
(2014) 05 GAU CK 0065

In the Gauhati High Court

Case No : WP (C) Nos. 2464 of 2006 and 8769 of 2005

Dipnarayan Mishra and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 29-05-2014

Acts Referred:

Citation : (2014) 2 GLD 301

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : S.B. Prasad, Advocates for the Appellant; P.S. Deka, G.A. and D. Borgohain, Advocates for the Respondent

Judgement

Biplab Kumar Sharma, J.—Both the writ petitions raising same issue have been heard together and are being disposed of by this common judgment and order. While in W.P. (C) No. 8769/2005 (hereinafter referred to as the first writ petition), the petitioners have challenged the Annexure-P/5 letter dated 12.7.1989 of the Government of Assam in the Food & Civil Supplies (B) Department, by which, it was conveyed that the Lower Division Assistant (LDA) of the Deputy Commissioner's/Sub-Divisional Office's amalgamated establishment, who had rendered at least 5 years of continuous service in the specified branches are entitled to get promotional benefit to the post of Sub-Inspector, Food & Civil Supplies as per Rule 11.2 of the Assam Supply Service Rules, 1970, in the second writ petition being W.P. (C) No. 2464/2006, the petitioners have challenged the Annexure-6 order of promotion, by which, the private respondents have been promoted to the post of Sub-Inspector of Food & Civil Supplies.

2. According to the petitioners, as per the provision of Assam Supply Service Rules, 1970 (as amended in 1989), it is only the members of the ministerial cadre under the Directorate are entitled to get promotion and not the member of the ministerial cadre of the Deputy Commissioner's/Sub-Divisional Officer's establishment.

3. I have heard Mr. S.B. Prasad, learned counsel for the petitioner as well as Mr. P.S. Deka, learned State Counsel. Also heard Ms. D. Borgohain, learned counsel representing the private respondents. I have also considered the entire materials on record.

4. As per the provision of the Assam Supply Service Rules, 1970, the appointing authority in respect of the post of Sub-Inspector of Supply means the Director of Supplies. Rule 3 under the head "cadres" provides for constitution of the same, under which, clause (f) speaks of Sub-Inspector of Supply. In the hierarchy of the cadres/posts, there are Joint Director of Supply, Deputy Director of Supply, Assistant Director of Supply, Superintendent of Supply, Inspector of Supply and Sub-Inspector of Supply. Rule 11 provides for recruitment to the post of Sub-Inspector of Supply through competitive examination as prescribed under Rule 17.

5. An amendment was brought in 1989 to the aforesaid rules of 1970. By amending Rule 11, it was provided that while 75% of the posts of Sub-Inspector of Food & Civil Supplies shall be filled up by direct recruitment through competitive examinations and the remaining 25% of the posts shall be filled up by promotion from the select list prepared under Rule 13 from amongst the ministerial cadre. The ministerial cadre shall include the post of LDA, Accountant, Assistant Account Assistant (Junior) in the office of the Director and the Food & Civil Supplies Offices in the districts and sub-divisions.

6. It is the above clause in the amended rule, which has created the whole confusion. According to the petitioners, the ministerial cadre referred to above cannot include the members of the ministerial cadre in the establishment of Deputy Commissioner/Sub-Divisional Officer. As noted above, the challenge in the first writ petition is the letter dated 12.7.1989 (Annexure-P/4) of the Government of Assam in the Food & Civil Supplies (B) Department, by which, it was clarified that the LDAs of the Deputy Commissioner's/Sub-Divisional Officer's amalgamated establishment, who had rendered 5 years of continuous service in the specified branches are also entitled to get promotional benefits as per the amended provision of Rule 11 of the aforesaid rules of 1970. It will be pertinent to mention here that in the establishment of Deputy Commissioner/Sub-Divisional Officer, there are branches of Food & Civil Supplies. On the other hand, the Director of Food & Civil Supplies is altogether a different establishment.

7. Mr. S.B. Prasad, learned counsel for the petitioners submits that while making provision for promotion to the post of Sub-Inspector of Food & Civil Supplies from amongst the LDAs; Account Assistant; Account Assistant (Junior) in the office of the Director and the Food & Civil Supplies office in the district and Sub-Divisions, it was clarified that those LDAs, Account Assistant, Account Assistant (Junior), who were transferred to the establishment of Deputy Commissioner/Sub-Divisional Officer. He submits that by the said provision, promotional scope was never extended to those who have been born in the establishment of Deputy Commissioner/Sub-Divisional Officer.

8. Ms. Borgohain, learned counsel representing the private respondents, on the other hand, submits that amendment brought to the aforesaid rules of 1970 makes it abundantly clear that the promotional scope was extended even to the members of the ministerial cadre working in the establishment of the Deputy Commissioner/Sub-Divisional Officer.

9. It will have to be born in mind that for the Director of Food & Civil Supplies, the rules applicable is the Assam Supply Service Rules, 1970. It will also have to be born in mind that the establishment of Director of Food & Civil Supplies is a separate entity then of the establishment of Deputy Commissioner/Sub-Divisional Officer. While it is true that there are branches of Food & Civil Supplies in the establishment of Deputy Commissioner/Sub-Divisional Offices, but by itself may not mean that the said establishments are within the establishment of Director of Food & Civil Supplies. As contended by the petitioners, the amended provision is applicable only to those members of the ministerial cadre referred to in the amended provision, who have been made to work in the Food & Civil Supply branch of the establishment of Deputy Commissioner/Sub-Divisional Officer and not to the ministerial cadre of the establishment of Deputy Commissioner/Sub-Divisional Officer.

10. Annexure-1 to the second writ petition is a letter addressed to the Government in the Food & Civil Supplies by the Director of Food & Civil Supplies, by which, a request was made to furnish required instruction in terms of the points raised in the said letter. The relevant portion of the letter is quoted below:

"In this connection, it may be stated that the LDA of Food & Civil Supplies offices in the Districts/Subdivisions are the amalgamated staff of the Deputy Commissioner establishment. Only the Accounts Assistant/Accounts Assistant (Junior) posted in the Districts/Sub-Divisions are ministerial staff of the Directorate establishment."

11. From the above, it is seen that according to the Director of Food & Civil Supplies only the Account Assistant/Account Assistant (Junior) posted in the districts/Sub-divisional offices are the ministerial staff of the Directorate establishment and that the LDA of the Food & Civil Supply offices in the districts/sub-divisions are the amalgamated staffs of the Deputy Commissioner/Sub-Divisional Officer establishment.

12. The issue is as to whether the ministerial staff referred to in the amended provision of Rule 11 can be said to be of the establishment of the Deputy Commissioner/Sub-Divisional Officer or the same will have to be necessarily of the establishment of Director of Food & Civil Supplies. It was in such circumstances, the Director of Food & Civil Supplies by his aforesaid letter dated 2.7.1989 sought for clarification from the Government of Assam in the department of Food & Civil Supplies. However, before issuance of any such clarification, the private respondents were promoted to the post of Sub-Inspector of Food & Civil Supplies. In absence of any interim order passed in this

proceeding, they are still holding the promotional posts.

13. As per the provision of Assam Directorate Establishment (Ministerial) Service Rules, 1973, which is applicable to the ministerial cadre of the establishment of Deputy Commissioner/Sub-Divisional Officer, there is promotional avenue from the post of LDA to UDA and thereafter to Superintendent etc. unlike the promotional avenue in the Director of Food & Civil Supplies. It is in this context, Mr. S.B. Prasad, learned counsel for the petitioner has submitted that unlike the said promotional avenue in the Director of Food & Civil Supplies, provision has been made for promotion to the post of Sub-Inspector from amongst ministerial cadre (25%). Ms. D. Borgohain, learned counsel representing the private respondent has referred to the clarification dated 12.7.1989 (Annexure-P/4), which is under challenge in the instant writ petition. By the said purported clarification, it was only conveyed to the Director of Food & Civil Supplies that the LDAs in the amalgamated establishment of Deputy Commissioner/Sub-Divisional Officer, who have rendered 5 years of continuous service in the separate branch are also entitled to get promotional benefits. However, the questions raised in the aforesaid letter of the Director have not been answered.

14. From the above, the question which falls for consideration is as to whether by the aforesaid purported clarification and falling back on the amended provision of 1973 Rules, provision could have been made for promotion of the members of the ministerial cadres of the establishment of Deputy Commissioners/Sub-Divisional Officers, which the Government in the Food & Civil Supplies Department will have to answer by referring to the provision of the rules and the intention behind the amendment that was brought in 1979. For all the aforesaid reasons, both the writ petitions are disposed of directing the Government in the Food & Civil Supplies Department to look into the grievance of the petitioners in reference to the relevant rules and the amendment brought therein and also consistently with the observations made above. It will be appropriate for the Government to pass a speaking order. Let the required exercise be carried out as expeditiously as possible, preferably within 31.8.2014 upon hearing all the necessary parties. There shall be no order as to costs.