

(2018) 02 GAU CK 0002
In the Gauhati High Court
Case No : WP(C) 2121 of 2010

HIRANYA KUMAR SARMA

APPELLANT

Vs

THE STATE OF ASSAM AND ORS

RESPONDENT

Date of Decision : 01-02-2018

Acts Referred:

Citation : (2018) 02 GAU CK 0002

Hon'ble Judges : Hrishikesh Roy

Bench : Single Bench

Advocate : A. DEVI., M. R. ADHIKARI, C. BARUAH

Judgement

1. Heard Ms. A. Devi, the learned counsel appearing for the petitioner. The State Authorities are represented by Mr. M.R. Adhikari, the learned Govt. Advocate. Mr. C. Baruah, the learned counsel appears for the Assam Public Service Commission (respondent No.3). There is no representation from the two private respondents, who have already superannuated.

2. This case was filed to claim seniority in the cadre of Additional Director above the private respondent Nos.7 & 8 and also for retrospective effect to the promotion to the cadre of General Manager. At the outset, the learned counsel for the petitioner Ms. A. Devi submits that there is no subsisting grievance at present, pertaining to seniority claim, as the concerned private respondents have already retired from service. She however contends that the promotion for the petitioner to the cadre of General Manager, should be retrospectively granted because the process for promotion was started in 2000.

3. The promotion process was initiated on 12.6.2000 but it did not fructify on account of litigation and other factors and the petitioner could eventually be promoted only on 9.8.2005 (Annexure-25), to the cadre of General Manager, in the Industries & Commerce Department. Accordingly, it is contended that the petitioner's promotion should be given retrospective effect from 4.11.2000, when the DPC was scheduled to consider the regular promotion.

4. On the other hand, Mr. M.R. Adhikari, the learned Govt. Advocate submits that the benefit of retrospective promotion cannot be claimed only because the vacancies are available or the aspirant had acquired the eligibility for promotion and accordingly, the respondents argue that the claim for retrospective promotion, w.e.f. 4.11.2000, is not tenable.

5. The post of General Manager is equivalent to Joint Director of Industries and is encadred as a Class-I post, under the Assam Industries Service Rules, 1997. The service records of those in the feeder cadre, were requisitioned on 12.6.2000 (Annexure-14), for considering promotion to the cadre of General Manager. However, because of litigation and other factors, the DPC could not consider promotion for anyone. Eventually, subject to the final outcome of the Writ Appeal No.126/2002, the petitioner was promoted on 9.8.2005 (Annexure-25), to the cadre of General Manager, under Regulation 4(D) of the Assam Public Service Commission (Limitation of Functions) Regulations, 1951 (hereinafter referred to as "the APSC Regulation").

6. The Writ Appeal was eventually dismissed on 29.9.2010 and therefore, the learned counsel Ms. A. Devi submits that the promotion of the petitioner should relate back to the date, when the DPC had proposed to consider the promotion. In support of the claim for retrospective promotion, the counsel relies on P.N. Premachandran vs. State of Kerala, reported in AIR 2004 SC 255. In this case, the Supreme Court did not interfere with a conscious decision taken by the Government to grant promotion with retrospective effect, to the concerned litigant.

7. Just because the employee in a feeder cadre acquires the eligibility to be considered for promotion, the movement to the higher cadre is not automatic and is subject to the prescribed process to promote the employees from the feeder cadre. The requisition of the ACR, on 12.6.2000 (Annexure-14), is an indication of the fact that the Government intended to make the promotion. But the proposed exercise was stalled on account of the litigation, launched by the departmental employees and eventually, the promotion could be granted only on 9.8.2005, to the petitioner.

8. Similar claim for retrospective promotion made by a Railway Engineer, was under consideration in the Nirmal Chandra Sinha vs. Union of India, reported in (2008) 14 SCC 29, where the Supreme Court observed that the date of occurrence of vacancy is irrelevant, for the purpose of promotion.

9. In P.N. Premachandran (Supra), cited by the petitioner, the retrospective promotion was granted only because the persons were serving in the higher post for very long period. In the given circumstances, the Kerala Government took recourse to Rule 39 of the Kerala State and Subordinate Service Rules, 1958, to grant the retrospective promotion. However, similar residuary overriding power (under Rule 39), is not available for the present litigant. Therefore, it will be irrational for this Court to follow the ratio of P.N. Premachandran (Supra), since it

is not applicable to the present case.

10. While the petitioner claims that he cannot be penalized for the delay in consideration of promotion, the Court cannot also overlook the fact that the Government too was not responsible for the promotion delay. Only because of the intervention of the Court with the proposed promotion exercise, the process of promotion could not be taken to its logical end. Therefore, the retrospective promotion in my perception, cannot be considered on the basis of purported failure of the Government to consider the promotion, at the appropriate time.

11. Following the above discussion, it is the conclusive view of the Court that the retrospective promotion cannot be granted to the petitioner. Thus this case is found devoid of merit and the same is accordingly dismissed, without any order on cost.