

GAHC010214312015



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

Case No. : WP(C)/7273/2015

SUBHASH CH. BEZBARUA
S/O LT. BAHIRAM BEZBARUA R/O VILL- RAMDIA P.O. MAJORKURI DIST.
KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE L.R. and SECRETARY TO THE GOVT. OF ASSAM, JUDICIAL
DEPARTMENT, DISPUR, GUWAHATI.

2:THE GAUHATI HIGH COURT
REP. BY REGISTRAR GENERAL
GAUHATI HIGH COURT
GUWAHATI-1
ASSAM.

3:THE CHIEF JUDICIAL MAGISTRATE

KAMRUP METRO
AT GUWAHATI.

4:THE CHIEF JUDICIAL MAGISTRATE

KAMRUP
AT AMINGAON

Advocate for the Petitioner : MR.A BHATTACHARYA, MR.P P DUTTA,MR.A BARUA

Advocate for the Respondent : GA, ASSAM, SC, GHC,MR.S K MEDHI

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order (Oral)

Date : 17.09.2024

Heard Mr. P. P. Dutta, learned counsel for the petitioner. Also heard C. Hazarika, learned Government Advocate appearing for the respondent no. 1 and Mr. H. K. Das, learned Standing Counsel for the Gauhati High Court representing the respondent nos. 2, 3 & 4.

2. The petitioner by instituting the present proceedings has sought for a direction upon the respondent authorities to promote him to the post of Upper Division Assistant (UDA) w.e.f., the date his juniors were so promoted vide order dated 05.02.2015.

3. The facts in brief, requisite for adjudication of the issue arising in the present proceeding is noticed as under:-

The petitioner was initially engaged as a Typist/Copyist in the establishment of Chief Judicial Magistrate, Kamrup vide an order dated 16.03.1978. Thereafter, the petitioner was, vide order dated 06.01.1989 temporarily appointed as Lower Division Assistant in the establishment. The petitioner was confirmed in his services by the Chief Judicial Magistrate, Kamrup, vide an order dated 30.10.2000.

The next promotional avenue available to an incumbent working in the establishment of the Chief Judicial Magistrate, Kamrup, in terms of the provisions of the **Assam Chief Judicial Magistrates Establishment (Ministerial) Service Rules, 1987**, are the posts forming the cadre of Upper Division Assistant (UDA). The petitioner contends that vide an

communication dated 17.07.2010, he was directed to appear in a recruitment process to be held on 14.08.2010 for selection for promotion to the post of UDA, however, no promotion came to be so effected in terms of the said recruitment exercise.

The Judicial District of Kamrup came to be bifurcated into two districts i.e., Kamrup (Metro) and Kamrup. Accordingly, the Court of Chief Judicial Magistrate, Kamrup also came to be bifurcated as the Court of Chief Judicial Magistrate, Kamrup (M), having its Headquarters at Guwahati and the Court of Chief Judicial Magistrate, Kamrup having its Headquarters at Amingaon.

The Registrar General of this Court vide notification dated 13.02.2014, notified that on creation of the separate Judicial District of Kamrup, the existing Judicial District with Headquarters at Guwahati will be known as Kamrup (M) district for all purposes. Further, vide notification dated 18.02.2014, the Registrar General of this Court, proceeded to declare that in view of the establishment of Judicial District of Kamrup at Amingaon, all the Judicial Courts situated at Rangia and Hajo shall now be under the jurisdiction of the Kamrup district having its Headquarters at Amingaon.

The petitioner submits that he having been working at the relevant point of time at Hajo, on the creation of the Judicial District at Kamrup with Headquarters at Amingaon, he was brought under the establishment of the CJM, Kamrup. The petitioner has further contended that at the time bifurcation of the Kamrup Judicial District, as noted herein above, w.e.f., 19.02.2014; the petitioner was placed at seniority position no. 3 amongst the incumbents working as of then against the post of LDA in the erstwhile establishment of the CJM, Kamrup, i.e., before bifurcation.

Upon bifurcation of the Judicial District of Kamrup, a fresh gradation list of the employees now placed in the establishment of the CJM, Kamrup (M) came to be published on 22.12.2014; however, the name of the petitioner did not figure in the said list. Thereafter, vide an order dated 05.02.2015, 12(twelve) incumbents working against the post of LDA in the establishment of the CJM, Kamrup (M) came to be promoted to the post of UDA w.e.f., 30.01.2015. It is the contention of the petitioner that amongst the persons so promoted, vide the said order dated 05.02.2015, 10(ten) of such employees were junior to him in the erstwhile establishment of CJM, Kamrup before its bifurcation. The petitioner submits that on account of the bifurcation so occasioning, he was denied an opportunity to have his case considered for promotion to the post of UDA. The petitioner, accordingly, had submitted representations before the CJM, Kamrup (R) for consideration of his case for promotion to the cadre of UDA w.e.f., the date his juniors were so promoted in the establishment of the CJM, Kamrup (M) vide the order dated 05.02.2015. The prayer of the petitioner not being considered, he has instituted the present proceeding.

4. Mr. P. P. Dutta, learned counsel appearing for the petitioner by reiterating the facts as noticed herein above, has submitted that while posting the petitioner to the establishment of the CJM, Kamrup with Headquarters at Amingaon, on its establishment, upon bifurcation of the Judicial District of Kamrup w.e.f., 19.02.2014; no option was so obtained from the petitioner, herein. It is further contended that the petitioner at the relevant point of time was serving at Hajo and accordingly, he was deemed to figure in the establishment of CJM, Kamrup on its establishment. Mr. Dutta has further submitted that the petitioner had also earlier held posts in

the establishment of the CJM, Kamrup (before its bifurcation) even at places, which now form part of Kamrup (M) District. Accordingly, Mr. Dutta has submitted that the petitioner being in the zone of consideration for promotion to the post of UDA and vacant post so available at the relevant point of time i.e., before the bifurcation of the Judicial District of Kamrup, the case of the petitioner was also required to be considered for such promotion by deeming him to be also in the establishment of CJM, Kamrup (M).

5. Mr. Dutta, learned counsel for the petitioner has further submitted that the petitioner during the pendency of the present proceeding has retired from his services on reaching the age of superannuation and the case of the petitioner was at no point of time considered for promotion to the post of UDA in the establishment of the CJM, Kamrup. Accordingly, in the above premises the learned counsel for the petitioner submits that appropriate direction is called upon to be issued, to the respondent authorities to promote the petitioner to the post of UDA, w.e.f., the date his juniors in the establishment of CJM, Kamrup (M) were so promoted, vide the order dated 05.02.2015.

6. Per contra, Mr. H. K. Das, learned Standing Counsel for the Gauhati High Court has submitted that after bifurcation of the erstwhile Judicial District of Kamrup, no vacancy having occasioned in the establishment of the Chief Judicial Magistrate, Kamrup in the cadre of UDA till the date, the petitioner had superannuated from his services i.e., till 30.11.2015, the case of the petitioner was not called upon to be so considered for such promotion. Mr. Das has submitted that the petitioner had not assailed his

placement in the establishment of the CJM, Kamrup, on its establishment upon bifurcation of the erstwhile Judicial District of Kamrup. Mr. Das has submitted that the promotion of the petitioner to the cadre of UDA having not been considered in view of the fact that no vacant post was available in the cadre of UDA, no right of the petitioner can be contended to have been violated in the matter.

7. Mr. H. K. Das, learned Standing Counsel, with regard to the contention of the petitioner that his case was also required to be so considered along with the other LDAs working in the establishment of CJM, Kamrup (M) for promotion to the cadre of UDA, after bifurcation of the erstwhile Judicial District, Kamrup, has submitted that the same would not be permissible, inasmuch as, in terms of the provisions of the said Rules of 1987, each of such CJM establishment is an independent unit. In the above premises, Mr. Das has submitted that the prayer of the petitioner in the writ petition cannot be acceded to by this Court.

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

9. The petitioner was initially working under the establishment of the CJM, Kamrup before its bifurcation. On bifurcation of the erstwhile Judicial District of Kamrup, the CJM, Kamrup establishment was also bifurcated as CJM, Kamrup (M) with its Headquarter at Guwahati and CJM, Kamrup with its Headquarter at Amingaon. With such bifurcation, all Judicial Courts situated at Rangia and Hajo were brought under the jurisdiction of the CJM, Kamrup district with Headquarter at Amingaon. The petitioner, at the relevant point of time was working as an LDA in the Court of JMFC, Hajo

and accordingly, his services came to be placed in the establishment of the CJM, Kamrup with its Headquarters at Amingaon. Such placement of the petitioner was not disputed to by him and the same was accepted by the petitioner.

10. Before the bifurcation of the Court of CJM, Kamrup into two separate and distinct establishments i.e., the Court of CJM, Kamrup (M) having its Headquarter at Guwahati and the Court of CJM, Kamrup with Headquarter at Amingaon, the petitioner was placed at serial no. 3 in order of seniority in the cadre of LDA. On bifurcation of the establishment of CJM, Kamrup and the placement of the petitioner in the establishment of the CJM, Kamrup, the name of the petitioner was deleted from the seniority list so published with respect to the incumbents in the Ministerial cadre in the establishment of the CJM, Kamrup (M).

11. It is an admitted position that vide the order dated 05.02.2015, 12(twelve) incumbents in the cadre of LDA in the establishment of the CJM, Kamrup (M) were promoted to the rank of UDA and further, that amongst the 12 incumbents so promoted, at least 10 of them were junior to the petitioner in the cadre of LDA in the erstwhile unified establishment of CJM, Kamrup.

12. The materials brought on record would reveal that in the establishment of the CJM, Kamrup with Headquarters at Amingaon, after its establishment on bifurcation, no vacancy had arisen in the post of UDA till 30.11.2015 i.e., the date on which the petitioner had retired from his services on reaching the age of superannuation. Accordingly, the case of the petitioner for promotion to the cadre of UDA was not mandated to be

so considered.

13. It is a settled position of law that an incumbent in a particular cadre would be eligible to be so considered for promotion on a vacancy arising in the promotional post which form part of the hierarchy of the service, he is so borne in.

14. Having drawn the above conclusion, this Court would now be required to examine the claim of the petitioner that he was also entitled to be so considered for promotion along with the incumbents promoted, vide the order dated 05.02.2015, against the post of UDA figuring in the establishment of CJM, Kamrup (M), Guwahati.

15. A perusal of the said Rules of 1987 would go to show that each establishment of CJM is an independent establishment and accordingly, an incumbent figuring in a particular CJM's establishment cannot claim for being promoted against a promotional post figuring in a different CJM's establishment. Although the petitioner, amongst the incumbents in the cadre of LDA in the erstwhile unified establishment of the CJM, Kamrup had figured at Serial No. 3 on the basis of seniority, such seniority position as assigned to the petitioner lost its significance on the bifurcation of the erstwhile establishment of the CJM into two different establishments as noticed herein above.

16. The petitioner having been placed in the establishment of the CJM, Kamrup with its Headquarter at Amingaon, the seniority of the petitioner and his further service condition would be so considered in terms of the said provisions of the said Rules of 1987 in relation to the establishment where he was so placed and it would not be permissible to the petitioner to

claim any benefit in this connection, basing on steps taken in respect of even his erstwhile juniors, now figuring in a separate and distinct CJM's establishment, which in this case would be the establishment of the CJM, Kamrup (M).

17. In view of the conclusions reached by this Court, it is to be held that the petitioner would not be entitled to be so considered for promotion against the vacancies that had arisen, after bifurcation of the CJM establishment in the establishment of the CJM, Kamrup (M) in the cadre of UDA. Accordingly, the claim of the petitioner as made in the present writ petition would not be mandated to be so considered by this Court. Further, the petitioner having already retired from his services, no direction can be so passed by this Court for considering the case of the petitioner against any vacancies in the cadre of UDA that may have so arisen after the date of superannuation of the petitioner, herein.

18. In view of the above conclusions, the writ petition is held to be devoid of any merit and accordingly, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant