the observations made herein above.

23. In so far as the seniority of Smt. Valsala Mathukkal is concerned, since the said issue is not the subject matter of the present proceeding, this Court refrains from making any observation in respect thereof. Likewise, the judgment and order dated 23.03.2021 passed by the learned Single Judge with regard to WP(C) No.6901/2014, WP(C) No.3717/2016 and WP(C) No.7777/2016 being under challenge before the



Division Bench in the Writ Appeals preferred by the aggrieved persons, no reference to the decision of the learned Single Judge regarding other issues dealt with in the judgment dated 23.03.2021 is also deemed necessary in the present proceeding.

With the above observations, this writ petition stands allowed to the extent indicated above.

Parties to bear their own cost.

JUDGE

T U Choudhury/Sr.P.S.

Comparing Assistant