

GAHC010209152018



2024:GAU-AS:9053

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

Case No. : WP(C)/6524/2018

UDDHAB CHANDRA DAS
S/O. LATE NIRANJAN CHANDRA DAS, ASSISTANT COMMISSIONER OF
STATE TAXES, DHUBRI ZONE, ASSAM, P.O., P.S. AND DISTRICT- DHUBRI,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM, FINANCE (TAXATION) DEPTT., DISPUR, GUWAHATI-6.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FINANCE (TAXATION) DEPTT.
DISPUR GUWAHATI-6.

3:THE COMMISSIONER OF TAXES ASSAM
KAR BHAWAN DISPUR GUWAHATI-06

Advocate for the Petitioner : MR. A M BARBHUIYA, MS F BEGUM,MS. M MEDHI
Advocate for the Respondent : SC, FINANCE AND TAXATION,

Linked Case : WP(C)/5488/2019

UDDHAB CHANDRA DAS
S/O. LT. NIRANJAN CHANDRA DAS
ASSTT. COMMISSIONER OF STATE TAXES
OFFICE OF THE DY. COMMISSIONER OF STATE TAXES
DHUBRI ZONE ASSAM P.O.
P.S. AND DIST. DHUBRI ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
TO BE REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM

FINANCE (TAXATION) DEPTT.
DISPUR
GUWAHATI-06.

2:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
FINANCE (TAXATION) DEPTT.
DISPUR
GUWAHATI-06.

3:THE COMMISSIONER OF TAXES

ASSAM
KAR BHAVAN
DISPUR
GUWAHATI-06.

4:THE ACCOUNTANT GENERAL (A AND E)

ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-29.

Advocate for : MR. A M BARBHUIYA
Advocate for : SC FINANCE DEPTT. appearing for THE STATE OF ASSAM AND 3
ORS.

Linked Case : WP(C)/4887/2021

UDDHAB CHANDRA DAS
S/O LATE NIRANJAN CHANDRA DAS
ASSISTANT COMMISSIONER OF STATE TAXES
OFFICE OF THE DEPUTY COMMISSIONER OF STATE TAXES
DHUBRI ZONE ASSAM DHUBRI ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM FINANCE (TAXATION) DEPARTMENT
DISPUR GUWAHATI 06

2:THE DEPARTMENTAL SELECTION COMMITTEE
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM FINANCE (TAXATION) DEPARTMENT
DISPUR GUWAHATI 06

3:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FINANCE (TAXATION) DEPARTMENT DISPUR GUWAHATI 06

4:THE COMMISSIONER OF TAXES ASSAM
KAR BHAWAN DISPUR GUWAHATI 06

5:THE ACCOUNTANT GENERAL (A AND E) ASSAM
MAIDAMGAON BELTOLA GUWAHATI 29

Advocate for : MR. A M BARBHUIYA
Advocate for : SC FINANCE appearing for THE STATE OF ASSAM AND 4 ORS.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 16.05.2024

Date of Judgment: 12.09.2024

Judgment & order(CAV)

Heard Mr. Abdul Muktaadir Barbhuiya, learned counsel appearing on behalf of the petitioner in all these 3(three) writ petitions. Also heard Mr. B. Gogoi, learned standing counsel, Finance Department; Mr. R. Dhar, learned standing counsel, Accountant General(A&E), Assam, appearing on behalf of respondent No. 4 in WP(c)5488/2019; and Mr. C. Baruah, Accountant General (A&E), Assam, appearing on behalf of respondent No. 5 in WP(c)4887/2021.

2. The petitioner, herein, by way of instituting WP(c)6524/ 2018, has, *inter alia*, prayed for a direction upon the respondent authorities for granting retrospective effect to the promotion as effected in his case to the cadre of Assistant Commissioner of Taxes, vide order, dated 01.03.2017. The petitioner is seeking such promotion to be made w.e.f. 01.01.2009 and thereafter, he has sought for a direction for his promotion to the cadre of Deputy Commissioner of Taxes w.e.f. 01.01.2013.

3. The petitioner in WP(c)5488/2019 has prayed for a direction for his promotion along with consequential benefits to the cadre of Joint Commissioner of Taxes.

4. The petitioner in WP(c)4887/2021 has presented a challenge to the Departmental Selection Committee Minutes meetings, dated 31.05.2013 and 09.12.2016, by which, his case for promotion to the cadre of Assistant Commissioner of Taxes, was so considered.

5. The facts in brief for adjudication of the issues as arising in the present proceedings is noticed as under:

The petitioner, herein, on selection, came to be appointed as a Superintendent in the Finance & Taxation Department, on 13.08.1993. In the year 2009; a seniority list of the incumbents in the cadre of Superintendent of Taxes came to be published and therein, the name of the petitioner found placed at serial No. 28.

It is the contention of the petitioner herein that amongst the candidates as existing in the said cadre and belonging to the Scheduled Caste Community, there was only one candidate i.e. Sri Padmadhar Das, who was senior to the petitioner, herein.

The next promotional avenue for the incumbents in the cadre of Superintendent of Taxes, are the posts figuring in the cadre of Assistant Commissioner of Taxes. The strength of the cadre of Assistant Commissioner of Taxes was 25(twenty five) posts and accordingly, in the year 2009, on

initiation of a process of selection for the vacancies identified for the year 2008; 14(four) incumbents in the post of Superintendent of Taxes, came to be so promoted to the cadre of Assistant Commissioner of Taxes. The petitioner, herein, belonging to the Scheduled Caste Community, was in the zone of consideration, but, he was not so promoted.

It is the contention of the petitioner that on promotion of the said 14(fourteen) Superintendent of Taxes to the cadre of Assistant Commissioner of Taxes in the year 2009; the cadre strength of the posts of Assistant Commissioner of Taxes rose to 23(twenty three) posts, and further 2(two) posts continued to remain vacant in the said cadre of Assistant Commissioner of Taxes.

The petitioner contends that given the quota prescribed for Scheduled Caste Community candidates i.e. 7 percent, at least, 2(two) posts in the cadre of Assistant Commissioner of Taxes was called to be so filled up from the candidates belonging to the Scheduled Caste Community.

The petitioner's case for such promotion not having been so considered inspite of vacancies being available; the petitioner approached this Court by way of instituting a writ petition being WP(c)647/2012. This Court on consideration of the issues arising in the said proceeding; was pleased vide order, dated 08.02.2013, to dispose of the said writ petition by directing the respondent authorities to consider the case of the petitioner for promotion to the cadre of Assistant Commissioner of Taxes within a period of 3(three) months from the date of receipt of a certified copy of the order. This Court further proceeded to provide that the respondent authorities may also consider the petitioner's case for promotion to the post of Assistant

Commissioner of Taxes w.e.f. 01.01.2009.

The petitioner was, thereafter, promoted vide order, dated 01.03.2017, to the post of Assistant Commissioner of Taxes with prospective effect. It is the promotion of the petitioner so effected vide the order, dated 01.03.2017, that is now being sought to be directed to be so effected with retrospective effect i.e. w.e.f. 01.01.2009.

The petitioner, during the pendency of WP(c)6524/2018, had retired from his services on attaining the age of superannuation w.e.f. 31.10.2018.

The petitioner, has, thereafter, instituted a writ petition being WP(c)5488/2019, praying for his promotion to the cadre of Joint Commissioner of Taxes. The petitioner has also instituted a writ petition being WP(c)4887/2021, assailing the Minutes of the meeting of the Departmental Selection Committee, dated 31.05.2013 and 09.12.2016.

6. Mr. Barbhuiya, learned counsel for the petitioner, by reiterating the facts as noticed hereinabove, has submitted that this Court vide order, dated 08.02.2013, as passed in WP(c)647/2012, having required the case of the petitioner to be so considered for promotion to the post of Assistant Commissioner of Taxes w.e.f. 01.01.2009; the respondent authorities could not have ignored such unambiguous direction passed by this Court.

7. It is the contention of Mr. Barbhuiya, learned counsel, that although a Disciplinary Proceeding was so instituted against the petitioner vide issuance of a Show Cause Notice, dated 02.07.2011; the same would not be a bar for consideration of the case of the petitioner for promotion to the post of

Assistant Commissioner of Taxes w.e.f. 01.01.2009, in-as-much as, there was no proceeding so instituted and/or pending against the petitioner as of 01.01.2009, and the proceeding that was so instituted against him in the year 2011, would be of no consequence when the case of the petitioner is to be so considered from a date prior to the institution of such Disciplinary Proceeding.

8. Mr. Barbhuiya, learned counsel for the petitioner, has submitted that the respondent authorities while effecting promotions from the cadre of Superintendent of Taxes to that of Assistant Commissioner of Taxes; had clearly ignored the provisions of the Assam Scheduled Castes and Scheduled Tribes(Reservation of vacancies in Services and Posts) Act, 1978, and the Rules framed thereunder.

9. Mr. Barbhuiya, learned counsel, has further submitted that the reservation as mandated for Scheduled Caste Community candidates being 7 percent; applying the said percentage of reservation to the cadre strength of the cadre of Assistant Commissioner of Taxes, at least, 2(two) posts were required to be so filled-up by way of promotion from incumbents in the cadre of Superintendent of Taxes belonging to the Scheduled Caste Community.

10. Mr. Barbhuiya, learned counsel, has submitted that in the year 2009 when the promotional exercise was so carried-out, both the petitioner and his senior Shri Padmadhar Das(both belonging to Scheduled Caste Community) were within the zone of consideration and accordingly, it was incumbent upon the respondent authorities to consider the case of the petitioner as well as his senior for such promotion and to have promoted them to the cadre, in question.

11. Mr. Barbhuiya, learned counsel, has further submitted that the roster points so available in the cadre of Assistant Commissioner of Taxes meant for the Scheduled Caste Community candidates, were so filled up by way of promotion of persons belonging to the General Category. The learned counsel has also submitted that even after 14(fourteen) incumbents in the cadre of Superintendent of Taxes were so promoted to the cadre of Assistant Commissioner of Taxes in the year 2009; further 2(two) vacancies were available in the cadre of Assistant Commissioner of Taxes as of 2009 and the said vacancies ought to have been utilized for promotion of the petitioner as well as his senior Shri Padmadhar Das.

12. Mr. Barbhuiya, learned counsel, by again referring to the order, dated 08.02.2013, passed by this Court in WP(c)647/2012; has submitted that this Court had directed for consideration of the case of the petitioner for promotion to the post of Assistant Commissioner of Taxes w.e.f. 01.01.2009, specifically, noticing the 2(two) vacancies so available in the cadre of Assistant Commissioner of Taxes as of 2009.

13. In the above premises; Mr. Barbhuiya, learned counsel for the petitioner, has submitted that the promotion so effected in respect of the petitioner, herein, vide the order, dated 01.03.2017, to the cadre of Assistant Commissioner of Taxes, is now called to be so granted with retrospective effect i.e. w.e.f. 01.01.2009, and accordingly, the petitioner would be so entitled to be promoted to the next higher cadre of Deputy Commissioner of Taxes w.e.f. 01.01.2013 and thereafter, to the cadre of Joint Commissioner of Taxes.

14. Per contra, Mr. Gogoi, learned standing counsel, Finance Department, at

the outset, has submitted that the promotion so effected to the cadre of Assistant Commissioner of Taxes in the year 2009 were against the vacancies so determined for the year 2008. 14(fourteen) vacancies having been so determined and its corresponding roster point being worked-out; it was found that neither backlog, nor, any current roster point was available for consideration of the cases of the Scheduled Caste Community candidates in the cadre of Superintendent of Taxes for promotion to the cadre of Assistant Commissioner of Taxes and accordingly, no candidate belonging to the Scheduled Caste Community came to be so promoted to the cadre of Assistant Commissioner of Taxes in the year 2009 against the vacancies so identified in the year 2008.

15. Mr. Gogoi, learned standing counsel, Finance Department, has further submitted that amongst the 14(fourteen) candidates so promoted; 2(two) candidates belonging to the ST(P) community, were also promoted along with 1(one) candidate belonging to the ST(H) community.

16. Mr. Gogoi, learned standing counsel, Finance Department, by referring to the roster point so utilized for the purpose of promotions effected in the year 2009; has contended that the roster points under consideration; were the roster points from 67 to 80 and none of the roster points so considered had included roster points for Scheduled Caste Community candidates.

17. Mr. Gogoi, learned standing counsel, Finance Department, has further submitted that in the promotional exercise as carried-out in the year 2009; the 100 point roster was so considered and in terms thereof, the roster point for Scheduled Caste Community fell at 63 which was already utilized.

18. Mr. Gogoi, learned standing counsel, Finance Department, has submitted that in the year 2009, further 7(seven) vacancies were so identified and considering the roster points involved; the candidates so selected, came to be promoted to the cadre of Assistant Commissioner of Taxes. However, the name of the petitioner did not figure in the final merit select list for such promotion. The learned standing counsel has submitted that in the year 2011; 2(two) further vacancies had arisen in the cadre of Assistant Commissioner of Taxes and on conclusion of the selection proceeding, 1(one) of the said vacancies, was so utilized for the promotion of one Shri Padmadhar Das considering him as a Scheduled Caste Community candidate.

19. Mr. Gogoi, learned standing counsel, Finance Department, has also submitted that in the year 2011; a Disciplinary Proceeding having been so instituted against the petitioner, herein; his case came to be placed in 'sealed cover' by the Departmental Selection Committee in its meeting held on 31.05.2013, for the further vacancies in the cadre of Assistant Commissioner of Taxes available for the year 2011.

20. Mr. Gogoi, learned standing counsel, Finance Department, has further submitted that vide order, dated 25.11.2013, on conclusion of the Disciplinary Proceeding so instituted against the petitioner; a penalty of withholding of 2(two) annual increments without cumulative effect, came to be so imposed upon him and the currency of the penalty period, continued, till 30.06.2016.

21. Mr. Gogoi, learned standing counsel, Finance Department, by referring to the directions passed by this Court vide order, dated 08.02.2013, in WP(c)647/2012, has contended that in pursuance thereof; the recommendations of the Departmental Selection Committee in respect of the

petitioner kept in 'sealed cover', came to be opened. It is the contention of Mr. Gogoi, that the Departmental Selection Committee, on opening of the said 'sealed cover', had found that the petitioner was held to be ineligible for such promotion in view of the markings as granted to him basing on his ACR gradings and accordingly, his case was not recommended for promotion against the vacancies, in the year 2011.

22. Mr. Gogoi, learned standing counsel, Finance Department, has submitted that the Departmental Selection Committee in its meeting held on 09.12.2016, had prepared the select list for the years 2012, 2013, 2014, and 2016 and therein, for each of the years under consideration; the case of the petitioner was so considered. However, the petitioner was not found eligible for promotion against the vacancies so worked-out for the said years on account of the currency of the penalty so imposed upon him.

23. Mr. Gogoi, learned standing counsel, Finance Department, has contended that on expiry of the currency of the penalty so imposed upon the petitioner, herein; his case was considered by the Departmental Selection Committee and recommended for the vacancies that would arise in the year 2017 and accordingly, vide the order, dated 01.03.2017, the petitioner came to be so promoted in the cadre of Assistant Commissioner of Taxes *albeit* with prospective effect.

24. Mr. Gogoi, learned standing counsel, Finance Department, has submitted that in the facts so involved; the petitioner cannot claim to have his promotion so granted with retrospective effect prior to 01.03.2017 on account of the fact that he was not eligible for such consideration, both, on account of there being no vacancy ear-marked for the candidates belonging to the Scheduled Caste

Community till the year 2011 and also on account of the Disciplinary Proceeding so instituted against him which had culminated with the imposition upon him of the above-noted penalty.

25. Mr. Gogoi, learned standing counsel, Finance Department, has accordingly submitted that the petitioner having superannuated from his service on 31.10.2018, would not be entitled for further promotion to the cadres of Deputy Commissioner of Taxes as well as Joint Commissioner of Taxes.

26. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

27. The basis for the claims made by the petitioner in the present proceedings, is the directions passed by this Court vide order, dated 08.02.2013, in WP(c)647/2012. The directions so passed, vide order, dated 08.02.2013, being relevant, is extracted hereinbelow:

“In view of above, respondents are directed to consider promotion of the petitioner to the post of Assistant Commissioner of Taxes in accordance of law within a period of 3 months from the date of receipt of a certified copy of this order. Respondents may also consider petitioner's promotion to the post of Assistant Commissioner of Taxes w.e.f. 1.1.2009 i.e, the date on which the officer holding the post against roster point 12 was promoted. It is made clear that the petitioner shall not be entitled to salary of the higher grade for the said period from 1.1.2009 till his actual date of promotion. However, petitioner will be entitled to all other consequential benefits of such promotion.”

28. A perusal of the said directions would go to reveal that this Court had required the respondent authorities to consider the case of the petitioner for promotion to the post of Assistant Commissioner of Taxes within a period of 3 months from the date of receipt of a certified copy of the order. This Court had

also observed that the petitioner's case for promotion to the post of Assistant Commissioner of Taxes may also be considered w.e.f. 01.01.2009. The requirement for consideration of the case of the petitioner for promotion w.e.f. 01.01.2009, is an observation so made and not a direction in the facts and circumstances so involved.

29. It is to be noted that the respondent authorities had filed a review petition which, however, was dismissed by the Court.

30. In the present proceedings; it is to be now examined as to whether the petitioner was entitled to have his case considered for promotion to the post of Assistant Commissioner of Taxes w.e.f. 01.01.2009.

31. It is an admitted position that in the year 2009, against the vacancies so identified for the year 2008; 14(fourteen) incumbents in the cadre of Superintendent of Taxes came to be so promoted to the cadre of Assistant Commissioner of Taxes. However, none of the incumbents so promoted, belonged to the Scheduled Caste Community.

32. The respondent authorities have justified the said action on their part on the ground that the roster points that were under consideration, did not involve a point belonging to the Scheduled Caste Community. It was further contended that the point belonging to the Scheduled Caste Community existed at roster point No. 63 whereas the promotion so effected in the year 2009; had utilized the roster points 67 to 80.

33. It was also contended that insofar as the Scheduled Caste Community is

so concerned, there was no backlog vacancies working-out for the year 2008. At this stage, it is to be noted that in the cadre of Scheduled Caste Community; above the petitioner, herein, there was another person belonging to the Scheduled Caste Community, i.e. Shri Padmadhar Das, who was, admittedly, senior to the petitioner, herein. Said Shri Das was also not promoted in the year 2009 against the vacancies so identified for the year 2008. Subsequently, Shri Das, came to be so promoted to the cadre of Assistant Commissioner of Taxes in the year 2011. The said Shri Das has accepted his such promotion and there was no further proceedings so instituted by him in this connection before this Court, for grant of retrospective effect of his such promotion.

34. It is also to be noted that after the promotional exercise so carried-out in the year 2009 against the vacancies ear-marked for the year 2008, a further process of promotion was carried-out in the year 2009 against the 7(seven) vacancies so available in the cadre of Assistant Commissioner of Taxes for the year 2009.

35. Thereafter, the next promotional exercise was so carried-out in the year 2011 and 2(two) vacancies so identified for the said year, were so filled up by way of promoting one Shri Gaurango Kr. Ghosh and Shri Padmadhar Das(SC) to the post of Assistant Commissioner of Taxes vide Notification, dated 05.05.2011. The said Shri Das was so promoted by reckoning his Scheduled Caste Community status.

36. It is to be noted, at this stage, that vide issuance of a Show Cause Notice, dated 02.07.2011, a Disciplinary Proceeding came to be so instituted against the petitioner, herein. The said Disciplinary Proceeding culminated with

the issuance of an order, dated 25.11.2013, imposing upon the petitioner, the penalty of withholding of 2(two) annual increments without cumulative effect. Accordingly, the petitioner came under a cloud w.e.f. 02.07.2011.

37. The records reveal that for the year 2011, further vacancies having arisen in the cadre of Assistant Commissioner of Taxes; the Departmental Selection Committee in its meeting held on 31.05.2013, considered the cases of the incumbents in the cadre of Superintendent of Taxes including the petitioner, herein. The directions as passed by this Court vide order, dated 08.02.2013, in WP(c)647/2012; were duly noticed by the Departmental Selection Committee, however, on account of pendency of a departmental proceeding against the petitioner, herein, the recommendations as made in his case, came to be kept in 'sealed cover'.

38. The 'sealed cover' of the petitioner pertaining to the consideration so made in his case against the vacancies arising in the year 2011 by the Departmental Selection Committee, again came to be placed before the Departmental Selection Committee in the light of the directions passed by this Court vide order, dated 08.02.2013, in WP(c)647/2012. It is seen that on opening of the 'sealed cover' by the Departmental Selection Committee, it was found that the case of the petitioner was not recommended against the vacancies for the year 2011 on account of the marks so secured by him basing on the gradings in his ACRs for the period, in question. It is to be noted that the petitioner had scored only 7 marks whereas the benchmark so prescribed for being eligible for promotion, was 13 marks. Accordingly, the case of the petitioner for promotion to the cadre of Assistant Commissioner of Taxes in terms of the selection made in his case against the vacancies for the year 2011, was not recommended by the Departmental Selection Committee.

39. It is seen that thereafter, a Review Departmental Selection Committee was so convened on 09.12.2016. On 09.12.2016, the Review Departmental Selection Committee had considered the preparation of the select list for the years 2012, 2013, 2014, and 2016. From a perusal of the minutes of the Departmental Selection Committee; it is seen that the case of the petitioner was so considered for each of the years for which the select lists were so prepared. It is to be noted that the Departmental Selection Committee in its meeting held on 09.12.2016, had made a separate consideration for the purpose of preparation of the select list for the years 2012, 2013, 2014, and 2016. In all of the said years, the case of the petitioner was duly considered. However, on account of the currency of the penalty so imposed upon the petitioner which continued upto 30.06.2016, his case was not so recommended for promotion.

40. It is seen that the said Review Departmental Selection Committee upon considering the vacancies that would arise in the cadre of Assistant Commissioner of Taxes in the year 2017, had proceeded to make its recommendations for filling up the said posts in the cadre of Assistant Commissioner of Taxes by recommending the name of the petitioner and another officer for promotion and accordingly, the petitioner came to be so promoted to the cadre of Assistant Commissioner of Taxes vide order, dated 01.03.2017, with prospective effect.

41. A perusal of the minutes of the meeting of the Departmental Selection Committee, dated 31.05.2013, so held for the preparation of the select list for the year 2011, would go to reveal that a due consideration was made in respect of all the personnel including the petitioner, herein. However, noticing the pendency of the Disciplinary Proceeding against the petitioner, herein; the

recommendations made in his case, came to be so placed under 'sealed cover'. The Departmental Selection Committee in its meeting held on 31.05.2013, had not committed any error in keeping the recommendations made in respect of the petitioner, herein, in 'sealed cover', in-as-much as the same is in consonance with the directions passed by the Hon'ble Supreme Court in the case of ***Union of India & ors. v. K. V. Jankiraman & ors.***, reported in **(1991) 4 SCC 109**. It is to be here noted that the Disciplinary Proceeding in respect of the petitioner was concluded only on 25.11.2013.

42. During the pendency of the Disciplinary Proceeding, in view of the directions passed by this Court vide order, dated 08.02.2013; it is seen that the 'sealed cover' in respect of the petitioner was opened by the Departmental Selection Committee in its meeting held on 07.06.2013, and therein, having found the petitioner to have scored only 7 marks and not achieved the benchmark of 13 marks; his case was held to be not suitable to be recommended for promotion to the post of Assistant Commissioner of Taxes.

43. As noticed hereinabove; the Review Departmental Selection Committee in its meeting held on 09.12.2016, while preparing the select list for the promotion to the cadre of Assistant Commissioner of Taxes for the years 2012, 2013, 2014, and 2016; had considered the case of the petitioner for each of the above-noted years, however, on account of the currency of the penalty so imposed upon him; his case was not recommended for such promotion to the post of Assistant Commissioner of Taxes.

44. Accordingly, this Court is of the considered view that the decisions of the Departmental Selection Committee so arrived at in respect of the petitioner, herein, in its meetings held on 31.05.2013, and 09.12.2016, would not call for

any interference.

45. As noticed hereinabove, above the petitioner in the cadre of Superintendent of Taxes; there existed another incumbent i.e. Shri Padmadhar Das who also belonged to the Scheduled Caste Community. The said Shri Das having been promoted to the cadre of Assistant Commissioner of Taxes only in the year 2011; the petitioner cannot claim to be so promoted prior to the date, said Shri Das, was so promoted.

46. As noticed hereinabove, the case of the petitioner was also duly considered for promotion to the cadre of the Assistant Commissioner of Taxes in the year 2011. However, on account of the marks so assigned to him basing on the gradings in the ACRs under consideration for the purpose of said promotion; he was held to be ineligible for such promotion. The said conclusions reached by the Departmental Selection Committee, is not under challenge in any of the proceedings before this Court.

47. Accordingly, it is to be held that the claim of the petitioner for being so considered for promotion from a date prior to 01.03.2017, does not merit any consideration.

48. It is also to be clarified that this Court vide the order, dated 08.02.2013, in WP(c)647/2012; had issued a direction for consideration of the case of the petitioner for promotion to the cadre of Assistant Commissioner of Taxes in accordance with law with prospective effect and the requirement for consideration of his case for promotion to the cadre of Assistant Commissioner of Taxes w.e.f. 01.01.2009, is only an observation and not a direction.

49. The petitioner having been, on due consideration, promoted to the cadre of Assistant Commissioner of Taxes, vide issuance of the Notification, dated 01.03.2017; this Court is of the considered view that the directions as passed by this Court vide order, dated 08.02.2013, in WP(c)647/2012, has been duly complied with.

50. In view of the conclusions reached by this Court hereinabove; the Notification, dated 01.03.2017, promoting the petitioner, herein, to the cadre of Assistant Commissioner of Taxes, would not call for any interference and accordingly, the further prayers of the petitioner for being considered for promotion to the cadre of Deputy Commissioner of Taxes and Joint Commissioner of Taxes, cannot be acceded to.

51. In view of the conclusions drawn hereinabove; the writ petitions are held to be devoid of any merit and accordingly, the same stand dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant