



GAHC010083762022

Page No.# 1/21



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

Case No. : WP(C)/3037/2022

DHIREN DAS
S/O- SRI THANURAM DAS, R/O- VILLAGE NO. 1 BAHPARA,
DHAKUAKHANA, DIST. LAKHIMPUR, ASSAM, PIN- 787055.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, JUDICIAL DEPARTMENT, DISPUR, GUWAHATI-
781006.

2:THE DISTRICT AND SESSIONS JUDGE
LAKHIMPUR
DIST. LAKHIMPUR
ASSAM
PIN- 787001.

3:THE SELECTION BOARD
REPRESENTED BY THE CHAIRMAN IN THE ESTABLISHMENT OF THE
DISTRICT AND SESSIONS JUDGE
LAKHIMPUR
NORTH LAKHIMPUR
DIST. LAKHIMPUR
ASSAM
PIN- 787001.

4:SMTI. NINA KALITA
HEAD ASSISTANT
OFFICE OF THE DISTRICT AND SESSIONS JUDGE
LAKHIMPUR
NORTH LAKHIMPUR
DIST.- LAKHIMPUR



ASSAM
PIN- 787001

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (CAV)

Date : 13-12-2022

Heard Mr. K. N. Choudhury, the learned Senior counsel assisted by Mr. R. M. Deka, the learned counsel appearing on behalf of the petitioner and Mr. U. K. Nair, the learned Senior counsel assisted by Ms. S. Sharma, the learned counsel appearing on behalf of the respondent Nos. 2 and 3. I have also heard Mr. A. Chetry, the learned counsel appearing on behalf of the respondent No. 4.

2. This is an application filed under Article 226 of the Constitution of India challenging the minutes of the meeting of the Selection Board dated 08.02.2021 whereby the respondent No.4 was recommended for promotion and appointment in the post of Head Assistant in the Office of District and Sessions Judge, Lakhimpur at North Lakhimpur; for cancellation of the said minutes of the meeting of the Selection Board dated 08.02.2021; for setting aside the order dated 10.02.2021 issued by the District and Sessions Judge, Lakhimpur at North Lakhimpur thereby promoting and appointing the respondent No.4 in the post of Head Assistant in the Office of District and Sessions Judge, Lakhimpur at North Lakhimpur and for cancellation of the same; for setting aside the rejection of the candidature of the petitioner for the post of Head Assistant in the Office of



District and Sessions Judge, Lakhimpur at North Lakhimpur by the Selection Board in its meeting dated 08.02.2021; for setting aside the gradation list dated 06.04.2022 so far as the Seniority position assigned to the petitioner vis-à-vis the respondent No.4; for a direction to the respondents to forthwith promote the petitioner to the post of Head Assistant in the Office of District and Sessions Judge, Lakhimpur at North Lakhimpur with effect from 10.02.2021 and a direction to the respondents to prepare a fresh Gradation List by placing the petitioner at Serial No.1 by considering his seniority.

3. The facts of the instant case as could be seen from a perusal of the writ petition is that the petitioner pursuant to a selection process vide an order No.41 dated 10.12.2004 issued by the District and Sessions Judge, Lakhimpur was appointed as Civil Assistant in the Munsiff-cum-Judicial Magistrate Court at Dhakuakhana against a sanctioned post. Pursuant thereto, the petitioner had joined in service as Civil Assistant/Lower Division Assistant on 14.12.2004. The petitioner thereupon was promoted to the grade of Upper Divisional Assistant vide order No.155 dated 23.12.2013. Subsequent thereto, the petitioner was further promoted to the post of Sheristadar in the Office of the Munsiff, Dhakuakhana vide order No.37 dated 06.03.2017. It is relevant to take note of that at present the petitioner is serving as Sheristadar in the Office of the Munsiff, Dhakuakhana. It has been further stated that in the Gradation Lists of the Grade-III and Grade-IV employees serving in the Establishment of the District and Sessions Judge, Lakhimpur prepared by the concerned respondents for the years 2019 and 2020, the name of the petitioner appeared at Serial No.1 as the petitioner was the senior most incumbent serving in the cadre of Sheristadar.

4. On 17.07.2019, the petitioner was arrested in connection with Dhakuakhana P.S. Case No.106/2019 under Section 468 of the Indian Penal Code. Thereupon, on the basis of a meeting held on 22.07.2019, the District and Sessions Judge, Lakhimpur had placed the petitioner under suspension as per Rule 6 read with Rule 32(1)(iii)(i) of the Assam Services (Discipline & Appeal) Rules, 1964 w.e.f. 22.07.2019. During this period when the petitioner was in detention, an advertisement was published on 30.07.2019 for filling up the vacant post of Head Assistant of the Establishment of District and Sessions Judge, Lakhimpur.

5. The petitioner was enlarged on bail vide an order dated 22.08.2019 by this Court in B.A. No.2122 of 2019. It has also been mentioned that a disciplinary proceeding was also initiated against the petitioner vide an order dated 23.10.2019. The petitioner submitted his written reply by denying the allegations framed against him on 17.01.2020.

6. The petitioner after being released from detention came to learn that in terms of the advertisement published on 30.07.2019 one Smti Krishna Konwar was appointed as Head Assistant in the Court of District and Sessions Judge, Lakhimpur vide order No.241 dated 09.09.2019. It has been alleged that Smti Krishna Konwar was junior to the petitioner in the cadre of UDA, the feeder cadre. It has been alleged that on account of the petitioner's detention, he had no knowledge about the said advertisement and the petitioner was also not informed by the respondent authorities about the said advertisement. It is under such circumstances, the petitioner could not apply in pursuance to the advertisement dated 30.07.2019.

7. Subsequent thereto, the Court of the Sub-Divisional Judicial Magistrate (M)

Dhakuakhana framed charges against the petitioner under Section 420/468 of the Indian Penal Code vide an order dated 27.02.2020 passed in G.R. Case No.194/2019. The petitioner being aggrieved, filed a Criminal Revision Case No. 6(1)/2020 before the Sessions Judge, Lakhimpur against the said order of framing charge. The learned Sessions Judge, Lakhimpur vide a judgment and order dated 01.11.2021 passed in Criminal Revision Case No. 6(1)/2020 held that it cannot be presumed that the petitioner committed any offence under Section 420/468 of the Indian Penal Code and as there was no sufficient ground to proceed against the petitioner, the order of framing charge against the petitioner dated 27.02.2020 was set aside.

8. In the meantime, Smti Krishna Konwar who was appointed on 09.09.2019 was going to retire on 31.01.2021. The petitioner submitted a representation dated 29.01.2021 requesting the District and Sessions Judge to consider his candidature for the post of Head Assistant in the Establishment of District and Sessions Judge, Lakhimpur. It is also relevant to take note of that vide an order dated 03.01.2022, the District and Sessions Judge, Lakhimpur reinstated the petitioner with all back wages.

9. Subsequent thereto, the petitioner upon being reinstated in his service came to learn that during his suspension period, the respondents have promoted the respondent No.4 to the post of Head Assistant on regular basis and pursuant thereto, prepared a Gradation List of Grade-III and Grade-IV staff serving in the Establishment of the District and Sessions Judge, Lakhimpur up to 23.02.2021. In the said Gradation list the petitioner was placed in Serial No.3.

10. Being shocked and surprised, the petitioner submitted a representation on 28.01.2022 ventilating his grievances regarding the seniority position assigned

to him before the District and Sessions Judge, Lakhimpur and with a request to prepare a fresh seniority list by placing the petitioner at Serial No.1 and to pass an order promoting him to the post of Head Assistant retrospectively from the date of promotion of the respondent No.4 i.e. 10.02.2021.

11. The petitioner thereafter filed an application on 23.02.2022 under the provisions of the Right to Information Act, 2005 before the Public Information Officer, Lakhimpur seeking certain informations relating to filling up the post of Head Assistant. In response to the same, the respondents vide a letter dated 24.03.2022 provided the petitioner with the information sought for under the Right to Information Act, 2005. The respondents had supplied a copy of the minutes of the meeting of the Selection Board dated 08.02.2021 for filling up the post of Head Assistant after the retirement of the earlier incumbent from the said post.

12. The said Selection Board Minutes is a part of the writ petition. A perusal of the said minutes show that the Selection Board considered the candidatures of the petitioner as well as the respondent No.4 in its meeting dated 08.02.2021 for the post of Head Assistant. It further transpires from the minutes of the meeting that the Selection Board had unanimously resolved to promote and appoint the respondent No.4 in the vacant post of Head Assistant in the Office of the District and Sessions Judge under Rule 6(2) of the Assam District and Sessions Judge Establishment (Ministerial) Service Rules, 1987 on regular basis. The candidature of the petitioner was rejected on the ground that he was placed under suspension and disciplinary as well as criminal proceedings were pending against him. It has been alleged in the writ petition that the petitioner was not called for in the interview by the Selection Board though the

respondent No.4 was called for in the interview by the Selection Board. It has been contended in the writ petition that the respondent authorities instead of regularly promoting the respondent No.4 and rejecting the candidature of the petitioner, the respondent authorities ought to have kept its findings in the sealed cover considering the fact that on the date of consideration, disciplinary as well as criminal proceedings were pending against the petitioner.

13. The materials on record further show that on 04.04.2022, the District and Sessions Judge, Lakhimpur issued an advertisement inviting applications for the experienced persons of the Establishment of the District and Sessions Judges, Assam for filling up the vacant post of the Chief Administrative Officer (Sheristadar) in the Establishment of District and Sessions Judge, Lakhimpur at North Lakhimpur. The eligibility condition prescribed in the advertisement is that the candidate must have served either as a Sheristadar of the Additional District and Sessions Judge or as Head Assistant in the Establishment of District and Sessions Judge continuously for a period of 5 years. In the advertisement dated 04.04.2022, it was also mentioned that the Selection Board reserved the right to relax the requisite criteria in case of exigencies. It has been alleged that there is no eligible candidate in the Establishment of District and Sessions Judge, Lakhimpur for the post of Chief Administrative Officer (Sheristadar) of District and Sessions Judge and the power to relax given to the Selection Board is only to favour the respondent No.4 which is not permissible under law. It has been alleged that the respondent No.4 has not completed the required 5 years of continuous service as a Head Assistant and therefore she was not eligible for being promoted and appointed in the post of Sheristadar.

14. It is the further case of the petitioner that pursuant to the issuance of the

advertisement dated 04.04.2022, the respondents have prepared a new Gradation List of the incumbents serving in Grade-III and Grade-IV under the Establishment of District and Sessions Judge, Lakhimpur on 06.04.2022. From the said Gradation List which have been enclosed as Annexure-U to the writ petition, it appears that the respondent No.4 has been put at Serial No.1 whereas the petitioner has been put at Serial No.2. The said Gradation List is challenged as illegal inasmuch as the respondent No.4 was admittedly junior to the petitioner in the cadre of UDA inasmuch as the petitioner was promoted to the post of UDA on 23.12.2013 whereas the respondent No.4 was shown to be promoted to the cadre of UDA on 24.08.2015. The petitioner upon coming to learn about the said Gradation List, had submitted a representation on 19.04.2022 thereby requesting the District and Sessions Judge, Lakhimpur to review the seniority position assigned to him in the Gradation List dated 06.04.2022 and placed him at Serial No.1.

15. An Office Memorandum issued by the Government of Assam in the Department of Personnel dated 09.05.2006 was brought on record wherein the procedure and guidelines for promotion of Government servants against whom Departmental/Disciplinary/ Court Proceedings are pending or whose conduct is under investigation have been detailed. It has been contended in the writ petition that as per Clause-3 of the OM dated 09.05.2006, the Selection Committee has to assess the suitability of the aforesaid Government servants along with other eligible candidates without taking into consideration that disciplinary case/prosecution pending against such Government Officers. The said Clause has further made it clear that the Selection Committee shall place its recommendations in respect of such officers in a sealed cover. It is the contention of the petitioner that the minutes of the meeting dated 08.02.2021

of the Selection Board would show that the petitioner's candidature was rejected on the ground that the petitioner is under suspension and disciplinary as well as criminal proceedings were pending which was in gross violation to the mandate of the Office Memorandum dated 09.05.2006.

16. In the backdrop of the above, the present writ petition has been filed seeking the reliefs as above stated.

17. This Court vide an order dated 13.05.2022 issued notice making it returnable by 4 (four) weeks. In the interim, this Court directed the concerned respondent authorities not to finalize the selection process for filling the post of the Chief Administrative Officer (Sheristadar) in the Establishment of District and Sessions Judge, Lakhimpur at North Lakhimpur vide advertisement dated 04.04.2022. The said interim order has been extended from time to time.

18. The respondent No.1 has not filed any affidavit-in-opposition. The respondent No.2 has filed an affidavit-in-opposition on 26.09.2022. In the said affidavit-in-opposition, it has been mentioned that there was a advertisement published on 30.07.2019 for filling up the vacant post of Head Assistant of the Establishment of District and Sessions Judge, Lakhimpur at North Lakhimpur. As the petitioner did not apply in pursuance to the said advertisement dated 30.07.2019, his candidature was not considered by the authorities and as such Smti. Krishna Konwar was promoted. In paragraph No.6 of the said affidavit-in-opposition, it has been mentioned that during the relevant time G.R. Case No.194/2019 under Section 420/468 of IPC was pending against the petitioner as such his candidature for the post of the Head Assistant in the Establishment of District and Sessions Judge was not taken into consideration. Further to that, it has been mentioned that the petitioner after reinstatement of service had

never assailed the promotion affected in the case of the respondent No.4 and vide his representation dated 28.01.2022, he only prayed for his promotion with retrospective effect. It has been mentioned that as the post held by the respondent No.4 being a single cadre post, the prayer of the petitioner could not be considered. It has also been mentioned that the respondent No.4 was promoted to the post of Head Assistant after considering her eligibility and suitability and on being found to be the most eligible amongst the candidates being considered.

In paragraph No.9 of the said affidavit-in-opposition, it has been stated that the candidatures of both the petitioner and the respondent No.4 were taken into consideration by the Selection Board in the meeting dated 08.02.2021 for the post of Head Assistant in the Establishment of District and Sessions Judge, Lakhimpur at North Lakhimpur. However, the post being a selection post and upon evaluation of merits; given that the petitioner was under suspension, a charge sheet having been issued and a disciplinary proceeding and prosecution for criminal charge pending against the petitioner, the respondent No.4 was promoted to the said post.

In reply to the allegation that the advertisement dated 04.04.2022 contained a clause thereby entitling the Selection Board to relax the requirement, it was mentioned that Rule 16 of the Assam District and Sessions Judge Establishment (Ministerial) Service Rules, 1987 empowers the appointing authority upon being satisfied that the operation of any of the Rules may cause undue hardship in any particular case, dispense with or relax the requirement of that Rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner. On the

allegation that the petitioner should be higher in rank in the Gradation List dated 06.04.2022, it was stated that as the Respondent No.4 have been promoted to the next higher Grade of the Head Assistant in the Establishment of the District and Sessions Judge, her name in the Gradation List will always figure above the incumbents in the cadre of the Sheristadar/UDA etc.

In paragraph No.13 of the affidavit-in-opposition, it has been mentioned that the petitioner had never prayed for a review of the Resolution dated 08.02.2021 as well as the order of promotion of the respondent No.4 dated 10.02.2021. It was mentioned that a move was initiated to examine as to whether the petitioner could also be promoted as Head Assistant by granting him notional promotion w.e.f. the date of promotion of the respondent No.4. However, the said process have been kept on hold awaiting directions in view of the proceedings pending before this Court.

Further to that, in paragraph No.15 of the affidavit-in-opposition, it has been mentioned that the decision was taken by the Selection Board that the prayer for the promotion of the petitioner to the post of Head Assistant would be considered later. However, due to typographical error, instead of typing the words "consideration of promotion to be kept in abeyance", the words "application of Dhiren Das, Sheristadar, O/O Munsiff, Dhakuakhana, is unanimously rejected by the members of the Selection Board" was typed. It was mentioned that on a much later date, the error came to the notice of the District and Sessions Judge but this typographical error could not be rectified as two members of the Selection Board have already handed over charge on 26.02.2021 as they were transferred to different stations. It has been mentioned that such an inadvertent mistake would not confer any right

whatsoever in favour of the petitioner.

19. The respondent No.4 has filed an affidavit-in-opposition. In the said affidavit-in-opposition, it has been mentioned that she has been working in the Establishment of the District Judiciary of the Lakhimpur District since 07.03.1988 without any blemish from any quarter. She further stated that she is due to retire from service on attaining the age of superannuation on 28.02.2023 and has a few months of service left before her superannuation. Apart from that, a perusal of her affidavit shows that as she upon being recommended for promotion in the Selection Board's meeting dated 08.02.2021 to the post of Head Assistant in the Office of the District and Sessions Judge, Lakhimpur was promoted on 10.02.2021 and she joined the said post on 10.02.2021 itself. The respondent No.4 further submitted that pursuant to the advertisement dated 04.04.2022, she has applied for the post of Chief Administrative Officer (Sheristadar) in the Establishment of District and Sessions Judge, Lakhimpur.

20. I have heard the learned counsels for the parties and have perused the materials on record. Before dealing with the facts involved in the instant case, it would be relevant to take note of the Assam District and Sessions Judges Establishment (Ministerial), Service Rules, 1987 (for short the "Rules of 1987") as the said Rules are relevant in deciding the instant case.

21. Sub-Rule (1) of Rule 3 stipulates that the Service i.e. the Assam District and Sessions Judges Establishment (Ministerial) Service shall comprise of the following categories of posts i.e. (i) Sheristadar of District and Sessions Judge, (ii) Sheristadar of Additional District and Sessions Judge, (iii) Sheristadar of Assistant District and Sessions Judge, (iv) Head Assistant, (v) Supervisory Assistant/Sheristadar of Munsiff/Upper Division Assistant, (vi) Lower Division

Assistant. Sub-Rule (2) of Rule 3 stipulates that each of the categories of posts in Sub-Rule (1) i.e. the categories mentioned hereinabove shall form an independent Cadre. Members of a lower cadre shall have no claim for appointment to any of the higher cadres except in accordance with the provisions made in these Rules.

22. Rule 6 relates to Recruitment. Sub-Rule (1) of Rule 6 is in relation to the recruitment to the post of Sheristadar of District and Sessions Judge. It is the requirement as per Sub-Rule (1) of Rule 6 that the selection shall be made from amongst the persons who must have served continuously as Sheristadar of Additional District and Sessions Judge or Head Assistant in the District and Sessions Judges Establishment at least for 5 years. Therefore, for the purpose of being taken into consideration for selection, the person has to serve continuously as the Sheristadar of the Additional District and Sessions Judge or Head Assistant in the District and Sessions Judge, Establishment at least for 5 years. Before further proceeding into the next Sub-Rule of Rule 6, it is relevant to take note of that the advertisement so made on 04.04.2022 is in relation to the post of the Sheristadar of the District and Sessions Judge.

23. Sub-Rule(2) of Rule 6 relates to Selection to the post of Head Assistant and the Sheristadar of the Additional District and Sessions Judge. The said Sub-Rule mandates that the Selection shall be made from amongst the persons who must have served as Supervisory Assistant or a Sheristadar of the Munsiff or a Sheristadar of the Assistant District and Sessions Judge or Upper Division Assistant continuously for 3 years in the District and Sessions Judges Establishment. It has been further mentioned in the note appended to the said Sub-Rule that for the purpose of promotion of Supervisory Assistant, Sheristadar

of Assistant District and Sessions Judge, Sheristadar of Munsiff and Upper Division Assistant, the District and Sessions Judge shall prepare a select list at the beginning of the each year taking into account the number of vacancies likely to occur during the year in question. The District and Sessions Judge shall associate the Additional District and Sessions Judge, Assistant District and Sessions Judge and the Munsiff in the selection. It is also relevant herein to take note of that the criteria for selection shall be on the basis of "**seniority cum merit**" and the select list shall remain valid for one year from the date of recommendation of the Selection Board. It is also stipulated that the said select list shall be reviewed after 1 year and all those eligible shall again be considered.

24. Sub-Rule (3) of Rule 6 relates to promotion to the post of Sheristadar of the Assistant District and Sessions Judge, Supervisory Assistant, Sheristadar of the Munsiff. The said promotion shall be from amongst the Upper Division Assistants of the District and Sessions Judges Establishment (Ministerial) concerned on the basis of "**seniority cum merit**" who have rendered not less than 7 years of service in the District and Sessions Judges Establishment (Ministerial) concerned out of which at least 3 years shall be of continuous service as Upper Division Assistant on the 1st day of the year in which the promotion is being made. For the purpose of the instant proceedings, the remaining Sub-Rules of Rule 6 being not relevant is not dealt with herein.

25. Rule 12 relates to Seniority. While Sub-Rule(i) of Rule 12 relates to seniority in the Lower Division Cadre, Sub-Rule (ii) and (iii) of Rule 12 relates to Upper Division (including Sheristadar of the Munsiff) and in the Head Assistant Cadre. Sub-Rule (ii) and (iii) of Rule 12 being relevant are quoted herein below.

“(ii) In the Upper Division (including Sheristadar of Munsiff) cadre, the seniority shall be according to the position in the select list from which the promotion to posts of Upper Division Assistant is made.

(iii) In the Head Assistant Cadre, the seniority shall be according to the date of promotion to the post of Head Assistant.”

From the above quoted Sub-Rules, it would transpires that in the Upper Division (including Sheristadar of the Munsiff) Cadre, the seniority shall be according to the position in the select list from which the promotion to the posts of Upper Division Assistant is made. In Sub-Rule (iii) which is in relation to Head Assistant Cadre, the seniority shall be according to the date of promotion to the post of Head Assistant. The said Sub-Rules of Rule 12 of the Rules of 1967 are pertinent for the purpose of the instant case as admittedly the petitioner was senior to the Respondent No.4 in the Upper Division Assistant cadre but with the promotion given to the Respondent No.4 as Head Assistant, she would be senior in view of the Sub-Rule (iii) of Rule 12 of the Rules of 1967.

26. A conjoint reading of Rule 3, 6 as well as 12 which have been referred to hereinabove would show that the Assam District and Sessions Judges Establishment (Ministerial) Service comprises of various categories of posts as enumerated in Sub-Rule (1) of Rule 3. Rule 6 as already stated hereinabove relates to Recruitment and the procedure laid down therein. For the post of Head Assistant as could be seen from Sub-Rule(2) of Rule 6, the same shall be done by way of selection from amongst the persons who must have served as Supervisory Assistant or a Sheristadar of Munsiff or a Sheristadar of the Assistant District and Sessions Judge or Upper Division Assistant continuously for 3 years in the District and Sessions Judges Establishment. The criteria for selection shall be on the basis of “**seniority cum merit**”. Sub-Rule (3) of Rule

6 stipulates the promotion from amongst Upper Division Assistants of the District and Sessions Judge Establishment (Ministerial) to the post of Sheristadar of the Assistant District and Sessions Judge, Supervisory Assistant, Sheristadar of the Munsiff. Rule 12(ii) categorically mandates that the seniority insofar as the Upper Division (including Sheristadar of the Munsiff) Cadre shall be according to the position in the select list from which the promotion to the posts of Upper Division Assistant is made and Sub-Rule(iii) of Rule 12 mandates that in the Head Assistant cadre, the seniority shall be according to the date of promotion to the post of Head Assistant.

27. In the backdrop of the above, let this Court take into consideration the relevant facts on the basis of the submissions made by the learned counsels for the parties. From the Gradation List of Grade-III and Grade-IV employees in the Establishment of District and Sessions Judge, Lakhimpur at North Lakhimpur enclosed as Annexure-U, it is apparent that the respondent No.4 was promoted to the cadre of Upper Division Assistant on 24.08.2015 whereas the petitioner was promoted to the cadre of Upper Division Assistant on 23.12.2013. Under such circumstances, taking into consideration Rule 12(ii) of the Rules of 1987, the petitioner is senior to the respondent No.4 in the Upper Division (including Sheristadar of the Munsiff) cadre. It is also relevant herein to take note of that in terms with Rule 6(2) of the Rules of 1987 which relates to the recruitment to the post of Head Assistant and Sheristadar of the Additional District and Sessions Judge, the criteria for selection shall be on the basis of "**seniority cum merit**" from persons who must have served as Supervisory Assistant or a Sheristadar of the Munsiff or a Sheristadar of the Assistant District and Sessions Judge or Upper Division Assistant. The criteria for selection is "**seniority cum merit**" which means the seniority is to be given precedence and it is only when

the seniority is equal then merit is to be taken into consideration. In that view of the matter, the petitioner by virtue of being senior in the cadre of Upper Division Assistant ought to have been recommended for promotion and given the appointment unless and until there was any other reason in terms with the Rules which forbade the petitioner from being considered for promotion to the post of Head Assistant and/or Sheristadar of the Additional District and Sessions Judge.

28. In the backdrop of the above, it is relevant to take note of the minutes of the meeting dated 08.02.2021 of the Selection Board held in the Office of the District and Sessions Judge, Lakhimpur at North Lakhimpur. It appears from the said minutes of the meeting that the Selection Board unanimously accepted the application of the respondent No.4 for the post of Head Assistant in the Establishment of District and Sessions Judge, Lakhimpur at North Lakhimpur. However, the petitioner's application was rejected by the members of the Selection Board giving the following grounds which were:

- (i) The petitioner was a Government servant under suspension,
- (ii) The petitioner was charge sheeted and disciplinary proceedings was pending against the petitioner and
- (iii) Prosecution for a criminal charge is pending against the petitioner.

29. It is in the above perspective that this Court is required to take into consideration as to whether the reasons by which the petitioner's application was rejected was in accordance with law inasmuch as if those reasons were not relevant for consideration to the selection proceedings, then in that regard the said selection has to be interfered with. At this stage this Court finds it relevant

to take note of the Office Memorandum dated 09.05.2006 which is a Office Memorandum pertaining to promotion of Government Servants against whom departmental/disciplinary/Court proceedings are pending or whose conduct is under investigation and the procedure and guidelines to be followed. Paragraph Nos. 2 and 3 of the said Office Memorandum being relevant are quoted hereinbelow:

“(2) At the time of consideration of the cases of Govt. Servants in the zone of consideration for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee/Selection Committee/Appointing Authority:

- (i) Government Servants under suspension.*
- (ii) Government Servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and*
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.*

(3) The Departmental promotion Committee/Selection Committee/Appointing Authority shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned in para-2 above, along with other eligible candidates, without taking into consideration the disciplinary case/criminal prosecution pending. Therefore it is made clear that only bare statement that case of an employee in the zone of consideration/extended zone of consideration is covered by any of the three situations indicated in para-2 above is to be furnished to the Departmental promotion committee/Selection Committee/Appointing Authority to enable it to place its recommendations in the sealed cover. No other details about the pending inquiry or the nature of Charges etc. are to be furnished to the Departmental Promotion committee/Selection Committee/Appointing Authority list these details weigh with the Departmental Promotion Committee/

Selection Committee/ Appointing Authority in making its recommendations, which are to be placed in the sealed cover.”

30. A perusal of the above quoted paragraphs of the Office Memorandum dated 09.05.2006 clearly shows that at the time of consideration of the cases of Government servants in the zone of consideration for promotion falling under the categories mentioned in para 2 (i), (ii) and (iii) the same should be specifically brought to the notice of the Departmental Promotion Committee/Selection Committee/Appointing Authority. In terms with para-3 the Departmental Promotion Committee/Selection Committee/Appointing Authority shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned in para-2 along with other eligible candidates, without taking into consideration the disciplinary case/criminal prosecution pending. It was also clarified that the Departmental Promotion Committee/Selection Committee/ Appointing Authority shall place its recommendations in respect to a Government servant falling within the categories mentioned in para-2 to place their recommendations in a sealed cover. No other details about the pending inquiry or the nature of charges etc. are to be furnished to the Departmental Promotion Committee/Selection Committee/Appointing Authority. It has also been mandated that such pending enquiry or the nature of changes etc. shall weigh with the said authority in making its recommendations which are to be placed in sealed cover. However, in the instant case, the minutes of the meeting dated 08.02.2021 clearly shows that the same was done without taking into consideration the Office Memorandum dated 09.05.2006 inasmuch as in the minutes of the meeting, the case of the petitioner was rejected on the ground that he is a Government servant under suspension, a charge sheet has been issued and the disciplinary

proceedings are pending against him and prosecution for criminal charge is pending against him. Under such circumstances, the said minutes of the meeting dated 08.02.2021 is in violation to the Office Memorandum dated 09.05.2006 and the Petitioner's case was not considered in the manner mandated under law.

31. It is also relevant to take note of that in the meantime, the petitioner has been already exonerated from all charges and the disciplinary proceedings have also been dropped insofar as the petitioner is concerned. Therefore, taking into consideration that right to be considered for promotion is a fundamental right and the petitioner has not been considered in the manner in which it ought to have been done in accordance with the provisions of the law and the Office Memorandum dated 09.05.2006, this Court therefore sets aside the minutes of the meeting dated 08.02.2021.

32. In view of the setting aside of the minutes of the meeting dated 08.02.2021, the selection of the respondent No.4 to the post of Head Assistant and the consequential appointment order dated 10.02.2021 is also interfered with.

33. In that view of the matter, this Court therefore disposes of the instant writ petition with the following observations and directions:

- (I) The minutes of the Selection Committee dated 08.02.2021 as well as the consequential order dated 10.02.2021 whereby the respondent No.4 was appointed as the Head Assistant in the Office of the Establishment of the District and Sessions Judge, Lakhimpur at North Lakhimpur is hereby set aside and quashed.

- (II) The respondent No.2 on the basis of the above observations shall initiate the process of appointment to the post of Head Assistant, Office of the District and Sessions Judge, Lakhimpur at North Lakhimpur afresh in terms with Rule 6(2) of the Rules of 1987 forthwith and complete the said process within a period of 30 days from the date of the instant judgment and order.
- (III) In view of the interference to the minutes of the meeting of Selection Committee dated 08.02.2021 as well as the appointment of the respondent No.4 dated 10.02.2021, the Gradation List so prepared on 06.04.2022 is also interfered with and the concerned Respondent Authorities shall prepare the said Gradation List on the basis of the outcome of the selection proceedings in pursuance to the directions as given in clause-II hereinabove.
- (IV) In the interim, till the fresh selection proceedings is not completed, the respondent No.4 be allowed to remain in-charge of the post of the Head Assistant in the Office of the Establishment of District and Sessions Judge, Lakhimpur at North Lakhimpur. However no rights or equity shall accrue in favour of the respondent No.4.

34. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant