

GAHC010275432023



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

Case No. : WP(C)/7038/2023

BIJAYLAKHMI LASKAR DUTTA
W/O DR. BIJOY KR DUTTA R/O BY LANE NO. 2 UMACHARAN BORO PATH
RUPNAGAR GUWAHATI 781032 DIST. KAMRUP M ASSAM

VERSUS

THE ASSAM POWER DISTRIBUTION COMPANY LTD AND 3 ORS
REP BY ITS CHAIRMAN CUM MANAGING DIRECTOR CMD BIJULEE
BHAWAN PALTAN BAZAR GUWAHATI 1 ASSAM

2:THE MANAGING DIRECTOR
ASSAM POWER DISTRIBUTION COMPANY LTD BIJULEE BHAWAN
PALTAN BAZAR GUWAHATI 1 ASSAM

3:THE CHIEF GENERAL MANAGER (HRA)
ASSAM POWER DISTRIBUTION COMPANY LTD BIJULEE BHAWAN
PALTAN BAZAR GUWAHATI 1 ASSAM

4:THE DIRECTOR (PERSONAL)
ASSAM POWER DISTRIBUTION COMPANY LTD BIJULEE BHAWAN
PALTAN BAZAR GUWAHATI 1 ASSA

PRESENT

HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

For the petitioner : Mr. P. Mahanta, Mr. D.J. Das, Mr. D. Thaosen, Advocates.

For the respondents : Mr. N. Dekar, S.C, APDCL.

Date of hearing : 23rd February, 2024

Date of Judgment and order : 29th February, 2024

JUDGMENT & ORDER

Heard Mr. P Mahanta, learned counsel for the petitioner. Also heard Mr. N. Deka, learned standing counsel, Assam Power Distribution Company Limited (APDCL), for all the respondents.

2. The petitioner, while working as Assistant General Manager (AGM) in the APDCL, was alleged to have installed the old electricity meter in her residence, by taking down the new electricity meter put by the APDCL, without the knowledge and permission of the APDCL. Accordingly, charge-sheet dated 09-06-2016 was issued to the petitioner wherein she was asked to submit her written statement of defence. The petitioner submitted her written statement of defence on 24-06-2016. Thereafter, the Departmental Proceeding (DP) proceeded. The DP was concluded by issuance of the order dated 27-01-2020 by which the petitioner was imposed the penalty of stoppage of all annual increment till the date of her superannuation, i.e., 29-02-2024 with further condition that she will not be considered for promotion during continuation of such penalty.

The petitioner, thereafter, filed an appeal on 06-03-2020 before the appellate authority. The appeal filed by the petitioner was disposed of by the appellate authority on 31-08-2020 by concurring with the decision of the Disciplinary Authority.

3. Being aggrieved, the petitioner approached this Court by way of WP(C) No. 3757/2020, which was disposed of by judgment and order dated 15-11-2022 with the following directions:

“30. In the case of **Vijay Singh vs. State of Uttar Pradesh & Others**, reported in **(2012) 5 SCC 242**, the Apex Court has held that a punishment not provided in the Rules cannot be imposed. Accordingly, the penalty of non consideration of the petitioner for promotion is not sustainable in law, as the same is not provided in the Regulations. The said penalty is accordingly set aside. With regard to the penalty of stoppage of all increments till the petitioner’s retirement, this Court finds that Regulation 10.2(a)(iii) only provides for stoppage of increment for a specified period. The petitioner has however been imposed the penalty of stoppage of all increments till the petitioner’s retirement. This court finds that the stoppage of all increment till retirement of the petitioner is not in consonance with Regulation 10.2(a)(iii) of the 1960 Regulations and as such, disproportionate and needs to be revisited by the Disciplinary Authority. The said penalty is accordingly set aside. The matter is remanded back to the respondent authorities to re-consider the case of the petitioner and impose a penalty lesser than the penalty of stoppage of all increments till her retirement.

31. The writ petition is accordingly disposed of.”

4. Thereafter, the Managing Director, APDCL, issued another order dated 02-01-2023. The operative portion of the said order reads as under:

“The undersigned being the Disciplinary Authority, after careful perusal and consideration of all the facts, relevant documents, judgment dated 15.11.2022 of the Hon’ble Gauhati High Court in the WP(C) No. 3757/2020 and circumstances of the matter, in exercise of power conferred upon under Regulation-10 of ASEB (General Service) Regulation (for officers’), 1960, to meet the end of justice, I do hereby award the penalty of “stoppage of three (3) annual increments with cumulative effect” w.e.f. July 2020 upon Smti Bijaylakshmi Laskar Dutta, AGM, O/o the CGM (AT&S), APDCL.

The representation dated 17.11.2022 submitted by Smti Bijaylakshmi Laskar Dutta, AGM, O/o the CGM (AT&S), APDCL is disposed of accordingly.”

5. By office order dated 07-09-2023, the petitioner, on the recommendation of the JCC was promoted to the post of DGM.

6. The petitioner, by way of the present writ petition claims for retrospective promotion on the strength of the judgment and order dated 15-11-2022 passed in WP(C) No. 3757/2020, with the following prayers:

“In the premises aforesaid, it is therefore respectfully prayed that Your Lordships may be pleased to admit this application, call for the records and issue a Rule calling upon the Respondents to show cause as to why a writ in the nature of :

i) Mandamus shall not be issued directing the respondents to forthwith to consider the petitioner for promotion to the post of Chief General Manager from the date the batchmate has been promoted, and/or

ii) Mandamus shall not be issued directing the respondent authorities to consider for promotion of the petitioner to the post of Chief General Manager in the respondent department w.e.f. the date the petitioner ought to have been promoted considering the penalty of 'stoppage of promotion till retirement' as void ab-initio in virtue of the judgment and order dated 15.11.2022 passed in WP(C) No. 3757 of 2020, and/or

iii) Mandamus shall not be issued to direct the respondent authorities to provide service benefits attached to the post of Chief General Manager, and/or

iv) Mandamus to direct to forthwith consider the representation dated 19.09.2003 submitted by the petitioner, and/or

upon cause(s) shown and after perusing the records and hearing the parties, Your Lordships may be pleased to make the Rule absolute and/or be pleased to pass such further or other order(s) as Your Lordships may deem fit and proper”

7. Mr. P. Mahanta, learned counsel for the petitioner submits that after the order dated 27-01-2020, by which the stoppage of all increments till the petitioner's retirement was imposed, with further condition that the petitioner will not be considered for promotion during continuation of such penalty, was interfered by this Court by judgment and order dated 15-11-2022, passed in WP(C) No. 3757/2020, the respondents ought to have considered the case of the petitioner for promotion to the post of Deputy General Manager (DGM), General Manager (GM) and Chief General Manager (CGM) by giving her retrospective promotions. However, the petitioner was debarred from promotion without considering the vital aspect of the finding of the judgment and order dated 15-11-2022, passed in WP(C) No. 3757/2020. In the meantime, the juniors of the petitioner were promoted to the post of DGM, GM and CGM superseding the petitioner thereby causing grave injustice to the petitioner.

It is also submitted that had the respondents considered the promotion of the petitioner, she would, now, have been in the position of Chief General Manager. However, she is two ranks down and presently holding the post of Deputy General Manager. The action of the respondents is ex-facie illegal and arbitrary and the petitioner has been meted out hostile discrimination without any reasonable basis or justification. Thereby, the respondents have violated, with all impunity, the fundamental rights guaranteed to the petitioner under the Constitution of India.

8. The learned counsel for the petitioner has also placed reliance in the case of **Vijay Singh vs. State of Uttar Pradesh and others**, reported in **(2012) 5 SCC 242** and in the case of **Akai Thadou vs. North Cachar Hills Autonomous District Council, Haflong and others**, reported in **1995 – L.L.N 124**.

9. It is submitted that the petitioner is retiring on 29-02-2024 and, therefore, the respondents should be directed to give two respective promotions to the posts of GM and CGM, at par with her juniors, who have already superseded the petitioner.

10. Mr. N. Deka, learned standing counsel, APDCL, on the other hand submits that after the judgment and order dated 15-11-2022 was passed in WP(C) No. 3757/2020, the respondent No. 2, Managing Director, APDCL, had issued another order on 02-01-2023 in compliance with the direction given by the judgment and order dated 15-11-2022, by which the petitioner was awarded penalty of stoppage of three annual increments with cumulative effect, with effect from July, 2020. He, therefore, submits that during the currency of the penalty imposed by the order dated 02-01-2023, no promotion could have been given to the petitioner. It is also submitted that this Court, by the judgment and

order dated 15-11-2022, passed in WP(C) No. 3757/2020, did not exonerate the petitioner from the charges, but had only interfered with the quantum of punishment and the matter was remanded back to the respondents for passing appropriate orders. As the penalty imposed by the order dated 02-01-2023 expired in the month of July, 2023, the petitioner was accordingly given promotion to the post of DGM by the order dated 07-09-2023. He, therefore, submits that no discrimination has been meted out to the petitioner inasmuch as during the currency of the penalty undergone by the petitioner in terms of the order dated 02-01-2023, the petitioner could not have been given any promotion.

The learned standing counsel for the respondents submits that there is no merit in the writ petition and the same deserves to be dismissed. He has placed reliance in the case of **Union of India and others vs. K.V. Jankiraman and others**, reported in **(1991) 4 SCC 109**; **L. Rajaiah vs. Inspector General of Registration & Stamps, Hyderabad and others**, reported in **(1996) 8 SCC 246**; **Collector of Thanjavur Distt. and others vs. S. Rajagopalan and others**, reported in **(2000) 9 SCC 145**; **Mohammed Faizal K.A. vs. D. Sali and others**, reported in **(2017) 16 SCC 394**; **Ram Ashish Dixit vs. Chairman, Purvanchal Gramin Bank Limited and another**, reported in **(2013) 6 SCC 309** and **State of T.N. vs. Thiru K.S. Murugesan and others**, reported in **(1995) 3 SCC 273**.

11. I have considered the submissions made by the learned counsel for the parties.

12. An important point of note is that after the order dated 27-01-2020, i.e., imposing penalty of stoppage of all annual increment till 29-02-2024, the date of superannuation of the petitioner, with further condition that she will not be

considered for promotion during continuance of such penalty was passed by the Disciplinary Authority, this Court interfered with the said order by the judgment and order dated 15-11-2022, passed in WP(C) No. 3757/2020. By the said judgment and order, the matter was remanded back to the respondent authorities to reconsider the case of the petitioner and impose a penalty lesser than stoppage of increments till her retirement.

Thereafter, the respondent No. 2 issued an order dated 02-01-2023, by which the petitioner was awarded the penalty of stoppage of three annual increments with cumulative effect with effect from July 2020. The said order dated 02-01-2023 has attained its finality inasmuch as the petitioner did not challenge the same and has undergone the penalty awarded by the order dated 02-01-2023.

13. In that view of the matter, this Court is of the considered opinion that the only question that is to be answered is whether the petitioner could have been promoted during the continuance of the penalty of stoppage of three annual increments with cumulative effect with effect from July 2020, imposed by the order dated 02-01-2023?

14. In the case of **K.V. Jankiraman** (supra), the Hon'ble Supreme Court, in paragraph 29, has observed and held as under:

“According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that

is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in presenti. When an employee is held guilty and penalized and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause (i) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal."

15. Further, in the case of **Thiru K.S. Murugesan** (supra), the Hon'ble Supreme Court has held in paragraph 9 as follows:

"It would thus be clear that when promotion is under consideration, the previous record forms the basis and when the promotion is on merit and ability, the currency of punishment based on previous record stands as an impediment. Unless the period of punishment gets expired by efflux of time, the claim for consideration during the said period cannot be taken up. Otherwise, it would amount to retrospective promotion which is impermissible under the Rules and it would be a premium on misconduct. Under these circumstances, we are of the opinion that the doctrine of double jeopardy has no application and non-consideration is neither violative of Article 21 nor Article 14 read with Article 16 of the Constitution."

16. Coming to the case in hand, the order dated 02-01-2023, issued by the respondent No. 2 clearly spells out the penalty awarded to the petitioner of stoppage of three annual increments with cumulative effect with effect from July 2020. It is not in dispute that the penalty awarded to the petitioner by the order dated 02-01-2023 would operate for a period of three years, i.e., upto July,

2023. The case of the petitioner was not recommended for promotion during the currency of the penalty for a period of three years during which period her juniors superseded her to higher post. It is also not in dispute that immediately after undergoing the penalty of stoppage of increments of three years, the petitioner was promoted to the post of DGM by the order dated 07-09-2023. Therefore, in the considered opinion of this Court, no discrimination has been meted out to the petitioner inasmuch as when her juniors were promoted to the higher post, the petitioner was undergoing the penalty of three years stoppage of increment with cumulative effect. The denial of promotion would not amount to penalty and it is to be taken into account that the penalty was imposed to the petitioner during the relevant period.

17. This Court, therefore, is of the view that when an employee is held guilty and penalized and is, therefore, not promoted during the currency of the penalty period, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct.

18. This Court has also considered the authority cited by the learned counsel for the petitioner; however, on consideration of the same, this Court is of the considered opinion that the same are not applicable to facts and circumstances of the present case.

19. Accordingly, this Court finds no merit in the present writ petition and the same is accordingly dismissed.

No costs.

JUDGE

Comparing Assistant