
(2007) 05 GAU CK 0023
In the Gauhati High Court

Prafulla Chandra Saikia

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 11-05-2007

Acts Referred:

Citation : (2007) 4 GLT 267

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amitava Roy, J.—The petitioner seeks practical alleviation from his perceived administrative apathy through an appropriate writ securing his repatriation to the Health and Family Welfare Department, Assam, his parent department and promotion to the rank commensurate to his service entitlements.

2. I have heard Mr. A.K. Goswami, Sr. Advocate for the petitioner and Mr. B.J. Ghosh, learned State Counsel for the official respondents.

3. The petitioner's version is that after his appointment as Assistant Surgeon-I with the Health and Family Welfare Department, Government of Assam, on 23/01/1973, he joined the said post. While he was posted as Medical and Health Officer-I at Bisturam Baruah State Dispensary in Jorhat, by notification No. HLA. 224/87/19 dated 10.04.1987 of the Health and Family Welfare (A) Department, his services were placed at the disposal of the Labour Department. Subsequent thereto, by notification dated 5.8.1987 issued by the Secretary to the Government of Assam, Labour and Employment Department, he was posted at Tinsukia. He joined the said post and has been serving in the said capacity since then without any promotion.

4. On his prayer at some later point of time for retention of his services by the Labour Department, the Under Secretary thereof sought for the views of his parent department on the issue. Eventually by notification dated 14.6.2000, the Labour Department informed his parent department that it was not inclined to

retain the petitioner's services permanently for technical reasons. The petitioner's parent department, however, responding to the earlier letter dated 17.6.1999 of the Labour Department communicated that it had no objection to his permanent absorption in the Labour and Employment Department. In view of the disinclination expressed by the Labour and Welfare Department, however, the issue receded to the background.

5. In the meantime, the petitioner's contemporaries in the cadre of Medical and Health Officer-I continuing in the parent department were promoted in regular sequence to the posts of Sr. Medical and Health Officer and Sub-Divisional Medical and Health Officer. Some of them, also reached the rank of Chief Medical and Health Officer or posts equivalent thereto. The petitioner, however, was neither considered for such promotion nor elevated in the ranks with the persons equally placed in his parent department. Even his juniors were promoted ignoring his superior claim. The representations submitted by him from time to time with his parent department also remained unresponded. Situated thus, he is before this Court.

6. The Health and Family Welfare Department in its counter while admitting that the doctors who had joined as Medical and Health Officer-1 in the department in the year 1973 and continuing there had in the meantime been promoted to higher ranks on the basis of their seniority affirmed that the petitioner also would have enjoyed the same benefit along with his contemporaries had he remained with the department. The answering respondent admitted that the petitioner's case was not considered for promotion in the parent department as he had continued with the Labour Department and was not repatriated therefrom. It has been asserted that the petitioner, if willing to be considered by the parent department ought to have represented for his inclusion in the gradation list thereof and got his performance report from the Labour and Employment Department forwarded for necessary assessments. The parent department, therefore, sought to lay the blame on the petitioner for the non-consideration of his case for promotion.

7. Mr. Goswami has persuasively urged that the arrangement whereunder the petitioner's services had been placed with the Labour and Employment Department cannot be construed to be one of deputation as at no point of time his option therefore was sought or obtained. Contending that it was incumbent on the part of his parent department to maintain his seniority in the cadre of Medical and Health Officer-I and consider him for the promotion of higher rank along with his contemporaries in due course, the learned Counsel maintained that the omission on the part of the parent department to consider the petitioner's case for promotion for all these years being without any conceivable justification, it is a fit case where a writ of mandamus ought to be issued directing his repatriation from the Labour and Employment Department to a post in the parent department which he is entitled to hold by virtue of the promotions earned in between. Mr. Goswami in support of his submissions placed his reliance

on the decision of the Apex Court in *State of Mysore Vs. M.H. Bellary*,

8. The learned State Counsel has argued that the petitioner being at fault not having taken appropriate steps for consideration of his case in the parent department and contended with the Labour and Welfare Department without any demur, he is not entitled to the relief as sought for.

9. The contesting arguments have been taken note of. The contextual facts are not in dispute. Though at some point of time, the issue of the petitioner's absorption in the Labour and Welfare Department engaged the attention of the concerned authorities, the same was eventually abandoned. The petitioner, however, continues in the Labour and Employment Department. The materials on record do not unequivocally demonstrate that the petitioner had been detailed on deputation to the Labour and Employment Department. Neither his parent department exhibited any inclination to recall him nor the loanee department took steps for his repatriation. In the process, admittedly the petitioner stagnated in his post. Both the departments remained indifferent about his career advancement though persons similarly situated in the parent department were granted promotion to higher posts.

10. The Apex Court in *State of Mysore v. M.H. Bellary*, (supra), while dwelling on the service prospects of a deputationist in his parent department had held with reference to the rules involved therein that the service of an Officer in another department is equivalent to one in the parent department and so long as the service of the employee in the new department is satisfactory securing increments and promotions, the same should be deemed to be rendered in the parent department also so as to entitle him to promotions which are open on seniority cum merit basis. Terming this accepted tenet in service jurisprudence as "next below rule", the Apex Court enounced that thereunder an Officer on deputation is given a paper promotion to higher posts in the parent department, if the Officer next below him is so promoted unless there are adverse remarks against him in the loanee department or he had been visited with punishment whereupon different consideration would arise.

11. Adverting to the facts in hand, it is not the case of the respondents with the petitioner's service record contains any adverse remark or that there is any reservation against his entitlements for promotions from either of the department. In that view of the matter, I am of the considered opinion that it was obligatory on the part of both the departments to arrange for his repatriation to the parent department in time and process his case for promotion to the post(s) to which his contemporaries in the parent department had in the meantime been elevated. The plea of lack of enterprise of the petitioner in this regard is wholly unconvincing. It being the solemn duty of the parent department in particular to consider the petitioner's case for promotion, in the circumstances, the contention to the contrary cannot be sustained.

12. In the result, the petition stands allowed. The authorities of the Health and

Family Welfare Department would take immediate steps for repatriation of the petitioner from the Labour and Employment Department. They would also initiate the process for considering his case for promotion to the ranks higher than that of Medical and Health Officer-I to which Officers equally placed like him in the department have been elevated. Needless to say, if the petitioner is so promoted following the exercise as ordered, he would be entitled to all consequential benefits as permissible in law. The process as ordered should be completed within a period of six weeks from the date of receipt of certified copy of this order. No costs.