
(2016) 11 GAU CK 0039
In the Gauhati High Court
Case No : Writ Petition No.(C) 6624 Of 2014

Jiban Chandra Sonowal

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 17-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 NEJ 281

Hon'ble Judges : Mr. Manojit Bhuyan, J.

Bench : Single Bench

Advocate : Mrs. V. L. Singh, Advocate, for the Respondent; Mr. S.N. Tamuli, Mr. R.J. Bordoloi, Mr. P.K. Zannat, Ms. D. Sonowal, Mr. R.S. Chouhan, Advocates, for the Petitioner

Final Decision : Allowed

Judgement

Mr. Manojit Bhuyan, J. (Oral) - Heard Mr. S.N. Tamuli, learned counsel for the petitioner as well as Ms. V.L. Singh, learned counsel representing respondent nos. 1, 2, 3, 4 and 5. Despite service of notice, the private respondent no. 6 has not put in appearance.

2. Challenge is made to the Order dated 28.10.2014 issued under the hand of the Executive Engineer, Pwd, North Lakhimpur Building Division promoting the respondent no. 6 to the vacant post of Divisional Head Assistant in the said establishment. The said order of promotion is assailed primarily on the ground that the procedure adopted for promoting the respondent no. 6 marks a clear departure from the provisions under the Assam Ministerial District Establishment Service Rules, 1967.

3. The procedure for making recruitment to the post of Sadar Head Assistant being clearly spelt out in the aforesaid Rules of 1967, therefore, the point for adjudication lies in a narrow compass, in that, whether the statutory procedure was followed while effecting promotion of the respondent no. 6.

4. In this regard the provisions under Rule 6(2) of the aforesaid Rules, 1967 needs to be noticed, which is as follows:

["6. Recruitment to the service shall be made by the appointing authority according to the procedure laid down below ? (a).... (2) Sadar Head Assistant/ Sub-divisional Head Assistant.-By selection from amongst the [Senior Assistants] with at least 10(ten) years of service as such to their credit including Supervisory Assistants in any Deputy Commissioner's Establishment.]"

5. The stand of the State Respondents as indicated in its affidavit-in-opposition filed on 29.08.2016 also requires to be noticed. At paragraph 10 thereof it is stated that the Public Works Department follows the Assam Ministerial District Establishment Service Rules, 1967 in so far as the service conditions of its employees belonging to the Ministerial Cadre & Divisional Establishment are concerned. Reference is made to sub-rule (2) of Rule 6 of the aforesaid Rules to say that promotion of Head Assistants are made on the basis of seniority-Cum-merit amongst the incumbents holding the post of Upper Division Assistant (UDA) and have rendered not less than 10 years as UDA. The said stand is reiterated in paragraphs 28 and 29 of the affidavit-in-opposition. The ground for according promotion to the respondent no. 6 to the vacant post of Sadar Head Assistant is stated at paragraph 11 of the affidavit-in-opposition to the effect that the same had been done as the respondent no. 6 is the senior most UDA amongst the Senior Assistants rendering more than 10 years as UDA. Also, the seniority of private respondent No. 6 has not been disputed by the other Upper Division Assistants of the Division. This ground is also reiterated at paragraph 28 of the affidavit-in-opposition.

6. The sum and substance of the stand of the State Respondent is that the respondent no. 6 is the senior most UDA and that he has been duly promoted as sub rule (2) of Rule 6 prescribes that the criteria for promotion is seniority-cum-merit.

7. On the very face of it, the stand of the State Respondents is utterly misconceived and, in fact, tentamounts to misleading this Court. The criteria of seniority Cum merit is applicable when promotion is made to the post of Senior Assistant in terms of sub rule (4) of Rule 6 of the aforesaid Rules of 1967. Under no circumstances the said criteria of seniority-cum-merit can be made applicable for filling up the post of Sadar Head Assistant in terms of sub rule (2) of Rule 6 of the said Rules of 1967.

8. In the backdrop of the categorical stand taken by the State Respondents and the same being contrary to the mandate under sub-rule (2) of Rule 6 of the Rules of 1967, the order of promotion granted to the respondent no. 6 cannot stand the scrutiny of law and is liable to be set aside. In this respect, this Court holds that it is well settled in law that where power is given to do a certain thing in a certain manner, the same has to be done in that manner or not at all. Other modes of performance are strictly forbidden. In the instant case and as observed

above the State Respondents had adopted a procedure contrary to the provisions under sub rule (2) of Rule 6 of the Rules. There cannot be any second opinion to it.

9. In view of the above, this writ petition stands allowed by setting aside and quashing the Order dated 28.10.2014 (Annexure-19). A direction is also made to the State Respondents to take steps to fill up the post of Sadar Head Assistant at North Lakhimpur, PWD Division in strict accordance to sub rule (2) of Rule 6 as expeditiously as possible, preferably within a period of 8(eight) weeks from today.

Writ petition stands allowed. No costs.