

GAHC010237162017



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

Case No. : WP(C)/3460/2017

PURNIMA DESHMUKH BHATTACHARJEE
W/O- TARUN KUMAR DESHMUKH, R/O- NARSINGTOLLA, SILCHAR-1, P.O
and P.S- SILCHAR, DIST- CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
FISHERY DEPPT., DISPUR, GUWAHATI-6

2:THE DIRECTOR OF FISHERIES
ASSAM
GUWAHATI

3:THE DEPUTY DIRECTOR OF FISHERIES
CACHAR
SILCHAR

4:THE DISTRICT FISHERIES DEVELOPMENT OFFICER
CACHAR
SILCHAR

5:NANDITA BHATTACHARJEE
JUNIOR ASSISTANT
OFFICE OF THE DISTRICT FISHERY DEVELOPMENT OFFICER
CACHAR
SILCHAR
PARK ROAD
OPPOSITE RED CROSS
SILCHAR- 78800

Advocate for the Petitioner : MR.F U BORBHUIYA

Advocate for the Respondent : MS.H DAS R-5

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

10.08.2023

Heard Mr. F.U. Barbhuiya, learned counsel for the petitioner. Also heard Mr. S. Choudhury, learned counsel for the respondent No. 5.

2. This writ petition is filed by the petitioner impugning the Provisional Gradation List prepared by the Department on 14.06.2016 in respect of Junior Assistant and communicated vide letter dated 20.05.2017 issued by the respondent. 2 and a further direction to restrain the respondent No. 5 from being promoted to the post of Senior Assistant in the establishment of respondent No. 4- District Fisheries Development Officer Cachar, Silchar and a further direction to the respondent Authority to consider for promotion of the petitioner against the existing vacant post of Senior Assistant in the establishment of respondent No. 4 with retrospective effect and service benefits. The petitioner was appointed as LDA-cum-typist by order dated 29.10.1986 and was posted in the Office of Sub-divisional Fishery Development Officer, Cachar, Silcher.

3. It is the grievance of the petitioner that since the date of appointment she has been serving in the said department without any promotion. The private respondent No.5 was appointed as an LDA on 09.09.1986 and she had joined in the Office of the District Fishery Development Officer, N.C Hills, Haflong. Subsequently, on 23.12.1994, respondent No. 5 joined in the office of the respondent No. 4 on mutual transfer with one Smti Nanda Das who was serving

as LDA in the office of the District Fishery Development Officer.

4. The learned counsel for the petitioner submits that in view of the fact that the petitioner joined on mutual transfer, she was junior to the petitioner in the cadre of Junior Assistant under the District establishment of the jurisdiction of respondent No. 4. It is the further case of the petitioner that since there are no service Rules governing the services of the employees in the Department of Assam Fisheries, the service condition of the Ministerial Staff of the District establishment and Directorate of Establishments are governed by the Assam Ministerial District Establishment Service Rules 1967 and the Directorate Establishment (Ministerial Service) Rules 1973. The learned counsel for the petitioner submits that the All Assam Ministerial Officers Association, in the year 2005 approached this Court by filing writ petition being W.P.(C)No. 5297/2005 and this Court by judgment and order dated 06.12.2007 directed the respondents to prepare a District-wise Gradation List and from that list to consider the senior most eligible persons for promotion to the next higher post. This Judgment of the Co-ordinate Bench was assailed before a Division Bench and the Division Bench by judgment dated 14.08.2014 passed in W.A. No. 27/2010 dismissed the writ appeal preferred by the State and affirmed the directions of the Co-ordinate Bench.

5. However, in spite of such directions, the respondent authorities did not consider the case of the petitioner. It is submitted that, thereafter, in WP(C) No. 728/2016 filed by Smti. Jamini Barman and others, this Court disposed of the matter in the face of the Guidelines being laid down by the Department for preparation of Gradation List as well as for promotion.

6. The Guidelines issued by the Directorate of Fisheries was in respect of promotion of Junior Assistants to the post of Senior Assistants at District Level

till finalisation of Service Rules. These guidelines were framed by the respondent authorities and were required to be followed till finalisation of service Rules.

7. It was further directed that a District Level Selection Committee be constituted for preparation of District Level Gradation List for promotion from the Post of Junior Assistants to the Senior Assistants. In the said Order, it was also directed that while preparing the District Level Gradation List it must be prepared for each category considering the seniority as per the date of joining in service. However, in the District Level Gradation List prepared on 14.06.2016, the Respondent No.5 is placed at Sl. No. 1 above the petitioner notwithstanding the fact that the respondent No.5 had joined the District of Cachar only in the year 1994, upon a transfer from Haflong, N.C. Hills on her own request. The Learned counsel for the petitioner submits that District Level Gradation List prepared on 14.06.2016 is violative of the Guidelines dated 28.04.2016 issued by the respondent authorities.

8. The petitioner has assailed the District Level Gradation List prepared on 14.06.2016, wherein the Respondent No. 5 has been shown at Sl.No.1.

9. The private respondent filed her affidavit-in-opposition contesting the claims of the petitioner. In her affidavit, it was contended that her transfer from Haflong to Cachar District was on public interest, and therefore there was no question of the benefit of her seniority not being given to her. She denied the contention of the petitioner that she was transferred on mutual request and would therefore lose her seniority.

10. It was contended that she had joined in Cachar and was therefore senior to the petitioner in all respects. The Department also contested the case of the petitioner and denied the contentions of the petitioner.

11. Referring to the speaking order dated 28.04.2016 issued by the Director of Fisheries, it was contended that the said order will subsist till the finalization of the Rules governing the service conditions are finalized. It was contended by the learned counsel appearing for the respondent Department that the District Level Committee in all districts is to be constituted for the preparation of the District Level Gradation List as well as for selection for promotion as per provisions of the guidelines. These guidelines will be followed until finalization of the Service rule for the promotional matter of Junior Assistant to Grade-IV. In case of any inability shown by the senior most or the selected incumbent, the next incumbent in the order of seniority will be considered for promotion subsequently. All such promotions will be made subject to approvals being taken from the next higher authority.

12. In the affidavit filed by the respondent No.2, it was contended that the following criteria was adopted while preparing the guidelines:

“(i) There are more than one establishment in a District along with Office of the District Fishery Development Officer & Sub Divisional Fishery Development Officer in the districts like Kamrup, Cachar, Barpeta, Nagaon, Sonitpur, Sivsagar, Karbi-Anglong, and Kokrajhar district. On the other hand in some establishment there is no any sanctioned vacant post of Sr. Asstt.

(ii) It has already been stated that, in earlier cases the promotion of Jr. Asstt. were executed by the Director of Fisheries, Assam on the basis of State level gradation list prepared for district level establishments as per seniority. Accordingly original place of posting of Jr. Asstts. were also changed at the time of promotion. Already many of Jr. Asstt. were promoted to the post of Sr. Asstt. in the different district, and many of them had already been retired from service. As a result in most of the offices, the staff of Jr. Asstts are not from original place of posting, due to transfer and posting of Assistants during promotion and due to

some other reason. The petitioner is also one of such incumbent who had been originally posted in Office of the Sub-Divisional Fishery Development. Officer, Cachar and subsequently transferred to Office of the District Fishery Development Officer, Cachar.

In view of the above and to overcome the complicity of seniority of incumbents in present context, the districts having more than one office were clubbed together and detailed guideline has been prepared accordingly.

In the guide lines it has been specifically stated to prepare a provisional gradation list of each category considering the seniority as per date of joining in service under the district.

As such the claiming of seniority by the petitioner in the office of the District Fishery Development Officer, Cachar, is denied as Smti Nandita Bhattachajee, Jr. Asstt is senior than the petitioner as per date of joining in the service and also as per draft Gradation list submitted by District Fishery Development Officer, Cachar."

13. It was also contended that the representation preferred by the petitioner questioning the promotion of the respondent No. 5 was also disposed by a speaking order in terms of the guidelines of the Department.

14. Learned counsels for the petitioner and the respondents have been heard. None had represented the private respondent No. 5. The pleadings available on record have been carefully perused.

15. The case projected by the petitioner is that in the District Gradation List prepared for the district of Cachar for the post of Junior Assistant, the petitioner having joined in the said post since her date of joining, which is 29.10.1986 as an LDA-cum-Typist, she has been working in the said post since her date of joining. As such, within the district, she is the senior most. However, respondent No. 5 was initially appointed as a Junior Assistant on 23.01.1994 in the office

of the district Fishery Development Officer, NC Hills, Haflong.

16. The petitioner has projected her case that the respondent No. 5 joined in the present district by applying for a mutual transfer with one Smt Nanda Das who was serving as an LDA.

17. Pleadings on record have been perused. The case projected by the petitioner is that she is the senior most person within the district of Cachar, whereas respondent No. 5, although had joined the services earlier than the petitioner, but she had joined in another district, which is NC Hills.

18. In terms of the District Ministerial Service Rules as well as Directorate establishment Rules, the next promotion to the higher post of Senior Assistant. It is to be specified under Rule 11 that in the post of LDA, the seniority shall be according to the date of appointment, if the persons joined in the appointment within 15 days from the date of their appointment. In so far as the post of Senior Assistant is concerned, the seniority is to be on the basis of the position in the select list from which the promotion to the post of Senior Assistant is made.

19. A perusal of the Rules reveal that there is no clear provision whereby inter-district transfer is restricted under the said rules. The guidelines which were framed on 28.04.2016 lays down the procedure that a District Selection Committee will be constituted for the districts and a district level gradation list will be prepared for each category of post, namely senior assistant, junior assistant, Grade-IV, on the basis of seniority, which is on the date of joining in service under the district. This draft gradation list is to be circulated and thereafter the final gradation list is to be prepared and on the basis of this Gradation list, the district selection committee will recommend for promotion

and upon due approval, separate promotional orders may be issued by the appointing authority. Subsequently, while disposing of the representation of the petitioner by order dated 20.05.2017, the Director of Fisheries disposed of the representations of the petitioner by way of this communication addressed to the district Fishery Development Officer Cachar. In the said communication, the Director of Fisheries clarified that all Ministerial Assistants in the district were treated as district cadre with effect from the date of issuance of the speaking order mentioned (by which the guidelines were framed), namely order No. AF(E) 132/92-93/pt-II/318 dated 28.04.2016. A further reference was made to the order dated 10.02.2016 passed in WP(C) No. 728 of 2016, which was disposed of by a single bench of this Court in view of the speaking order dated 28.04.2016 passed by the competent authority. By the said communication, it was clarified that all existing Ministerial Staff in a district should be treated as a district cadre with effect from the issuance of the speaking order.

20. There is no dispute that as on date, there is no Service Rules governing the service conditions of the employees under the Fisheries Department. The promotions to the post of UDA has been effected in terms of the guidelines framed on 28.04.2016. While the petitioner submits that the respondent No. 5 had originally joined in the district of Haflong and she was transferred to Cachar on her own request/Mutual request and as such her the seniority cannot be granted to the Respondent No. 5 over and above the petitioner who had joined in the district of Cachar and has been working since then, the respondent No. 5 in her affidavit has disputed such contentions of the petitioner.

21. The petitioner had referred to the order of the transfer order of the petitioner to submit that it does not reflect any TA thereby indicating that this transfer is on mutual request and not in public interest. The 1967 and 1973

Rules although governs the service conditions of the District Ministerial Service and Directorate Ministerial Services, there is no specific bar that the incumbents cannot be transferred out of the district in public interest, if required. The order dated 09.12.1994 transferring the respondent No. 5 which is available at Annexure-B to the affidavit filed by the respondent No. 5 whereby the respondent No. 5 was transferred from NC Hills to Cachar District and one Smt Nanda Das, was transferred from Cachar to Haflong does not reflect that it was made as a mutual transfer or in own request. The order itself reflects that it is in the interest of public service. That apart, this order is not only an order of transfer in respect of respondent No. 5 and the said Smt. Nanda Das. By the said order also, two other persons have also been transferred in other districts. As such, the mere fact that TA/DA has not been shown to be payable in the said Order cannot by itself be the sole consideration to come to a conclusion that this order was issued by way of mutual transfer or transfer on in own request. There is no other material on record to suggest that the TA/DAs were withheld or not payable only because the transfer was effected on mutual transfer. As such, this contention of the petitioner cannot be accepted. The averments in the affidavits filed by the State also does not reflect that this transfer order was passed on mutual request.

22. That apart, in view of this finding by the court, the contention of the petitioner that the decision of the authority by communication dated 20.05.2017, whereby the representation of the petitioner was rejected and it was clarified that with effect from the date of the Guidelines dated 28.04.2016, all existing ministerial staff in the district should be treated as district cadre with effect from the date of issuance of the speaking order also cannot be said to be in conflict with the Rules of 1967 and Rules of 1973.

23. There is no dispute that the Guidelines which are laid down by communication dated 28.04.2016 are required to be enforced till the service rules are framed. These guidelines have not been put to challenge by the petitioner. It is also not disputed that the petitioner has in the meantime superannuated from her service.

24. In view of the discussions above, the claims made by the petitioner by way of the present writ petition cannot be entertained.

25. In that view of the matter, the contentions raised in the writ petition are not acceptable. The writ petition fails and is found to be devoid of merit and therefore dismissed.

JUDGE

Comparing Assistant