
(2001) 09 GAU CK 0042
In the Gauhati High Court
Case No : WP (C) No. 5358 of 1999

Dr. Gopal Krishna Dhar Senapati and Another	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 14-09-2001

Acts Referred:

Assam Stenographers Service Rules, 1995 — Rule 11

Citation : (2003) 2 GLR 290 : (2001) 3 GLT 225

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : H.N. Sarma and K. Bhatta, for the Appellant; A. Thakur, GA and G.B. Sarma, SC, APSC, for the Respondent

Judgement

D. Biswas, J.—In this petition the legality and validity of the Assam Stenographers" Service (Amendment) Rules, 1999 has been challenged. The amendment Rules reads as follows :

NOTIFICATIONS

Date Dispur, the 11st June "99

No. SAE.11/74/274 : In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Assam is hereby pleased to make the following rules further to amend the Assam Stenographers" Service Rules, 1995, hereinafter referred to as the principal Rules, in the manner hereinafter appearing, namely :

Short title and Commencement. 1.(1) These rules may be called the Assam Stenographers" Service (Amendment) Rules, 1999.

(2) they shall come into force on the date of their publication in the Official Gazette.

Amendment of Rule 11. (3) In the principal Rules,, in rule 11 in sub-rule (1), the words and other offices of the State Government appearing after the word "Chief

Minister's Secretariat" shall be deleted.

2. Sub-rule (1) of Rule 11 as it stood before the amendment made on 11th June, 1999 reads as follows :

"Rule : 11 :-

Appointment by promotion to the cadre of Special Officer and Ex-Officio Deputy Secretary to the Government of Assam, Secretariat Administration Establishment Department and Senior Grade Stenographer and Ex-Officio Under Secretary to the Government of Assam shall be made by the Governor in the manner provided herein below namely :

(1) Subject to suitability as may be decided by the Board and by the Appointing Authority as set out in Rule 12 and also subject to possessing the qualifications and experience as prescribed hereinafter, members belonging to the cadre of Stenographer Grade-I in the Secretariat, Chief Minister's Secretariat and other offices of the State Government shall be eligible for promotion to the cadre of Senior Grade Stenographer and Ex-Officio Under Secretary to the Government of Assam and a Senior Grade Stenographer and Ex-Officio Under Secretary to the Government of Assam in the Secretariat shall be eligible for promotion to the cadre of Special Officer and Ex-Officio Deputy Secretary to the Government of Assam, Secretariat Administration Establishment Department."

3. It would appear that by the above amendment in 1999, the Stenographers (Grade-I) have been ousted the consideration zone for promotion to the cadre of Special Officer and Ex-Officio Deputy Secretary and/or Senior Grade Stenographers and Ex-Officio Under Secretary to the Government of Assam hitherto they were entitled under the Rules before amendment. Shri H. N. Sarma, Learned Counsel for the petitioners argued that the impugned amendment is discriminatory as it is based on unintelligible classification ordained to keep the petitioners and others alike out of the consideration zone for promotion to the next higher grade, Shri Sarma submitted that the amendment is unconstitutional as it violates the constitutional and other legal rights of the petitioners and, hence, may be set aside and quashed with consequential directions for promotion of the petitioners to the post of Senior Grade Stenographers and Ex-Officio Under Secretary to the Government of Assam with pay benefits.

4. Learned State counsel tried to justify the amendment on the ground that stenographers working in other offices of the State Government do not belong to Secretariat Services and, as such, they cannot be promoted to the post of Special Officer and Ex-Officio Deputy Secretary. In addition, the learned State counsel also argued that the amendment had to be effected as the Rules as it stood prior to amendment was in conflict with the provisions of rule 3(2) of the Assam Stenographers Services Rules, 1995. Besides, the learned State counsel further argued that right for consideration for promotion is not a vested right as the State have the powers to abridge such right to promotion. Mr. H. B. Sarma,

learned standing counsel, Assam Public Service Commission, however, did not appear and argue the case.

5. In reply the State in their affidavit-in-opposition submitted that in pursuance of the recommendations of the Pay Commission in 1964, the State issued notification dated 22.11.1966 (Annexure-1) by integrating three grades of stenographers into one grade, i.e., Grade-I with a view to ensure that no stenographers stagnates in his grade. Apart from other pleas, it has been stated in para 22 that stenographers working in the Secretariat and other State Government offices constitute separate cadres and they belong to different offices and, therefore, they cannot claim equality with stenographers working in the Secretariat. According to the State respondent, the nomenclature of the post is suggestive of the fact that the posts are meant for Grade-I Stenographers working in the Secretariat and that the amendment was indispensable for keeping parity with the provisions of Sub-rule (2) of Rules 3 of the Assam Stenographers Service Rules, 1995.

6. Sub-rule (2) of Rules 3 of the Assam Stenographers Service Rule, 1995 is quoted below :

"Rule 3(2) - Senior Grade Stenographer & Ex-Officio Under Secretary to the Govt. of Assam, Stenographer Grade-I, Stenographer II and Stenographer Grade-III appointed in the Secretariat and other State Govt. Offices shall be deemed constitute separate cadres in the respective Grades in respect of each such office."

7. The petitioners' service condition are governed by the Assam Stenographers' Service Rules, 1995. The provision in Sub-rule (2) of Rules 3 quoted above clearly shows that Grade-I, Grade-II and Grade-III Stenographers working in the Secretariat and other State Government Offices belong to separate cadres in their respective offices. This otherwise means that the stenographers working in other Government offices constituting separate cadre cannot be considered for promotion to a post, namely, Deputy Secretary or Under Secretary, as the case may be. The provision in Sub-rule (2) of Rules 3 means this. Therefore, obviously Sub-rule (1) of Rules 11 as it stood prior to the amendment was in conflict with the provisions of the said Sub-rule (2) of Rules 3 of the Assam Stenographers Service Rules, 1995. It was on this context the Governor in exercise of his powers under the proviso to Articles 309 amended the Rules in order to remove the anomaly and conflict. The reason for such amendment is relatable primarily to the fact that stenographers working in other Government offices cannot be appointed either as Deputy Secretary or as Under Secretary since they are not working in the State Secretariat. The reasons discernible from above cannot be termed as unreasonable. The question would still remain, as argued by Shri Sarma, whether the avenues for promotion of the Stenographers Grade-I working in other State Government Offices could be blocked by the State without creating alternative channel for promotion to the equivalent higher grade.

8. The State in para 4 of the affidavit-in-opposition mentioned that there cannot be any grievance on the part of the stenographers, particularly those working in other State Government Offices, after integration of three grades of stenographers into Grade-I as per recommendations of the Pay Commission, 1964. This contention, in my opinion, does not answer the question raised. Therefore, it would be imperative to deliberate upon the issues with reference to the laws in force and the interpretation given by the Hon"ble Supreme Court.

9. In Roshan Lal Tandon Vs. Union of India (UOI), the Supreme Court has clarified that although in origin the Government service is contractual, but once appointed, the Government servant acquires a status and his rights and obligations are no longer determined by the consent of the parties. Such rights and obligations are subject to the Statutes or Rules which may be framed unilaterally altering the service condition. It is absolutely not necessary for the State to obtain consent of the employees before amendments of service conditions are carried out. This law still holds the field and has been reiterated in a number of judgments by the Supreme Court as well as different High Courts. But this does not mean that the State have power to take away vested rights in exercise of its statutory powers under Article 309. In T.R. Kapur and Others Vs. State of Haryana and Others, the Supreme Court was of the view that the benefits acquired under existing rules cannot be taken away by an amendment with retrospective effect. Vested rights cannot be affected or impaired by rules made under proviso to Article 309 and, hence, the Supreme Court held that employees who were already promoted before the amendment of the Rules cannot be reverted and their promotion cannot be recalled.

10. The genesis of the instant writ petition is, however, different. Chances of promotion to the post of Special Officer and Ex-Officio Deputy Secretary and or Senior Grade Stenographer and Ex-Officio Under Secretary have been taken away by the amendment made in 1999. The reasons advanced are that Sub-rule (1) of Rules 11 as it stood prior to amendment was in conflict with the provisions of Sub-rule (2) of Rules 3 and that the stenographers working in other Government Offices constitute a separate cadre and they are not eligible for appointment and promotion to the post of Deputy Secretary or Under Secretary. The reason shown cannot be said to be devoid of any force. Chances of promotion is not a vested right. The amendment made in 1999 taking away the chances of promotion to remove the conflict with the provisions of Sub-rule (2) of Rules 3 and to channellise promotion within the respective cadres cannot be said to be unreasonable classification. Viewed from this angle, it would be impermissible to condemn the amendment as arbitrary and hostile.

11. Mr. Sarma, learned counsel further argued that the petitioners were not considered for promotion despite vacancies available and their promotion was delayed purposely till the Rule was amended so as to deprive them of their right for consideration for promotion to the next higher grade.

12. In R.S. Ajara and Others Vs. State of Gujarat and Others, the Supreme Court

has held that benefit accrued under the existing rules cannot be taken away by an amendment with retrospective effect and no statutory rule or administrative order can whittle down any right which has become crystallized and no Rules can be framed under the proviso to Article 309 of the Constitution which affects or impairs the vested rights.

13. In view of what is stated above the petitioners appear to have a case for consideration for promotion against the vacancies that occurred prior to amendment to the rule subject to their eligibility and selection. But the Rule as amended and in force cannot be interfered with for reasons recorded hereinbefore.

14. In the result, this petition is disposed of with a direction to the respondents to consider the case of the writ petitioners and other persons situated similarly for promotion to the next higher grade only against those vacancies, which occurred prior to the amendments made in 1999 and pass appropriate orders in this regard.

No order as to costs.