
(2021) 07 GAU CK 0124

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3341 Of 2021

Nabajit Nath

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 20-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Indian Penal Code, 1860 — Section 109, 120B, 308, 342, 448

Citation : (2021) 07 GAU CK 0124

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : D Mahanta

Final Decision : Allowed

Judgement

1. Heard Mr. D. Mahanta, learned counsel for the petitioner. Also heard Mr. S.S. Roy, learned Govt. Advocate appearing for the respondents.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has, inter alia, challenged the action of the respondents in not

including the name of the petitioner in the impugned order under Memo No.RA/DBB/2021/1623 dated 09.07.2021 for pre-promotion training to the rank of Sub Inspector (UB).

3. The case of projected by the petitioner is that while serving in Dhubri P.S., he was made an accused in Gauripur P.S. Case No.764/2020 under

section 120B/109/448/342/308 IPC. The petitioner has already approached this Court by filing Crl. Pet. No.392/2020 for quashing of the FIR dated

17.07.2020. On completion of investigation, the prosecution sanction was sought for and was granted by order dated 31.08.2019. The petitioner

challenged the order granting sanction, and this Court by order dated

28.02.2020 in WP(C) No.1487/2020 had stayed the operation of order dated 31.08.2019, granting sanction. On similar facts, departmental proceeding was initiated against the petitioner and the petitioner had challenged the legality by filing WP(C) No.2150/2020, and this Court by interim order dated 06.05.2020 had suspended the departmental proceeding.

4. The learned counsel for the petitioner submits that the petitioner is awaiting confirmation of promotion in the rank of Sub Inspector (UB) w.e.f.

01.12.2014. Accordingly, it is submitted that the proceedings against the petitioner of a later date cannot be a cause of consideration for not giving

promotion to the petitioner w.e.f. 01.12.2014. It is submitted that the criminal proceedings as well as the departmental proceedings took effect

prospectively and therefore, for a subsequent action, the confirmation of the promotion of the petitioner w.e.f. 01.12.2014 would not have been

interfered with. Accordingly, the learned counsel for the petitioner prays for interim relief.

5. The learned Govt. Advocate opposes the prayer for interim relief on the ground that as the name of the petitioner is not included in the order dated

19.06.2021 by the Director General of Police, Assam, the petitioner would not be entitled to have pre-promotion cadre training course. It is also

submitted that he would require instructions from the respondents as to whether any departmental proceeding is pending/ contemplated against the

petitioner. Accordingly, the prayer for interim relief is opposed.

6. Issue notice returnable on 20.08.2021.

7. No steps are required to be taken as the respondents are represented by the learned Govt. Advocate. However, requisite additional copies of the

writ petition be furnished to him within 2 (two) days.

8. Considered the prayer for interim relief. The Court has taken note of the submissions made by the learned counsel for the petitioner that no

departmental proceeding was initiated against the petitioner at the relevant time when the order of promotion was passed. The Court has also taken

note of the submission made by the learned counsel for the petitioner that promotional training is not a regular feature and is periodically taken up after

2-3 years and batch to batch wise and it is submitted that if the petitioner cannot undergo the pre-promotion cadre training course, even if the writ

petition stands allowed, he would not become entitled to be confirmed in the

rank of Sub Inspector (UB) and therefore, he would lose the opportunity of promotion.

9. Considering the above stated situation, this Court is inclined to provide that the respondent nos.2 and 3 shall permit the petitioner to undergo pre-

promotion cadre training course for promotion to the rank of Sub Inspector (UB). However, it is provided that participation in such training course

shall not give, confer and/ or create any substantive right on the petitioner for being confirmed in the rank of Sub Inspector (UB) and the issue of

promotion of the petitioner would be subject to further orders that may be passed in the writ petition.

10. The petitioner is allowed to provide a downloaded copy of this order to the learned Govt. Advocate and to the competent authority and the said

authority is at liberty to verify the correctness of the order from the website of the Court and act accordingly.

11. List on 20.08.2021.