

GAHC010017012016



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

Case No. : WP(C)/3277/2016

SMTI. MANJU KONWAR
W/O. SRI RUBUL CHANDRA DOWARAH, R/O. FLAT NO. 402 5TH FLOOR
PANORAMA APARTMENT NEAR CHANDMARI FLY OVER, P.O.
SILPUKHURI, GHY.-781003, DIST. KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY ITS COMM. and SECY. DEPTT. OF FINANCE ESTT.-B, GOVT. OF
ASSAM, DISPUR, GHY.-781006.

2:THE COMMISSIONER and SECY.
TO THE DEPTT. OF WPT and BC
GOVT. OF ASSAM
DISPUR
GHY.-781006.

3:THE DIRECTOR OF AUDIT
LOCAL FUND
GOVT. OF ASSAM
KAR BHAWAN
6TH FLOOR
GANESHGURI
GHY.-781006.

4:SRI GAUTAM TUMUNG
S/O. LT. PURAM TUMUNG PRESENTLY WORKING AS SR. ASSTT. IN THE
OFFICE OF DIRECTORATE OF AUDIT LOCAL FUND
GOVT. OF ASSAM
DISPUR
GHY.-781006

Advocate for the Petitioner : MR.K BORUAH

Advocate for the Respondent : MR.U C RABHA R-4

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

12.12.2023

Heard Mr. M. K. Sharma, learned counsel for the petitioner. Also heard Mr. R. Borpujari, learned Standing Counsel, Finance Department, Assam for respondent Nos.1 and 3, Mr. R. M. Das, learned Standing Counsel, Social Welfare Department, Assam for respondent No.2 and Mr. A. Deka, learned counsel appearing for the respondent No.4.

2. The writ petitioner herein and the private respondent No.4 are both working as Senior Assistant (UDA) in the establishment of respondent No.3 i.e. the Director of Audit (Local Funds), Government of Assam, Kar Bhawan, Guwahati. The writ petitioner belongs to the Other Backward Class (OBC) category whereas the respondent No.4 is a candidate belonging to the Scheduled Caste (Hills) category. The writ petitioner was originally appointed as an LDA against a leave vacancy post on 21.07.1987 in which post she had joined immediately. The respondent No.4, on the other hand, was appointed as an LDA on 01.04.1992. In the Gradation List of LDAs circulated by the authorities on 25.01.2005 the name of the writ petitioner appeared above the respondent No.4. However, subsequently, a backlog vacancy for ST(H) candidate occurred in the department which was required to be filled up by way of promotion. As such, the respondent No.4 was promoted as Senior Assistant (UDA) on 08.01.2003. The writ petitioner was also promoted soon thereafter as Senior

Assistant (UDA) on 28.09.2004.

3. On 09.09.2014 the respondent No.3 had circulated a gradation list of Senior Assistants (UDAs) wherein the name of the respondent No.4 appeared at serial no.1 whereas the name of the writ petitioner appeared at serial no.2. Aggrieved by the aforesaid seniority position, the instant writ petition has been filed *inter-alia* contending that the writ petitioner, having joined service much before the respondent No.4, her seniority in the original cadre which was above the respondent No.4 ought to have been maintained by the authorities in the cadre of Junior Assistant. In other words, the writ petitioner has sought determination of her seniority claim above the respondent No.4, in the cadre of Senior Assistants (UDAs).

4. The prayer of the petitioner has been opposed by the respondent No.4 by filing counter-affidavit contending that the claim of the petitioner is barred under the law in view of the order dated 30.04.2016 issued by the respondent No.3 notifying that the provisional gradation list dated 09.09.2014 of Senior Assistants (UDAs) was correct. It is also the contention of the respondent No.4 that his promotion to the post of Senior Assistant (UDA) (HQ) was against a vacancy reserved for ST(H) category and therefore, the petitioner cannot claim any right in respect thereof.

5. After going through the materials available on record, I find that the respondent No.4 had earlier approached this Court by filing WP(C) No.1624/2012 with a prayer to issue a direction upon the authorities to publish the correct gradation list of Senior Assistant (UDA) (HQ). At that point of time, the provisional gradation list dated 09.09.2014 was not published. However, during the pendency of the aforesaid writ petition the gradation list dated

09.09.2014 came to be published wherein, the name of the respondent No.4 appeared at serial no.1 i.e. above the writ petitioner. The learned Single Judge had passed order dated 07.02.2018 disposing of the writ petition filed by the respondent No.4 bearing WP(C) No.1624/2012 by holding that after publication of the provisional gradation list dated 09.09.2014 which is stated to be correct, the writ petition itself had become infructuous. Noticeably, the writ petitioner was a party to the aforesaid writ petition being WP(C) No.1624/2012 and the order dated 07.02.2018 was apparently passed in presence of the writ petitioner. If that be so, it is apparent that the position obtaining in the provisional gradation list dated 09.09.2014 has attained finality in view of the order dated 07.02.2018 passed by this Court.

6. Moreover, there is nothing to dispute the stand of the respondents that the promotion given to the respondent No.4 in the post of Senior Assistant (UDA) (HQ) was against a reserve category backlog vacancy meant to be filled up by way of promotion only from ST(H) category candidate. It is under such circumstances, the respondent No.4 was promoted to the post of Senior Assistant (UDA) (HQ) by order dated 08.01.2003. The order of promotion of the respondent No.4 as Senior Assistant (UDA) (HQ) was not challenged by the petitioner at the relevant point of time. In view of the above, this Court is of the opinion that the plea of the petitioner's counsel that the seniority of his client be declared over and above the respondent No.4 cannot be entertained in the present proceeding since the petitioner seems to have waived her right in the matter due to her failure not only to assail the order dated 08.01.2003 but also by accepting the order dated 07.02.2018 passed in WP(C) No.1624/2012. In view of the above, the question of inter-se seniority between the writ petitioner

and the respondent No.4 in the cadre of Senior Assistants (UDAs) (HQ) had attained finality in the eyes of law and the same cannot now be reopened by this Court on the basis of the case projected by the petitioner.

7. Consequently, this writ petition is held to be devoid of any merit and the same is accordingly dismissed.

Parties to bear their own cost.

JUDGE

Comparing Assistant