(1994) 06 GAU CK 0036

In the Gauhati High Court

Case No : Writ Appeal No. 181 of 1994 in Civil Rule No. 2333 of 1992

Minoo Gogoi APPELLANT

Vs

Jatindra Nath Deka and Others RESPONDENT

Date of Decision : 21-06-1994

Acts Referred:
Assam Taxation Service Rules, 1962 — Rule 20

Citation : (1994) 2 GLR 233

Hon'ble Judges : V.K. Khanna, C.J;S.N. Phukan, J

Bench : Division Bench

Advocate : D.N. Choudhury, A. Roy and S.R. Sen, for the Appellant; T.N. Phukan, P. Talukdar and D.P. Chaliha, Govt. Advs. for Assam, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Khanna, C.J.—This appeal has been filed against the judgment and order of the learned single Judge dated 28.4.94 given in Civil Rule No. 2333 of 1992.

2. Smti Minoo Gogoi, Appellant in the present appeal (respondent-5 in the writ petition), was promoted to the post of Inspector of Taxes on 30.5.92 against the quota fixed for filling up posts by promotion from Upper Division Assistant''s. Civil Rule No. 1650/92 was filed in this Court by Respondent-1 J.N. Deka and this Court by its order dated 12th August, 1992 directed the Financial Commissioner to dispose of the petition filed before him. In pursuance of the order passed by this Court the Commissioner and Secretary to the Government of Assam, Finance Department disposed of the appeal filed by Sri J.N. Deka and three other petitions filed by other UDAs who were aggrieved by the order of promotion of the Appellant. It is this order passed by the Commissioner and Secretary dated 24.9.92 which has been challenged by Sri J.N. Deka by filing Civil Rule No. 2333 of 1992.

3. We have heard Mr. D.N. Choudhury, counsel appearing for the Appellant, Mr. T.N. Phukan, counsel appearing for Respondent-1 Sri J.N. Deka and Mr. D.P.

Chaliha, Government Advocate, Assam, and the appeal is being finally disposed of at the admission stage.

4. The facts for the purpose of adjudicating the present appeal are that the Appellant-Respondent was appointed on 11.5.78 to the post of LD Assistant-cum-Typist on compassionate ground on the death of her husband and the writ Petitioner-Respondent-1 Sri J.N. Deka was appointed on 19.10.68. U is not disputed that at the relevant time both the Respondent-Appellant and the writ Petitioner-Respondent had been promoted to the post of UDA and in the gradation list the position of Appellant-Respondent was at Sl. No. 337 whereas the position of Sri J.N, Deka, writ-Petitioner-Respondent-1 was at Sl. No. 156.

5. For promotion as Inspector of Taxes from the Ministerial Cadre, the Service Rules provide for 25% of the vacancies in a calender year provided - (a) The Government servant has rendered at least 10 years of service and (b) that he does not cross the age of 45 years in the first day of January of the year in which his promotion is considered. The Appellant-Respondent-5 made a representation to the Government for consideration of her case as according to her she had already attained the age of 41 years and her chance for promotion in normal course would never come up before she crosses 42 years, (the maximum age fixed at that time was 42 years which was subsequently increased to 45 years), as she was sufficiently junior in the gradation list, Accordingly, she had sought for relaxation of the Rules for promotion on compassionate ground by invoking the provisions of Rule 20 of the Assam Taxation Service Rules, 1962. It is in exercise of the powers under the aforesaid Rule that the Appellant-Respondent-5 has been brought within the field of eligibility among the UDAs who were to be considered for being promoted to the post of Inspector of Taxes. It has not been disputed before us that considering the position of the writ Petitioner-Respondent-1 in the gradation list, the case of the Appellant could not have been considered at the relevant time when she, was promoted to the post of Inspector of Taxes.

6. Before the learned single Judge, counsel appearing for the writ Petitioner-Respondent 1 had urged that the relaxation under Rule 20 has been wrongly granted. We are, however, of the opinion that the question of giving relaxation of age to the Appellant-Respondent''s does not arise as admittedly on the date of promotion she was below 42 years, What has in fact been dons under the Rule is that the seniority of the Appellant-Respondent has been upgraded so as to bring her within the field of eligibility for the purpose of considering her case for promotion to the higher post and in our opinion the competent authority of the State Government in exercise of the powers under Rule 20 of the Service Rules could not break the seniority rule on the ground which was put forward by the Appellant-Respondent by invoking those provisions. The order passed by the competent authority, in our opinion, is arbitrary inasmuch as the question of giving relaxation in any of the qualifications could only arise when according to the gradation list the Appellant-Respondent would have come within the field of

eligibility of the employees who were entitled to be promoted to the higher post. But the Appellant could not have been considered for promotion because any of the qualifications which had been laid down for the purpose of making promotion to the post of Inspector of Taxes was not necessary to be relaxed as she did not come within the zone of consideration for promotion. The case of the Appellant-Respondent before the competent authority was that as she is much below in the gradation list, her case for promotion would come up for consideration only at the point of time when she would cross 45 years (42 years now increased to 45 years) and thus she will not be entitled to be considered for promotion on the ground that she has crossed the age of 45 years. We are expressing no opinion on the question as to whether the view taken by tilt? learned single Judge is correct or not as in our opinion the question of relaxation of age of the Appellant-Respondent would arise only when she comes within the field of eligibility in accordance with the gradation list because it is only at that time that the question as to whether any relaxation of age should be given to her or not may arise. At the present moment when the Appellant-Respondent was promoted on 30.5.92 to the post of Inspector of Taxes, her age being below 42 years, it could not be said that in case she was within the field of eligibility she would have been disqualified on the ground that she was over aged. Now, in our opinion, what the competent authority has done in the present case is to upgrade the seniority of the Appellant-Respondent, which action is arbitrary and could not be done. The promotion granted to the Appellant on 30.5.92 after giving her relaxation in exercise of the powers under Rule 20 therefore is liable to be quashed. The cases for promotion will be considered by the competent authority strictly in accordance with the Rules. The order of the learned single Judge stands modified to that extent. The direction given by the learned single Judge in respect of considering the case of promotion of the writ Petitioner-Respondent-1 only is, therefore, modified to the extent that cases of all the persons who come within the field of eligibility will be considered.

7. For the reasons above, the judgment and order of the learned single judge is modified to the extent indicated above and the writ appeal us dismissed. Looking to the entire facts and circumstances of the case, we leave the parties to bear their own costs.

