

GAHC010169462022



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

Case No. : WA/55/2023

THE DIRECTOR NATIONAL INSTITUTE OF TECHNOLOGY AND ANR.
SILCHAR, ASSAM, 788010, INDIA

2: THE CHAIRMAN
BOARD OF GOVERNORS
NATIONAL INSTITUTE OF TECHNOLOGY
SILCHAR
ASSAM
INDIA, 78801

VERSUS

ARUP BHATTACHARJEE
ASSTT. PROFESSOR,
DEPARTMENT, CSE, NATIONAL INSTITUTE OF TECHNOLOGY, SILCHAR,
ASSAM, 788010, INDIA

Advocate for the Petitioner : MR. S P CHOUDHURY, MR. S. J. SARKAR, MS B DEVI,
MR K BISWAKARMA

Advocate for the Respondent : MR S NATH, MR. S DUTTA, DR G J SHARMA

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGMENT

Date : 13-09-2024

(Kardak Ete. J)

Heard Mr. S. P. Choudhury, learned counsel for the appellants. Also heard Mr. S. Dutta,

learned Senior Counsel assisted by Mr. S. Nath, learned counsel for the sole respondent.

2. This intra-Court appeal is directed against the judgment and order dated 21.07.2022 passed by the learned Single Judge in WP(C) 5055/2017, by which, the writ petition filed by the respondent/petitioner has been allowed, thereby setting aside the Minutes of the meeting/report of the Committee dated 27.04.2017 and the Minutes of the 53rd and 54th Board of Governors (BOG in short) meeting dated 06.05.2017 in so far as the petitioner/respondent is concerned. The learned Single Judge has directed the appellants to promote the petitioner as Lecturer (Senior Grade) w.e.f. 03.10.2001 with consequential service benefits including arrear monetary benefits and also to grant consequential service benefits as Lecturer (Selection Grade), Assistant Professor (Selection Grade) on the basis of the UGC notification relating to the appointment of teacher in Universities and Colleges as issued from time to time.

3. Facts of the case, in brief, are that the respondent/petitioner is serving as Assistant Professor in National Institute of Technology, Silchar. The respondent/petitioner has challenged the Minutes of the Meeting/Report of the Committee dated 27.04.2017 and a corresponding Minutes of the 53rd and 54th BOG Meeting dated 06.05.2017 with regard to consideration of the case of the respondent/petitioner for promotion to the post of Lecturer (Senior Grade) with effect from 03.10.2001 with consequential service benefit including arrear monetary benefits in view of the judgment and order dated 03.02.2017 passed in WP(C) 1969/2014. It is the further case of the respondent/petitioner that he being entitled to be promoted to the post of Lecturer (Selection Grade) at least w.e.f. 03.10.2006 with consequential service and monetary benefits and also for a specific direction to the appellants to promote the respondent/petitioner to the post of Associate Professor on completion of 3 years as Assistant Professor.

4. Essentially, the grievance of the respondent/petitioner is that the post which he was previously holding as System Programmer, a post equivalent to the post of lecturer, in the establishment of the appellants, should be taken into account for consideration for promotion, under the Career Advancement Scheme (in short CAS). Therefore, he is entitled to be promoted under the CAS by considering the period of service as System Programmer.

5. The contention of the respondent/petitioner is that the decision of the Appellants Institute in not considering promotion of the respondent /petitioner under CAS, is in the teeth of the judgement and order dated 03.02.2017 passed in W.P.(C) No.1969/2014 by this Hon'ble court (since not complied with) and as such the impugned minutes of the meeting of the committee dated 27.04.2017 and the corresponding minutes of the 53rd and 54th BOG meeting dated 06.05.2017 so far as the respondent/petitioner is concerned being illegal and arbitrary, is liable to be set aside and quashed. The post held by respondent/ petitioner as System Programmer being equivalent to the post of Lecturer and considering his past service, ought to have recommended for promotion under the CAS and the appellants by not doing the same had acted in an illegal and arbitrary manner and as such the minutes of the BOG rejecting the promotion of respondent/petitioner is illegal as the BOG while rejecting the prayer of the respondent/petitioner had failed to take into account that the respondent/petitioner while discharging his duties had qualified himself for promotion to the next higher post under CAS.

6. On the other hand, the contention of the appellants is that the entitlement of the respondent/petitioner was actually based on his initial entry and since the post of teaching and non-teaching cannot be equated with under any circumstances as such there was no illegality and infirmity in the decision to reject the grievance of the respondent/petitioner. The writ petition is not maintainable since the respondent/petitioner could not specify as to how he was deprived from getting promotion under CAS as the same is required to be considered based on his continuation of service for a particular period of time based on his service condition. The respondent/petitioner is not entitled for any relief since he was not involved in any teaching post and person of non-teaching post cannot be construed as a teaching post for further consideration under CAS.

7. On detail consideration of the matter, the learned Single Judge has come to the finding that vide judgment and order dated 03.02.2017 in WP(C) No. 1969/2014, the court had come to a finding that the post of System Programmer is equivalent to the post of Lecturer in Computer Science and Engineering and it further observed that the said aspect of the matter was overlooked by the Selection Committee in its meeting held on 17.01.2014 and same point

has been raised by the appellants/respondents which had been specifically dealt with by this court in the said judgment dated 03.02.2017. The direction given to the appellants to reconsider the case of the appellant for placement as Lecturer (Senior Scale) with effect from 31.10.2001 and to grant all consequential benefits was a mandamus directing the appellants/respondents to consider the case of the respondent /petitioner. That the appellants/respondents in order to nullify the direction passed by this Court, have rejected the case of the respondent/petitioner on grounds which were not germane to the issue and which were also barred by constructive res judicata. The pleadings in the case of the appellants/respondents are nothing but a mere repetition of the earlier pleadings and, therefore, held to be groundless.

8. Mr. S.P. Choudhury, learned counsel for the appellants, submits that although there existed some similarity in terms of qualification of system programmer and lecturer but the same cannot be construed to be equivalent for consideration under the CAS as the post of Lecturer is a teaching post whereas the post of System Programmer is a non-teaching post (non-academic) and not guided by AICTE norms. It is the specific case of the appellants that respondent/petitioner cannot be considered for promotion under the CAS as the post of System Programmer is not same as that of Lecturer. The respondent/petitioner was recommended for promotion as Lecturer (Senior Scale) w.e.f 17.01.2004 on which date the BOG approved the recommendation for consideration under the CAS although during that relevant period of time the respondent/petitioner has completed only 5 years of service in the post of Lecturer. The respondent/petitioner was given due consideration for promotion under the CAS and there was no illegality meted out to the respondent/petitioner.

9. Mr. S.P. Choudhury, learned counsel, submits that the respondent/petitioner by filing the affidavit-in-reply, has contended that the UGC guidelines dated 24.12.1998, have stated that service experience of organizations such as CSIR, ICAR, DRDO, etc. should also be considered while counting past service. However, none of these organizations are teaching/academic institutes. Thus, consideration of past service experience for promotion under CAS, according to UGC, does not depend on whether entry point in service is in non-teaching/teaching cadre etc. He submits the appointment letter dated 22.12.1999 placed by

the respondent/petitioner, goes to show that he was freshly appointed as Lecturer in Computer Science and Engineering.

10. Mr. S.P. Choudhury, learned counsel, submits that the learned Single Judge, has erroneously come to a finding that in view of the judgment and order dated 03.02.2017 in W.P. (C) No. 1969/2014 there is very limited scope for the appellants and appellants were under obligation to give promotion to the respondent /petitioner. The issue raised by the appellants was negated on the ground that the UGC vide guideline dated 24.12.1998 had clarified the contention as raised by the respondent/petitioner and there being no embargo to give promotion to the respondent/petitioner under CAS.

11. Mr. S.P. Choudhury, learned counsel, submits that the learned Single judge while passing the impugned judgment and order has failed to appreciate the fact that finding of the coordinate bench has no overriding effect and the other coordinate bench can take an independent view and in the instant case the judgment and order dated 03.02.2017 passed in WP(C) No. 1969/2014 cannot be a guiding principle in adjudicating the writ petition and in passing the impugned judgment and order which has vitiated the same and the same is liable to be set aside and quashed. He submits that the Hon'ble Single Judge while passing the impugned judgment and order misconstrued the contention of the appellants with regard to the fact that the System Programmer and Lecturer are not equivalent post and when one is Non-Teaching and the other one is Teaching post which cannot be equated under any circumstances and there being nothing on record which would justify such observation of similar post and in that view of the matter the action of the appellants cannot be faulted with and thereby the learned Single Judge has arrived at an erroneous finding observing two posts to be similar. He submits that the petitioner was freshly appointed in the post of Lecture whereas his previous appointment was in the post of System Programmer which is a non-teaching post and the benefit of CAS is applicable for teachers of Degree Level Technical Institutions and in the instant case there is nothing on record which would substantially justify that the person of non-teaching post can also claim the same benefit after being freshly appointed to the teaching post and in that view of the matter the finding of the learned Single Judge has no legally justifiable basis and as such the impugned judgment and

order is liable to be set aside and quashed.

12. Mr. S.P. Choudhury, learned counsel, submits that the finding of the learned Single Judge that the pleading of the appellants/respondents are nothing but a mere constructive res judicata is absolutely incorrect in view of the fact that the plea taken by the petitioner was similar to the plea taken in the previous writ petition and in that view of the matter the respondents have countered the contention raising objection to the applicability of the CAS so far as the petitioner is concerned. The learned Single Judge has failed to take note of the fact that the post of System Programmer and Lecturer is not equivalent and there was nothing on record which could justify the contention of the petitioner and merely based on presumption the claim was made which is absolutely perverse and this relevant aspect was not taken into consideration.

13. Mr. S.P. Choudhury, learned counsel, submits that the learned Single Judge did not take into consideration the contention of the appellants that the minimum qualification for the post of Lecturer in Computer Science and Engineering Dept. was First Class BE/B.Tech. and it is a teaching (Academic) post guided by AICTE norms whereas System Programmer is a non-teaching Post and not guided by AICTE norms and the minimum qualification as prescribed being M.Sc. in Mathematics also along with the qualification of 1st Class BE in CSE or ECE or EE. The respondent/ petitioner was freshly appointed as Lecturer on 23.12.1999 and accordingly all the entitlements were given to him by counting from his fresh appointment as Lecturer.

14. Mr. S.P. Choudhury, learned counsel, submits that the learned Single Judge while arriving at a conclusion with regard to counting of past service had committed error by resembling the case of the respondent/petitioner with one Dilip Dutta who had joined the appellant Institute on probation and his consideration under the CAS with effect from 26.06.2000 has got no similarity in so far as the case of the respondent/petitioner is concerned as the eligibility criterion for granting promotion under the CAS is only applicable for teachers of Degree Level Technical Institutions and considering such guideline there has been no consideration by the learned Single Judge to arrive at a conclusive finding as to the entitlement of petitioner for promotion under CAS.

15. Mr. S.P. Choudhury, learned counsel, submits that the learned Single Judge while passing the impugned judgment and order erroneously emphasized the UGC OM dated 24.2.1998 whereas the CAS was formulated on 31.07.2001 and the said scheme specified the guidelines for promotion procedure of Teachers in self Financing Degree Level Institutions and there was nothing on record which would justify that the UGC OM was having binding effect on the notification of the AICTE and in that view of the matter the finding and observation of the learned Single Judge is devoid of any basis.

16. Mr. S. Dutta, learned Senior Counsel for respondent/ petitioner submits that the respondent/petitioner was appointed as System Programmer on 03.10.1996 after following a selection process in the then Regional Engineering College, Silchar, now the National Institute of Technology, Silchar. Vide OM dated 15.09.2003, the scheme CAS for teachers of degree level Technical Institutions was framed. As per the said Scheme, the minimum length of service to be eligible for placement in the grade of Lecturer (Senior Scale) is 5 years for those having M. Phil or M. Tech degree. The Selection Committee in the National Institute of Technology, appellants, held its meeting on 17.01.2004 and found the Petitioner eligible for placement as Lecturer (Senior Scale) with effect from 17.01.2004. Further, by the Minutes of the Selection Committee dated 17.01.2004 the petitioner was recommended for Lecturer (Senior Scale) with effect from 17.01.2004.

17. Mr. S. Dutta, learned Senior Counsel, submits that the respondent/petitioner, being aggrieved, for not granting him Lecturer (Senior Scale) with effect from 03.10.2001, by not taking into consideration his period of service rendered as System Programmer under the Computer Science and Engineering Department, had approached this court by filing the writ petition being WP(C) 1969/2014. The stand of the appellants clearly shows that the same grounds were taken as has been taken in the present proceedings thereby unsuccessfully attempted to justify the reasons for recommendation of the Petitioner as Lecturer (Senior Scale) with effect from 17.01.2004.

18. Mr. S. Dutta, learned Senior Counsel, submits that vide judgement and order dated 03.02.2017, WP(C) 1969/2014 was disposed of wherein the learned Single Judge has come to a categorical finding that the post of System Programmer is equivalent to the post of lecturer

in Computer Science and Engineering and it has further observed that the said aspect of the matter was overlooked by the Selection Committee in its meeting held on 17.01.2004. The appellants have raised the same issue before the learned Single Judge as well before this Court which has been specifically dealt with in the judgement and order dated 03.02.2017. The appellants have preferred a Writ Appeal against the judgment and order dated 03.02.2017 passed in the WP(C) No.1969/2014. There being a delay, an application for condonation of delay was also filed being I.A(Civil) No.148/2018. The Division Bench of this Court vide an order dated 25.03.2019 had dismissed the said application seeking condonation of delay. No further appeal or proceedings has been preferred against the order dated 25.03.2019 passed in I.A(Civil) No.148/2019, therefore, the judgement and order dated 03.02.2017 in WP(C) No.1969/2014 has attained finality. Therefore, he submits that there is no infirmity in the impugned judgement and order dated 21.07.2022 and as such the present appeal may be dismissed.

19. We have considered the submissions of the learned counsel for the parties and the materials available on record including the judgment and order dated 03.02.2017 and 21.07.2022.

20. On consideration of the materials on record, we find that admittedly, the respondent/petitioner was appointed as System Programmer on 03.10.1996 after following a selection process in the then Regional Engineering College, Silchar, now National Institute of Technology, Silchar. Vide OM dated 15.09.2003, the CAS for teachers of degree level Technical Institutions was framed. As per the said Scheme, the minimum length of service to be eligible for placement in the grade of Lecturer (Senior Scale) is 5 years for those having M. Phil or M. Tech degree. The Selection Committee in the National Institute of Technology, appellants herein, held its meeting on 17.01.2004 and found that the respondent/petitioner was eligible for placement as Lecturer (Senior Scale) with effect from 17.01.2004.

21. Being aggrieved of not granting him Lecturer (Senior Scale) with effect from 03.10.2001 by not taking into consideration his past service rendered as System Programmer under the Computer Science and Engineering Department, the respondent/petitioner had approached this court by filing the writ petition being WP(C) 1969/2014 which was disposed of by

judgment and order dated 03.02.2017, wherein the learned Single Judge came to a categorical finding that the post of System Programmer is equivalent to the post of lecturer in Computer Science and Engineering and it was further observed that the said aspect of the matter was overlooked by the Selection Committee in its meeting held on 17.01.2004. Consequently, the learned Single Judge directed the appellants to reconsider the case of the petitioner for placement as Lecturer (Senior Scale) w.e.f. 03.10.2001 and to grant all consequential benefits. The appellants have preferred a Writ Appeal against the judgment and order dated 03.02.2017 passed in the WP(C) No.1969/2014. An application for condonation of delay was also filed being I.A(Civil) No.148/2018. The Division Bench vide an order dated 25.03.2019 had dismissed the said application seeking condonation of delay. Admittedly, no further appeal or proceedings has been preferred against the order dated 25.03.2019 passed in I.A(Civil) No.148/2019. In view of the above position, the findings arrived at by the learned Single Judge to the effect that the post of the System Programmer is equivalent to the post of Lecturer in Computer Science and Engineering for which the period of service rendered by the petitioner as System Programmer was required to be taken into consideration which was overlooked by the Selection Committee, vide judgement and order dated 03.02.2017 in WP(C) No.1969/2014, has attained finality.

22. On perusal of the judgment and order dated 03.02.2017 passed in WP(C) No.1969/2014, we find that the learned Single has dealt with the merits of the matter and found that the decision taken in the Selection Board Meeting dated 17.01.2004 to be not in consonance with the facts and the applicable law and therefore directed the appellants to reconsider the case of the respondent/petitioner for placement as Lecturer (Senior Scale) w.e.f. 03.10.2001 and thereafter to grant all consequential benefits. We are of the view that the findings arrived at by the learned Single Judge that the post of the System Programmer is equivalent to the post of Lecturer in Computer Science and Engineering for which the period of service rendered by the petitioner as System Programmer was required to be taken into consideration which was overlooked by the Selection Committee had attained finality and same cannot be reagitated.

23. Perusal of the pleadings of the appellants in both the writ petition being WP(C)

1969/2014 and the present writ petition, clearly reveals that grounds taken are same without there being any new grounds justifying the reasons for recommendation of the Petitioner as Lecturer (Senior Scale) w.e.f. from 17.01.2004. As noted above, the learned Single Judge vide judgement and order dated 03.02.2017 in WP(C) No.1969/2014 has specifically dealt with the issue which has attained finality, therefore, the same could not be permitted to be reagitated again.

24. Having considered carefully the findings and observations by the learned Single Judge impugned herein, we are of the view that the learned Single judge has considered every aspects of the matter and applicable law which requires no interference and we do not have any other view than the view taken by the learned Single Judge as in the judgment and order dated 03.02.2017 passed in WP(C) No.1969/2014, the Court specifically has dealt with the merits of the matter and found that the decision taken in the Selection Board Meeting dated 17.01.2004 to be not in consonance with the facts and the applicable law and directed to reconsider the case of the respondent/petitioner for placement as Lecturer (Senior Scale) w.e.f. 03.10.2001 and thereafter to grant all consequential benefits. As noted above, the findings arrived at that the post of the System Programmer is equivalent to the post of Lecturer in Computer Science and Engineering for which the period of service rendered by the petitioner as System Programmer was required to be taken into consideration which was overlooked by the Selection Committee, had attained finality. We do not find any reason to re appreciate the matter which had attained finality that too in an intra-Court appeal.

25. In the above context, we would refer to the case of **Tractor and Farm Equipment Ltd. Vs. Secretary to the Govt. of Assam, Dept. of Agriculture and Ors.** reported in **2004 (1) GLT 117**, wherein it has been held, which is reproduced herein below:

“26. While dealing with the present appeal, one has to bear in mind that a writ appeal is really not a statutory appeal preferred against the judgment and order of an inferior to the superior Court. The appeal inter se in a High Court from one Court to another is really an appeal from one coordinate Bench to another co- ordinate Bench and it is for this reason that a writ cannot be issued by one Bench of the High Court to another Bench of the High Court nor can even the Supreme Court issue writ to a High Court. Thus, unlike an appeal, in general, a writ appeal is an appeal on principle and that is why, unlike an appeal, in an ordinary sense, such as a criminal appeal, where the whole

evidence on record is examined anew by the appellate Court, what is really examined, in a writ appeal, is the legality and validity of the Judgment and/ or order of the Single Judge and it can be set aside or should be set aside only when there is a patent error on the face of the record or the judgment is against the established or settled principle of law. If two views are possible and a view, which is reasonable and logical, has been adopted by a Single Judge, the other view, howsoever appealing such a view may be to the Division Bench, it is the view adopted by the single Judge, which should, normally, be allowed to prevail. Hence, the impugned judgment of the learned Single Judge cannot be completely ignored and this Court has to consider the judgment and order in its proper perspective and if this Bench, sitting as an appellate Bench, is of the view that the decision has been arrived at by the learned Single Judge without any material error of fact or law, then , the judgment, in question, should be allowed to prevail. The reference made, in this regard, by Mr. Dutta to the case of [Ramendra Nath, Dey \(2001 \(1\) Gauhati Lr 94\)](#) (supra) is not misplaced."

26. In the case of **M. Nagabhushana Vs. State of Karnataka and Ors.** reported in **(2011) 3 SCC 408**, the Hon'ble Supreme Court has held, as under:

"12. The principles of Res Judicata are of universal application as they are based on two age old principles, namely, 'interest reipublicae ut sit finis litium' which means that it is in the interest of the State that there should be an end to litigation and the other principle is 'nemo debet his ve ari, si constet curiae quod sit pro un aet eademn cause' meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of Res Judicata is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a Court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of Res Judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of Res Judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing Court for agitating on issues which have become final between the parties.

27. Having considered the submissions and after going through the materials available on record including the impugned judgement and orders dated 03.02.2017 and 21.07.2022, we are of the view that the matter, having been specifically dealt with on merits and applicable law by the learned Single Judge in the judgment and order dated 03.02.2017 in WP(C) No.1969/2014, which has attained finality, no interference is called for to the impugned judgement and order dated 21.07.2022 passed by learned Single Judge. There is no infirmity in the impugned judgement and order dated 21.07.2022.

28. In view of discussions made herein above, we do not find any infirmity in the impugned judgement and order dated 21.07.2022, warranting interference in this intra-Court writ appeal. Hence, the writ appeal fails and dismissed as being devoid of merit.

JUDGE

JUDGE

Comparing Assistant