

(2004) 08 GAU CK 0044
In the Gauhati High Court
Case No : Writ Petition (C) No. 8006 of 2003

Makbul Hussain Saikia

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-08-2004

Acts Referred:

Assam Chief Judicial Magistrate Establishment (Ministerial) Service Rules, 1987 — Rule 15, 6

Citation : (2004) 3 GLT 334

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : Sk. N. Mahammad, S. Rahman and S. Sayed, for the Appellant; K. Agarwal and H.K. Mahanta, for the Respondent

Judgement

B.K. Sharma J.

1. By this writ application the Petitioner has assailed the legality and validity of the Annexure 5 letter dated 19.9.03 issued by the CJM, Kamrup, Guwahati to the District and Sessions Judge, Kamrup, Guwahati recommending the name of the Respondent No. 4 for appointment and promotion as Head Assistant. Along with the said letter the proceedings of the selection board and other related particulars such as service books and character rolls of different incumbents considered for such promotion were also forwarded.

2. By an order dated 31.5.03 issued by the CJM, Kamrup, Guwahati, the writ Petitioner was allowed to hold the charge of the office of Head assistant in the office of the CJM, Kamrup, Guwahati with effect from 1.6.03. The Selection Board was constituted for the purpose of regular promotion to the post of Head Assistant and the said selection committee in its proceeding held on 9.6.03 recommended the Petitioner for such regular promotion. Although, as per the relevant rules, it is the CJM who was to act as the Chairman of the Selection Board, the Additional CJM, Kamrup, Guwahati acted as such in absence of the CJM who was on leave at that time.

3. As per the requirement of the rules the recommendation made by the Selection Board was placed before the District and Sessions Judge, Kamrup who in turn rejected the recommendation made in favour of writ Petitioner and issued a direction to readvertise the post and to hold a fresh selection. The order reads as below:

Md. Makbul Hussain Saikia, U.D. Assistant of the office of the Chief Judicial Magistrate, Kamrup, Guwahati recommended for appointment as Head Assistant of the office of the Chief Judicial Magistrate Kamrup, Guwahati, by the Selection Board is not found suitable for appointment. As such the recommendation so made by the Selection Board is turned down. Chief Judicial Magistrate will again make advertisement for the above post and send recommendation accordingly through Selection Board within a short time.

Sd. H. Barua District and Sessions Judge Kamrup, Guwahati.

4. After the aforesaid order dated 4.7.03 passed by the district and Sessions Judge, Kamrup, another selection was held by the CJM, Kamrup, Guwahati and by letter dated 19.9.03 forwarded the recommendations made by the Selection Board to the District and Sessions Judge, Kamrup. As per the recommendations made by the Selection Board, in its proceeding dated 16.9.03, it is the Respondent No. 4 who was found suitable for appointment as Head Assistant.

5. It is the legality and validity of the second recommendation forwarded by the impugned letter dated 19.9.03 which is under challenge in this writ petition. I have heard Mr. N. Mahammad, learned Counsel appearing for the Petitioner and Mr. K. Agarwal, learned Counsel appearing for the Respondent No. 4 Mr. H.K. Mahanta, learned State Counsel made submissions on behalf of the Official Respondents.

6. Mr. N. Mahammad, learned Counsel for the Petitioner strenuously argued that the impugned selection made on 16.9.03 and forwarded by the impugned letter dated 19.9.03 are not sustainable inasmuch as there could not have been two selections for the same post in the same year. Referring to the provisions of the Chief Judicial Magistrate Establishment (Ministerial) Service Rules, 1987, Mr. N. Mahammad, learned Advocate submits that duty is enjoined on the Selection Board to make correct assessment of the suitability of different incumbents for promotion/appointment to the post of Head Assistant. The earlier Selection Board having found the writ Petitioner suitable for promotion, the second Selection Board which was constituted after about 3 months could not have found the writ Petitioner unsuitable for such appointment. He submitted that the Petitioner being at the verge of retirement, his date of retirement being 31.8.05 on attaining the age of superannuation, in all fairness the writ Petitioner ought to have been selected. He finally submitted that the Respondent No. 4 is much younger to the writ Petitioner and will continue in service till December, 2010 and thus would have further chance for appointment as Head Assistant.

7. Mr. K. Agarwal, learned Counsel for the Respondent No. 4 on the other hand

submits that as per the Rules the Selection made by the Selection Board is not final and the final selection is to be made by the District Judge. He submits that the writ petition is premature in as much as no final decision has been taken by the District Judge on the basis of the recommendation made by the Selection Board. He also submitted that the earlier recommendation made in favour of the writ Petitioner was not acted upon by the District and Sessions Judge, Kamrup on valid and good ground and in any case such non-acceptance of the recommendation by the District and Sessions Judge as recorded in its order dated 4.7.03 being not under challenge, the writ Petitioner is precluded from making any reference to the earlier selection, more particularly when he appeared in the second selection without any objection, Mr. Agarwal finally submits that the writ court in exercise of its power of Judicial review will not sit on appeal over the selection made by the duly constituted Selection Board so as to re-appreciate the materials like an appellate authority

8. Mr. H.K. Mahanta, learned State Counsel appearing on behalf of the official Respondents submitted in reference to the records produced. He submits that the Selection Board having found the Respondent No. 4 suitable recommended him ahead of others and there was no infirmity in such recommendation. He also submitted in tune with the submission of Mr. Agarwal, learned Counsel for the Respondent No. 4 that since the matter will have to be considered by the District and Sessions Judge finally and the proceedings of the Selection Board is only by way of recommendation, the writ petition is not maintainable at this stage.

9. I have considered the rival submission made by the learned Counsel for the parties. I have also considered the materials available on records. I have gone through the records produced by Mr. Mahanta, learned State Counsel containing the recommendations made by the Selection Board and the purported character rolls of the Petitioner and the Respondent No. 4. I have also gone through the provisions of Assam Chief Judicial Magistrate's Establishment (Ministerial) Service Rules, 1987. As per the said rule the appointing authority has been defined as the District and Sessions Judge in case of appointment to the post of Head Assistant. Rule 6 lays down the methodology for selection to the post of Head Assistant from amongst the U.D. Assistants having at least 10 years of service as such to their credit in any CJM Establishment (Ministerial).

10. As per the note appended to Rule 6, the Selection Board shall consist of the CJM and Sub-Divisional Judicial Magistrate of the District concerned to assess the comparative merit and ability of the candidates for the purpose of recommending the name of suitable candidates to the District and Sessions Judge concerned. Such note however, provides that the CJM shall forward the recommendation of the Selection Board together with the character Rolls and other relevant papers relating to the applications submitted by different incumbents to the District and Sessions Judge who in turn shall make the selection strictly on merit. The select list is to remain valid for a period of one year.

11. Rule 15 of the Rules provides that except the provisions made in the Rules,

all matters relating to pay, allowances, leave, pension, discipline and other conditions of service shall be regulated by General Rules framed by the Govt. from time to time. There is no specific provisions in the rules relating to manner and method in which the confidential rolls are to be maintained. There is also no indication as to in what manner the confidential rolls of the incumbents are to be initiated and finalized. If that be so, applying the provisions of Rule 15 same will have to be governed by the General Rules of the Govt. holding the field.

12. I have carefully gone through the minutes of the Selection Board. In the first selection it was the Petitioner who was recommended by the Selection Board. The observations made by the Selection Board are quoted below:

The Selection Board observes that Sri Mokbul Hussain Saikia is the senior most candidate of this Establishment and his date of joining is 6.3.69. On perusal of his character roll and service book, there is no adverse entry against him. In the interview also the selection Board found him efficient, sincere and well conversant in the office work and fit for recommendation for appointment as Head Assistant of the establishment of Chief Judicial Magistrate's office, at Kamrup, Guwahati.

In the light of the above observation and after threadbare discussion and assessing the comparative merit and ability of the candidate the Selection Board has recommended the name of Sri Mokbul Hussain Saikia for appointment as Head Assistant in the office of the Chief Judicial Magistrate's Establishment at Kamrup Guwahati.

13. The aforesaid recommendation made in favour of the writ Petitioner was turned down by the District and Sessions Judge holding that he was not found suitable for appointment. It was on that ground the recommendation made in favour of the writ Petitioner was rejected and the CJM was directed to hold another Selection and make recommendation on that basis.

14. By the above quoted order dated 4.7.03, the recommendation of the Petitioner was turned down by the District and Sessions Judge observing that the Petitioner was not found suitable for promotion without, however, assigning any reason. As against the reasons furnished by the Selection Board, the District and Sessions Judge simply turned down the recommendation made in favour of the Petitioner branding him to be not suitable for appointment without discussing anything as to how and why he was not suitable for appointment

15. After the aforesaid order dated 4.7.03 the CJM Kamrup conducted another selection. As noticed above, in the earlier selection it was Additional CJM, Kamrup who acted as Chairman of the Selection Board in absence of the CJM who was on leave. This time the Selection Board comprising of the CJM as the Chairman recommended the Respondent No. 4 for appointment as Head Assistant. While considering the service particulars including the ACRs of different incumbents, the Selection Board found the Respondent No. 4 to be suitable for appointment on the basis of ACRs for the years 1994, 1998 and

2000. The Selection Board in its proceeding dated 16.9.03 observed that the Respondent No. 4 has produced all the relevant documents in original and he could reply satisfactorily to all the answers put by the Board.

16. As against such observation in respect of the Respondent No. 4 the Selection Board made observations in respect of the writ Petitioner to the effect that he did not produce any document/certificate in original. As regards his character roll for the years 1994, 1998 and 2000, the Selection Board observed that the character roll for the aforesaid years contained remarks like "He is inefficient and no knowledge of the work", "He is honest by nature, cannot organize to complete the entrusted works", "He needs to improve his efficiency", "He is sincere but a bit slow. Needs improvement". As against such adverse remarks there are good remarks pertaining to period 1994 when the Petitioner was found to be "efficient". However, there is nothing to indicate as to whether, the Petitioner was asked to produce the original documents and as to whether any question was put to him and what was his reaction to the same.

17. The Selection Board considered the character rolls of the writ Petitioner and other incumbents including the Respondent No. 4 who were the applicants for the post of Head Assistant and made the selection on that basis. The case of the writ Petitioner has been rejected primarily on the ground of adverse remarks in his ACRs as noticed above. It is nobody's case that those adverse remarks were ever communicated to the Petitioner. Thus here is a case in which the case of the writ Petitioner has been rejected firstly by the District and Sessions Judge by making indefinite and vague remarks like "is not found suitable for appointment" as recorded in the order dated 4.7.03 and secondly by the second Selection Board on the basis of the adverse remarks recorded in his ACRs which were never communicated to him.

18. Apart from the fact that the adverse remarks were not communicated to the Petitioner enabling him to make representation for expunging the same, the confidential rolls reveal that the remarks were recorded only periodically and not annually as is generally required to be done. Moreover, the remarks were recorded by only one authority i.e. the CJM without there being any Reviewing and Accepting authority. The CJM played all the three roles and became the Chairman of the Selection Board and considered the case of promotion of the Petitioner whose case was already rejected by the District and Sessions Judge leaving no option for the second selection Board, but to reject the case of the Petitioner. The expression "Annual Confidential Rolls" (ACR) itself signifies maintenance of the same annually.

19. Mr. H.K. Mahanta, learned State Counsel was requested to obtain instructions on certain areas having close nexus with the issues involved in this proceeding. He accordingly asked for the following informations from the CJM, Kamrup by his letter dated 28.7.2004.

(1) Whether there are any rules in respect of recording the ACRs of the

employees in the establishment of the Chief Judicial Magistrate, if yes, what the Rules?

(2) Why the ACRs of the employees are not recorded every year?

(3) Whether the Petitioner in the present case was informed about the adverse remarks made in his ACR?

(4) Whether the three authorities namely 1) Assessing Authority 2) Revising Authority and 3) Accepting Authority are there in maintaining ACRs in the establishment.

20. The above points have been replied by the CJM, Kamrup, Guwahati by letter dated 3.8.2004 as follows:

Regarding Point No. 1, it is submitted that there is Rule of maintaining ACR of the employees in the Establishment of CJM and it maintained in the Form of Character Roll as per official record. Instantly I am unable to cite the specific Rule as sought for.

Regarding Point No. 2. The head of office did not submit the ACR of employees for remark of the officer every year for which as per record it is seen that officers used to put remark in the Character Roll of employees at the time of his transfer. It is the duty of the Head Assistant to put up the ACR before the Head of the Department/Chief Judicial Magistrate which is not followed at all in the office.

Regarding Point No. 3- As per record there is no indication that the Petitioner was informed about the adverse remarks made in the ACR.

Regarding Point No. 4- In the office establishment of CJM the three authorities namely 1) Assessing Authority 2) Reviewing Authority and 3) Accepting Authority are not maintained in respect of ACR. CJM being the Head of the Establishment accepted the ACR.

21. From the aforesaid factual position as revealed by the Respondent No. 3 herself, there is no manner of doubt that the confidential rolls are not maintained as are required to be maintained and that the adverse remarks recorded against the Petitioner were never communicated to him. I am of the considered opinion that the Respondents should seriously consider maintaining of confidential rolls of their employees in future keeping in mind the object and purpose for which the same are maintained. The adverse remarks must invariably be communicated to the employee concerned asking for his representation and consideration of the same for expunction, if justified. Taking recourse to the provisions of Rule 15 of the aforesaid Rules, the Respondents may follow the General Rules as are being followed in the State Government departments. Some of the basic principles relating to maintenance of confidential rolls are discussed below.

22. There is no gainsaying that the confidential reports of an employee are basically performance appraisal of the employee and constitute vital service

records in relation to his career advancement. The forms and contents of such confidential reports are usually laid down in Service Rules or in the administrative instructions. The performance of a public servant in the discharge of duties is highly relevant while considering his entitlement to certain service benefits, more particularly those related to career advancement like promotion etc.

23. One of the basic principles underlining maintenance of annual confidential roll is that it should be written by superior officer of high rank and that there should be another officer higher in rank than the one who has written the confidential roll to review such reports. The rules usually provide for a reporting authority, a reviewing authority and an accepting authority.

24. As per the general rules, the ACR should be recorded annually preferably for the period covered by the financial year. It is necessary that every employee should know what his defects are and how he could remove them. Experience suggests that it would make better efficiency and contentment in the public service "if every reporting officer realizes that it is his duty not only to make objective assessment of his subordinate's works and qualities, but also to give him at all times the necessary advice, guidance and assistance to correct his fault and deficiencies. This is precisely the reason, it is often emphasized that while mentioning any fault/defect the reporting officer should give an indication to the efforts at reform made by him, by way of guidance, admission etc and the results of such efforts.

25. The basic principles of writing of ACR emphasize that the officers writing the confidential reports should have carefully observed the works and conduct of those under their control, and have provided the required training and guidance, where necessary. The ACR should be based upon the results of such observations as well as periodical inspection. The confidential reports so recorded might vary from Department to Department depending upon the nature of works attached to various posts. However, assessment on certain qualities of general importance such as integrity, intelligence, keenness, industry, tact, attitude to superior and subordinates, relation with fellow employees etc should invariably find place in the report.

26. An adverse remark is a remark which indicates deficiencies of the employee in relation to his performance qua an employee. Compliance with natural justice is ensured by the right of representation, a due consideration thereof and upon the representation being successful, a review of the position. This is in the nature of post-decisional opportunity. Generally an adverse remark needs to be communicated to the employee concerned. An uncommunicated adverse remark cannot, as a general rule, be acted upon by the employer to the prejudice of the employee.

27. In the leading case of *Gurdial Singh Fijji Vs. State of Punjab and Others*, the Apex Court observed as follows:

The principle is well settled that in accordance with the rules of natural justice an

adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, not arising out of any fault on the part of the Appellant, though the adverse report was communicated to him, the government has not been able to consider his explanation and decide whether the report was justified. In these circumstances, it is difficult to support the non-issuance of the integrity certificate to the Appellant. The chain of reaction began with the adverse report and the infirmity in the link of causation is that no one has yet decided whether that report was justified. We cannot speculate in the absence of a proper pleadings, whether the Appellant was not found suitable otherwise that is to say for reasons other than those connected with the non issuance of an integrity certificate to him.

28. In the case of Amar Kant Choudhary Vs. State of Bihar and Others, , the Apex Court following the principles laid down in Gurdial Singh Fijji (supra) held that the decision of the Selection Committee recorded in its meeting in which the case of the Appellant was considered for promotion to the IPS was vitiated reliance being placed on the adverse remarks which were later on expunged. It further observed that the High Court committed an error in dismissing the petition of the Appellant. The observations made by the Apex Court regarding maintenance of confidential rolls as reflected in paragraph 9 of the judgment, are quoted below:

Before concluding we wish to state that the Central Government and the State Government should now examine whether the present system of maintenance of confidential rolls should be continued. Under the Present system entries are first made in the confidential roll of an officer behind his back and then he is given an opportunity to make a representation against any entry that may have been made against him by communicating the adverse entry after considerable delay. Any representation made by him would be considered by a higher authority or the State Government or the Central Government as the case may be, some years later as it has happened in this case, by which time any evidence that may be there to show that the entries made were baseless may have vanished. The predicament in which the officer against whom adverse remarks are made is then placed can easily be visualized. Even the authority which has got to pass orders on the representation of the officer will find it difficult to deal with the matter satisfactorily after a long interval of time. In the meanwhile the officer concerned would have missed many opportunities which would have advanced his prospects in the service. In order to avoid such a contingency the Government may consider the introduction of a system in which the officer who has to make entries in the confidential roll may be required to record his remarks in the presence of the officer against whom remarks are proposed to be made

after giving him an opportunity to explain any circumstance that may appear to be against him with the right to make representation to higher authorities against any adverse remarks. This course may obviate many times totally baseless remarks being made in the confidential roll and would minimize the unnecessary suffering to which the officer concerned will be exposed. Another system which may be introduced is to ask the officer who records the confidential remarks to serve a copy of such remarks on the officer concerned before the confidential roll is submitted to the higher authorities so that his representation against the remarks may also reach the higher authority shortly after the confidential roll is received. This would curtail the delay in taking action on the representation. Suspensions, adverse remarks in confidential rolls and frequent transfers from one place to another are ordered or made many a time without justification and without giving reasonable opportunity to the officer concerned and such action surely result in the demoralization of the services. Courts can give very little relief in such cases. The Executive itself should therefore devise effective means to mitigate the hardships caused to the officers who are subjected to such treatment. These questions require to be examined afresh in the light of the experience gained in recent years and solutions should be found to eliminate as far as possible complaints against misuse of these powers by official superiors who may not be well disposed towards the officer against whom such action is taken. It is needless to state that a non-disgruntled bureaucracy adds to the efficiency of administration.

29. In the case of *State of U.P. Vs. Yamuna Shanker Misra and another*, the Apex Court emphasized the object of writing the confidential reports and making entries in the character rolls as to give an opportunity to a public servant to improve his excellence. It observed that the officer entrusted with the duties to write confidential reports has a public responsibility and trust to write confidential reports objectively, fairly and dispassionately. Similarly in the case of *Swatanter Singh Vs. State of Haryana and others*, the Apex Court emphasized the object of writing the confidential reports.

30. It is settled legal position that the object of writing the confidential reports in character rolls of Govt. servant and communication of the adverse remarks is to afford an opportunity to the officer concerned to make amends to his remissness; to reform himself; to mend his conduct and to be disciplined, to do hard work, to bring home the lapse in his integrity and character so that he corrects himself and improves the efficiency in public service. The entries, therefore, require an objective assessment of the work and conduct of a Govt. servant reflecting as accurately as possible his sagging inefficiency and incompetency. The defects and deficiencies brought home to the officer are means to the end of correcting himself and to show improvement towards excellence. The confidential report, therefore, would contain the assessment of the work, devotion to duty and integrity of the officer concerned.

31. In the case of *State Bank of India etc., Vs. Kashinath Kher and others, etc.,*

the Apex Court found fault in adopting confidential reports in toto by the committee considering promotion without any cross verification from the character rolls or the record and in dependent assessment of merit and ability. It emphasized that being selection post, the selection records also must indicate reasons, however, brief they may be so that when tested by judicial review, the court would be better assisted by such record to reach correct decision in law.

32. Emphasizing the need for correct recording in the ACRs, the Apex Court made observations that confidential reports be written by the superior officers higher above the cadres. The officer concerned should show objectivity, impartiality and fair assessment without any prejudices whatsoever with the highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officer get demoralized which would be deleterious to the efficacy and efficiency of public service. Therefore, they should be written by a superior officer of high rank. Who are such high rank officers is for the pointing authority to decide. There should be another higher officer in rank above the officer who has written confidential report to review such report. The appointing authority or any equivalent officer would be competent to approve the confidential reports or character rolls. This procedure would be fair and reasonable. In that particular case procedure adopted by the Bank was held to be illegal, unfair and unjust.

33. In the case of Sukhdeo Vs. Commissioner Amravati Division, Amravati and Another, the desirability of affording opportunity was emphasized.

34. In the light of the discussions made above both in respect of factual and legal aspect of the matter there is no gain saying that the case of the Petitioner was improperly considered on the basis of adverse remarks pertaining to the years mentioned above which were admittedly not communicated to him. Adverse remarks having not been communicated to the Petitioner it could not have been acted upon by The Selection Committee which led to the violation of the principles of natural justice. It need not be emphasized that as a General Rule adverse remarks pertaining to officer/employee must necessarily be communicated to him enabling him to make representation against the same. Such an opportunity is provided as post decisional opportunity to persuade the authority to expunge the adverse remarks. In the instant case the admitted position is that the Petitioner was never communicated with the adverse remark and yet those remarks were made use of towards deprivation of his promotion as Head Assistant.

35. There is another aspect of the matter, so far as the manner and method in which annual confidential reports have been maintained. The character rolls produced by the learned State Counsel do not indicate of making any assessment of the works of the incumbents annually as noticed above. The remarks have been recorded by only one authority without any endorsement of the Reviewing Authority or of the Accepting Authority. Nothing has been highlighted as to whether the Petitioner failed to improve himself in respect of the deficiency as

mentioned in his annual confidential rolls. The remarks against the Petitioner are also vague and indefinite and were recorded without providing pre or post decisional opportunity.

36. Leaving aside all the above deficiencies in maintaining the ACRs, the recommendation made by the Selection Board is not sustainable only on the ground that the adverse remarks made against the Petitioner in his confidential rolls were never communicated to the Petitioner and yet the same were made use of towards consideration of his case for promotion/appointment as Head Assistant.

37. Dealing with the order dated 5.7.03 passed by the District and Sessions Judge on the basis of recommendation made by the First Selection Committee, there is no manner of doubt that the same is devoid of any reason. Assigning of reason in such matter is one of the facets of the principles of natural justice which has been emphasized time and again in various judicial pronouncements. The First Selection Committee recommended the case of the Petitioner with due reasons and yet the District and Sessions Judge turned down the same with the remarks that "is not suitable for appointment". While passing the remarks against the Petitioner, the District and Sessions Judge, Kamrup did not show any reason for the same. It is true that the District and Sessions Judge is the final authority in making the selection. However, on the face of the recommendation made in favour of the writ Petitioner, such a recommendation could not have been set at naught without there being any indication as to how the assessment relating to performance of the Petitioner was made, if at all the same was made, by the District and Sessions Judge, Kamrup.

38. It is true that the Petitioner did not raise any objection to the order dated 4.7.03 by which the recommendation made by the Selection Committee was turned down and the Petitioner duly appeared in the second selection test. In this context Mr. Agarwal, learned Counsel for the Petitioner submits that the Petitioner has waived his right so far as his selection is concerned. A reference to the said order dated 4.7.03 and the observation made by the selection committee in respect of the confidential rolls of the Petitioner for the aforementioned periods leave no manner of doubt that the Petitioner was condemned unheard so much so the adverse remarks recorded against the Petitioner were never communicated enabling him to make representation against the same persuading the authority to expunge the adverse remarks. The Authority who recorded the adverse remarks against the Petitioner acted as the Chairman and the selection board relied upon those very adverse remarks and held that the Petitioner was not suitable for such promotion.

39. As regards the plea of the official as well as Private Respondents that the writ petition is premature, I respectfully disagree with the submission made by the learned Counsel for the Respondents. According to them, the matter has not attained finality and the impugned minutes of the Selection Committee is only recommendatory in nature and that final decision lies with the District and

Sessions Judge who is yet to take a final decision in the matter. The District and Sessions Judge has already held the Petitioner to be not suitable for promotion on the basis of the recommendation made by the first Selection Board. It is but natural that the District and Sessions Judge who has already held the Petitioner as not suitable for promotion will not go against his own earlier decision as conveyed by his order dated 4.7.2003. It was as per the said order, the second selection was made and thus the Petitioner already stood eliminated. In such a situation, the plea raised by the Respondents is not at all tenable.

40. For the foregoing reasons and discussions, I am of the considered opinion that the recommendation made by the Selection Board as per the proceeding dated 16.9.03 is as communicated by the impugned letter dated 19.9.03 are not sustainable and liable to be set aside and quashed, which I accordingly do. The matter stands remanded back to the Respondents for taking fresh decision for appointment to the post of Head Assistant consistently with the observations made above. Till consideration of the case of the incumbents including the Petitioner and the Respondent No. 4 for promotion to the post of Head Assistant, status quo as on today shall be maintained.

41. The writ petition stands allowed to the extent indicated above, subject to the course of action now required to be adopted and completed by the Respondents as expeditiously as possible and consistently with the observations made above. There shall be no order as to costs.