

GAHC010201732016



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

Case No. : WP(C)/296/2016

DR. ABHIJIT HOLME CHOUDHURY
S/O LT. DR. JOGESH CHANDRA HOLME CHOUDHURY, PREMTOLA,
SILCHAR TOWN, P.O. SILCHAR-4, DIST- CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
HEALTH AND F.W. DEPTT., DISPUR, GHY-6

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
HEALTH AND F.W. DEPTT.
DISPUR
GHY-6

3:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
LABOUR AND EMPLOYMENT DEPTT.
DISPUR
GHY-6

4:THE DY. SECY. TO THE GOVT. OF ASSAM
HEALTH and F.W. A DEPTT.
DISPUR
GHY-6

5:THE DY. SECY. TO THE GOVT. OF ASSAM
LABOUR AND EMPLOYMENT DEPTT.
DISPUR
GHY-6

6:THE UNDER SECY. TO THE GOVT. OF ASSAM
LABOUR AND EMPLOYMENT DEPTT.

DISPUR
GHY-

Advocate for the Petitioner : MS. S DASGUPTA

Advocate for the Respondent : GA, ASSAM (EA)

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

02.02.2024.

1. Heard Mr. B. Malakar, learned counsel for the petitioner. Also heard Mr. T. C. Chutia, learned counsel for the respondent Nos. 2, 3, 5 and 6 and Mr. A. Chaliha, learned counsel for the respondent Nos. 1 and 4.
2. By way of the present writ petition, an order dated 15.11.2014 (Annexure-11) passed by the Commissioner and Secretary to the Government of Assam, Health and Family Welfare Department, has been assailed whereby the claim of the petitioner for promotion to the next higher grade was rejected on the purported ground of refusal of the petitioner to accept his first promotion to the rank of Senior Medical and Health Officer. It was further concluded that as the petitioner has refused to accept such promotion, he had also lost his inter-se-seniority.
3. Before proceeding further, it is noted that the petitioner has expired during the pendency of this writ petition. However, as in the event, the petitioner is granted promotion with retrospective effect, the same will have a bearing on the family pension, this Court under its order dated 13.12.2023 passed in IA(Civil)/890/2023 allowed impleadment of the legal heirs of the deceased petitioner.
4. The deceased petitioner was appointed to the post of Medical & Health Officer Grade-I, in the Health and Family Welfare Department, Assam on 21.08.1987.

While he was working in the said position, his employer by a notification dated 23.09.1996, placed his service at the disposal of Labour & Employment Department, Assam. On the basis of such placement, another notification dated 05.11.1996 was issued by the Labour and Employment Department, Assam appointing the petitioner as Medical Inspector of Plantation, Silchar in his Grade pay plus other allowances as admissible and was posted at Silchar.

5. The petitioner continued to serve in the aforesaid position, however, on 14.06.2000, the Labour and Employment Department, Assam communicated to the employer of the petitioner i.e. Health and Welfare (A) Department, Assam that Labour and Employment Department, Assam has decided not to retain service of any Medical & Health Officer, Grade-I of the Health Department permanently in the Labour and Employment Department as Medical Inspector of Plantation due to some technical reasons. Though such communication reflects the policy decision of the Labour and Employment Department not to retain the services of any Medical & Health Officer-I of the Health Department in the Labour and Employment Department, however, admittedly, as reflected in the affidavit filed by the respondents, no formal order was issued either releasing the petitioner from Labour and Employment Department or any communication was issued by the employer calling back the petitioner.
6. In the meantime, according to the petitioner by a Notification dated 24.02.2004, some Medical & Health Officer, Grade-I were promoted to the rank of Senior Medical & Health Officer, however, the case of the petitioner was not considered he being posted at Labour and Employment department and his Juniors were promoted by way of the aforesaid notification. However, subsequently, by another Notification dated 06.02.2006 issued by the Secretary to the Government of Assam, Health and Family Welfare Department, Assam, the petitioner was promoted to the post of Senior Medical and Health Officer. In the

meantime, the petitioner continued to be in the Labour and Employment Department. Accordingly, he preferred a representation on 13.03.2006 before his employer raising his grievance that though he has been promoted to the rank of Senior Medical and Health Officer, but till date, the Labour and Employment Department has not released him and accordingly he requested his employer to do the needful, so that, he can join in the promotional post. However, the matter remains in the same position and the petitioner continued to be posted under Labour and Employment Department.

7. In the meantime, some similarly situated Medical and Health Officer, Grade-I under deputation, facing similar problems approached this Court by way of filing writ petition being WP(C) No. 471/2007 which was disposed of under its Judgment and Order dated 11.05.2007 allowing such writ petition and directing the authorities in the Health and Family Welfare Department to take immediate steps for repatriation of the petitioner from the Labour and Employment Department and to initiate the process for consideration of the case of the petitioner in the said writ petition for promotion to the ranks higher than that of Medical and Health Officer Grade-I to which officers equally placed like him in the department have been promoted. It was further observed in the said Judgment and Order that if the petitioner is so promoted following the exercise as ordered, he would be entitled to all consequential benefits as permissible under law.
8. Thereafter, the petitioner preferred yet another representation on 02.01.2009 re-agitating his grievances with an additional grievance that his batch mate had been promoted earlier by notification dated 24.02.2004 issued by the Secretary to the Government of Assam, Health and Family Welfare (A) Department and the petitioner is also entitled for promotion from that date i.e. 24.02.2004.
9. It is apposite to mention here that the petitioner continued in the Labour and

Employment Department. Subsequently, the petitioner also approached before this Court by filing writ petition being WP(C) No. 2446/2010. During pendency of the writ petition, the petitioner was released from the Labour and Employment Department on 16.12.2010 and he was posted at Sonabarighat SHC by a notification dated 10.11.2010. Taking note of the aforesaid development, the writ petition preferred by the petitioner was disposed of by this Court under its order dated 20.01.2011 with a direction to the petitioner to join in his place of posting pursuant to the notification dated 10.11.2010 and to file a representation before the Commissioner and Secretary to the Government of Assam, Health and Family Welfare Department, seeking the posting as the Senior Medical and Health Officer, pursuant to the order of promotion dated 06.02.2006. It was further provided that the petitioner may also file a representation before the said authority for claiming promotion to the next higher post, which shall also be dealt with by the said authority in accordance with law.

10. Pursuant to such order, the petitioner submitted his representation on 27.01.2011 before the authority for his promotion to the post of the Senior Medical and Health Officer, which has been answered and negated by the impugned speaking order dated 15.11.2014.
11. The ground of rejection of the claim of the petitioner is purported refusal of the petitioner in his first promotion to the Senior Medical & Health Officer and resultantly, it was decided that in view of such refusal, the petitioner lost his inter-se-seniority.
12. The affidavit-in-opposition filed by the respondent authority while replying the statement made in paragraph-5 of the writ petition, the respondent has categorically admitted that though the Labour and Employment Department intimated that they could not permanently absorb doctor of Health and Family Welfare Department, however, the petitioner was not released by the Labour and

Employment Department. The affidavit is totally silent why the employer has not recalled the petitioner to his parent department, even after, the policy decision of the Labour and Employment Department not to retain Medical Officer.

13. There is no other materials has been shown or produced before this Court or any statement supported by any materials has been made that the petitioner has refused to join in the promotional post of the Senior Medical and Health Officer.
14. From the undisputed facts as discussed hereinabove, it is clear that the petitioner was promoted by an order dated 06.02.2006 issued by the Secretary to the Government of Assam, Health and Family Welfare Department to the post of Senior Medical and Health Officer and at that point of time, he was still on deputation in the Labour and Employment Department inspite of the inter departmental communication dated 14.06.2000, whereby the Labour and Employment Department has clarified to the Health and Family Welfare Department that said department will not continue to appoint any Medical and Health Officer, Grade-I in the Labour and Employment Department. Such communication is not specific to the case of the petitioner only but a general order, which is also fortified by the Judgment and Order passed by this Court in WP(C) No. 471/2007.
15. That being the position and in absence of any materials to show that the petitioner has refused to join in the post of Senior Medical and Health Officer, the reason for refusal of promotion is not sustainable under law. Therefore, such determination is interfered with and accordingly, the impugned order dated 15.11.2014 issued by the Commissioner & Secretary to the Government of Assam, Health and Family Welfare Department is set aside and quashed.
16. The matter is once again remanded back to the Commissioner & Secretary to the Government of Assam, Health and Family Welfare Department and the said

authority shall determine afresh the representation of the petitioner filed in terms of this Court's earlier order dated 20.01.2011 passed in WP(C) No. 2466/2010. While considering such representation, the respondent i.e. Commissioner & Secretary to the Government of Assam, Health and Family Welfare Department shall take note of the determination made in this writ petition.

17. It is also clarified that if the petitioner is held to be entitled for the benefits claimed, he would be entitled to all the consequential benefits as permissible under law.
18. The process as directed should be completed within a period of 8 (eight) weeks from the date of receipt of the certified copy of this order.
19. It is needless to say that, though the petitioner has in the meantime expired, such consideration and resultant benefit, if any granted, should be given to the legal heirs of the petitioner, including re-fixation of the pension/family pension.
20. With the aforesaid determination and observation, this writ petition stands disposed of.

JUDGE

Comparing Assistant