

GAHC010152702023



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

Case No. : WA/445/2023

BIKASH RANJAN SHOME
S/O LT. PRABHAT CHANDRA SHOME, PROJECT ROAD, P.O.PATHARKANDI,
DIST KARIMGANJ, ASSAM, 788724

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
REVENUE (REGISTRATION)DEPTT, DISPUR, GHY-6

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

REVENUE REGISTRATION DEPTT
DISPUR
GHY-6

3:THE INSPECTOR GENERAL OF REGISTRATION

ASSAM
BAMUNIMAIDAN
GHY-21

4:THE DIST REGISTRAR

KARIMGANJ DIST
KARIMGANJ
ASSAM

5:MD. ABDUL MATIN

S/O LATE WAKIB ALI

RESIDENT OF VILLAGE HULASHNAGAR
PO ANIPUR
788734
KARIMGANJ
ASSA

Advocate for the Petitioner : MR. N DHAR

Advocate for the Respondent : MR. J HANDIQUE, SC, REVENUE DEPTT.

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 21.06.2024
(Vijay Bishnoi, CJ)

This writ appeal is filed by the appellant being aggrieved with the order dated 13.06.2023 passed by the learned Single Judge in WP(C) No.1245/2011. In the writ petition, the petitioner has made twin prayers. Prayer No.(i) for setting aside the order of promotion dated 29.01.2011, whereby, the respondent No.5 was promoted to the post of Upper Division Assistant (UDA) (ii) to issue a writ of mandamus directing the respondents to absorb the petitioner in the cadre of LDA with retrospective effect from 01.08.1988 and thereafter to give him promotion to the post of UDA with all consequential benefits.

2. The learned Single Judge after hearing the learned counsel for the parties has dismissed the writ petition with the following:-

“8. I have considered the submissions advanced by the learned counsel for both the sides and have also gone through the materials available on record.

9. It is not in dispute that during the pendency of this writ petition the writ petitioner as well as the respondent No.5 had attained the age of superannuation and they have retired from service. In so far as the claim of the

petitioner of being absorbed in the post of LDA with effect from 01.08.1988 i.e. the date on which he was regularly absorbed as Extra-Writer is concerned, the said prayer was made in C.R. No.6384/1996 instituted by the writ petitioner as the Assistant General Secretary of All Assam Extra-Writers Association. However, the prayer made by the petitioner was declined by the learned Single Judge by judgment dated 14.09.1999 by holding that the writ petition was frivolous and misconceived. Even the Writ Appeal bearing No.385/1999 preferred by the petitioner was withdrawn vide order dated 20.01.2006 with liberty to furnish particulars of the individuals seeking relief before the competent authorities. Mr. Sen submits that his client had submitted a representation and was awaiting the outcome of the process before the departmental authorities. Be that as it may, the fact remains that the writ petitioner had unsuccessfully agitated the same issue in the earlier round of litigation before this Court. Therefore, the issue as to whether the petitioner had a right to be absorbed in the cadre of LDA with effect from 01.08.1988 or not is no longer open to debate and therefore, cannot be gone into in the present proceeding. The matter would have been different if the representation submitted before the departmental authorities in terms of the order dated 20.01.2006 passed in Writ Appeal No.385/1999 had been considered and determined by the authorities giving rise to a fresh cause of action.

10. It further appears that the respondent No.5 was regularly absorbed as an Extra-Writer with effect from 01.08.1988 on the strength of the order dated 18.11.2003 passed by the learned Single Judge in Civil Rule No.5402/1995. Thereafter, the respondent No.5 was promoted/absorbed in the post of LDA but such absorption of the respondent No.5 as LDA is not under challenge in the present proceeding. If that be so, there can be no doubt about the fact that the respondent No.5 was borne in the cadre of LDA on a date prior to the date of regularization of the petitioner's service in the cadre of LDA. Therefore, I do not find any justifiable ground to hold that the promotion of the respondent No.5 to the post of UDA ahead of the writ petitioner was illegal.

11. What is also significant to note herein that the writ petitioner did not take sufficient steps to pursue the remedy before this Court while he was in service. This fact, when viewed in the light of the fact that the writ petitioner had never challenged the order of regularization of the service of respondent No.5 in the cadre of LDA, would be sufficient grounds for this Court to hold that the writ petition is not maintainable in the facts and circumstances of the case. Moreover, the relief prayed for by the petitioner also cannot be granted to him at this distant point of time. This Court finds that there is substantial delay in

filing the writ petition and such delay in pursuing remedy by the petitioner, in the opinion of this Court, cannot be treated as innocuous delay."

3. Having heard the learned counsel for the parties, we are of the view that the learned Single Judge has not committed any illegality in passing the impugned order in view of the fact that the claim of the appellant for absorbing him in the post of LDA with retrospective effect from 01.08.1988 has already been adjudicated by this Court in CR No.6384/1996 decided on 14.09.1999, wherein, this Court has rejected the said claim and the writ appeal filed against the said decision has also been dismissed.
4. We are of the view that the learned Single Judge has rightly not granted the prayer of the petitioner to set aside the order of promotion of the respondent No.5 to the post of UDA because the appellant has never challenged the promotion of the respondent No.5 on the post of LDA, which is a Feeder post of the post of UDA.
5. In such circumstances, we do not find any case for interference.
Accordingly, the writ appeal is dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant