

(2023) 08 GAU CK 0055
In the Gauhati High Court
Case No : Writ Appeal No. 308 Of 2023

Shyam Sundar Saha

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 25-08-2023

Acts Referred:

Citation : (2023) 08 GAU CK 0055

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

Bench : Division Bench

Advocate : B.K. Goswami, N. Barman, J. Gogoi, D. Chakrabarty

Final Decision : Dismissed

Judgement

1. The instant intra-Court writ appeal has been preferred by the appellant/writ petitioner for assailing the common judgment and order dated 24.05.2023 whereby the learned Single Judge dismissed three separate writ petitions, being, WP(C) 6236/2022, WP(C) 2959/2023 and WP(C) 6052/2022, filed by the appellant herein for assailing the appointment of the respondent No.5, Sukhendu Narayan Dhar Choudhury, in the post of LDA so as to deprive him of seniority in the gradation list on the ground that the initial appointment of the respondent No.5 was illegal.

2. Heard learned counsel appearing for the parties and perused the impugned judgment and the material placed on record.

3. Learned counsel Mr. B.K. Goswami, representing the appellant vehemently and fervently urged that the appointment of the respondent No.5 on the post of LDA, as projected to have been made by order dated 07.03.1994, was illegal because the very Advertisement/Notice dated 24.09.1993 issued by the department for making appointment on the said post was de hors the rules and thus, appointment of the respondent against the vacant post of LDA under the Executive Engineer, Silchar, F.C. Division was void ab initio and illegal. As the very appointment of the respondent No.5 was illegal, he could not have been

assigned seniority in the gradation list over and above the appellant/writ petitioner. He thus implored the Court to accept the writ appeal; set aside the impugned judgment; and as a consequence, direct the respondents to terminate the respondent No.5 from services and accord appropriate seniority to the appellant/writ petitioner over and above the respondent No.5.

4. Per contra, learned counsel representing the respondents vehemently and fervently opposed the submissions advanced by appellant's counsel. They urged that the appellant herein filed an earlier writ petition, being, WP(C) 3727/2022 for challenging the provisional gradation list of Senior Assistants which was disposed of by order dated 06.06.2022 directing the respondents to consider the representation dated 17.02.2022 filed by the appellant/writ petitioner. The said representation was objectively considered and rejected by a speaking order dated 08.09.2022. The appellant/writ petitioner challenged the said rejection by filing WP(C) 6052/2022. He also filed another writ petition, being, WP(C) 6236/2022 challenging the final gradation list dated 13.09.2022 issued by the department. They urged that the appellant/writ petitioner claimed that during pendency of these two writ petitions, i.e. WP(C) 6052/2022 and WP(C) 6236/2022, the appellant/writ petitioner received information under the RTI Act, which disclosed that the very recruitment notice dated 24.09.1993 issued by the departmental authorities was illegal and was de hors the rules. Learned counsel for the respondents drew the Court's attention to the facts noted in paragraph 13 of the impugned judgment wherein it is reflected that the appellant's counsel gave up the challenge laid to the appointment of the respondent No.5. Hence, it is contended that as the challenge to the appointment of the respondent No.5 had been given up, the appellant cannot be allowed to challenge the seniority list, which is based on the length of service of the respondent No.5 in the department. They further submitted that the learned Single Judge, while dismissing the writ petitions, has observed that the endeavour of the writ petitioner lacks bona fide and his conduct deserves to be deprecated. Thus, they urged that this intra-Court writ appeal should be dismissed with exemplary cost.

5. We have given our thoughtful consideration to the submissions advanced at Bar.

From a bare perusal of the impugned judgment, we find that the petitioner's counsel did not press the challenge laid to the appointment/selection of the respondent No.5, which fact was noted by the learned Single Judge at paragraph 13 of the impugned judgment. Even while arguing the appeal before us, learned counsel Mr. B.K. Goswami was not in a position to dispute the fact that the appointment of the respondent No.5 was made in the year 1994. The appellant herein was born in the service in the year 2011 and, for the first time, challenge was laid to the appointment of the respondent No.5 on the post of LDA in the year 2022. In this background, we are in agreement with the observations made by the learned Single Judge in the impugned judgment that the conduct of the appellant/writ petitioner in filing the writ petitions was not bona fide. We find

ourselves unable to accept the contention of the appellant's counsel that the selection process undertaken by the respondent authorities, whereby respondent No.5 was appointed as an LDA way back in the year 1993, suffered from any irregularity/illegality. No such challenge can be entertained after a period of almost three decades. The bravado of the appellant/writ petitioner in trying to invoke writ jurisdiction of this Court for such a lame and belated challenge was rightly deprecated. The fact remains that the writ petitioner/appellant herein was born in the cadre of Junior Assistant in the office of the Executive Engineer, Silchar W.R. Division in the year 2011 and he woke up from his slumber to challenge the appointment of the respondent No.5 in the year 2022 when the final gradation list was issued. Thus, by no means it could be said that the writ petitions filed by the appellant/writ petitioner herein had any element of bona fides.

6. In view of the above, we are of the firm view that the learned Single Judge was perfectly justified in dismissing the writ petitions filed by the appellant herein and in denying the relief prayed for by him. As a matter of fact, the appellant, being a government servant, has tried to invoke the extra-ordinary writ jurisdiction of this Court to lay a lame challenge to an action which took place nearly 29 years ago which attempt by itself is deprecable. The impugned judgment does not suffer from any infirmity warranting interference in this intra-Court writ appeal, which fails and is dismissed as being devoid of merit.

7. A cost of Rs.25,000/- is imposed upon the appellant/writ petitioner, which shall be deposited with the Registry of this Court within a period of 30 (thirty) days from today. Out of the cost amount, a sum of Rs.20,000/- shall be paid to the respondent No.5 for the undue harassment, which he faced on account of this frivolous litigation. The remaining amount of Rs.5,000/- shall be appropriated in the funds of the Assam State Legal Services Authority.

8. The writ appeal is dismissed with the above observations and directions.