
(2006) 01 GAU CK 0061
In the Gauhati High Court
Case No : WP (C) No. 6023 of 2002

Bhabendra Kumar Kalita

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 17-01-2006

Acts Referred:

Citation : (2006) 2 GLR 733 : (2006) 4 GLT 115

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : R.C. Saikia, for the Appellant; R.K. Bora and T. Chutia, for the Respondent

Judgement

Ranjan Gogoi, J.—Heard Mr. R. C. Saikia, learned Counsel for the petitioner, Mr. R. K. Bora, learned Government Advocate, Assam and Mr. T. Chutia, learned Standing Counsel, Board of Secondary Education, Assam, appearing for the respondent Nos. 2 to 4. Service of notice on the respondent Nos. 5 to 10 have been presumed by order dated 21.11.2003 passed by this Court.

2. The petitioner was-appointed as a Lower Division Assistant in the Board of Secondary Education, Assam (hereinafter referred to as the Board) on 2.1.1975. A gradation list of the employees of the Board in the cadre of Lower Division Assistant and Typist as on 19.8.1984 was published on 20th October 1984. The respondent No. 5 who was promoted to the post of LDA from the post of Senior Grade Typist with effect from 1.8.1976 was placed above the petitioner in the aforesaid gradation list. The respondent Nos. 6 to 10, however, were placed below the petitioner in the said gradation list. As by orders dated 17.5.1996 and 10.1.1997 the respondent Nos. 5 and 6 were promoted to the next higher post of Assistant Superintendent, the petitioner challenged the aforesaid promotions by instituting a writ proceeding before this Court which was registered and numbered as Civil Rule No. 349 of 1997. The aforesaid writ proceeding, i.e. C.R. 349/1997 was closed by this Court by order dated 24.1.2001 directing consideration of the case of the petitioner in accordance with the rules,

guidelines and executive, instructions of the Board, as may be in force. Prior to that, an interim order was passed by this Court on 29.6.2000 directing the petitioner to furnish an undertaking of good behaviour for consideration of his case for promotion. The petitioner, it is to be noticed, was facing a departmental proceeding on an allegation of misbehaviour with a senior since the year 1998 and in the said proceeding a decision was taken by the Board that the petitioner should furnish an undertaking of good behaviour to the Board. After the aforesaid undertaking was furnished by the petitioner his case for promotion to the next higher post of Asstt. Superintendent was considered and, being found fit and eligible, the petitioner was promoted to the post of Asstt. Superintendent by order dated 30.1.2000. However, in the meantime, as the respondent Nos. 7, 8, 9 and 10 who are junior to the petitioner in the post of LDA were promoted to the higher post of Asstt. Superintendent by various orders passed in the year 1998 and as the case of the petitioner pursuant to the order dated 24.1.2001 passed by this Court in C.R. No. 349/1997 e was considered and rejected, the promotions of the respondent Nos. 5 to 10 to the next higher posts including the post of Superintendent to which some of the respondents have been promoted has been sought to be challenged by means of the present writ application.

3. Insofar as the placement of the respondent No. 5 in the gradation list at a place above the petitioner is concerned, the materials on record have established that the Board had taken a resolution in the year 1979 that Senior Grade Typists who are promoted to the post of LDA should have their seniority counted in the post of LDA from the date of their posting as Senior Grade Typist as both the posts, i.e. LDA and Senior Grade Typist are in the same scale of pay. The aforesaid resolution of the Board makes it clear that the decision is not to be applied retrospectively and is not to affect incumbents who may have, in the meantime, been promoted to the post of UDA. Neither the petitioner nor the respondent No. 5 had been promoted to the post of ITDA at the relevant point of time, i.e., in the year 1979. The aforesaid persons were promoted to the post of U.D.A. in the year 1985 and, therefore, resolution of the Board not to operate the decision retrospectively cannot apply to the facts of the present case. No infirmity, therefore, is discernible in placement of the respondent No. 5 above the petitioner in the gradation list and his promotion made to the post of Assistant Superintendent by order dated 17.5.1996.

4. However, the position would be a little different insofar as the respondent Nos. 6 to 10 are concerned. Admittedly, the said respondents are junior to the petitioner in the rank of Lower Division Assistant. While the aforesaid respondents had been promoted to the higher post of Assistant Superintendent in the year 1997 and 1998 the petitioner was so promoted only in the year 2000. The action of the authority in promoting the said juniors earlier than the petitioner and in withholding the promotion of the petitioner have been sought to be justified by contending that the petitioner had delayed the furnishing of the requisite undertaking and no sooner the same was furnished, pursuant to the interim order of this Court dated 29.6.2000 in C.R. No. 349/ 1997, promotion to

the post of Asstt. Superintendent was conferred to the petitioner with effect from 30.10.2000. The delayed submission of the undertaking, on account of which the belated promotion of the petitioner has been sought to be justified before the Court by the Board was in connection with the departmental proceeding against the petitioner. No material has been laid before the Court to show that any disciplinary action was decided to be taken against the petitioner in the departmental proceeding initiated against him. In the aforesaid departmental proceeding no decision adverse to the petitioner has been taken. In such circumstances, the delay in submitting the undertaking required to be submitted by the petitioner, cannot be understood by the Court to be a relevant factor or a sufficient justification for withholding of the promotion of the petitioner. If, in the departmental proceeding any punitive action has been decided against the petitioner the situation would have been otherwise. However, if the petitioner has not been found guilty in the departmental proceeding and no punishment has been imposed on him it is difficult to see as to how an undertaking required to be given by him in connection with the said proceeding could have been understood by the Board to be sufficient to withhold his promotion and allow him to be bypassed and that too by as many as five of his admitted juniors. The action of the Board, in the considered view of the Court, discloses an apparent lack of proportion and, therefore, the same has to be corrected. The Board as the employer, after the petitioner had furnished the undertaking, could have easily resolved the situation by taking a more balanced view to give the petitioner promotion to the post of Assistant Superintendent with effect from 30.10.2000 but by giving him notional seniority over the respondent Nos. 6 to 10 so that the petitioner's prospects in service is not effected any further. The Board not having so acted, therefore, has to be directed by this Court to act accordingly.

4. Consequently, while maintaining the promotions of the respondent Nos. 5 to 10 to the post of Asstt. Superintendent and to such higher posts in the Board that may have been conferred in the meantime, I deem it appropriate to partly allow this writ petition by directing that the petitioner be granted notional seniority in the post of Assistant Superintendent with effect from the date of promotion of the respondent No. 6 i.e. 10.1.1977 and on that basis to consider the case of the petitioner for further promotion to the post of Superintendent against such vacancies, as may be available at present or in the immediate future.

5. The writ petition is consequently allowed to the extent indicated above.