
(2011) 12 GAU CK 0068
In the Gauhati High Court
Case No : Writ Petition (C) No. 149 of 2008

Smt. Tilottama Hazarika

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Assam Judicial Magistrate Establishment (Ministerial) Services, 1987 — Rule 12

Citation : (2011) 12 GAU CK 0068

Hon'ble Judges : Prasanta Kumar Saikia, J; Biplab Kumar Sharma, J

Bench : Division Bench

Advocate : L. Rahman, for the Appellant; BC Das, SC, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—By means of this writ petition, the petitioner has challenged the Annexure-E order dated 24.12.2007 by which the respondent Nos. 4 and 5 have been promoted to the post of Upper Division Assistant (UDA) from that of Lower Division Assistant (LDA). The petitioner has also challenged the minutes of the selection committee dated 14.12.2007 (Annexure-C).

2. The basic grounds on which the petitioner has made the aforesaid challenge is that she being senior to the respondent Nos. 4 and 5, ought to have been preferred over the said two respondents. According to the petitioner, a gradation list was prepared by the Chief Judicial Magistrate, Darrang, Mongoldoi on 06.12.2006 in which she was placed at serial No. 6 ahead of the said two respondents who had been placed at serial No. 7 and 8. In this connection, the petitioner has placed reliance on Annexure-D gradation list dated 06.12.2006. The petitioner has also alleged that the reservation rules applicable to the case was not followed which resulted in deprivation of promotion to her.

3. We have considered the entire materials on record and have given our anxious consideration to the same.

4. In the counter affidavit filed by the official and the private respondents, the

contentions raised in the writ petition have been denied. It has been stated that in the merit list prepared for the purpose of initial appointment to the post of LDC, the respondent No. 5 occupied merit position at serial No. 1 while the petitioner occupied serial No. 9. As regards the plea of the petitioner that she had joined the post of LDA on 18.09.1989 as against joining on 19.09.89 by the respondent No. 5, it has been contended that irrespective of such dates of joining, the merit positions of the candidates in the merit list would determine the seniority position. So far as the respondent No. 4 is concerned, it has been stated that she is senior to the petitioner inasmuch as she had joined the establishment as Copyist which is in the same grade of LDA on 08.06.1987 and thereafter joined as LDA on 19.09.1989. Thus, counting her service in the same grade w.e.f. 08.06.1987, she was conferred higher seniority over the petitioner. Be it stated here that the respondent No. 4 belongs to the reserved category, she being ST(P).

5. In the minutes of the meeting of the District Level Committee (DLC) held on 14.12.2007, the above aspects of the matter have been discussed in detail. The committee found all the three incumbents, i.e. the respondent Nos. 4 and 5 and the petitioner suitable for promotion. However, based on the aforesaid determination of seniority of the respondent Nos. 4 and 5 over the petitioner, they were promoted to the promotional post. The committee also resolved to promote the petitioner to the post of UDA in the establishment of the Addl. Chief Judicial Magistrate from the date of its functioning. Thus, it is not the case of deprivation of promotion to the petitioner. The selection committee was fully alive to the case of the petitioner, but in view of the aforesaid seniority position of the respondent Nos. 4 and 5 over her, she could not be promoted instantaneously. However, it was resolved to promote her with the functioning of the court of the Addl. Chief Judicial Magistrate.

6. The petitioner cannot claim seniority over the respondent Nos. 4 and 5 on the basis her date of joining, i.e. 18.09.1989 irrespective of joining the service by the respondent No. 4 which was one day later than her on 19.08.1989, the seniority will have to be determined on the basis of the merit positions obtained by them in the selection. Admittedly as against the merit position occupied by the respondent No. 5 at serial No. 1, the petitioner occupied merit position at serial No. 9. So far as the respondent No. 4 is concerned, apart from the fact that she belongs to ST (P), she joined the post of Copyist in the same grade in the year 1987 and to be precise on 08.06.1987. Thereafter, she joined as LDA on 19.09.1989. In our considered view, there is nothing wrong in reckoning her to be senior to the petitioner taking into account her service in the same grade w.e.f. 08.06.1987.

7. When all the incumbents are suitable for promotion, such promotion have to be effected on the basis of their seniority position. Although the petitioner has placed reliance on the purported gradation list dated 06.12.2006 (Annexure-D), but in absence of any approval of the same by the District and Session Judge, it

cannot be said to have attained the finality. That apart, when the rules prescribe a particular mode of determination of seniority, learned CJM could not have drawn seniority list in violation of the said mode of determination of seniority. Rule 12 of the Assam Judicial Magistrate Establishment (Ministerial) Services, 1987, clearly stipulates that when more than one person are appointed on the same date, their inter se seniority shall be determined according to their position in the merit list. Both the incumbents, i.e. the petitioner and the respondent No. 5, had been appointed on the same date, i.e. 16.09.1989. Thus, they had 15 days joining time to their credit. Merely because the petitioner had joined one day ahead of the respondent No. 5, she cannot claim seniority over him irrespective of the merit position obtained by her in the selection which is at serial No. 9 as against the merit position No. 1 occupied by the respondent No. 5.

8. For all the aforesaid reasons, we are not inclined to interfere with the impugned minutes of the selection dated 14.12.2007 and the order of promotion dated 24.12.2007. Consequently, the writ petition stands dismissed leaving the parties to bear their own costs.