



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Writ Appeal No. 110/2018

1. Sri Hiranya Kumar Sarma,
S/o Late Debendra Ch. Sarma,
Permanent resident of Majorhati, Barpeta,
Assam.

1(i). Smt. Anupama Devi,
W/o Late Hiranya Kumar Sarma, Resident of
House No.10, Debadaru Path, Ambikagiri
Nagar, Zoo Road, Guwahati-781024, District –
Kamrup (Metro), Assam.

1(ii). Smt. Pratyasha Sarma,
Daughter of Late Hiranya Kumar Sarma.
Resident of House No.10, Debadaru Path,
Ambikagiri Nagar, Zoo Road, Guwahati-
781024, District – Kamrup (Metro), Assam.

1(iii). Sri Bhabarnav Sarma,
Son of Late Hiranya Kumar Sarma.
Resident of House No.10, Debadaru Path,
Ambikagiri Nagar, Zoo Road, Guwahati-
781024, District – Kamrup (Metro), Assam.

[Appellant Nos. 1(i), 1(ii) and 1(iii) are legal
heirs of appellant No.1]

- **Appellants**

- **Versus-**

1. The State of Assam, represented by the
Commissioner & Secretary to the Govt. of
Assam, Industries & Commerce Department,
Dispur, Guwahati-781006.

2. The Commissioner, Industries &
Commerce, Assam, Bamunimaidan,
Guwahati-21.

3. The Secretary, Assam Public Service Commission, Khanapara, Guwahati-22.

4. The Principal Secretary to the Govt. of Personnel (B) Department, Dispur, Guwahati-6.

5. The Commissioner & Secretary to the Govt. of Assam, Welfare of Plains Tribes and Other Backward Classes (WPT & BC), Dispur, Guwahati-6.

6. The Legal Remembrancer, Assam, Dispur, Guwahati-6.

- **Respondents**

For the Appellant(s) : Ms. M. Buzarbaruah, Advocate

For the respondent(s) : Mr. A. Kalita, SC, Industries & Commerce Department, Assam
Mr. D. K. Sarmah, Addl. Sr. GA, Assam

- **BEFORE -**

**HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

Date of Hearing : 14.08.2023

Date of Judgment : 28.08.2023.

JUDGMENT & ORDER

(Sandeep Mehta, CJ)

1. Heard Ms. M. Buzarbaruah, learned counsel representing the appellants. Also heard Mr. A. Kalita, learned Standing Counsel, Industries and Commerce Department, Assam as well as Mr. D. K. Sarmah, Additional Senior Government Advocate, Assam, representing the respondents.

2. The instant intra-court writ appeal lays challenge to the final judgment and order dated 01.02.2018 passed by the learned Single Judge, whereby WP(C) No. 2121/2010 preferred by Late government employee Sri Hiranya Kumar Sarma claiming the relief of seniority and retrospective promotion in the cadre of General Manager, Industries & Commerce, Government of Assam, was rejected. Though the appeal came to be preferred by Sri Hiranya Kumar Sarma, but during pendency thereof he passed away and has been substituted by appellant Nos. 1(i), 1(ii) and 1(iii) being the legal heirs of Sri Hiranya Kumar Sarma.

3. The only grievance which the appellants now seek to ventilate through this appeal is to the extent of the claim for promotion with retrospective effect made by the original appellant/writ petitioner Sri Hiranya Kumar Sarma and the consequential monetary benefits.

4. Learned counsel Ms. A. Buzarbaruah, representing the appellants vehemently and fervently urged that the DPC was convened in the year 04.11.2000 to consider the case of the Late employee Sri Hiranya Kumar Sarma but despite his entitlement, promotion was granted to him belatedly on 09.08.2005. Thus, grave financial loss was caused to the Late employee and the continuing effect thereof is being suffered by the appellants in the matter of grant of terminal benefits. She placed reliance on the Hon'ble Supreme Court judgment in the case of ***P.N. Premachandran vs. State Of Kerala***, reported in ***AIR***

2004 SC 255 and urged that the ratio of the said judgment clearly applies to the case at hand and as a consequence the appellants are entitled to the relief of consequential financial benefits by declaring that the Late employee Sri Hiranya Kumar Sarma stood promoted w.e.f. 04.11.2000.

5. On the other hand, learned counsel representing the respondents Mr. A. Kalita and Mr. D.K. Sarmah vehemently and fervently opposed the submissions advanced by the appellants' counsel. They urged that no employee serving in State service has a right to be promoted. The only right which an employee can claim is to be considered for promotion. In the present case, the case of Sri Hiranya Kumar Sarma was taken up for promotion by the DPC convened in the year 2000, but on account of pending litigation instituted by other employees and injunctions granted by the Court, the exercise of promotion got stalled and, hence, Sri Hiranya Kumar Sarma could be promoted only on 09.08.2005. In support of their contentions, learned counsel for the respondents have placed reliance on the judgments rendered by Hon'ble Supreme Court in the cases of ***State of Uttar Pradesh & Others vs. Ashok Kumar Srivastava & Anr.***, reported in **2013 (Suppl) SC 513** and ***Nirmal Chandra Sinha vs. Union of India and Others***, reported in **(2008) 14 SCC 29**. On these grounds they implored the Court to dismiss the appeal.

6. We have given our thoughtful consideration to the submissions advanced at the Bar and have gone through

the impugned judgment and the judgments cited at the Bar.

7. At the outset we may note that the case of ***P.N. Premachandran*** (supra) relied upon by the appellants' counsel traverses on an entirely different set of facts because in the said case the employees concerned were working on the promotional post since a long period of time and as a consequence they were given advantage of retrospective promotion by the authorities. The retrospective promotion granted to a section of employees was challenged by the appellant P.N. Premachandran, which challenge was repelled in the peculiar facts and circumstances of the case. Hon'ble the Supreme Court held that looking to the stand of the State of Kerala that there was an administrative delay in conducting the DPC, Rule 31(a)(i) was resorted to for giving *ad hoc* promotions to the departmental candidates and subsequently upon the DPC being convened, the promotions made earlier were regularised with retrospective effect. Hon'ble the Supreme Court, after examining the provisions of the rules applicable, did not find any irregularity in the orders granting promotion with retrospective effect and observed that the respondents could not be made to suffer owing to the administrative lapses on the part of the State of Kerala. Thus, it is clear that in the said case, the administrative lapses on the part of the State were the reason behind the delay in promoting the employees concerned. In the present case, no such situation prevails. The delay in

promoting the appellant Hiranya Kumar Sarma was on account of the process of promotion being stalled due to pending litigation wherein, injunction operated on the promotion and, hence, the delay was not on account of the administrative lapses. That apart, the ratio of the judgments relied upon by the respondents' counsel in the case of ***Ashok Kumar Srivastava*** (supra) and ***Nirmal Chandra Sinha*** (supra) clearly postulates that the date of occurrence of vacancy is not relevant for the purpose of grant of promotion and that promotion can only be effective from the date the same is granted.

8. In the wake of the discussion made hereinabove, we find no infirmity in the order passed by the learned Single Judge and, hence, the writ appeal fails and the same is dismissed as being devoid of merit.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant