

GAHC010194942020



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

Case No. : WP(C)/144/2021

BIDYUT KUMAR DEB
S/O- LT. BARINDRA KR. DEB, PERMANENT R/O- THANA ROAD, WARD NO.
12, NEAR S.P. BUNGLOW, P.O. AND DIST.- KARIMGANJ, PIN- 788710, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF
PUBLIC HEALTH ENGINEERING (PHE), DISPUR, GHY-6

2:THE CHIEF ENGINEER (PHE)
WATER
ASSAM
HENGRABARI
GHY-36
KAMRUP (M)
ASSAM

3:THE SUPERINTENDING ENGINEER (PHE)
HAILAKANDI CIRCLE
HAILAKANDI
ASSAM WHO IS ALSO THE CHAIRMAN OF THE SELECTION COMMITTEE
FOR PROMOTION TO DIFFERENT CATEGORIES OF GRADE-III AND
GRADE-IV POST UNDER KARIMGANJ PHE DIVISION

4:THE EXECUTIVE ENGINEER (PHE)
WATER
KARIMGANJ DIVISION
KARIMGANJ
ASSAM WHO IS ALSO THE MEMBER SECY.OF THE SELECTION
COMMITTEE FOR PROMOTION TO DIFFERENT CATEGORIES OF GRADE-III
AND GRADE-IV POST UNDER KARIMGANJ PHE DIVISION

5:THE ACCOUNTANT GENERAL
ASSAM
PENSION BRANCH
MAIDANGAON
BELTOLA
GHY-29
KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. D CHAKRABARTY

Advocate for the Respondent : SC, P H E

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri D Chakrabarty, Advocate.

For the Respondents : Ms. M Kalita, Advocate &
Shri D Bhattacharrya, Advocate.

Dates of Hearing : 08.05.2024.

Date of Judgment : 08.05.2024.

JUDGMENT & ORDER

The writ petition has been filed with the following relief:

“Under the afore stated premises, it is humbly prayed that Your Lordships may be graciously pleased to admit this Writ Petition, call for the records and issue Notice/ Rule calling upon the Respondents to show cause as to why, a Writ in the nature of Mandamus and/or Certiorari and/ or any

other Writ, direction or Order of the like nature be not issued for:- giving notional promotion to the Petitioner to the post of Section Assistant w.e.f. 01.06.2020, i.e. the date on which, decision was taken by the Selection Committee to select the Petitioner for promotion and such promotion may be taken into account while assessing the post retirement and pensionary benefits of the Petitioner and on hearing the cause or causes as may be shown, to make the rule absolute and/or to pass such further other order as your Lordship may deem fit and proper.

AND

Pending final adjudication of the Instant Writ Petition, Your Lordships may also be pleased to restrain the Respondents from cancelling the decision taken in the meeting held on 01.06.2020 in the Office of Respondent No. 4 to select the Petitioner for promotion to the post of Section Assistant.”

2. The facts projected by the petitioner are that he was appointed as Khalasi vide an order dated 13.12.1989 in Public Health Engineering (PHE) Department in the Karimganj PHE Division. A provisional *inter se* list of Khalasi was prepared in which, the name of the petitioner figured against Sl. No. 66. The aforesaid provisional list was finalized on 29.05.2020 and the name of the petitioner had figured at Sl. No. 58.

3. The promotional exercise was undertaken by a Selection Committee which had held its meeting on 01.06.2020 for considering promotions to various vacant posts of Grade-III and Grade-IV. According to the petitioner, though his name was recommended for promotion, before such promotion could be given effect to, the petitioner had attained the age of superannuation on 30.09.2020 and had retired from service. The claim of the petitioner is that he is entitled to

be given notional benefit of such promotion and accordingly, the consequential post retirement benefits.

4. I have heard Shri D Chakrabarty, learned counsel for the petitioner. Also heard Ms. M Kalita, learned counsel representing the PHE Department, Assam whereas Shri D Bhattacharrya, learned counsel appears for the Accountant General, Assam.

5. Shri Chakrabarty, learned counsel for the petitioner has submitted that his name was within the zone of consideration in the final gradation list wherein, he was placed against Sl. No. 58. He has also contended that the date of superannuation of the petitioner was after about 4 months from the date when the Selection Committee had made the recommendations. He accordingly submits that the delay in effecting the promotions should not cause prejudice to the petitioner and he be granted the benefits of notional promotion from such date and consequently all the post retirement benefits by construing that he had retired from the promoted post of Grade-III.

6. In support of his submissions, Shri Chakrabarty, learned counsel for the petitioner has relied upon the following decisions:

i) *Nalini Kant Sinha Vs. State of Bihar & Ors.*, 1993 Supp (4) SCC 748;

ii) *State of Uttar Pradesh & Ors. Vs. Roshan Singh & Ors.*, (2006) 13 SCC 661; and

iii) *Union of India Vs. Hemraj Singh Chauhan & Ors.*, (2010) 4

SCC 290.

7. This Court has, however, noted that the cases of ***Nalini Kant Sinha*** (*supra*) and ***Roshan Singh & Ors.*** (*supra*) are not relevant to the present subject matter.

8. In the case of ***Hemraj Singh Chauhan*** (*supra*), the Hon'ble Supreme Court has reiterated the requirement of a fair consideration for promotion. The aspect of delay on the side of the respondent authorities was also considered by the Hon'ble Court.

9. *Per contra*, Ms. Kalita, learned counsel representing the PHE has submitted that the post of Khalasi is a personal post and there is no promotional avenue and therefore, the petitioner would not have a right for making such a claim.

10. Shri Bhattacharrya, learned Standing Counsel, Accountant General submits that his client may not have an effective role in the adjudication of the present case.

11. The rival submissions of the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

12. It is not in dispute that the petitioner was a Khalasi and in the final gradation list, his position was at Sl. No. 58. It is also not in dispute that a Selection Committee was constituted which had held a meeting for promotion

on 06.02.2020. The contention raised on behalf of the Department that a Khalasi is not entitled for further promotion is not supported by the documents on records, more specifically, an order dated 22.03.2022 by which an incumbent, Shri Bikash Ghosh, a Khalasi of the same Karimganj PHE was given the benefit of promotion to the post of Section Assistant.

13. What is, however, germane to the issue raised is as to whether the present claim is based on any discrimination or unreasonable action. The only claim of the petitioner is that there was about 4 months from the date of the minutes of the Selection Committee till his retirement when the petitioner could have been promoted to the post of Section Assistant. It is, however, not the case of the petitioner that any person junior to him in the gradation list was given promotion in that period. The claim of notional promotion on the ground that there was a meeting of the Selection Committee prior to such retirement would not be an acceptable proposition inasmuch as it will open a floodgate of cases. Even otherwise, there is no instance which has been pointed out by the petitioner of any junior persons in the gradation list given the benefit of promotion at the time when the petitioner was still in service. The document which was annexed to IA(C)/1184/2022 which was disposed of on 09.05.2022 is of the year 2022 i.e. after the date of retirement of the petitioner in service. The appointment of the incumbent who is junior to the petitioner after retirement of the petitioner cannot be a ground to grant notional promotion and subsequent benefits to the petitioner. There is absolutely no dispute with the proposition that a fair consideration for promotion is a right of an employee. However, in the instant case, it does not appear that the petitioner was deprived of any such right in view of the fact that no unreasonableness or arbitrariness appears from

the final gradation list prepared on 29.05.2020 followed by the Selection Committee meeting on 01.06.2020.

14. In that view of the matter, this Court is of the opinion that no case for interference is made out and accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant