

(2023) 08 GAU CK 0006

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3772 Of 2011

Anita Haldar

APPELLANT

Vs

State Of Assam And Ors.

RESPONDENT

Date of Decision : 01-08-2023

Acts Referred:

Citation : (2023) 08 GAU CK 0006

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : M. Chakraborty, B. Gogoi

Final Decision : Dismissed

Judgement

1. The instant writ petition has been filed by the petitioner assailing the order dated 27.06.2011 issued by the Executive Engineer, Public Works Department (Roads), Guwahati City Division No.I; for a writ of mandamus thereby directing the respondents to allow the petitioner to work as Lower Division Assistant (LDA) in the Office of the G. K. Sub-Division in terms with the order dated 30.09.2004 as well as for a direction upon the respondents to regularize the services of the petitioner as Work Charged Khalashi and promote the petitioner into the post of Grade-III by appointing her as LDA in the Office of the Executive Engineer, Public Works Department (Roads), Guwahati City Division No.I.

2. The facts as could be discerned from the writ petition are that the petitioner was appointed as a Work Charged Khalashi in the year 1994. The petitioner thereupon, in the year 1997, passed her Bachelor of Arts Examination. Subsequent thereto, the petitioner filed a writ petition being WP(C) No.4253/2004 wherein the petitioner claimed that as she was a graduate and there were approximately six vacancies in the cadre of LDA, the petitioner be considered for appointed as Grade-III employee as per the Government policy embodied in the letter dated 25.05.1992. The said writ petition was disposed of vide an order dated 22.06.2004 thereby directing the respondent authorities,

particularly the respondent No.3, namely, the Executive Engineer, Public Works Department (Roads), Guwahati City Division first to ascertain the number of vacancies in the cadre of LDA required to be filled up by promotion under the Government policy and thereafter to fill up the same by promoting Grade-IV employees having requisite qualifications. It was further observed that the petitioner, being a graduate, is entitled to be considered for promotion under the aforesaid policy and her case should also be considered along with the other similarly situated eligible persons in accordance with the provisions of law. It was further directed that the representation so submitted by the petitioner on 08.06.2004 should also be taken into consideration while making appointment to the post of LDA. Thereupon, on the basis of the order dated 22.06.2004, there have been certain inter-departmental communications.

3. On 30.09.2004, an order was issued by the Executive Engineer, Public Works Department (Roads) whereby in pursuance to a letter issued by the under Secretary to the Government of Assam dated 29.09.2004 as well as the Finance Memorandum dated 19.03.2004, the petitioner was temporarily promoted to the post of LDA and placed in the G.K. Sub-Division in the scale of pay from the date of joining in her promoted post until further orders. Pursuant thereto, the petitioner joined her promotional post.

4. The Executive Engineer, Public Works Department (Roads) issued a show cause to the petitioner on 29.07.2005 wherein it was mentioned that as there was no Rule for promotion to Work Charged persons and as such the petitioner was asked to show cause why she should not be reverted back to her original post. The said show cause reply was directed to be submitted within two days. On 01.08.2005, the petitioner sought for time on medical ground.

5. Be that as it may, an order was passed on 01.08.2005 by the Executive Engineer, Public Works Department (Roads) whereby the petitioner was reverted back to her original post. This order was put to challenge by the petitioner in WP(C) No.5492/2005.

6. This Court, vide an order dated 19.08.2005, had stayed the said order and it was further directed that the petitioner be allowed to continue in the post of LDA. It is further seen from the records that the said writ petition so filed by the petitioner being WP(C) No.5492/2005 was disposed of vide the order dated 13.06.2011 along with WP(C) No.4366/2009 filed by another person. It appears from the said order dated 13.06.2011 that the said order dated 01.08.2005 by which the petitioner reverted to the original post was not interfered with. This Court, however, directed the respondent authorities that if the said authorities felt that the post of LDA was to be filled up by Work Charged Khalashi, arrangement had to be made taking into account the seniority position of the Work Charged Khalashis. This Court further directed that in the event any decision is taken to promote the Work Charged Khalashi to the post of LDA, the authority would do so strictly adhering to the position indicated in the seniority list and would also consider as to whether the Work Charged Khalashis are

entitled to the post of LDA. It is further relevant to take note of that this Court directed that taking into account that the petitioner had rendered service as an LDA during the period, there should be no recovery made from the petitioner. This order dated 13.06.2011 passed in WP(C) No.5492/2005, however, was not put to challenge by the petitioner and thereby the order dated 01.08.2005, by which the petitioner was reverted back to the original post had attained finality.

7. Pursuant to the said order dated 13.06.2011 passed by this Court, the petitioner submitted a representation dated 18.06.2011 thereby requesting that she may be allowed to continue as an LDA. The Executive Engineer, Public Works Department (Roads), thereupon, passed an order on 27.06.2011 whereby it was observed that the petitioner was engaged as a Work Charged Khalashi in the year 1994 and being a Work Charged employee is not entitled to promotion to the post of LDA, and as such, her case cannot be considered for promotion. In view of the said findings, it was, therefore, ordered that the petitioner be reverted back to the original post of Work Charged Khalashi with immediate effect. This order dated 27.06.2011 was put to challenge before this Court by way of the present writ petition seeking the further consequential relief as has already been mentioned in the previous segments of the instant judgment.

8. It appears on record that the respondent, PWD authorities had filed an affidavit-in-opposition on 23.02.2012. In the said affidavit-in-opposition, it was mentioned that the petitioner's promotion to the post of LDA from the post of Work Charged Khalashi was not regular, and as such, she was reverted back to the post of Work Charged Khalashi vide the order dated 01.08.2005. It was further mentioned that the order dated 01.08.2005 by which the petitioner was revered back to her original post was not interfered with by this Court in WP(C) No.5492/2005. It was mentioned that the speaking order dated 27.06.2011 was in consonance with the prevalent laws in as much as the petitioner being a Work Charged Khalashi is not entitled for promotion to the post of LDA as it is not permissible for the authorities to promote Work Charged employees to the post of LDA. It was further mentioned that only regular Grade-IV employees are entitled to get promotion to the post of LDA, and as such, the petitioner was rightly reverted back to her original post, i.e. Work Charged Khalashi.

9. I have heard the learned counsels for the parties and perused the materials on record. From the impugned order dated 27.06.2011, two aspects of the matter come to light. First that the petitioner being a Work Charged Khalashi cannot be given promotion to the post of LDA and the second is that the petitioner was reverted back to her original post. In respect to the second aspect of the matter, the non-interference by this Court to the order dated 01.08.2005 by which the petitioner was reverted back to her original post having already attained finality, the order dated 27.06.2011 was nothing but a reiteration of the reversion of the petitioner vide the other dated 01.08.2005 which had already attained finality and as such cannot be assailed before this Court again. The first aspect of the matter pertains to whether the petitioner being a Work Charged Khalashi can be

promoted to the post of LDA. Nothing has been brought on record to show that on the basis of the extant applicable Rules, the petitioner can be given a promotion to the post of LDA which is a Grade-III post. On the other hand, it is the specific stand of the respondent authorities that could be seen from the affidavit-in-opposition that only regular Grade-IV employees can apply for being considered for promotion to a Grade-III post of LDA.

10. Taking into account the above, this Court does not find any merit in the instant writ petition for which the instant writ petition stands dismissed.