

(2023) 10 GAU CK 0048
In the Gauhati High Court
Case No : Writ Appeal No. 341 Of 2019

Mukul Chandra Baishya

APPELLANT

Vs

National Insurance Company Limited

RESPONDENT

Date of Decision : 16-10-2023

Acts Referred:

Citation : (2023) 10 GAU CK 0048

Hon'ble Judges : Sandeep Mehta, CJ; Susmita Phukan Khaund, J

Bench : Division Bench

Advocate : R.C. Saikia, N. Dey, R. Goswami

Final Decision : Dismissed

Judgement

Sandeep Mehta, CJ

1. Heard Mr. R.C. Saikia, learned counsel for the appellant/ writ petitioner and Mr. R. Goswami, learned counsel representing the respondents.

2. Through this intra-Court writ appeal, the appellant (writ petitioner) has laid challenge to the judgment & final order dated 24.10.2019 passed by the learned Single Judge, dismissing WP(C) No.5526/2016 preferred by the petitioner with the following prayers:-

"In the aforesaid circumstances, it is most earnestly prayed that Your Lordships would be graciously pleased to issue Rule, call for the records, directing the Respondents to show cause as to why Annexure 'C' and Annexure 'E' shall not be set aside and as to why a writ in the nature of certiorari shall not be issued directing the respondents to promote the petitioner to the post of Development Officer Grade-I, from Development Officer Grade-II with retrospective effect i.e. from the date when the petitioner collected the premium of above Rs.7.5 lakhs in the extended period of time as per letter dated 1.6.2001 (Annexure-D) and after cause or causes being shown if any your Lordships may kindly be pleased to make the Rule absolute and/or such order/orders as Your Lordships may deem fit

and proper in the above facts and circumstances of the case.

-AND-

Pending disposal of this Writ Petition as an emergency has existed, your Lordships may kindly pass an interim order directing the respondents to keep one post of Development Officer, Grade-I vacant."

3. The appellant herein, seeks a direction upon the respondents to promote him to the post of Development Officer Grade-I from the post of Development Officer Grade-II with retrospective effect, i.e. from the date when the appellant/writ petitioner, collected premium of more than Rs.7.50 Lakhs in the extended period of time vide the letter dated 01.06.2001. The petitioner has also assailed the Office Memorandums dated 16.03.2000 and 21.01.2004 in the writ petition as well as in this writ appeal.

4. As per the case set up in the writ petition, the appellant/ writ petitioner was appointed as Development Officer Grade-II on probation vide the letter/order dated 23.12.1999. His initial appointment was on probation and he was attached to the Mangaldoi Branch under Guwahati Division-I. The period of probation was for 1(one) year extendable further. The service of the appellant/writ petitioner as Development Officer Grade-II was extended for a period of 1(one) year with effect from 24.12.2000, by an order dated 1.06.2001. Thereafter, his service as Development Officer Grade-II was confirmed with effect from 24.12.2001, by a letter dated 8.04.2002. The appellant/writ petitioner has projected that as per his initial appointment letter dated 23.12.1999, he was required to secure minimum premium income of Rs.7.50 Lakhs during the period of probation. In the letter dated 01.06.2001 extending the service of the appellant/writ petitioner, it was specifically indicated that he would be required to procure a minimum premium of Rs.7.50 Lakhs and that all the other terms and conditions mentioned in the appointment letter dated 23.12.1999 would remain the same. However, to the predicament of the appellant, a letter dated 16.03.2000 was issued, wherein the amount of premium was increased to Rs.8 Lakhs. In the very same letter, the target for placement in Grade-I was fixed at Rs.10.25 Lakhs.

5. The appellant/writ petitioner raised a grievance that this enhancement in targets to be achieved amounted to change in terms of employment and hence, the same was bad in the eyes of law. The appellant/writ petitioner further claimed that he had collected premium to the tune of Rs.9.8 Lakhs during his extended period of service as probationary Development Officer Grade-II, which was more than the prescribed target for placement in Grade-I. The revised target of Rs.10.25 Lakhs fixed by the letter dated 16.03.2000 for promotion to Grade-I was contrary to the terms of appointment of the appellant/writ petitioner as referred to in the original appointment letter dated 23.12.1999. The appellant/writ petitioner has also raised a grievance that his service was converted to the administrative side on or after 31.03.2003 and thus, unless he is placed at Grade-I from a prior date as per his entitlement, he is being deprived of all avenues of

promotion in future. It is also averred that the appellant/writ petitioner has suffered stagnation in service for 16(sixteen) years after conversion to the administrative side. If the appellant/writ petitioner's rightful claim for placement at Grade-I had been considered at the appropriate point of time, he would have received 2(two) promotions as Administrative Officer (Scale-I) and Administrative Officer (Scale-II).

6. The appellant/writ petitioner claims to have submitted repeated representations to the authorities but his prayer for being promoted as Development Officer Grade-I from an antedate as per his entitlement was not favourably considered upon which, the appellant/writ petitioner preferred the captioned WP(C) No.5526/2016, which came to be rejected by the order dated 24.10.2019, which is assailed in this intra-Court writ appeal.

7. Mr. R.C. Saikia, learned counsel representing the appellant/ writ petitioner, vehemently and fervently contended that enhancement of premium for placement as Development Officer Grade-I to Rs.10.25 Lakhs as effected by the order/memo dated 16.03.2000 is totally illegal and contrary to the terms and conditions of appointment of the appellant herein. The appellant/writ petitioner has been stagnated in the same post despite having served for almost 24(twenty-four) years for no fault of his. In support of his contentions, Mr. Saikia has placed reliance on the following judgments of the Hon'ble Supreme Court – (i) Council of Scientific and Industrial Research & Anr. -Vs- K.G.S. Bhatt & Anr., reported in AIR 1989 SC 1972; (ii) Y.V. Rangaiah & Ors. -Vs- J. Sreenivasa Rao & Ors., reported in (1983) 3 SCC 284; (iii) Chairman, Railway Board & Ors. -Vs- C.R. Rangadhamaiah & Ors., reported in (1997) 6 SCC 623; (iv) N.T. Devin Katti & Ors. - Vs- Karnataka Public Service Commission & Ors., reported in (1990) 3 SCC 157 and (v) B.L. Gupta & Anr. -Vs- M.C.D., reported in (1998) 9 SCC 223. On these grounds, Mr. Saikia implored the Court to accept the writ appeal and extend the reliefs craved for by the appellant.

8. Per contra, Mr. R. Goswami, learned counsel representing the respondents, urged that the appellant/writ petitioner has failed to make out a case for grant of relief in this case. He urged that the writ petition by itself was filed with significant delay in the year 2019 claiming antedated promotion from the year 2000 and thus, the appellant/writ petitioner deserves to be non-suited on the ground of delay and laches alone. He further urged that the appellant/writ petitioner voluntarily chose to shift to the administrative side way back in the year 2003. In this regard, he drew the Court's attention to the averments made in the affidavit-in-opposition filed by the Insurance Company, wherein it is specifically pleaded that a discussion was held amongst the Associations of Development Officers, which led to a conclusion that most of the Development Officers Grade-II, who are very few in number, were stagnating at the maximum of the scale for a long time without having promotional avenues to any other cadre with higher pay scale. These representations were examined by the Management in consultation with the recognized Associations of Development

Officers and to address the needs of those Development Officers Grade-II, who looked forward to an alternative, it was envisaged to construct a One-time Package Scheme to enable such Development Officers Grade-II to opt for an avenue that would place them in a pay scale with adequately long span commensurate with the length of their balance service. The appellant/writ petitioner was offered the option for conversion to the cadre of Assistant, which would enable him to get regular increments in that cadre and also provide him with the opportunity of promotion to higher posts. However, the appellant/writ petitioner declined to avail of the opportunity given and as such, he is not entitled to the claim antedated promotion and that too after a gap of more than 16-17 years. It was further urged that the appellant/writ petitioner having failed to get promotion based on mandatory collection of premium, voluntarily opted for shift to administrative side way back in the year 2003 and thus, he cannot be allowed to raise this highly belated challenge to the denial of upgradation from Grade-II to Grade-I in the Marketing Division.

9. It was further submitted that the appellant/writ petitioner having joined the Administrative Division way back in the year 2003, cannot claim promotion in the Marketing Division. However, he has already been provided with the stagnation increments in terms of the applicable Schemes. It was further submitted that the Scheme under which the appellant/writ petitioner opted to shift to the Administrative Division, i.e. the General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Development Staff) Amendment Scheme, 2003, was subjected to challenge before Hon'ble the Apex Court in the case of National Insurance Company Limited - Vs- General Insurance Development Officers Association, reported in AIR 2008 SC 2657 and the Hon'ble Supreme Court affirmed the validity of the said Scheme. Whatever benefits of promotion are available to the Officers in the Administrative Branch are conferred on the introduction of Schemes which are floated by the General Insurance Company and hence, the appellant/writ petitioner has no cause to raise a grievance in this regard.

Based on these submissions, Mr. Goswami, learned counsel for the respondents, vehemently and fervently implored the Court to dismiss the appeal and affirm the judgment rendered by the learned Single Bench.

10. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the material available on record as well as the impugned judgment & order dated 24.10.2019.

11. In the writ petition as well as in the writ appeal, the appellant/writ petitioner has not questioned the legality or propriety of the decision to shift him to the Administrative Division of the Insurance Company way back in the year 2003. This fact was clearly pleaded by the respondents in their affidavit-in-opposition filed in the writ petition as well as in the writ appeal and has not been controverted by the appellant by filing any counter affidavit. The relevant projections as made in the affidavit-in-opposition filed by the respondents in the

writ petition are reproduced herein below for the sake of ready reference:-

"32. That regarding the statements made in Paragraph No.40 of the Writ Petition it is denied that the petitioner has procured a premium of Rs.1.00 crore. As a matter of fact, on the basis of the application made by the petitioner vide his application dated 17.02.2003, the competent authority has converted his services as Development Officer Grade-II (Administrative) vide letter marked GRO/MKTG/2003/3353 dated 29.04.2003."

12. The petitioner filed an additional affidavit after the affidavit-in-opposition of the respondents but therein a bald statement was made that the appellant did not give his option to be appointed as an assistant in the Administrative Office of the respondents. However, at Paragraph 8 of the affidavit, it has been tacitly admitted that the Scheme was made to shift the officers from Marketing to Administrative Division and the appellant/writ petitioner was placed in administration as Development Officer Grade-II. Nonetheless, despite the said shift, the appellant continued to work in the Marketing Sector. However, there is no plausible material on record of the proceedings to support such claim of the appellant/writ petitioner. The fact that the appellant was moved to the Administrative Division of his own volition is well established.

13. The appellant/writ petitioner has not set up a case either in the writ petition or in the writ appeal that inspite of being transferred to the Administrative Division, he is entitled to promotion as Development Officer Grade-I in the Marketing Division. At Paragraph 4 of the affidavit-in-opposition filed in the writ appeal, the respondents have clearly demonstrated that the Circular dated 27.05.2011 was issued to utilize the services of the Development Officers in the administration side for procuring business and in return, they were given certain compensatory benefits. At Paragraph 5 of the affidavit filed by the respondents in the writ appeal, it has been pleaded that after having voluntarily opted for an irreversible conversion from marketing functions as a Development Officer Grade-II (Marketing) to Administrative (Non-Marketing) functions as a Development Officer Grade-II, it is not open to the appellant/writ petitioner to make a claim for the promotional avenues which are available exclusively to the Development Officers Grade-II working on the Marketing side.

14. There is no provision in the Scheme for promotion of Development Officers Grade-II (Administration) to Development Officer Grade-I for business procured. The said submission made in the affidavit filed by the respondents in the writ appeal not having been disputed by the appellant/writ petitioner, he cannot now, at this highly belated stage, be allowed to lay a claim for antedated promotion in the Marketing Division. The writ petition was filed by the appellant/writ petitioner in the year 2016 seeking ex-post facto promotion from the post of Development Officer Grade-II to the post of Development Officer Grade-I in the Marketing Division with effect from the year 2001. Thus, the challenge laid by the appellant/writ petitioner to the judgment rendered by the learned Single Bench was highly belated and suffered from unexplained laches.

15. Now, we proceed to deal with the judgments cited by Mr. Saikia in support of his submissions claiming relief of ex-post fact promotion to the appellant/writ petitioner. In the case of Council of Scientific and Industrial Research (supra), the Hon'ble Supreme Court laid down as below:-

"It is often said and indeed, adroitly, an organisation public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well."

16. There cannot be any two views on the aforesaid proposition expounded by Hon'ble the Supreme Court. However, we cannot remain ignorant to the fact that the advancement can be two folds, one by way of promotion in the cadre and in case, the promotional avenues are not available, then, the employee concerned can be granted financial upgradations so as to avoid stagnation. There is no dispute that the appellant/writ petitioner was shifted to the Administrative Division way back in the year 2003. Had there been any objection on the part of the appellant/writ petitioner in this move, then he should have raised a timely objection there against. Thus, the above referred judgment is of no benefit to the appellant/writ petitioner so as to support his claim for ex-post facto promotion.

17. In the case of Y.V. Rangaiah & Ors. (supra), the Hon'ble Supreme Court criticized the decision of the employer in delaying the preparation of the panel for promotion resulting into deprivation of chances of promotion to the employee concerned. The factual matrix of the said case reveals that the panel for promotion was not prepared within the time stipulated in the rules and instead was drawn up after amendment of the rules for promotion and in this background, the Hon'ble Supreme Court held that the vacancies in the promotional posts occurring prior to the amendment had to be filled up in accordance with the unamended rules. The appellant/writ petitioner has relied upon the said judgment in order to portray that he should have been promoted in the Marketing Division on the basis of the premium collected by him way back in the year 2001. However, the fact remains that the target for collection of premium for promotion from Development Officer Grade-II to Development Officer Grade-I had been increased from Rs.7.5 lakhs to Rs.10.25 lakhs vide letter dated 16.03.2000. The appellant/writ petitioner challenged the said letter/communication through the writ petition filed in the year 2016 claiming that the same amounted to change in the terms of employment. However, the fact remains that even in the appointment letter dated 23.12.1999 whereby the appellant/writ petitioner was appointed in the post of Development Officer Grade-II, it was clearly indicated that he would have to satisfactorily perform all duties and functions assigned to him and to obey all such orders and instructions as may be given orally or in writing by superior officer from "time to

time” (Emphasis supplied).

18. Clause 6 of the appellant’s appointment order dated 23.12.1999 stipulates that the services would be governed by the General Insurance (Rationalisation of Pay Scale and other conditions of Service of Development Staff) Scheme, 1976 and the General Insurance (Termination, Superannuation and Retirement of officers and Development Staff) Scheme, 1976, as amended from time to time and the General Insurance (Conduct, Discipline and Appeal) Rules, 1975. Clause 8 of the appointment order further stipulates that the appointment is and shall be subject to the rules and regulation as may be in force from time to time and that the same shall also be governed by such instructions and orders as may be issued orally or in writing. The letter dated 16.03.2000 whereby the Y.V. Rangaiah & Ors. premium target for placement in Development Officer Grade-I had been fixed at Rs.10.25 lakhs in cities with population less than Rs.5 lakhs was applicable in the entire insurance sector and was never challenged at any point of time. Even before that, instructions dated 26.03.1999 were in force which required that the premium target for placement in Development Officer Grade-I to be completed during the period of 01.04.1999 to 31.03.2000 would be Rs.9.75 lakhs for the cities having population less than five lakhs. It is not in dispute that the appellant/writ petitioner was appointed as Development Officer Grade-II on 23.12.1999 at which point of time, the instruction dated 26.03.1999 was in force. There is no dispute and rather, it is the admitted case of the appellant/writ petitioner that his premium collection in his two probationary years was less than Rs.10.25 lakhs. Thus, the decision of the authorities in not placing the appellant/writ petitioner in Development Officer Grade-I post cannot be faulted and the decision of the respondent authorities cannot be termed to be in violation of the ratio laid down in the case of (supra).

19. In the case of Chairman, Railway Board & Ors. (supra), the controversy involved was regarding retrospective amendment affecting vested or accrued rights of the government employees. Such retrospective amendment of statutory rules adversely affecting the pension of the employees, who already stood retired on the date of the notification, was declared to be invalid. However, as has been discussed above, in the present case, no such situation prevails and there was no amendment in the rules which adversely affected the progression opportunities of the appellant/writ petitioner. Rather, the change mandated by the authorities was commensurate with the service conditions of the appellant/writ petitioner. Hence, the judgment in the case of Chairman, Railway Board (supra) also does not support the case of the appellant/writ petitioner in his endeavour to seek ex-post facto promotion.

20. In the case of N.T. Devin Katti & Ors. (supra), it was laid down that where selection process was initiated by issuing advertisement inviting applications, the selection should normally be regulated by the rule or the order then prevailing. The amendment effected in the rules after issuance of the advertisement would not govern the selection process initiated earlier. For the sake of repetition, it

may be mentioned that no such situation exists in the case at hand because there had not been any change in the conditions of service for promotion as alleged by the appellant/writ petitioner. Similar principle was laid down in the case of B.L. Gupta & Anr. (supra).

Hence, the judgments cited by appellant/writ petitioner's counsel do not come to his rescue in the endeavour for claiming ex-post facto promotion.

21. The respondents' counsel Mr. R. Goswami has placed reliance on the Supreme Court judgment in the case of National Insurance Company Limited - Vs- General Insurance Development Officers Association (supra), wherein the Hon'ble Supreme Court examined the validity of the General Insurance (Rationalization of Pay Scales and Other Conditions of service of Development Staff) Amendment Scheme, 2003 and expressly approved the decision of the General Insurance Company in changing the target for promotion. The decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited (supra) was based on the Constitutional Bench judgment in the case of Kishan Prakash Sharma & Ors. -Vs- Union of India & Ors., reported in (2001) 5 SCC 212.

Having considered the entirety of facts and circumstances, we are of the unhesitant view that the controversy at hand is squarely covered by the judgment rendered by Hon'ble Supreme Court in the case of National Insurance Company Limited (supra) referred to above.

22. Another important fact which needs to be mentioned here is that the service of the appellant/writ petitioner in Development Officer Grade-II was confirmed on 08.04.2002 w.e.f. 24.12.2001. The appellant/writ petitioner made a prayer to the Senior Divisional Manager, Maligaon Division vide letter dated 12.12.2003 for placement in the Development Officer Grade-I. The said letter was responded by the Regional Office by its communication dated

21. 01.2004 with the clear indication that Sri Mukul Ch. Baishya had failed to procure the minimum stipulated premium (SPO) of Rs.10.25 lacs during 2000-2001 and 2001-2002 and hence, his request for placement in Development Officer Grade-I could not be admitted in view of the existing guidelines. The said letter/decision was not subjected to challenge by the appellant/writ petitioner. In the year 2003, the appellant/ writ petitioner's services were shifted to the Administrative Branch, which fact was neither disclosed by the petitioner in his pleadings nor was the pertinent assertion made in the affidavit of the respondent controverted by proper and convincing material.

23. There cannot be any two views on the ratio of the judgments cited by the learned counsel for the appellant/writ petitioner that the opportunity of advancement has to be given to a person serving in the public or private organization but it is equally true that in a service which does not provide any promotional avenue, stagnation benefits are offered which takes care of the financial stagnation of such employees. There being no averment of the appellant/writ petitioner in the pleadings that after shifting to the administrative

side on his own accord, he has been stagnating at the same pay scale, we are of the firm opinion that the learned Single Bench was perfectly justified in rejecting the claim made by the appellant/writ petitioner through the captioned writ petition seeking a direction for retrospective promotion in the category of service, i.e. Marketing Division, from which he himself opted out way back in the year 2003.

24. As a consequence, finding no infirmity in the impugned judgment & order dated 24.10.2019 passed by the learned Single Judge in WP(C) No.5526/2016, we hereby dismiss the instant writ appeal as being devoid of merit.

No order as to cost.