

GAHC010129222021



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

Case No. : WP(C)/4150/2021

ANGANA BARUAH
W/O RUPJYOTI PUJARI, R/O FLAT NO. 301, SAMANNAY PATH, SURVEY,
BELTOLA, ASSAM-781028

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, DEPARTMENT OF
TRANSPORT, DISPUR, GUWAHATI-781006.

2:THE ASSAM STATE TRANSPORT CORPORATION

REP. BY ITS CHAIRPERSON
PALTANBAZAR
GUWAHATI
DIST. KAMRUP (M)
ASSAM
PIN-781008

3:THE MANAGING DIRECTOR

ASSAM STATE TRANSPORT CORPORATION
PALTANBAZAR
GUWAHATI
DIST. KAMRUP (M)
PIN-78100

Advocate for the Petitioner : MR. R J DAS

Advocate for the Respondent : SC, TRANSPORT

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

09-08-2023

Heard Mr. R.J. Das, learned counsel for the petitioner. Also heard Mr. R.M. Das, learned Standing Counsel, ASTC and Ms. M.D. Bora, learned Standing Counsel, Transport Department.

2. This writ petition has been filed by the petitioner with the following prayers:

- (i) The impugned order dated 16.06.2021 issued by the respondents, cancelling the decisions taken in the 178th Board Meeting of the Assam State Transport Corporation, particularly Item No.11 regarding the appointment of petitioner as Secretary to the MD, ASTC,
- (ii) The order dated 17.06.2021 giving effect to such cancellation of decision of the Board as well as
- (iii) The order dated 24.06.2021 transferring the petitioner to ASTC Workshop, Rupnagar subsequently.

3. The petitioner is working as an Upper Division Assistant (UDA) in the respondent Corporation and she was allowed to work as a Secretary to the MD, ASTC, in the vacancy which arose because of the superannuation of the then incumbent. The petitioner's case was considered and the Board of ASTC in its 178th Board meeting held on 21.05.2021 approved the appointment of the petitioner as the Secretary to the MD. The said Board meeting was convened to decide on several other issues including the question of appointment of the petitioner as a Secretary to the MD, ASTC. Subsequently, a news item appeared

in one of the local newspapers raising a controversy in regard to the decision taken by the ASTC Board in its 178th Board meeting held on 21.05.2021. The Transport Department, which is the concerned Department of the Government, which has supervisory powers over the corporation, directed the MD of the ASTC to submit a detailed report in respect of the allegations raised in the newspaper item. Pursuant thereto on 16.06.2021 the report was submitted by the Managing Director. However, prior to calling for the report the Secretary to the Government of Assam cancelled the decision taken in the 178th meeting of the Board of the ASTC held on 21.05.2021. Being aggrieved, the present writ petition has been filed.

4. The learned counsel for the petitioner submits that there is no infirmity in the qualification of the petitioner and the Board had appreciated her services rendered and on due consideration of the services rendered by the petitioner, the Board had taken a decision to appoint the petitioner as a Secretary. In so far as the petitioner is concerned, the resolution adopted by the Board is extracted as under :

Item No. 11: Regularization of post of Secretary to MD

MD, ASTC apprised the Board for appointing of Smt. Angana Baruah as Secretary to MD , Secretary Office of the Managing Director, ASTC, Secretary to the Board of Directors, ASTC in the rank of Upper Divisional Assistant. Due to following reasons:-

1. Official is highly qualified with post-graduation in English Literature and well versed in Computer/IT handling.
2. She is working from last 2 (two) Years and 4 (four) months as In-charge Secretary and her performance is outstanding.
3. She has maintained required standard of official knowledge and Official decorum, secrecy as per official requirement.

In view of above requirement, it was discussed that the Board may approve the following:

- a) Requirement of Shorthand/Stenography may be exonerated and

exempted in this case of appointment of Smt. Angana Baruah as Secretary to the MD/Board of ASTC.

b) She may be promoted and given higher financial scale of Superintendent w.e.f, 1st Feb 2023.

c) She may be given Rs.370/- (Rupees three hundred seventy only) per day as additional daily allowance to hold this higher post in addition to her salary she is getting.

b) Board may give approval to appoint her as Secretary to the MD, ASTC w.e.f, the date of signing of the Minute of 178th Meeting of the Board with above exemption and with additional benefit.

Further it was discussed that this is only revision in the rank with the same existing pay.

The Board took note of this and approved the same.

5. In view of the discussions held by the Board, the appointment of the petitioner to the post of Secretary to the MD, ASTC was approved. Thereafter, the petitioner was appointed to the post of Secretary to the MD, ASTC vide order dated 01.06.2021. Pursuant to her appointment she had been rendering her service to that post of Secretary to the MD, ASTC. Learned counsel for the petitioner submits that the Corporation being a corporate body and all policy decision being adopted by the Board established under the law. Once a decisions are taken by the Board in it's meeting, without giving proper reasons and justifications the cancelation of the Board decision ought not to have been done by the Government. It is submitted by the learned counsel for the petitioner that in respect of 178th meeting of the Board of Directors which was held on 21.05.2021, the same was issued on the basis of a report which was submitted by the Secretary to the Government of Assam, Department of Transport by letter dated 23.6.2021. The report of the Secretary was submitted pursuant to the order dated 29.06.2021 issued by the Principal Secretary of the Government Assam who was appointed as an Inquiry Officer to inquire the allegation against the irregularities and inconsistency regarding the decisions taken in the 178th meeting by the Directors of the Board. In the said report in

respect of the promotion relating to the petitioner it was stated that this promotion was given out of turn without following the proper procedure as well as the Rules prescribed under the Rules of 1973. It is further stated that the officer who submitted the report was also a Member of the Board of Directors and who was present and participated in the 178th meeting of the Board. In the report, it is stated that during the discussion, certain objections were raised by the said Officer along with other Members of the Board regarding non-fulfillment of the requirements by the petitioner and accordingly, the Board had decided to proceed with the appointment of the petitioner but without exempting the requirement for shorthand/stenography but permitted her to acquire the qualifications within a fixed period of time. The report also reflects that although this objection was raised during the meeting, subsequently when the minutes were circulated this objection raised by the said officer as well as other members was not reflected in the meeting minutes.

6. Mr. R.M. Das, learned Standing Counsel, ASTC appearing for the respondents submits that the ASTC is a Corporation established under the Road Transport Corporation Act, 1950 and the Transport Corporation has been given the power to make necessary rules and regulations in respect of the employees engaged by the corporation. It is submitted that as on date the Rules under the Assam District Ministerial Services Rules, 1973 are being followed by the Corporation in respect of recruitment and governing the services of the employees of the Corporation. submits that the petitioner is a Grade-III employee and is working as an Upper Division Assistant. She was given out of turn promotion to the post of Secretary to the MD, ASTC which is a Grade-II post. Referring to the affidavit-in-opposition filed by the Department of Transport, Mr. R.M. Das submits that there is no infirmity in the order passed by

the Secretary, Department of Transport cancelling the 178th resolution of the Board by its order dated 16.06.2021 which is at Annexure-I of the affidavit-in-opposition. It is submitted that to get a promotion from the post of an Upper Division Assistant to the post of Secretary of MD, ASTC, which is a Grade-II post, an employee is required to be promoted to 2 (two) other posts, namely, Office Superintendent and Superintendent of Accounts before being considered for promotion to the post of Secretary of MD, ASTC. The Board resolution does not reflect any decision in respect of the petitioner being taken for promotion to the post of Superintendent and as such, there is no infirmity in the orders cancelling the resolution of the Board as well as the appointment of the petitioner to the post of Secretary of MD, ASTC.

7. Learned counsels for the parties have been heard. Pleadings have been carefully perused. It is seen that the Board of ASTC had taken a decision after due deliberation. The ASTC is a Body Corporate established under the State Road Transport Corporation Act, 1950. Under the said Act, the Government has deep and pervasive control over the Corporation. The decision of the Government in respect of any policy decision taken by the Board cannot be held to be without any powers in view of the provisions of the Act.

8. After hearing the learned Counsel for the parties and upon perusal of the pleadings available in the Court, this Court does not find that proper Rules and regulations were followed at the time of promoting the petitioner to the post of the Secretary of MD, ASTC. From the affidavit filed by the Department of Transport it is seen that there are two posts, namely, Superintendent of Accounts and Office Superintendent which are stated to be below the post of Secretary to MD of ASTC and to which post the petitioner can be promoted to the post of Secretary to the MD, ASTC. But such averment made in the affidavit-

in-opposition is not supported by reference to any rules/regulation/notification/OM. That apart, it is evident from the pleadings that the Secretary, who had submitted the report dated 23.07.2021 at the relevant point of time pursuant to the order of the Department dated 29.06.2021 is the same Officer who was the Member of the 178th Board meeting. That apart, the impugned order dated 16.06.2021 whereby the decision of the Board of the Director taken on 21.05.2021 in respect of its 178th meeting which was cancelled with immediate effect was also issued by the same officer. *Prima facie*, it appears that the Secretary to the Government of Assam, was also a Member of the Board of Directors which had taken the decision as per the minutes, approving the appointment of the petitioner to the post of Secretary of MD, ASTC in 178th meeting held on 21.05.2021. He was also appointed as the enquiry officer by the Government by the order dated 29.06.2021 and he is the same officer who had ultimately submitted the report casting doubts on the procedure adopted by the Board in its meeting held on 21.05.2021 in so far as the petitioner's appointment is concerned.

9. Under such circumstances, it is evident that one officer who was a member of the Board which took the decision on 21.05.2021, was also the inquiry officer and was also the officer who had finally passed the order canceling the Board's decision. Such action by an Officer of the State Government cannot be expected to be proper as the same is clearly in conflict with the cardinal principles of natural justice. The officer who was the member of the Board of Directors and who had approved the decision of selecting the petitioner, conducted the inquiry, submitted the report and also passed the order suspending the decision adopted by the Board of Directors in its 178th Board meeting in which he himself was a member cannot be accepted to be correct procedure.

10. In that view of the matter this Court is of the considered opinion that the impugned order dated 16.06.2021 cannot be allowed to be stand. Accordingly, the same is therefore interfered with and set aside. However, considering the fact that there is some cloud with regard to the procedure established/adopted/prescribed by the Corporation as well as prescribed by the Transport Department in respect of Rules or OMs governing the service conditions, the matter stands remanded to the Board of Directors, ASTC who will take a fresh decision in respect of the promotion of the writ petitioner is concerned. Accordingly, the order stands set aside to the extent it relates to the petitioner. The Board will reconsider this matter upon taking all attending facts and circumstances and all the rules/ regulations/ OMs/ notifications applicable in respect of any service conditions laying down the criteria governing the service conditions of the employees like the petitioner. The Board will permit the petitioner to submit any document or credentials, if required and thereupon, the Board will take decision and pass a reasoned order in respect of the claims of the petitioner raised. Any such order is passed, a copy thereof shall be served on the petitioner. The respondent nos. 2 & 3 are directed to place the matter before the Board, ASTC within a period of 10 (ten) days from the date of receipt of a certified copy of this order and thereafter, within further a period of 60 (sixty) days the Board of ASTC shall take a fresh decision as directed above. Copies of any such decision taken shall be forwarded to the Department of Transport and also to the petitioner.

11. Writ petition is accordingly disposed of in terms of the above. No order as to cost.

JUDGE

Comparing Assistant