
(2008) 02 GAU CK 0022
In the Gauhati High Court

Abala Devi

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Citation : (2010) 1 GLR 665 : (2008) 2 GLT 59

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Judgement

B.K. Sharma, J.—Both the writ petitions being connected To each other, have been heard together and are being disposed of by this common judgment and order.

2. The petitioner in the first writ petition i.e. W.P. (C) No. 3661/2005 is the Respondent No. 5 in the second writ petition i.e. W.P. (C)No. 5639/2005. Similarly, the petitioner in the second writ petition is the Respondent No. 5 in the first writ petition. While the grievance of the petitioner in the first writ petition is the order having effect of her reversion from the promotional post from Upper Division Assistant (U.D.A.) to her original post of Lower Division Assistant (L.D.A.), the grievance of the petitioner in the second writ petition is his non-promotion to the post of U.D.A., which promotion was earlier provided to the petitioner in the first writ petition.

3. The basic facts are not in dispute. While the petitioner in the first writ petition was appointed in the establishment of the Regional College of Nursing (R.C.N.), Guwahati, the petitioner in the second writ petition was appointed in the establishment of the Gauhati Medical College & Hospital (G.M.C.H.), Guwahati. Both the establishments, distinct and separate, are under the administrative control and supervision of the Director of Medical Education (D.M.E.), Assam.

4. The first writ petitioner was appointed as L.D.A. (Grade-III) in the R.C.N, by the Principal of the said college on 22.4.1987. On the other hand, the second writ petitioner was appointed as Store Keeper (Grade-III) on 7.10.1997 by the

Principal-cum-Chief Superintendent of the G.M.C.H. Subsequently, he was placed on duty as LDA with effect from 20.7.1998. Even otherwise also, the post of Store Keeper is in the rank of L.D.A.

5. It is in the above backdrop of two separate establishments i.e. the R.C.N. and G.M.C.H., it is the case of the second writ petitioner that in the event of any promotional vacancy, he is entitled to get consideration for such promotion. Be it stated here that the second writ petitioner is a reserved category candidate [ST(P)].

6. In the year 2002, the D.M.E., Assam by his order dated 14.3.2002 transferred the first writ petitioner from R.C.N. to G.M.C.H. to the replacement of the second writ petitioner. By the same very order, the second writ petitioner was transferred to R.C.N. to the replacement of the first writ petitioner. Both the incumbents continued in their respective posts of LDA with inter-changing of establishment.

7. The entire dispute relating to filing of the instant writ petitions has arisen due to such transfer of the incumbents from one establishment to another.

8. While the first petitioner was continuing in the establishment of G.M.C.H., which is separate from her own original establishment, she was promoted to the post of UDA in the same establishment i.e. G.M.C.H. by office order dated 15.9.2004 issued by the Principal-cum-Chief Superintendent, G.M.C.H. Since it is the second writ petitioner, who originally belonged to the establishment of G.M.C.H., with the promotion of the first writ petitioner by the authority of the G.M.C.H., his grievance started inasmuch as, but for the aforesaid transfer order dated 14.3.2002, it is he who would have got the promotion. In fact, he before the order of promotion, made Annexure-VIII representation dated 29.3.2004 to the Principal-cum-Chief Superintendent, G.M.C.H. urging for his transfer back to his own establishment i.e. G.M.C.H. In the representation, it was clearly indicated that in the event of his continuation in the establishment of the R.C.N., he will be deprived of his promotion to the post of UDA in the establishment of G.M.C.H. It was also indicated that because of his transfer to R.C.N., he was looser in respect of the hazard allowance of Rs. 100/- per month.

9. It appears that in spite of the said representation, the first writ petitioner was promoted to the post of UDA in the establishment of G.M.C.H., which is admittedly not her original establishment. The resultant effect of such promotion is the deprivation of the second writ petitioner to get the promotion in his own establishment.

10. The DME i.e. the controlling and supervising authority of both the establishments, by his Annexure-IX letter dated 17.3.2005 addressed to the Principal-cum-Chief Superintendent, G.M.C.H. indicated about deprivation of the second writ petitioner of promotion to the post of UDA. Accordingly, the direction was issued to consider his case maintaining 20-Point Roster applicable to the establishment. The said letter dated 17.3.2005 was followed by Annexure-VII

letter dated 29.4.2005 addressed to the DME by the Principal-cum-Chief Superintendent, G.M.C.H. In the letter, the decision to revert back the first petitioner to R.C.N. and to promote the second petitioner as UDA in her place, was indicated. The letter also indicated about the initial appointments of both the incumbents in the respective establishments i.e. the R.C.N. and the G.M.C.H.

11. After the aforesaid decisions and communication, the DME Assam issued order dated 10.5.2005 (Annexure-XII to the first writ petition) transferring back both the incumbents to the respective original establishments. Naturally, the first writ petitioner was transferred as LDA to her own establishment i.e. the R.C.N. as she was transferred from there to G.M.C.H. as LDA. Same was the case with the second writ petitioner.

12. The first writ petitioner is aggrieved by the said order not because of her transfer to RCN, but primarily because of her transfer as LDA and not as UDA. She has filed the writ petition making a challenge to the same. This Court by order dated 18.5.2005 stayed the impugned order so far as the same relates to the first writ petitioner.

13. Although pursuant to the aforesaid impugned order, the second writ petitioner was released from R.C.N. on 13.5.2005 enabling him to join the G.M.C.H., but in view of the aforesaid interim order passed by this Court on 18.5.2005, the D.M.E., Assam by his order dated 30.6.2005 again reverted back the second writ petitioner to R.C.N.

14. In the second writ petition, the challenge made by the petitioner is the promotion of the first writ petitioner as UDA. As reflected, it is his case that since both the establishments are distinct and separate, it is he, who belonging to the establishment of the G.M.C.H. is entitled to get promotion as UDA and not the first writ petitioner. It is his case that taking advantage of transfer effected in respect of both the incumbents, the benefit of promotion which would have otherwise accrued to him, cannot be taken away.

15. The D.M.E., Assam has filed affidavit-in-opposition in the first writ petition contending that having regard to the fact that the appointing authorities of both the incumbents are different and that both the establishments have distinct and separate entity with no common gradation list, it was incorrect on the part of the Principal-cum-Chief Superintendent, G.M.C.H. to promote the first writ petitioner in the establishment of G.M.C.H. to which the second writ petitioner belongs. It is the definite stand of the D.M.E. that separate gradation lists are maintained in both the establishments and the promotions are also effected on the basis of such separate gradation lists. Having detected the mistake committed by the authority of the G.M.C.H., necessary follow up action had to be taken-the affidavit states.

16. In the reply affidavit filed by the first writ petitioner, the basic facts have not been denied. She has also filed affidavit-in-opposition in the second writ petition clearly admitting that the establishments of R.C.N. and the G.M.C.H. are distinct

and separate. In Para-6 of the said affidavit, she has made the following statements:

6. That in regard to the statements made in Para-9 of the petition the deponent states that the deponent fails to understand as to what has been indicated by the phrase "Parent Department". Both the deponent and the petitioner are employees of their department of Medical Education and Gauhati Medical College and Hospital and the Regional College of Nursing are two different institutions under the Directorate of Medical Education, Assam. In that view of the matter Gauhati Medical College and Hospital cannot be termed as "Parent Department" of the petitioner.

17. She has maintained that she was promoted on the basis of her seniority without however, saying anything as to how and in what manner, her seniority was counted in the transferred establishment i.e. the G.M.C.H. Her contention is that since the impugned order has the effect of her reversion from the promotional post of UDA to the lower post of LDA, same could not have been done without taking recourse to the procedure established by law.

18. I have heard Dr. Y.K. Phukan, learned Sr. Counsel assisted by Mr. D. Das, learned Counsel for the first writ petitioner as well as Ms. R. Chakraborty, learned State Counsel representing the State respondents. I have also heard Mr. S.D. Choudhury, learned Counsel appearing for the second writ petitioner. I have considered the materials on record produced by the learned State counsel.

19. During the course of hearing, with a view to provide amicable settlement to the matter, instructions were called for through the learned State counsel as to whether there is any promotional vacancy of UDA in G.M.C.H. and R.C.N. to provide accommodation to both the incumbents. It was intimated that a vacancy of UDA has occurred with effect from 1.11.2007 in the establishment of G.M.C.H. However, no such promotional vacancy has arisen in the establishment of R.C.N. Thus, in the event of transfer of the first writ petitioner to R.C.N., she will have to be reverted back to the post of LDA, while the second writ petitioner will get his promotion as UDA, which position but for the transfer of both the incumbents by order dated 14.3.2002 would have been the natural consequence.

20. It is not the case of the respondents that the second writ petitioner is unfit for promotion as UDA. Same is the case with the first writ petitioner. However, had the incumbents being continued in their respective establishments and they were not transferred as was done by the order dated 14.3.2002, it is the second writ petitioner, who would have earned his promotion from the date on which the first writ petitioner was promoted. The respondents have realized the mistake they have committed and accordingly, while deciding to promote the second writ petitioner, it has also been decided to transfer the first writ petitioner to her original establishment i.e. the R.C.N, with an unfortunate result of her reversion to the post of LDA.

21. While promoting the first writ petitioner as UDA by order dated 15.9.2004

issued by the Principal-cum-Chief Superintendent, G.M.C.H., he was totally oblivious of the fact that she had come to the establishment on transfer from another establishment and that the incumbent i.e. the second writ petitioner belonging to the establishment had been transferred to another establishment. Thus, while promoting the first writ petitioner as UDA, the case of the second writ petitioner never came up for consideration although he in the meantime had submitted the aforesaid Annexure-VIII representation dated 29.3.2004 to the same very authority, who issued the impugned order of promotion dated 15.9.2004.

22. In view of the above, both the writ petitions are disposed of with the following directions:

i. The Principal-cum-Chief Superintendent, G.M.C.H. shall consider the promotion of the second writ petitioner to the post of UDA with effect from 15.9.2004, on which date, the first writ petitioner was promoted as such. It is made clear that he will not be entitled to any back wages, but his pay in his promotional post, shall be fixed notionally.

ii. The D.M.E., Assam shall consider either retention of the first writ petitioner in the establishment of the G.M.C.H. in the promotional post of UDA, which has fallen vacant on 1.11.2007 or her transfer to R.C.N. along with the promotional post. This course of action shall however, be without affecting the interest of the administration of both the establishments and immediate promotional prospects of others.

iii. Since the entire dispute/problem has its roots to the transfer order dated 14.3.2002 issued by the D.M.E., Assam and the consequential action of the Principal-cum-Chief Superintendent, G.M.C.H., it is expected that the said two authorities in collaboration with the Principal, R.C.N, would arrive at a solution to protect the interest of the first writ petitioner as far as possible and practicable.

iv. In the event of working out the solution in terms of (2) and (3) above and the result is favourable to the first writ petitioner, the said authorities shall not order for recovery of any amount already drawn by the first writ petitioner in the promotional post of UDA. However, her promotion as UDA will be effective from 1.11.2007.

23. With the above directions and expectation, both the writ petitions are disposed of leaving the parties to bear their own costs.