

GAHC040018002017



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

Case No.: WP(C)/372 (AP)/2017

Shri Kago Apey

...Petitioner

-Versus-

1. The State of Arunachal Pradesh
Represented by the Chief Secretary
Government of Arunachal Pradesh, Itanagar
2. The Commissioner and Secretary (Law & Justice) Government of
Arunachal Pradesh, Itanagar
3. The Gauhati High Court
Represented by the Registrar General, Itanagar Permanent Bench,
Naharlagun
4. Shri Rabindra Nath Barman
Deputy Registrar, Gauhati High Court, Itanagar Permanent Bench,
Naharlagun
5. Shri Narayan Chandra Das
Deputy Registrar Gauhati High Court, Itanagar Permanent Bench,
Naharlagun
6. The Registrar, Gauhati High Court, Itanagar Permanent Bench,
Naharlagun

...Respondents

Advocates:

For the Petitioner	: H. Lampu
For the Respondents	: Indraneel Chowdhury, Advocate General, State of Arunachal Pradesh
	: Muk Pertin, Sr. Adv.Standing Counsel (R 3 & 6)

BEFORE
HON'BLE MR. JUSTICE KARDAK ETE

Date of Hearing : 31.08.2023
Date of Judgment : 12.09.2023

JUDGMENT & ORDER (CAV)

Heard Mr. H. Lampu, learned counsel for the petitioner. Also heard Mr. Indraneel Chowdhury, learned Advocate General, assisted by Ms. K. Wangmo, learned State counsel for the State of Arunachal Pradesh, and Mr. Muk Pertin, senior counsel, learned Standing Counsel, assisted by Mr. K. Dabi, learned counsel for respondent Nos. 3 and 6. None appears for respondent Nos. 4 and 5.

2. By filing this writ petition the petitioner has challenged the legality and validity of order No. HC.V-120/2017(Pt-2)/542, dated 09.06.2017, issued by the Registrar General, Gauhati High Court, by which the respondent No. 5 has been promoted from the post of Assistant Registrar to Deputy Registrar and order No. HC.V-47/2013/1831/Estt. dated 22.08.2013, whereby the respondent No. 4 has been posted on transfer against the vacant post of Deputy Registrar, Gauhati High Court, Itanagar Permanent Bench on the ground of violation of Notification No. OM-38/76(Vol-II) dated 21.09.2000 and 01.02.2001, issued by the Chief Secretary, Government of Arunachal Pradesh.

3. The case projected by the petitioner is that he has initially joined the service at the Gauhati High Court, Itanagar Permanent Bench as Assistant on its establishment on 12.08.2000 and he has been working as Assistant Registrar since 2008. The Itanagar Permanent Bench of the Gauhati High Court was established in the year 2000 with a post of Deputy Registrar.

4. The Government of Arunachal Pradesh *vide* order No. JUD(HCB)-98/88(VOL-II) dated 21.09.2016, issued by the Chief Secretary, created as many as 25 posts for the Itanagar Permanent Bench of the Gauhati High Court, Naharlagun, which includes 2 posts of Deputy Registrar, one meant for Judicial Officer Grade-III and other posts meant for the High Court Services. Out of the creation of one more post of Deputy Registrar to be filled up from the High Court Services, there were two posts of Deputy Registrar to be filled up from the High Court Services at Itanagar Permanent Bench.

5. In the year 2013, one post of Deputy Registrar at Itanagar Permanent Bench fell vacant and it was filled up by private respondent No. 4 by way of transfer from Principal Seat, Gauhati High Court, *vide* Memo No. HC.V-47/2013/1831/Estt. dated 22.08.2013.

6. The reservation policy of the State of Arunachal Pradesh *vide* Notification No. OM-38/76(Vol-II) dated 21.09.2000 and its partial modification dated 01.02.2001 were issued by the Chief Secretary, Government of Arunachal Pradesh, whereby the Government of Arunachal Pradesh in exercise of power under Clause (4) of Article 16 and in terms of Article 335 and 320 (4) of the Constitution of India has made reservation in the matter of promotion of officials and officers from Group-'B' to Group-'A' and within Group- 'A', by prescribing

50% ratio reserved exclusively for APST officials or officers with a model 100 point rosters.

7. The contention of the petitioner is that since there are 2 posts of Deputy Registrar at the Itanagar Permanent Bench of the Gauhati High Court and the post of Deputy Registrar being Group- 'A' post, 50% of the post is reserved for APST officials in terms of the reservation policy dated 21.09.2000 and 01.02.2001. The petitioner being an APST official ought to have been considered for promotion against one vacant post of Deputy Registrar. At the time of hearing the learned counsel for the petitioner fairly submits that the petitioner has no grievance against the respondent No. 4, therefore, he is not pressing the prayer No. 2 in respect of respondent No. 4.

8. According to the petitioner, on further creation of one more post of Deputy Registrar to be filled up from the High Court Services as there are 2 posts of Deputy Registrar, he has submitted a representation dated 01.11.2016 to the Registrar, Gauhati High Court, Itanagar Permanent Bench praying for promotion to the post of Deputy Registrar on the ground that as per rules of reservation of the State Government of Arunachal Pradesh in the matter of promotion, 50% of the Group-'A' posts are required to be filled up from the APST officers and since out of total 2 posts of Deputy Registrar one post has already been filled *vide* order dated 22.08.2013 by the respondent No. 4, the second post be filled up by the petitioner since he is the lone APST officer working in the feeder post of Assistant Registrar.

9. While the petitioner was expecting favorable consideration for promotion to the post of Deputy Registrar by the authority concerned, *vide* the

impugned order memo No. HC.V-120/2017(Pt-2)/542 dated 09.06.2017, the respondent No. 5 was promoted to the post of Deputy Registrar against the newly created post in utter disregard of rules of reservation in the matter of promotion of the State Government.

10. Mr. H. Lampu, learned counsel for the petitioner submits that the claims of the petitioner are firstly, the Government of Arunachal Pradesh has a reservation policy issued *vide* notification No. OM-38/76(Vol-II) dated 01.02.2001, wherein it is provided that 50% of post by promotion in Group-'A' is reserved for APST and remaining 50% is unreserved. But reservation policy of the State of Arunachal Pradesh is equally applicable to the High Court employees of the Itanagar Permanent Bench. Since there are two posts of Deputy Registrar to be filled up from the High Court Services in Itanagar Permanent Bench and as per reservation policy of the State, one post is reserved for APST and another is unreserved, petitioner ought to have been promoted on one of the said posts.. Secondly, since the year 2013, one unreserved post of Deputy Registrar at Itanagar Permanent Bench was filled up by the respondent authority by transferring the private respondent No. 4 from Principal Seat to Itanagar Permanent Bench, the other post of Deputy Registrar ought to have been filled up from APST candidates since it is a reserved post. However, the respondent authority has promoted the private respondent No. 5 in disregard of existing reservation policy of the State of Arunachal Pradesh.

11. Mr. H. Lampu, the learned counsel for the petitioner submits that the powers under Article 229(2) of the Constitution of India cannot be exercised by the Chief Justice in an unfettered and arbitrary manner. Appointment should be made giving adherence to the provisions of Article 14 and 16 of the Constitution

of India and/or such rules made by the legislature. By referring and relying to the judgment of the Hon'ble Supreme court in the case of **Renu and Ors -versus- District and Sessions Judge** reported in (2014) 14 SCC 50, he submits that the Hon'ble Supreme Court has issued a direction that all the High Courts are requested to re-examine the statutory rules dealing with the appointment of the staff in the High Court as well as in the subordinate courts and in case any of the rule is not in conformity and consonance with Articles 14 and 16 of the Constitution, same may be modified.

12. Mr. Lampu, the learned counsel for the petitioner further submits that the reservation policy of the State *vide* notification dated 01.02.2001, issued by the Chief Secretary of Arunachal Pradesh in the name of Governor of Arunachal Pradesh is a law made by the executive under Article 162 of the Constitution as enabled by Article 16 (4) of the Constitution. There is no other rule or law made by the legislature on the subject and as such, the notification of reservation is as good as law made by the legislature or rules made under proviso to Article 309 of the Constitution.

13. He submits that the Chief Justice has power under Article 229 (2) of the Constitution to prescribe rules regulating the condition of the service of the officers and servants of the High Court but the power of the Chief Justice is subject to the provisions of any law made by the legislature of the State. It cannot make a rule in derogation or contrary or inconsistent with law made by the legislature. He submits that rule 8 of the Gauhati High Court Service Rules, 1967 (hereinafter referred to in short as the Service Rules of 1967) provides for reservation in direct recruitment of staffs of the High Court but it does not provide for reservation in the matter of promotion. The State of Arunachal

Pradesh *vide* notification dated 01.02.2001 has made reservation in promotion and since it is a law made by the executive which is as good as law made by the legislature no reservation for promotion in Service Rules of 1967 is derogative of notification dated 01.02.2001. Therefore, the appointment of the private respondent No. 5 by way of promotion to the post of Deputy Registrar is *dehors* the provision of Article 229 (2) of the Constitution as it was done without adherence to the reservation policy of the State of Arunachal Pradesh notification No. OM-38/76 (Vol-II) dated 01.02.2001 and as such the impugned order dated 09.06.2017 issued by the Registrar General, Gauhati High Court promoting the respondent No. 5 is liable to be interfered with and prayed accordingly.

14. Mr. Indraneel Chowdhury, learned Advocate General of the State of Arunachal Pradesh, while referring to the affidavit filed by the State submits that the Government of Arunachal Pradesh in its affidavit has made it clear that challenges made in the writ petition pertains to the Gauhati High Court service and conditions of service of its officers would be governed by the applicable rules in force. In view of such stand taken by the Government of Arunachal Pradesh, based on the request by this Hon'ble Court to the Advocate General to assist the Court he put forward his submission in the role of *Amicus Curiae* in order to assist this Hon'ble Court.

15. The learned Advocate General submits that so far as the order of transfer and posting dated 22.08.2013 is concerned, there is no scope of any interference because Rule 17A of the Rules of 1967 provides for such transfer and there is no challenge to the validity of the said Rules. Since there is no specific allegation of *malafide* this Court need not go into this challenge and the

writ petition deserves to be dismissed so far as this prayer is concerned. With regard to the challenge made to order dated 09.06.2017 by which the respondent No. 5 has been promoted as Deputy Registrar, the main ground on which the same has been questioned is that the same is in violation of reservation policy of the Government of Arunachal Pradesh notified *vide* notification dated 21.09.2000 and 01.02.2001.

16. The learned Advocate General submits that the first limb of the arguments of the learned counsel for the petitioner is to the effect that although under Rule 8 of the Rules of 1967, provision has been made for reservation for direct recruitment, however, such similar provision of reservation in the matter of promotion have not been made and accordingly, the learned counsel for the petitioner has argued that a similar provision for reservation in the matter of promotion ought to have been made by the rule making authority. He submits that the above argument is fundamentally fallacious. In order to accept such contention made on behalf of the petitioner, he submits that this Hon'ble Court will have to read into the Service Rules of 1967 and entire rule made for reservation in the matter of promotion. This in return would amount to putting words in the mouth of rule making authority and adding the entire rule, which would amount to judicial legislation. He submits that such a course of action on the face of settled principles governing interpretation is wholly impermissible in law. The learned Advocate General placed reliance on the case of **Grasim Industries Ltd. Versus Collector of Customs** reported in (2002) 4 SCC 297, wherein the Hon'ble Supreme Court at paragraph 10 has held as under:

“**10.** ...where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating the statutory provisions... The

construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided”.

17. The learned Advocate General submits that the second limb of arguments of the learned counsel for the petitioner is that the notification dated 21.09.2000 and 01.02.2001 issued by the Government of Arunachal Pradesh would automatically apply to the employees and staff serving under the Itanagar Permanent Bench of the Gauhati High Court. The learned Advocate General, while relying on the judgment of the Hon’ble Supreme Court in the case of **Indra Sawhney and Others Versus Union of India and Others** reported in 1992 Supp (3) SCC 217, submits that the Hon’ble Supreme Court was pleased to hold that reservation can be provided for by way of executive instruction in the context of the language employed by the framers of the Constitution in Article 16 (4) which is to the following effect:

“Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.”

However, the language employed in Article 229 (2) is entirely different which provides for condition of service being prescribed by rules made by the Chief Justice of the High Court. In the above view of the matter, he submits that the notification issued by the State Government would not have automatic application to officers/employees in the service under the High Court of the said State.

18. The learned Advocate General further submits that Rule 8 of the Gauhati High Court Service Rules of 1967 provides for reservation, however, only in respect of direct recruitment. The rule making authority has not made

any provision for reservation in the promotion. Therefore, in any case, in terms of the settled proposition of law to the effect that executive instruction cannot override rules, the notification dated 21.09.2000 and 01.02.2001 providing for percentage of reservation so issued by the State Government will not have any application to the facts of the instant case.

19. The learned Advocate General placed reliance on the judgment of the Hon'ble Apex Court in the case of **K.K. Parmar and Others Versus High Court of Gujarat and Others** reported in (2006) 5 SCC 789, in support of his submission. He referred to paragraph 17 which is reproduced herein below:

“17. ...A rule framed by the State in exercise of its power under proviso appended to Article 309 of the Constitution of India maybe applicable to the employees of the High Court but the executive instructions issued would not be and in particular when the same is contrary to or inconsistent with the rules framed by the Chief Justice of the High Court in terms of Article 229 of the Constitution of India.”

20. Mr. Muk Pertin, learned senior counsel, Standing Counsel for the respondent Nos. 3 and 6, while referring to the affidavit filed on behalf of the respondent Nos. 3 and 6 submits that the notification dated 21.09.2000 and 01.02.2001 is for the employees of the State Government of Arunachal Pradesh and these notifications are not applicable to the employees of the High Court. The Gauhati High Court employees are governed by the Gauhati High Court Services (Appointment, Conditions of Service and Conduct) Rules, 1967. The service conditions of all the employees of the Gauhati High Court as regard employment, promotion *etc.* are governed by the said Service Rules of 1967. So far as salary, pension and leave of the employees are concerned, these are governed by the Rules and Regulations of the respective State Government as per the Service Rules of 1967.

21. Mr. Muk Pertin, learned senior counsel submits that so far as the transfer of respondent No. 4 is concerned, Rules 17A of the Rules of 1967 provides that an officer or staff of the Principal Seat may be transferred from Principal Seat to outlying Benches or vice versa. As per Rule 17A, the Hon'ble Chief Justice is empowered to transfer any staff from one State to another in exigencies of public service.

22. The learned senior counsel submits that with regard to the promotion of respondent No. 5, a committee of Hon'ble Judges in consideration of all ACRs approved the name of respondent No. 5 and the same was approved by the Hon'ble Chief Justice on 07.06.2017 and the Registry issued order on 09.06.2017 promoting the respondent No. 5 to the post of Deputy Registrar at the Itanagar Permanent Bench of the Gauhati High Court. He further submits that the correct position of the case is that out of 2 posts of Deputy Registrar at the Itanagar Permanent Bench, one is occupied by the respondent No. 4 who was Deputy Registrar in the Principal Seat and was transferred to Itanagar as per Gauhati High Court Rules in the exigencies of public service. Therefore, only one post has been filled up by promotion and the other one is by way of transfer. The promotion of the respondent No. 5 has been done as per the Rules and the respondent No. 5 is much senior to the petitioner in the feeder post of Assistant Registrar. Mr. Pertin, learned senior counsel finally submits that the object of Article 229 of the Constitution of India is to secure the independence of the High Court. The notification issued by the State Government regarding the reservation of seat/post would not apply to the High Court employees and the petitioner cannot seek relief from a notification which is not applicable in the

High Court Rules. In support of his submissions he has relied on the following judgments:

- 1) **H.C. Puttaswamy Versus Chief Justice of Karnataka High Court**, reported in AIR 1991 SC 295.
- 2) **High Court of Rajasthan Versus Ramesh Chand Paliwal** reported in AIR 1998 SC 1079.
- 3) **Indra Sawhney Versus Union of India** reported in AIR 1993 SC 477
- 4) 2006 (6) Mh.L.J (**S.S. Tamgade Versus State of Maharashtra and Others**)

23. I have considered the submissions advanced by the learned counsel for the parties.

24. Before I embark on to consider the claims and submissions of the parties, I deem it apposite to consider the relevant notification of reservation issued by the Government of Arunachal Pradesh and the Gauhati High Court Service Rules, 1967 and also the relevant constitutional provisions which are reproduced herein below:

25. Notifications dated 21.09.2000 and 01.02.2001 issued by the State of Arunachal Pradesh

“GOVERNMENT OF ARUNACHAL PRADESH
DEPARTMENT OF PERSONNEL, ADMINISTRATIVE REFORMS & TRAINING

D&M BRANCH : : ITANAGAR

NOTIFICATION

In exercise of the powers conferred by clause (4) of Article 16 and in terms of Article 335 and 320 (4) of the Constitution of India, the Government of Arunachal Pradesh is pleased to make reservation in matters of promotion of following classes of posts as shown below for A.P.S.T. Officials and Officers in the services under the Govt. of Arunachal Pradesh.

- Group ---- 'A' ---- 50%
- Group ---- 'B' ---- 80%
- Group ---- 'C' ---- 80%
- Group ---- 'D' ---- 100%

To facilitate proper implementation of the Government decision in this respect, a Model 100 point roster indicating the point of reservation in Group 'A', 'B' & 'C' posts is appended at Annexure – I and II for strict compliance by all concerned.

Separate order will be issued in the matter of determination of seniority.

This Notification shall come into force with immediate effect. All such cases of promotion which have not been given effect to, shall be subject to the present notification.

Sd/- P.M. Nair
Chief Secretary
Govt. of Arunachal Pradesh
Itanagar

Memo No. OM-38/76 (Vol-II) Dated Itanagar, the 21st Sept. '2000"

“GOVERNMENT OF ARUNACHAL PRADESH
DEPARTMENT OF PERSONNEL, ADMINISTRATIVE REFORMS & TRAINING

D&M BRANCH : : ITANAGAR

No. OM-38/76 (Vol-II)

Dated Itanagar, the 1st Feb. '2001

NOTIFICATION

In partial modification of the Govt. of notification of even number dated 21-09-2000, the Government of Arunachal Pradesh is pleased to make reservation in matters of promotion to the following class of classes of posts in the services under the Govt. of Arunachal Pradesh, in favour of Arunachal Pradesh Schedule Tribes Officials and Officers shown against each group with immediate effect.

- Promotion within Group 'D' ---- 100%
- Promotion from Group 'D' to Group 'C' and within Group 'C'
---- 80%
- Promotions from Group 'C' to Group 'B' and within Group 'B'
---- 80%

- Promotions from Group 'B' to Group 'A' and within Group 'A'
---- 50%
- It will not be applicable in the matter of determination of seniority and also clearance of backlog.

To facilitate proper implementation of the Government decision in this respect, a Model 100 point rosters indicating the point of reservation in Group 'A', 'B', 'C' & 'D' post are appended at Annexure- I, II & III for strict compliance by all concerned.

Sd/- Lalit Sharma
Chief Secretary
Govt. of Arunachal Pradesh
Itanagar

Memo No. OM-38/76 (Vol-II) Dated Itanagar, the 12th Feb. '2001"

26. Gauhati High Court Service Rules, 1967:

Rule 7. Gazetted officers- (2) [The appointment of a Deputy Registrar shall be from the State Judicial Service Grade-III or by promotion of a Gazetted Officer in the High Court's Service belonging to Class-IIA having a degree in Law from a recognized University or by direct recruitment of an Advocate having not less than seven years continuous practice at the Bar.

Provided however that a degree in Law is not essential for the existing Class II-A Gazetted officers in the High Court's service.]

Rule 8. Scheduled Castes, scheduled tribes, other backward classes and more backward classed- To secure better representation for scheduled castes and scheduled tribes, five per cent of the posts to be filled up by direct recruitment shall be generally reserved for scheduled castes, ten per cent of them for members of scheduled tribes belonging to the plains area, fifteen per cent for members of scheduled tribes belonging to the hills and five per cent for members of other backward classes and more other backward classes; provided that if in any one year suitable candidates of scheduled castes, scheduled tribes, other backward classes, and more backward classes are not available or if sufficient number of suitable candidates for filling up the reserved vacancies is not available for these classes in any particular year then such of the vacancies which remain unfilled would be available to the others. But this deficiency will be carried forward and made good in the recruitment to the services from year to year till the requisite percentage is filled up; provided that in any year the total percentage of all categories of reserved vacancies shall not be in excess of fifty per cent.

(2) In view of the changes made necessary rosters shall have to be maintained to

record rota cum quota.

Rule 17A. Any employee in the services of the High Court including those in the benches at Kohima, Imphal and Agartala may be transferred from one station to the other in the exigencies of public service and such transfer, in the case of Gazetted officers, shall be notified in the official Gazette.

Rule 21. Leave, pension, etc. – (i) In regard to pay, allowances, leave, leave salary or pension, the rules and regulations applicable to the members of the services under the rule making power of the Government of Assam shall apply mutatis mutandis to persons serving in this High Court and subject also to such amendments and variations as may be made by the Chief Justice from time to time with the approval of the Governor [of the State of Assam] where such proposal is necessary.

Provided that the powers exercisable under the said rules and orders by the Governor of the State of Assam or by any authority subordinate to the Governor of the State of Assam shall be exercisable by the Hon'ble Chief Justice or by such person as he may, by special or general order direct.

(ii) Any question arising as to which rules or orders are applicable to the case of any person serving on the staff attached to the High Court shall be decided by the Hon'ble Chief Justice."

27. Article 16 of the constitution of India-

"Article 16. Equality of opportunity in matters of public employment. -

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

28. Article 229. Officers and servants and the expenses of High Courts.

(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any

office connected with the Court save after consultation with the State Public Service Commission.

(2). Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorized by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State."

29. A bare reading of the notifications dated 21.09.2000 and 01.02.2001 shows that it has been issued under Article 16 (4) of the Constitution of India by making reservation in the matters of promotion for the classes of post for APST officials and officers in the service under the Government of Arunachal Pradesh. Therefore, the notification cannot be said to have automatic application for the services of the officials/employees of the Gauhati High Court.

30. A perusal of Rule 8 of the Gauhati High Court service Rules of 1967 shows that the reservation provided for members of the scheduled tribes and scheduled castes is in the matter of direct recruitment and not for promotion. No reservation has been provided in the matter of promotion in the Gauhati High Court Service Rules of 1967 as on date. Rule 17A provides that any employee in the service of the High Court including those in the outlying benches may be transferred from one station to another in the exigencies of public service. Rule 7(2) provides that the appointment of Deputy Registrar shall be from the State judicial service Grade-III or by promotion of a gazetted officer in the High Court service belonging to Class-IIA having a degree in law from a recognized University or by direct recruitment of an advocate having not less than 7 years continuous practice at the bar. Therefore, it transpires that there are three sources of recruitment/appointment to the post of Deputy Registrar,

namely from the State Judicial Service Grade-III, by promotion of a gazetted officer in the High Court Service belonging to Class-IIA and direct recruitment of an advocate having not less than 7 (seven) years continuous practice at the bar and any employee in the service of the High Court including those in the outlying benches may be transferred from one station to another in the exigencies of public service.

31. Rule 21 provides that with regard to pay, allowances, leave, leave salary or pension, the rules and regulations applicable to the members of the services under the rule making power of the Government of Assam shall apply mutatis mutandis to persons serving in the High Court and subject also to such amendments and variations as may be made by the Chief Justice from time to time with the approval of the Governor of the State where such proposal is necessary.

32. It is undisputed that the service conditions of the members of the Gauhati High Court as regards appointment/ recruitment and promotion are governed by the Gauhati High Court Service Rules of 1967 except the pay, allowances, leave, leave salary or pension of the employees which are governed by the rules and regulations of the respective State Government as per Rule 21 of the Gauhati High Court Service Rules of 1967.

33. There is no dispute that the Gauhati High Court Service Rules of 1967 does not provide any provision for reservation in the matter of promotion for the employees of the Gauhati High Court. The Service conditions of the employees of the Gauhati High Court are governed by the Gauhati High Court Service Rules of 1967 and rules or regulations of the concerned State

Government are followed only in cases of pay, allowances, leave, leave salary or pension. Therefore, the notification dated 21.09.2000 and 01.02.2001 whereby the reservation has been provided for the officials and officers of the Government of Arunachal Pradesh in the matter of promotion would not be applicable to the employees of the Gauhati High Court. Thus, the contention that the above referred notification dated 01.02.2001 of the State of Arunachal Pradesh which provides 50% reservation in the matter of promotion for the State Government officials and officers shall be applicable to the petitioner for the purpose of considering his promotion to the post of Deputy Registrar cannot be accepted and accordingly stands rejected.

34. Clause of 2 of Article 229 of the constitution of India provides that subject to provisions of any law made by the legislature of the State, the conditions of service of officers and servants of the High Court shall as such may be prescribed by the rules made by the Chief Justice of the High Court. The contention of the learned counsel for the petitioner that the notification dated 01.02.2001 of the State Government of Arunachal Pradesh is a law made by the executive under Article 162 of the Constitution as enabled by Article 16(4) of the Constitution and there is no other rules or law made by the legislation in the subject and as such notification dated 01.02.2001 is as good as law made by the legislature, therefore, not following the State notification of reservation (supra) or non providing of reservation in the Gauhati High Court Service Rules in exercise of the power of the Chief Justice under Article 229 (2) in derogative of the notification/law made by the legislature since it is subject to law made by the legislature, is wholly misconceived. Assuming that the notification dated 01.02.2001 issued under the enabling provision of Article 16 (4) of the

Constitution is to be a law made under Article 162 of the Constitution of India, still then nothing is discernable that the Chief Justice has prescribed any rules regulating the condition of service of the officials and officers of the High Court which is contrary to the law made by the legislature of the State. Rather under Rule 8 of the Gauhati High Court Service Rules, 1967, it provides for reservation in the matter of direct recruitment and there is no provision for reservation in the matter of promotion.

35. On consideration of the submission of the learned counsel for the petitioner it be noted that the challenged has been made to the order dated 09.06.2017 by which the respondent No. 5 has been promoted as Deputy Registrar on the ground that the same is in violation of the reservation policy of the Government of Arunachal Pradesh notifications dated 21.09.2000 and 01.02.2001. At the same time, the learned counsel for the petitioner argued that although under Rule 8 of the Rules of 1967 provisions have been made for reservation for direct recruitment and no such similar provision for reservation in the matter of promotion have been made and therefore, similar provision for reservation in the matter of promotion ought to have been made by the rule making authority. In the considered view of this Court, when the challenge is on the ground of applicability and/or violation of reservation of the Government of Arunachal Pradesh notification dated 01.02.2001, the argument that the similar provision for reservation in the matter of promotion ought to have been made by the rule making authority appears contradictory. This Court fails to understand whether the learned counsel for the petitioner is actually on the grounds of violation of reservation policy of the State of Arunachal Pradesh or is he for making a similar provision for reservation in the matter of promotion to

be prescribed by the rule making authority in the Gauhati High Court Service Rules, 1967 (which is beyond the scope of this Court). Be that as it may, in view of above conclusion that the reservation policy of the State Government would not be applicable to the services of the employees of the Gauhati High Court, there is no question of violation of the reservation policy of the State. It is altogether different issue that it may be desirable for the rule making authority to make similar provision for reservation in the matter of promotion for the employees of the Gauhati High Court. If it is to accept the contention made by the learned counsel for the petitioner this Court, as succinctly submitted by the learned Advocate General, will have to read into the Gauhati High Service Rules, 1967 of entire rules provided for reservation in the matter of promotion which would amount to judicial legislation and such course of action would be wholly impermissible and in fact would be in the teeth of settled principles governing the interpretation. I may profitably refer to the case of **Grasim Industries Ltd. Versus Collector of Customs** (*Supra*) wherein the Hon'ble Supreme Court has held that where the words are clear and there is no obscurity and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating the statutory provisions. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided.

36. The argument but by and large similar, advanced by the learned counsel for the petitioner to the effect that notification dated 01.02.2001 issued by the Government of Arunachal Pradesh would automatically apply to the employees and staffs serving under the Itanagar Permanent Bench of the Gauhati High Court, it is worth referring to the case of **Indra Sahwney and**

Others Versus Union of India and Others (*Supra*) wherein Constitutional Bench has held that reservation can be provided for by way of executive instruction in the context of the language employed by the framers of the constitution under Article 16(4).

37. It is no longer *res integra* that Article 16(4) is an enabling provision. It provides that nothing shall prevent the State from making any provision for reservation of appointment or post in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State. By the 77th Constitutional Amendment Act, 1995 and the 85th Amendment Act, 2001 with retrospective effect from 17.06.1995, the Clause (4-A) was inserted for enabling the State to make any provision on reservation in the matters of promotion with consequential seniority to any class or classes of post in the services under the State in favour of the scheduled castes and scheduled tribes which in the opinion of the State are not adequately represented in the services under the State. It is a well settled position of law that Articles 16 (4) (4-A) of the Constitution of India are only enabling provisions and no individual can claim enforcement of the same.

38. In **Ajit Singh (II) –Versus- State of Punjab** reported in (1999) 7 SCC 209, the Hon'ble Supreme Court held that Article 16(4) confers a discretion and does not create any constitutional duty and obligations.

39. The enabling provisions under Article 16(4) and 16(4-A) for making reservation by the State are totally different from the rule making power of the Chief Justice of High Court under Article 229 (2) of the Constitution. Article 229(2) has a distinct and different scheme and contemplates full freedom to the

Chief Justice in the matter of appointments of officers and servants of the High Court and their conditions of service. The language employed in Article 229 (2) is entirely different which provides for condition of service being prescribed by rules made by the Chief Justice of the High Court. As concluded above, the notification issued by the State Government of Arunachal Pradesh would not have automatic application to the officers/employees in the service under the Gauhati High Court, no matter officer/official may be serving at Itanagar Permanent Bench.

40. The learned counsel for the petitioner, while laying emphasis on the language employed in Article 229 (2) to the expression subject to the provisions in law made by the legislature of the State, had submitted that executive instruction dated 21.09.2000 and 01.02.2001 which is as good as law made by the legislature of the State and therefore, same would apply to the officers and employees of the Gauhati High Court including the petitioner. It is to note that an executive instruction cannot take the place of the law made by the legislature therefore, there cannot be any question of the said executive instruction being applicable to the said employees of the Gauhati High Court. On reading the provisions of Article 229 (2) of the Constitution, the language employed makes it abundantly clear that the rules pertaining to conditions of service so framed by the Chief Justice would be subject only to provisions of any law made by the legislature of the State. This unambiguous constitutional provision pre-supposed existence of a rule framed by the Chief Justice and a law made by the legislature governing the same field indicates that there is inconsistency between the two. In the instant case, there is nothing to show that there is inconsistency between the law made by the legislature of the State

and the rule prescribed by the Chief Justice of the High Court, therefore, the contentions of the learned counsel for the petitioner are fallacious and accordingly stands rejected.

41. Having regard to the case of **Renu Versus District and Sessions Judge** (*Supra*) relied by the learned counsel for the petitioner, it is settled position that powers under Article 229 (2) of the Constitution cannot be exercised by the Chief Justice in an unfettered and arbitrary manner. Appointment should be made giving adherence to the Articles 14 and 16 of the Constitution and or such rules as made by the legislature. In view of the direction at paragraph 35.1, it may be desirable to re examine the statutory rules if there is any rule which may not be in conformity and concerned with the provisions of Articles 14 and 16 of the Constitution which may be modified. However, in the considered view of this Court there is nothing to show that there is any provision in the Gauhati High Court Service, Rules 1967 which may be considered to be not in conformity and consonance with the provisions of Articles 14 and 16.

42. It is a well-established principle that the object underlying Article 229 of the Constitution of India is to ensure the independence of the High Court. The limited extent of review available to the High Court is inasmuch as to test the validity and constitutionality of the rules framed by the Chief Justice.

43. In H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka reported in 1991 Supp (2) SCC 421 the Hon'ble Supreme Court has observed which is reproduced herein below:

“11. The object of this article was to secure the independence of the High Court which cannot be regarded as fully secured unless the authority to appoint

supporting staff with complete control over them is vested in the Chief Justice. There can be no disagreement on this matter. There is imperative need for total and absolute administrative independence of the High Court. But the Chief Justice or any other Administrative Judge is not an absolute ruler nor he is a free wheeler. He must operate in the clean world of law, not in the neighbourhood of sordid atmosphere. He has a duty to ensure that in carrying out the administrative functions, he is actuated by the same principles and values as those of the Court he's serving. He cannot depart from and indeed must remain committed to the constitutional ethos and traditions of his calling. We need hardly say that those who are expected to oversee the conduct of others must necessarily maintain a higher standard of ethical and intellectual rectitude. The public expectations do not seem to be less exacting."

44. The power of the Chief Justice is neither absolute nor unfettered. However no Court under Article 226 of the Constitution of India has the power to direct the Chief Justice to frame or formulate rules or make appointments for a particular purpose since that would mean impinging on the discretion of the Chief Justice. In other words although the Court has every power to examine the constitutional validity of rules framed under Article 229 of the Constitution of India, but it cannot issue directives to the Chief Justice to frame Rules for the benefit of a certain section of society. Therefore, Court cannot issue a directive to legislate or to frame rules for the Scheduled Castes, Scheduled Tribes and Backward Classes reservations.

45. In **Indra Sawhney and Others –Versus- Union of India and Others** (*Supra*), the Hon'ble Supreme Court observed as follows:

"The action of the Government in making provisions for the reservation of appointment or posts in favour of any 'backward class of citizens' is a matter of policy of the government. What is best for the 'backward class' and in what

manner the policy should be formulated and implemented bearing in mind the object to be achieved by such reservation is a matter for a decision exclusively within the province of the Government and such matters do not ordinarily attract the power of judicial review or judicial interference except on the grounds which are well settled by a catena of decisions of the Supreme Court."

46. In **M. Gurumoorthy Versus The Accountant General, Assam and Nagaland & Ors.**, reported in (1971) 2 SCC 137, the Constitution Bench held which is reproduced herein below:

"11. The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointments of officers and servants of a High Court it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided in the Article. This is essentially to secure and maintain the independence of High Courts.....Clause (1) read with clause (2) of Article 229 conferred exclusive power not only matter of appointment but also with regard to prescribing the conditions of service of the officers and servants of the High Court by Rules on the Chief Justice of the Court. This is subject to any legislation by the State Legislature but only in respect of conditions of service.....Thus Article 229 has a distinct and different scheme and contemplates full freedom to the Chief Justice in the matter of appointments of officers and servants of the High Court and their conditions of service. These can be prescribed by rules made by him."

47. In view of above discussion and conclusion that the reservation policy of the State of Arunachal Pradesh vide notifications vide dated 21.09.2000 and 01.02.2001 whereby the reservation has been provided for the officials and officers of the Government of Arunachal Pradesh in the matter of promotion

would not be applicable to the employees of the Gauhati High Court, the claims and prayer of the petitioner for the purpose of considering his promotion to the post of Deputy Registrar is hereby rejected.

48. In view of what has been discussed and concluded above, I find no merit in the present writ petition. No interference is called for to the impugned order dated 20.08.2013 by which the respondent No. 4 was posted on transfer in the post of Deputy Registrar from the Principal Seat, Gauhati High Court to Itanagar Permanent Bench and the order dated 09.06.2017 by which the respondent No. 5 was promoted to the post of Deputy Registrar.

49. Accordingly, the present writ petition is dismissed being devoid of merit.

No order as to cost.

JUDGE

Comparing Assistant