

GAHC010014222013



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

Case No. : WP(C)/7546/2013

SMTI MAMANI NATH
W/O JITUMANI TALUKDAR, R/O PUTHIMARI, P.O. ODALGURI, DIST-
BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, SOCIAL WELFARE DEPARTMENT, DISPUR, GHY-6

2:THE DIRECTOR
SOCIAL WELFARE DEPARTMENT
UZANBAZAR
GHY.-1

3:DISTRICT PROGRAMME OFFICER
BARPETA
ICDS PROJECT
BARPETA

4:THE CHILD DEVELOPMENT PROJECT OFFICER
BHAWANIPUR ICDS PROJECT
BARPETA

5:NIZARA DEKA
SUPERVISOR
C/O CHILD DEVELOPMENT PROJECT OFFICER
RUPSHI
ICDS PROJECT
KALGASIA
BARPETA

Advocate for the Petitioner : MR.K DAS

Advocate for the Respondent : SC, SOCIAL WELFARE

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

15.02.2024

Heard Mr. S. Khound, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned Additional Senior Government Advocate appearing for the respondent Nos. 1 to 4. None appears for the respondent No.5.

The grievance of the petitioner as raised in the present proceedings pertains to the depression of her seniority in the cadre of Supervisor in the Social Welfare Department in comparison to the respondent No.5, although the petitioner was placed above the respondent No.5 in the select list prepared leading to their appointment as Supervisor. The petitioner further prays that she is to be brought under the coverage of the Assam Services Pension Rules 1962 and not under the New Contributory Pension Scheme under which she was covered on her appointment as Supervisor.

A process for recruitment being initiated for filling up of vacant posts of Supervisor and names being decided to be called from the Employment Exchange across the State, the name of the petitioner was forwarded by the jurisdictional District Employment Exchange to the authorities of the Department of Social Welfare, Assam for recruitment to the post of Supervisor. The petitioner, after having cleared the various stages of the said selection process, was included in the select list so prepared at Sl. No.35 on merit. The petitioner

belongs to the OBC category. The respondent No.5, who had taken part in the said selection process also figured in the said list and was placed at Sl. No.37 and the said respondent belongs to the Schedule Caste community. The respondent No.5 was offered with an appointment against the said post on 27.02.2006. However, the petitioner was not offered such appointment, although she belonged to the OBC category.

The petitioner being aggrieved had approached this Court by instituting the WP(C) No. 506/2006 assailing the appointment of the respondent No.5. This Court vide order dated 09.03.2010 was pleased to dispose of the said application requiring the respondents to look into the grievance of the petitioner, more particularly, the grievance raised by the petitioner that there was 27% reservation for the candidate belonging to the OBC community which was not reckoned while effecting appointments from the select list in question. In terms of the order passed by this Court vide order dated 09.03.2010, the Director of Social Welfare, vide order dated 31.05.2010, on noticing that the vacancies against the OBC category was not covered during the recruitment process, had redressed the grievance of the petitioner by accommodating her against a post reserved for OBC/MOBC candidates. Accordingly, vide order dated 29.03.2012 the petitioner came to appointed as Supervisor. In the order of appointment dated 29.03.2012, there is a stipulation made that the services of the petitioner would be governed by the "New Defined Contribution Pension Scheme" introduced by the Government w.e.f. 01.02.2005.

On perusal of the materials brought on record it is seen that the interview in the said recruitment process was held on 27.01.2005 and the select list was published on 11.11.2005. Thereafter appointments came to be made from the

said select list including the appointment of the petitioner as Supervisor made on 29.03.2012. The appointments having been so made and the appointees having entered into Government service against the post of Supervisor in pursuance to the said process of recruitment after 01.02.2005, they cannot claim to be covered by the provisions of Assam Service Pension Rules, 1969 and would be covered under the "New Defined Contribution Pension Scheme", introduced w.e.f. 01.02.2005. Accordingly, the grievance of the petitioner to the extent that she has not been covered under the provisions of the Assam Services (Pension) Rule 1969 does not merit consideration.

With regard to the claim of the petitioner that she has been deprived of her seniority in the post of Supervisor in comparison to the respondent No.5 is now required to be considered. It is to be noted that the petitioner was placed at Sl. No. 35 on merit in the select list so prepared for the post, while the respondent No. 5 was placed at Sl. No. 37 on merit therein. The respondent No.5 was appointed at an earlier point of time against the said post by applying the principles of reservation against a vacancy identified for the SC community candidates and the petitioner was appointed subsequently on 29.03.2012, but the said appointments were so effected from the same select list and as such the seniority of the petitioner and the respondent No.5 have to be reckoned basing on the positions obtained by them in the select list. It is settled law that the inter-se seniority of candidates recruited in the same selection process is to be fixed in the in terms of the merit position as obtained by the candidates in the selection so held. The petitioner having been placed above the respondent No.5 in the select list, she would rank senior to the respondent No.5 in pursuance to their respective appointments to the said post. The appointment of respondent No.5 being affected at an earlier point of time than that of the

petitioner on account of application of the principle of reservation would not clothe the respondent No.5 with seniority in the matter and such seniority shall be determined in terms of her merit position in select list in question.

In this connection reference may be made to the provisions of Rule 4(v) of the Assam Scheduled Caste and Scheduled Tribe (Reservation of vacancies in the services and post) Rules 1983 which mandates that the seniority of the candidate so appointed shall be determined in order of preference shown in the combined select list furnished by the Selection Committee. The petitioner admittedly being placed above the respondent No.5 on merit in the select list in question, she would rank senior to the respondent No.5 in the cadre of Supervisor.

In view of the said conclusions, while the claim of the petitioner for inclusion under the Provision of the Assam Service Pension Rules, 1962 is rejected, the petitioner is declared to be senior to the respondent No.5 on the basis of the respective merit position as obtained by them in the selection preceeding their such appointment and as reflected by virtue of their placement on merits in the select list in question. Accordingly, the respondent authorities would now consider the petitioner to be senior to the respondent No. 5 in the cadre of Supervisor and reckon the said position for grant of all service benefits to the petitioner including promotion to the next higher cadre of the service.

With the above observations and directions this writ petition stands disposed of.

JUDGE

Comparing Assistant