
(2006) 05 GAU CK 0077
In the Gauhati High Court
Case No : Civil Rule No. 5522 of 1998

Shyamal Saikia

APPELLANT

Vs

Gauhati High Court and Others

RESPONDENT

Date of Decision : 30-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 2 GLT 874

Hon'ble Judges : B.S. Reddy, C.J;T. Nandakumar Singh, J

Bench : Division Bench

Advocate : N. Dutta and U. Bhuyan, for the Appellant; G.A. Assam and B.C. Das, for the Respondent

Judgement

B.S. Reddy, C.J.—The Petitioner in this writ petition invokes extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue appropriate writ particularly the one, i.e., the writ of mandamus, declaring that the Petitioner is entitled to promotion to the post of Upper Division Assistant with effect from 1.9.1989, when his immediate junior was so promoted and to assign his seniority position in the grade of Upper Division Assistant in the Gauhati High Court accordingly. The Petitioner also prays for an appropriate consequential direction directing the 1st Respondent to give retrospective effect to the promotion of the Petitioner to the post of Upper Division Assistant on and from 1.9.1989 and to grant him all consequential benefits including assignment of the seniority position of the Petitioner in the grade of Upper Division Assistants at S.I. No. 32 in the Gradation List.

2. We have heard Shri N. Dutta, learned Senior Counsel appearing on behalf of the Writ Petitioner and Shri BC Das, learned Standing Counsel, appearing for the Gauhati High Court. None appears on behalf of the Respondents 5 to 30.

3. In Order to consider as to what relief can be granted to the Writ Petitioner in this writ petition, a few relevant facts have to be noticed:

The Petitioner was initially appointed as Record Arranger in the Gauhati High Court and subsequently promoted and appointed to the post of Library Attendant (now redesignated as Library Assistant) on 14.7.1981 with effect from 11.7.1981. It may not be necessary to notice in detail the subsequent revision in the pay-scales of Lower Division Assistants elsewhere as well as for the purpose of the present case.

4. Suffice it to notice that the Petitioner having failed to elicit any positive response as regards the benefit of the revision of pay scale filed Civil Rule No. 295 of 1982 seeking appropriate direction as against the Respondents. This Court vide its judgment and order dated 2.1.1984 declared that the posts of Library Attendant and Lower Division Assistant are of equal status, equal pay-scale and equal responsibilities and that the post of Lower Division Assistant was never considered to be a promotional post for the Library Attendants. In terms of the directions issued by this Court, Library Attendants and the Lower Division Assistants are found equally eligible for promotion to the next higher posts i.e. Assistant Librarians, Upper Division Assistants etc.

5. The Petitioner, having waited for implementation of the judgment, submitted a detailed representation dated 23.9.1988 to the Hon'ble Chief Justice with a prayer to include his name as per seniority for consideration of promotion that may be effected pursuant to the decision of the Court. The representation had received due attention of the High Court on its Administrative side and the Petitioner was accordingly informed by the letter dated 9.1.1989 that necessary action would be taken as and when vacancy occurs in the post of Lower Division Assistant. The Petitioner, inter alia, contending that the view taken by the High Court on the Administrative Side was contrary to the directions, issued in Civil Rule No. 295 of 1982, made another representation on 4.4.1989.

6. In response to the representation dated 4.4.1989, the Registrar (Admn) vide letter dated 21.7.1989 informed the Petitioner that his representation could not be considered favourably and accordingly rejected the same.

7. Thereafter, the High Court in its Administrative Side had effected 5(five) promotions promoting Lower Division Assistants as Upper Division Assistants in the Principal Seat of the High Court. One such promotion included Shri Abedur Rahman, who joined as Lower Division Assistant on 11.7.1981 and on which day the Petitioner joined as Library Attendant and subsequently by another order dated 7.3.1991 one Smti Meera Rajbangshi, Lower Division Assistant, who had joined the service later to the Writ Petitioner, was also promoted to the post of Upper Division Assistant.

8. The Petitioner, having left with no other remedy, filed a writ application before this Court, which was registered and numbered as Civil Rule No. 1447/1991 challenging the orders dated 9.1.1989, 21.7.1989, 1.9.1989 and 7.3.1991 whereunder some promotions were made ignoring the claims made by the Petitioner. The same was allowed by this Court vide its judgment and order dated

17.12.1996 once again reiterating that both the posts of Lower Division Assistant and Library Assistant are in the same rank and grade having same pay scale and equal status. The Court held that the Petitioner is entitled to be promoted in the same manner as the Lower Division Assistants and such benefit of promotion shall not be denied on the sole ground that the Petitioner does not belong to the category of Lower Division assistants. The Court accordingly issued directions directing the Respondents to consider the case of the Petitioner along with other lower grades as mentioned in Rule 18 i.e. the posts in the Ministerial Establishment (Non-Gazetted) Class-III(A).

9. Ultimately, by order dated 27.11.1997 issued by the Registrar (Judicial), the Petitioner was promoted provisionally as Upper Division Assistant with effect from the date of assumption of charge subject to direction of the Hon'ble High Court in Writ Appeal No. 466 of 1997. The Petitioner accordingly joined in the post of Upper Division Assistant on 29.11.1997. In the meanwhile, Writ Appeal No. 466 of 1997 was dismissed by this Court on the ground of limitation and the order attained its finality.

10. In this writ petition all that the Petitioner claims is that his seniority must be assigned and his seniority position be shown in the appropriate place in the Gradation List and appropriate direction in this regard may be issued giving all the benefits to the Petitioner with reference to the date when his junior was promoted.

11. Be it noted that the judgment rendered in Civil Rule No. 1447 of 1991 has attained its finality in view of dismissal of Writ Appeal No. 466 of 1997 by a Division Bench of this Court. The Petitioner and the Respondents are bound by the judgment and the same must be given its full effect.

12. The Petitioner instead of making an appropriate representation to the High Court on its Administrative side for implementing the judgment of this Court has chosen to file this writ petition practically asking the Court to issue direction to enforce the order passed in Civil Rule No. 1447 of 1991. In order to consider the grievances expressed, it will be appropriate on the part of the Petitioner to make an appropriate representation to the High Court in the Administrative Side, which shall be duly considered and disposed of by the said authority within a period of 3 (three) weeks from the date of making such a representation in the light of the directions issued in Civil Rule No. 1447 of 1991 which has attained finality.

13. The writ petition is accordingly disposed of giving the Petitioner the liberty to file such a representation, which shall receive due attention of the Respondent authority which shall be disposed of within a period of 3 (three) weeks from the date of filing of the said representation.