
(2023) 08 GAU CK 0065
In the Gauhati High Court
Case No : Writ Appeal No. 282 Of 2023

Assam Khadi And Village Industries Board	APPELLANT
Vs	
Manalisha Deka	RESPONDENT

Date of Decision : 28-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 309
Assam Directorate Establishment (Ministerial) Service Rules, 1973 — Rule 8

Citation : (2023) 08 GAU CK 0065

Hon'ble Judges : Sandeep Mehta, CJ; Susmita Phukan Khaund, J

Bench : Division Bench

Advocate : M. Nath, P. K. Munir, U. K. Nair, A. Jahid, S. Tashisenla, R. Dhar

Final Decision : Disposed Of

Judgement

1. Heard Mr. M. Nath, learned Senior Counsel, assisted by Mr. P. K. Munir, representing the appellants. Also heard Mr. U.K. Nair, learned Senior Counsel, assisted by Mr. A. Jahid, representing respondent No. 1, and Ms. S. Tashisenla, learned counsel appearing on behalf of Mr. R. Dhar, learned Standing Counsel, Handloom Textile and Sericulture Department, representing the respondent Nos. 2 and 3. We have also gone through the impugned judgment and the material placed on record.

2. The instant intra-court writ appeal takes exception to the judgment and final order dated 30.06.2023, rendered by the learned Single Judge in WP(C) No. 7075/2021 filed by the respondent No. 1/writ petitioner seeking to assail the "Record Note of Discussion" dated 30.11.2021 held in the meeting of the Khadi & Village Industries Board, and the consequential order dated 06.12.2021 issued by the Chief Executive Officer of the Khadi Board, whereby the promotion of the respondent no. 1/writ petitioner to the post of Superintendent was ordered to be kept in abeyance till the matter could be reviewed.

3. The brief facts relevant and essential for disposal of the writ appeal are noted

hereinbelow:

The Assam Khadi & Village Industries Board (hereinafter referred to as "Khadi Board") was constituted pursuant to the enactment of the Khadi and Village Industries Board Act, 1955 (hereinafter referred to as "Act of 1955"). The Board consists of Members, as appointed by the State Government, and one of such Members is appointed as the Chairman and another as Secretary of the Khadi Board. The Khadi Board is empowered under the Act to appoint Staff as it may consider necessary. The provisions of the Act of 1955 empower the Board to create post/posts on reasonable Pay Scale ordinarily similar to the Pay Scale applicable to the employees of the State Government entrusted with similar responsibilities. The Chairman of the Khadi Board is bestowed with the powers for ensuring proper functioning of the Board. He is de facto Member of the Executive Committee nominated by the Board and functions as the Chairman of the Executive Committee. The Secretary of the Khadi Board is bestowed with the power to implement the decisions taken by the Board under the provisions of the Act and the Chairman is required to exercise general supervision on all matters of the Board. Under the provisions of the Act of 1955, the Government exercises deep and pervasive control over the activities of the Board.

It may be mentioned herein that as per provisions of the Act of 1955, the Service Rules for governing the service conditions of the employees of the Khadi Board were required to be framed by the Board. Accordingly, draft Service Rules were prepared in the year 1985 and were sent for approval to the competent department in the Government of Assam. However, the same were returned to the Chief Executive Officer of the Khadi Board requiring the Board to re-draft the same in the model/form, as provided by the Administrative Reforms and Training (A.R.T.) Department, and to be re-submitted thereafter for consideration of the Government. The Board constituted a committee which prepared a set of draft Service Rules and presented the same to the Board. The Board accepted the draft Service Rules without any suggested change. These draft Service Rules continued to be considered as the rules governing the service conditions of the employees of the Board.

The respondent no. 1/writ petitioner was initially appointed as a LDA-cum-Typist in the Khadi Board on 07.07.1998. Subsequently, she was promoted to the post of UDA in the year 2014. While working in the post of UDA she was recommended for further promotion. The Departmental Promotion Committee (DPC) prepared a panel of names for promotion to the next higher post, i.e. the post of Superintendent. Four UDAs including the respondent no. 1/writ petitioner were recommended for promotion to the post of Superintendent. The order of promotion in respect of the respondent no. 1/writ petitioner was made to be effective upon retirement of the incumbent holding the post of Superintendent at the relevant point of time. The said incumbent retired on 12.08.2020 and accordingly the respondent no. 1/writ petitioner along with two other UDAs were promoted to the post of Superintendent. The respondent no. 1/writ petitioner

joined in the post of Superintendent on 12.08.2020. However, as her pay was not fixed in the said post, she submitted representations to the authorities for raising this grievance. Subsequently, certain complaints and objections were raised in respect of the promotions given to the respondent no. 1/writ petitioner and some more persons.

The Chairman of the Khadi Board constituted a committee to examine these complaints. Accordingly, the committee examined the matter and gave certain suggestions for consideration of the Chairman/Board. One of the suggestions of the committee was that the pay scale of Assistant Superintendent is higher than UDA (HQ) and as such the persons holding the post of UDA (HQ) were required to be promoted to the post of Assistant Superintendent. After receiving the report of the committee, the Board, in its 179th meeting convened on 11.01.2021 held that as the respondent no. 1/writ petitioner, who was holding the post of UDA (HQ) at the relevant point of time, was promoted to the post of Superintendent without holding the feeder post, i.e. Assistant Superintendent, her promotion was in gross ignorance of the panel list prepared by the Sub-Committee and also was in contravention of the government norms. The respondent no. 1/writ petitioner, apprehending that her promotion to the post of Superintendent may be cancelled/recalled, immediately represented before the competent authority claiming that there was no error in her promotion from the post of UDA to Superintendent and that the report of the Sub-Committee was contrary to the rules as well as the government instructions. The Board, however, decided to re-examine the case of the respondent no. 1/writ petitioner and put up a proposal for her promotion to the post of Assistant Superintendent. Consequent thereto, a decision was taken by the Board on 30.11.2021, which was translated into the office order dated 06.12.2021 directing that the promotion of the respondent no. 1/writ petitioner to the post of Superintendent be kept in abeyance till the matter could be reviewed. The said order was challenged by the respondent no. 1/writ petitioner by filing the captioned writ petition, which has been accepted by the learned Single Judge vide order dated 30.06.2023 which is under challenge in this intra-court writ appeal.

5. Mr. M. Nath, learned Senior Counsel assisted by Mr. P.K. Munir, representing the appellants vehemently and fervently contended that promotion of the respondent no. 1/writ petitioner was sanctioned in gross contravention of the extant rules and regulations. The feeder post for promotion to the post of Superintendent is of Assistant Superintendent. The respondent no. 1/writ petitioner was directly promoted from the post of UDA (HQ) to the post of Superintendent by circumventing the feeder cadre of Assistant Superintendent. He thus implored the Court to reverse the impugned order passed by the learned Single Judge and to affirm the decision of the Board.

However, the appellants' counsel were not in a position to dispute that the draft rules have so far not been promulgated under Article 309 of the Constitution of India.

6. Per contra, Mr. U.K. Nair, learned Senior Counsel assisted by Mr. A. Jahid, representing the respondent no. 1/writ petitioner vehemently and fervently urged that the promotion of the respondent no. 1/writ petitioner from the post of UDA (HQ) to the post of Superintendent was as per the prevailing instructions issued by the government. The draft rules framed by the Board were never submitted to the government for approval. As a consequence, the department of Administrative Reforms and Training, Government of Assam, issued a communication dated 04.11.1988 laying down the procedure to fill up the posts by promotion or direct recruitment and the same was being followed religiously by the Board till date. The Khadi Board, vide order dated 12.12.2006 constituted a Ten-Member Committee for drafting the draft Service Rules. The Committee, in turn, issued draft Service Rules in the model format as required by the letter/ Executive Instructions dated 04.11.1988, and submitted the same for publication. Schedule-B appended to the said draft Service Rules provides that for filling up the posts of Registrar/Superintendent, Government rules will be applicable. Mr. Nair urged that promotion of the respondent no. 1/writ petitioner is in accordance with the said instructions and, as such, the appellants were totally unjustified in directing that the promotion order of the petitioner dated 12.08.2020 shall be kept in abeyance till the matter is reviewed. He rather submitted that there is no merit in the contention of the appellants' counsel that the post of Assistant Superintendent is an intermediary post between the posts of UDA and the Superintendent. In order to fortify this assertion, Mr. Nair drew the Court's attention to the Executive Instructions dated 04.11.1988, issued by the Government of Assam, Handloom Textile and Sericulture Department, prescribing the manner and procedure for promotion/direct recruitment in the Assam Khadi & Village Industries Board. He submitted that in these instructions, the posts of Assistant Superintendent, UDA and LDA are placed in Class-III, whereas the post of Superintendent is placed in Class-II.

Referring to Rule 8 of the Assam Directorate Establishment (Ministerial) Service Rules, 1973 (hereinafter referred to as "Rules of 1973"), Mr. Nair submitted that under these rules a person holding the post of Senior Assistant is entitled to be promoted to the post of Superintendent. As per Mr. Nair, the post of Senior Assistant is equivalent to the post of UDA. He further submits that though there is no clarification from the Khadi Board about the enforcement of the service rules, till date the draft service rules, which were published vide notice dated 07.01.2008, are being treated as the Service Rules of the Khadi Board. He thus urged that the recommendation made by the DPC for promotion of the respondent/writ petitioner from the post of UDA (HQ) to the post of Superintendent and the consequential promotion order dated 12.08.2020 are in consonance with the draft rules which are being followed by the Board and, hence, the Board was not justified in directing that the order of promotion of the writ petitioner shall be kept in abeyance and that she would be considered for promotion for the post of Assistant Superintendent. He further urged that the committee constituted by the Chairman of the Board to examine the complaints/

objections against the promotions gave its report without objective consideration of the draft rules as well as Rule 8 of the Rules of 1973. He contended that in Schedule-B of the model format attached to the draft rules, promotion to the posts of Class-II(A), i.e. the post of Registrar/Superintendent is to be made as per the government norms. The promotion of the respondent/writ petitioner was precisely made in accordance with the government norms and, hence, the same was not liable to be recalled. He urged that the reasons assigned in the impugned order dated 30.06.2023, passed by the learned Single Judge while accepting the writ petition of the respondent are in sync with the applicable rules and the prevailing procedure and, hence, the impugned order does not warrant any interference in this intra-court writ appeal.

7. We have given our thoughtful consideration to the submissions advanced at the Bar and have gone through the material placed on record.

8. The short controversy, which this Court is called upon to examine, is whether the executive instructions dated 04.11.1988 would prevail in the matter of promotion of the employees of the Khadi Board, or whether the draft rules of 2008 would hold the field? In this regard we would like to mention that even in the executive instructions dated 04.11.1988 the government clearly indicated that the Board shall frame fresh draft rules in the model/format supplied by the department and submit the same along with Schedule at an early date. In the Executive Instructions, the post of Superintendent is placed in Class-II, whereas the posts of Assistant Superintendent, UDA, LDA, Organiser, Manager, Supervisor, Inspector, Foreman, Instructor, etc. are placed in Class-III. Thus, there is no clarity in the matter of sub-classification of Class-III posts in these Executive Instructions. It is also not in dispute that acting on the directions given in these executive instructions, the Khadi Board issued draft rules in the model/format wherein the post of Registrar/Superintendent is placed in Class-II and the promotional procedure to be applied was made applicable as per the government norms, wherein the posts of Assistant Superintendent/UDA/LDA are placed in Class-III. Hence, consideration of the post of UDA as a feeder post for the purpose of promotion to the post of Superintendent is a permissible interpretation/view of the matter. The promotion of the respondent/writ petitioner herein from the post of UDA (HQ) to the post of Superintendent was made as a consequence of the recommendations made in the DPC meeting held on 20.03.2020. In this meeting, four employees holding the post of UDA (HQ) were recommended for promotion to the post of Superintendent, whereas five employees holding the post of UDA (HQ) were recommended for promotion to the post of Assistant Superintendent. Such promotions were questioned in the sub-Committee's report with the observation that the pay scales of Assistant Superintendent and UDA (HQ) are not equal and, hence, persons holding the posts of UDA (HQ) had to be promoted to the post of Assistant Superintendent and could not directly be promoted to the post of Superintendent without serving on the post of Assistant Superintendent. However, we find that the said observation in the minutes of the meeting dated 30.11.2021, though may appear

attractive on the face of record, does not stand to scrutiny when we see the model Schedule-B annexed to the draft rules for promotion of the employees of the Khadi Board which places Registrar/ Superintendent in Class-II with the promotional avenue being that the persons must be a Graduate candidates having ten years service experience under the Board. The criterion for promotion is provided as seniority-cum-merit and minimum two years service in the feeder post. These promotions are to be made as per government norms. The feeder posts are prescribed to be Class-III in which Assistant Superintendent/UDA are placed at the same pedestal.

9. In this background, there is apparently an anomaly in the draft rules and the Schedule appended to the rules, which was not addressed by the sub-committee constituted to examine the legality of the promotion of the respondent/writ petitioner. The further fact remains that the government norms, which are provided in Rule 8 of the Rules of 1973, were also not considered by the sub-committee and, as such, the decision taken by the Board on 30.11.2021 revoking the promotion of the respondent/writ petitioner and directing consideration of her promotion to the post of Assistant Superintendent prima facie suffers from non-application of mind to relevant material.

Thus, we are of the firm opinion the impugned office order dated 06.12.2021 and the record note of discussion dated 30.11.2021 were rightly interfered by the learned Single Judge to the extent of reversing the revocation of the order of promotion of the respondent/writ petitioner. However, considering the fact that the Board's decision to revoke the promotion granted to the respondent/writ petitioner was based on the difference in pay scales of Assistant Superintendent and UDA, we feel that the better way for resolution of the issue would be to refer the matter to the concerned department of the State government so that the issues can be objectively examined and appropriate recommendation can be received.

10. In view of the above discussion, we hereby direct the Khadi Board to refer the matter of promotion of the respondent/writ petitioner as Superintendent to the Handloom Textile and Sericulture Department. The controversy shall be examined by the Secretary of the department in consultation with the Secretary of the Department of Personnel, Government of Assam. Till such process is undertaken, the respondent/writ petitioner shall continue to hold the post of Superintendent. However, she will not be entitled to claim any lien on the post based on the promotion order dated 12.08.2020 and the order passed by the learned Single Judge in WP(C) 7075/2021. Her promotion to the post of Superintendent will be dependent on the decision taken by the Secretary of the Handloom Textile and Sericulture Department, Government of Assam. In case, any adverse order being passed, the respondent/writ petitioner shall be entitled to challenge the same as per law.

11. The writ appeal is disposed of with the above observations and modification in the order dated 30.06.2023, passed by the learned Single Judge in WP(C) No.

7075/2021.

No order as to costs.