

GAHC010165032023



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

Case No. : Review.Pet./101/2023

NIKUMONI SAIKIA
D/O-LATE BIDYADHAR SAIKIA, R/O- DERGAON, P.O. DERGAON, DIST.-
GOLAGHAT, ASSAM, PIN- 785614.

VERSUS

THE STATE OF ASSAM AND 3 ORS . A
REP. BY THE COMMISSIONER AND SECRETARY, GOVT. OF ASSAM,
SOCIAL WELFARE DEPARTMENT, DIPSUR, GUWAHATI-6.

2:THE DIRECTOR
SOCIAL WELFARE ASSAM
UZANBAZAR
GUWAHATI.

3:THE ACCOUNTANT GENERAL
ASSAM
BELTOLA
GUWAHATI-29.

4:THE SECRETARY
DEPTT. OF WOMEN AND CHILD DEVELOPMENT
DISPUR
GUWAHATI

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 25-09-2023

[Soumitra Saikia, J]

Heard Mr. M.U. Mahmud, learned counsel for the review petitioner. Also heard Mr. D.K. Sarma, learned Additional Senior Government Advocate, Assam.

2. This review petition has been filed by the petitioner seeking a review of the order dated 27.04.2022 passed in Writ Appeal No.182 of 2021.

3. The review petitioner, who was working as an Assistant Child Development Project Officer under the Department of Social Welfare was not given her due promotion to the next higher post of Child Development Project Officer (CDPO) in the year 2006. Aggrieved, she filed a writ petition being WP(C) No.112/2011 seeking appropriate Writ, Direction or Order. This writ petition came to be disposed of by order dated 20.07.2012 directing the authority to consider the representation of the petitioner. When the claim of the petitioner for promotion to the post of CDPO was still not considered, she filed a contempt petition before this Court. Ultimately, in the year 2014 the review petitioner was promoted to the post of CDPO and subsequently, she superannuated in the year 2020. As her promotion was made effective from the year in which it was granted, which is 2014, the review petitioner again approached this Court by filing another writ petition being WP(C) No.4967/2020 seeking appropriate

orders that the respondent authority be directed to give effect to her promotion from the year 2006 since her juniors were promoted in the year 2006, overlooking her claim. WP(C) No.4967/2020 came to be dismissed by order dated 01.04.2021 pursuant to which a review petition being Review Petition No.33/2021 was filed which was also dismissed.

4. Being aggrieved, she filed the writ appeal being Written Appeal No. 182 of 2021. The Appellate Court upon consideration of the matter in its entirety, disposed of the appeal on 27.04.2022 with the following directions:

“

The only claim of the present appellant is for notional promotion to the post of CDPO from the year 2006 when her juniors were promoted.

Under these circumstances which we have already narrated above, we dispose of the present appeal with a direction to the State Government to constitute a Review Departmental Committee which shall review the case of the appellant for promotion from the year 2006 when her juniors were promoted to the next higher post. We say this only on the ground that though promotion cannot be claimed as a matter of right but definitely consideration for promotion is a right of an employee in service and in this case, till now, no reasonable explanation has come forward from the State as to why the appellant's promotion was denied. In case promotion is denied then reasons must be assigned.

In the light of the above facts, the review committee shall take a decision whether the petitioner (present appellant) was liable to be promoted in the year 2006 when her juniors were promoted. We make it absolutely clear that this should not be taken as a direction for promoting the petitioner. But the review committee must consider the matter and pass a speaking order.”

5. Thereafter, the review petitioner's case was considered by the authorities and by an order dated 27.09.2022 the Review Departmental Committee considered the case of the review petitioner and decided to promote the petitioner notionally to the cadre of CDPO with effect from the date when her immediate junior was promoted in the year 2006 vide notification no. SWD.88/2005/39, dated 20.01.2006. The Committee, however, decided that no claim for arrear salary and other benefits shall be admissible.

6. Learned counsel for the review petitioner submits that since the Appellate Court had held that the notional promotion was the only claim of the appellant in Writ Appeal No.182 of 2021 (review petitioner herein), the Review Departmental Committee declined to grant her arrear salary and other benefits. Accordingly, this Review Petition has been filed seeking a review of the findings of the Appellate Court in the order dated 27.04.2022 passed in Writ Appeal No.182 of 2021 that *the only claim of the petitioner is for notional promotion to the post of CDPO from the year 2006 when her juniors were promoted.*

7. Mr. D.K. Sarma, learned Additional Senior Government Advocate, appearing for the respondents no. 1, 2 & 4 submits that there is no error apparent on the face of the record. The learned counsel for the respondents contends that the denial of financial benefits has given rise to a new cause of action. It is submitted that as a new cause of action has arisen, a fresh writ petition, if required, ought to have been filed. As such, this review petition merits dismissal.

8. Learned counsel for the parties have been heard and review petition available on record have been carefully perused.

9. The order dated 27.04.2022 passed by the Appellate Court seeking review is also carefully perused. The Appellate Court by its order dated 27.04.2022 directed the Department to constitute a Review DPC to review the case for promotion of the review petitioner from the year 2006 as no reasonable explanation was forthcoming from the Department. Pursuant to the directions passed by the Appellate Court by its order dated 27.04.2022 in Writ Appeal No.182 of 2021, the Review DPC considered her case and granted her notional promotion with effect from the year 2006 from the date when her juniors were promoted.

10. Ordinarily, the denial of other benefits by granting the notional promotion would generate a fresh cause of action requiring the petitioner to agitate the matter by filing a separate proceeding, and we would have therefore rejected this review petition as this is strictly not a case for review as no error apparent on the face of the record has been pointed out to us. However, considering the fact that the review petitioner had superannuated in the meantime in the year 2020, we would like to close the review petition by clarifying that the direction of the Appellate Court to consider the case of the review petitioner for notional promotion having been carried out by the Department by order dated 27.09.2022 vide notification no. SWD.88/2005/39 and although this Court cannot direct the Department to pay the arrear salary for the period under consideration for which the petitioner never worked; however any

benefits, that would accrue to her as pensionary benefits if the review petitioner is entitled to under the provisions of law, the same shall be granted to the review petitioner by the respondent department. As such only by way of a clarificatory order, we direct the concerned Department to pass appropriate orders as directed above within a period of 30 (thirty) days from the date of receipt of a certified copy of this order in respect of her entitlements towards her pensionary benefits in view of the notional promotion already granted.

11. The Review Petition accordingly stands disposed of in terms of the above.

JUDGE

CHIEF JUSTICE

Comparing Assistant