

GAHC010195972021



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

Case No. : WA/324/2021

DILIP KALITA
S/O SRI GAHIN KALITA,
R/O VILL, P.O.-PATIAPAM, P.S.-KAMPUR,
DIST-NAGAON, ASSAM, PIN-782426.

.....Writ Appellant

VERSUS

1. THE STATE OF ASSAM,
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI-781006.

2:THE COMMISSIONER/SECRETARY,
GOVERNMENT OF ASSAM,
SECRETARIAT ADMINISTRATION (ESTABLISHMENT) DEPARTMENT,
DISPUR, GUWAHATI-781006.

3:THE COMMISSIONER/SECRETARY,
GOVERNMENT OF ASSAM,
PERSONNEL (B) DEPARTMENT,
DISPUR, GUWAHATI-781006.

4:THE COMMISSIONER/SECRETARY,
DEPARTMENT OF IMPLEMENTATION OF ASSAM ACCORD,
DISPUR, GUWAHATI-781006

5:MD. SALAMUDDIN AHMED,
DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM,
TRANSPORT DEPARTMENT,
DISPUR, GUWAHATI-781006.

6:HEMENDRA KUMAR SAIKIA,
DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM,
URBAN DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI-781006.

7:RAMESHWAR CHOUDHURY,
DEPUTY SECRETARY,
PRINTING AND STATIONARY DEPARTMENT,
DISPUR, GUWAHATI-781006.

8:MD. KHAIRAT ALI AHMED,
DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM,
PUBLIC WORKS DEPARTMENT,
DISPUR, GUWAHATI-781006.

9:MRS. MORAMI PAYENG,
SUPERINTENDENT,
CO-OPERATION DEPARTMENT,
GOVERNMENT OF ASSAM,
DISPUR, GUWAHATI-781006.

..... **Respondents**

– BEFORE –
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SUMAN SHYAM

For the Appellant	: Mr. K.N. Choudhury, Senior Advocate assisted by Mr. D.J. Das, Advocate.
For the respondent(s)	: Mr. D.K. Sarmah, Additional Senior Government Advocate, Assam for respondent Nos.1, 3 & 4. : Mr. B. Gogoi, Standing Counsel, Secretariat Administration Department (SAD) for respondent No.2. : Dr. G.J. Sharma, Advocate for respondent No.9.
Date of Hearing	: 22.02.2024.
Date of Judgment	: 27.02.2024.

JUDGMENT & ORDER (CAV)

[Vijay Bishnoi, CJ]

This intra-Court appeal is filed by the appellant challenging the judgment dated 02.11.2021 passed by the learned Single Judge in WP(C) No.3585/2018

whereby the writ petition filed by the appellant/writ petitioner has been dismissed.

2. The facts culled out from the case are that vide office order dated 29.01.1990, the appellant/writ petitioner was appointed as a Lower Division Assistant (LDA) in the Assam Secretariat under the provisions of Assam Public Services (Preferential Appointment) Rules, 1986 read with Rule 16 of Assam Secretariat Subordinate Services Rules, 1963 on *ad hoc* basis in the scale of pay of Rs.580-20-680-EB-25-805-EB-30-1165/- per month plus other allowances as admissible for a period of 2(two) months with effect from the date of joining.

It is mentioned in the appointment order dated 29.01.1990 that the case for regularization of the appellant in the post of Lower Division Assistant in the Secretariat will be considered on his qualifying in the written test/interview arranged for the purpose in due course and subject to favourable police verification report.

Later on the services of the appellant in the post of Lower Division Assistant came to be regularized vide order dated 25.02.1992 under the Assam Public Services (Preferential Appointment) Rules, 1986.

3. The appellant had preferred the writ petition, being WP(C) No.1756/1999 before this Court, along with 26 other employees who were also appointed on *ad hoc* basis along with the appellant/writ petitioner and their services were also regularized in the year 1992 along with the appellant, seeking a relief that benefit of seniority from the date of their appointment on *ad hoc* basis i.e. 29.01.1990 be extended to them. The said writ petition [WP(C) No.1756/1999] came to be dismissed by the learned Single Judge of this Court vide judgment dated 18.03.2002 while concluding that the seniority of the appellant and the

similarly situated employees are to be reckoned from the date of their regular appointment i.e. with effect from 25.02.1992. The claim of the appellant and the similarly situated employees to grant them seniority from the date of their *ad hoc* appointment was rejected.

4. The respondent State in the year 2003 had thereafter issued a final gradation list of Lower Division Assistants wherein the appellant was placed at Serial No.418 and being aggrieved with the same, the appellant had preferred a writ petition, being WP(C) No.4139/2003 before this Court seeking a prayer for regularization of his *ad hoc* appointment.

The writ petition [WP(C) No.4139/2002] filed by the appellant/writ petitioner remained pending up to the year 2012. However, vide order dated 29.05.2012, the learned Single Judge of this Court taking into consideration the fact that the writ petition filed by the appellant is pending for the last 9 years, had disposed of the same with liberty to the petitioner to make a representation before the authorities concerned with the further direction that in the event of making such a representation, the said authority shall pass a speaking order dealing with the contentions that may be raised in the representation.

5. On the strength of the above order dated 29.05.2012 passed in WP(C) No.4139/2003, the appellant had filed representation to the respondents. The Department of Personnel taking note of the said representation had made a favourable note to the appellant on 02.02.2015 and referred the matter to the Cabinet for taking appropriate decision. In the meantime, the Government of Assam, vide order dated 25.08.2015 had rejected the representation filed by the appellant/writ petitioner in pursuance to the order passed by the learned Single Judge of this Court on 29.05.2012 in WP(C) No.4139/2003.

Being aggrieved with the same, the appellant/writ petitioner has again filed a writ petition, being WP(C) No.3086/2015 and the learned Single Judge of this Court vide order dated 17.02.2016 had disposed of the said writ petition filed by the appellant with the direction to the Chief Secretary, Government of Assam to place the letter dated 02.02.2015 issued by the Joint Secretary to the Government of Assam, Personnel Department along with the letter dated 25.08.2015 issued by the Commissioner and Secretary to the Government of Assam, Secretariat Administration Department along with the additional affidavit filed by the appellant and other connected documents before the Cabinet for its perusal and consideration/decision in its next meeting.

6. Pursuant to that, the Cabinet has considered the matter and passed an order dated 14.02.2018 whereby it was ordered that the existing seniority of the appellant which had been fixed in Gradation List published on 23.12.2002 and maintained in subsequent Gradation List till that date shall continue. Being aggrieved with the same, the appellant/writ petitioner had filed WP(C) No.3585/2015 which came to be dismissed by the impugned judgment dated 02.11.2021.

7. Mr. K.N. Choudhury, learned Senior counsel appearing for the appellant has argued that the appointment of the appellant cannot be said to be in violation of the Rules and it can only be considered as irregular. However, in view of the decision of the Hon'ble Supreme Court rendered in the cases of (i) *Direct Recruit Class II Engineering Officers' Association Vs. The state of Maharashtra & Ors.*, reported in (1990) 2 SCC 715 and (ii) *Kamalbai (SMT.) Vs. Commissioner of Police, Nagpur and Ors.*, reported in (1993) 3 SCC 384, the seniority to the appellant is required to be given from the date of *ad hoc* appointment and not from the date of regularization. It is contended that the

State Cabinet and the respondents have illegally rejected the claim of the appellant though the Department of Personnel, in its letter dated 02.02.2015 had made a favourable report in favour of the appellant with clear observation that the appellant and the similarly situated persons are liable for seniority from the date of their *ad hoc* appointment. It is contended that in view of the above admitted position, the learned Single Judge ought to have allowed the writ petition filed by the appellant/writ petitioner while granting relief claimed for in the writ petition. But the learned Single Judge has illegally dismissed the writ petition.

8. Learned Senior Counsel for the appellant has therefore submitted that the impugned order passed by the learned Single Judge requires to be set aside and the writ petition filed by the appellant/writ petitioner be ordered to be allowed and the relief prayed for in the writ petition be granted.

9. Per contra, learned counsel appearing for the respondent State has submitted that the issue regarding the grant of seniority to the appellant and the other similarly situated employees from the date of their *ad hoc* appointment has already been finalized by the learned Single Judge of this Court vide judgment dated 18.03.2002 passed in WP(C) No.1756/1999 wherein the claim of the appellant and the other similarly situated employees to grant seniority has been rejected with the specific finding that the seniority of the appellant and other similar petitioners are to be reckoned from the date of their regular appointment i.e. with effect from 25.02.1992.

It is submitted that the said judgment dated 18.03.2002 passed in WP(C) No.1756/1999 was not subjected to any challenge and the same has attained finality. It is further contended that once the issue regarding the seniority of the appellant and the other similarly situated employees has attained finality, the

same cannot be disturbed by a note prepared by the Department of Personnel in favour of the appellant and the other similarly situated employees. It is further contended that the learned Single Judge taking into consideration the above facts and circumstances of the case has rightly refused to interfere and has not committed any error in dismissing the writ petition.

10. Having heard the learned counsel appearing for the parties and after going through the material available on record and also taking into consideration the fact that the issue regarding the grant of seniority to the appellant/petitioner and other similarly situated employees has already been decided by the learned Single Judge of this Court vide judgment dated 18.03.2002 passed in WP(C) No.1756/1999 and as the same has attained finality, the learned Single Judge has rightly observed that the appellant cannot ask for reopening the said issue on the basis of liberty granted to him by the Court in subsequent writ petition. The learned Single Judge has also taken note of the fact that none of the similarly situated employees has been given the benefit of seniority from the date of their *ad hoc* appointment and therefore, no case for discrimination has been made out.

11. We are of the considered opinion that the view taken by the learned Single Judge cannot be faulted with and hence, we do not find any merits in this writ appeal. The same is therefore dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant