
(2008) 09 GAU CK 0048
In the Gauhati High Court

Arundhati Deb

APPELLANT

Vs

Gauhati High Court and Others

RESPONDENT

Date of Decision : 03-09-2008

Acts Referred:

Gauhati High Court Services (Appointment, Conditions of Service and Conduct) Rules, 1967 — Rule 7(4)

Citation : (2009) 3 GLR 76 : (2009) 1 GLT 201

Hon'ble Judges : Hrishikesh Roy, J;B.D. Agarwal, J

Bench : Division Bench

Judgement

Hrishikesh Roy, J.—Heard Mr. S. Talapatra, learned senior counsel appearing for the petitioner. Also heard Mr. S.M. Chakraborty, learned senior counsel who appears for the respondent Nos. 1, 2 and 3. Respondent No. 4 has chosen not to participate in the proceedings although notice was served on him.

2. The petitioner, who is a Master Degree holder in English Language and has been appointed as a Translator in the Agartala Bench of the Gauhati High Court on 14.12.1992, is challenging the right of respondent Nos. 3 and 4, who were also appointed as Translators to be considered as encadred Translators in the newly created cadre of High Court Translators, brought about by incorporation of Sub-rule 4 of Rule 7 of the Gauhati High Court Services (Appointment, Condition of Service and Conduct) Rules, 1967 ("the Rules") through Amendment of the Rules in 1994. The challenge to the entitlement of respondent Nos. 3 and 4 to be part of the newly created cadre is on the ground that the respondent Nos. 3 and 4 do not possess the qualification prescribed under Sub-rule 4 of Rule 7 of the Rules to be fitted into the entry level post of Junior Grade Translator in the newly created cadre, where Degree in Law or Master Degree in English language have been prescribed as the requisite qualification. The writ petitioner is also seeking direction for notifying the encadrement of eligible persons in the cadre of Translators, by excluding respondent Nos. 3 and 4 from the said exercise.

2.1 The writ petitioner also challenges the notification dated 20.3.2006 whereby

the respondent No. 3 has been promoted to the post of Senior Grade Translator and seeks further direction for considering the case of the petitioner for promotion to the said post of Senior Grade Translator.

3. When the petitioner was appointed as Translator on 14.12.1992 the post of translator was notified a member of the Class IIA) Service under the Ministerial Establishment (Non-Gazetted) of the High Court. It is not in dispute that the qualification for being appointed to the post of Translator at the time when the petitioner and also the respondent Nos. 3 and 4 were appointed to the said post was honours Graduate, preferably Honours in English or Master Degree. Master Degree was not however prescribed as an essential qualification for being appointed as a Translator.

4. The respondent No. 3 is an Honours Graduate in Education and was appointed as a Translator in the year 1988 in pursuant to the advertisement notification dated 18.11.1987, The respondent No. 4 was also appointed around the same time as respondent No. 3. This respondent also does not possess a Master Degree and was appointed as Translator while holding an Honours Degree which as earlier noted was the required qualification for being appointed as Translator at the relevant point of time in the year 1988.

5. With the first Amendment Rules, 1994, Sub-rule (4) of Rule 7 of the Rules was inserted. Along with the new Rules, Schedule 1(A) was also incorporated which brought into being a separate cadre for the Translator of the High Court with the entry level Translator being described as Junior Grade Translator and the two higher cadre Translators, which are to be filled up by promotion, have been described as Senior Grade Translator and Chief Translator respectively.

5.1 For ready reference, Sub-rule (4) of Rule 7 incorporated in the Rules with effect from 1.4.1993 is extracted for ready reference:

(4) The post of Chief Translators and Senior Grade Translators as mentioned in Schedule 1(A) shall be filled up by promotion from, the Senior Grade Translators and Junior Grade Translators respectively while the posts of Junior Translators shall be filled up by competitive examination from amongst the persons having degree in Law or Master Degree in Language:

Provided that the posts mentioned in this Schedule shall form an independent cadre, and promotion to higher posts shall be restricted to the posts mentioned in this Schedule only.

5.2 As can be noticed above from the proviso to Rule 7(4) of the Rules that the post mentioned in Schedule 1(A) shall form an independent cache and promotions to higher post shall be restricted to the post mentioned in the said Schedule 1(A) only.

6. The petitioner as well as respondent Nos. 3 and 4 were appointed as Translators before notifying the new and separate cadre of Translators and with the constitution of the independent cadre of Translators, notified by the 1st

Amendment Rules, 1994, the persons who will be encadred in the newly constituted cadre were required to be notified.

7. But although none was encadred as a Junior Grade Translator in the newly constituted Translator's Cadre, the respondent No. 3 was given promotion by the impugned notification dated 20.3.2006 giving her promotion to the post of Senior Grade Translator, which obviously is a promotional post in the newly constituted cadre of Translator. Although it is averred in the counter affidavit filed by the High Court that separate Cadre of Translators in pursuant to the 1st Amendment Rules, 1994 have been notified, it is the categorical assertion of the petitioner's counsel that no such constitution of Translator's Cadre in pursuant to the amendment of 1994 were ever made and the petitioner and the respondent Nos. 3 and 4 continued to serve as Translators and not as encadred Junior Grade Translators in the new cadre.

7.1 It may also be noticed that no document or notification has been produced on behalf of the respondents to show that encadrement in the new Cadre has been made with regard to the functioning Translators of the court, in pursuant to the Amendment of 1994.

8. Mr. S. Talapatra, learned senior counsel representing the petitioner contends that the petitioner is the only Translators amongst the 3 Translators appointed in the High Court prior to 1994, who possesses the academic qualification to be encadred as Junior Grade Translator and the other 2 Translators (respondent Nos. 3 and 4) not having the requisite educational qualification, are not even eligible to be encadred as Junior Grade Translators because of the educational requirement prescribed by Sub-rule (4) of Rule 7 of the Rules.

8.1 On the basis of the above claim, it is contended on behalf of the petitioner that as the respondent No. 3 cannot be encadred as a Junior Grade Translator, she cannot obviously be promoted as Senior Grade Translator, as such promotion to the promotional post in the new cadre can be made only by considering the cases of persons holding the post of Junior Grade Translators.

9. Mr. S.M. Chakraborty, learned senior counsel representing the respondent Nos. 1, 2 and 3 on the other hand submits that the requirement prescribed by Sub-rule (4) of Rule 7 of the Rules with regard to the Junior Grade Translators, would not debar the encadrement of respondent Nos. 3 and 4 into the newly constituted cadre of Translators just because they do not have a Master Degree in Language. This submission is made on the basis that the Sub-rule (4) of Rule 7 of the Rules provided for a mode of direct recruitment of Junior Grade Translators through competitive examination from among those who have a Degree in Law or Master Degree in Language. It is submitted that respondent Nos. 3 and 4 are not to be inducted into the Cadre of Translators through direct recruitment as they are already holding the post of Translator in the High Court and obviously the Educational Qualification prescribed under Sub-rule 4 would not come on the way of their encadrement in the newly constituted cadre of

Translators.

10. To appreciate that the Translators of the High Court constitute a separate cadre distinct from that of the General Ministerial Cadre of the High Court, a decision of this Court dated 26.6.2008 in the case of Smt. Sabita Kuri v. The Gauhati High Court in Writ Petition No. 344 of 1999 is placed before us by the learned Counsel for the petitioner. In this case, the court held that the Translators form a separate and independent cadre with different Recruitment Rules having distinct line of promotion starting from Senior Grade Translators to Senior Grade Translators and Chief Translator and these Translators are outside the Gerifersl Ministerial Cadre of the High Court.

11. Having noticed the rival arguments advanced by the learned Counsels, what is needed to be decided is whether the respondent Nos. 3 and 4 would be barred from being encadred into the newly created separate cadre of Translators because of the educational qualification prescribed for Junior Grade Translators under Sub-rule (4) of Rule 7 of the Rules. It is seen that the educational qualification is prescribed for persons who wish to participate in a competitive examination for being recruited as Junior Grade Translators. But since the respondent Nos. 3 and 4 are already functioning as Translators to the High Court since the year 1988, the requirement of a Master Degree in Language for being inducted at the entry grade of the Translators Cadre in our view would not be justified in case of working Translators of the court, who were appointed prior to prescription of the higher educational qualification by the Amendment of 1994.

12. But it also appears that neither the petitioner nor the respondent Nos. 3 and 4 have been encadred into the newly constituted cadre of Translators by appropriate exercises making the newly created cadre of Translators operational and under these circumstances, we are left with no choice but to declare that none so far can be said to occupy the post of Junior Grade Translator in the newly created cadre of Translators. If none is holding the post of Junior Grade Translator, a promotion to the post of Senior Grade Translator, which is to be made by considering the cases of Junior Grade Translators, cannot obviously be made by considering the cases of Translators as appropriate encadrement in the feeder grade in the newly constituted cadre of Translators have not so far been made.

13. Under the above circumstances, we are of the opinion that the promotion given to respondent No. 3 by the impugned promotion notification dated 20.3.2006 to the post of Senior Grade Translators is unjustified, as at the time of promotion she was not holding the post of Junior Grade Translator. Accordingly, we declare the said promotion to be unsustainable in law.

14. Since, prayer is also made in the instant petition for constitution of the initial cadre strength in the newly created cadre of Translators and since we find that no such constitution has yet been done by an appropriate exercise of encadrement, it might be appropriate to direct the respondent authorities to take

into account the newly created cadre of Translators created by the 1st Amendment Rules, 1994, so that the names of those persons who would hold the encadred posts in the newly created cadre are notified. Only after such notification, it would be appropriate to initiate the process of giving promotion to the higher post in the newly created cadre of Translators. It is ordered accordingly.

15. The writ petition is disposed of in terms of aforesaid directions.