
(2015) 10 GAU CK 0012

In the Gauhati High Court

Case No : WA No. 6 of 2014 and W.P.(C) No. 3070 of 2010

State of Assam and Others

APPELLANT

Vs

Kumud Gogoi

RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Citation : (2015) 4 GLT 1103

Hon'ble Judges : K. Sreedhar Rao, Actg. C.J. and Prasanta Kumar Saikia, J.

Bench : Division Bench

Advocate : H. Rahman, Advocate, for the Appellant; K. Sarma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Prasanta Kumar Saikia, J.—This appeal is directed against the judgment dated 05.10.2012, rendered by the learned Single Judge in WP(C) No. 3070/2010 allowing the writ petition. We have heard Mr. H. Rahman, learned counsel for the appellants and also heard Mr. K. Sarma, learned counsel for the respondent.

2. The case projected by appellant herein in brief is that the writ petitioner/respondent herein was initially appointed as Armed Branch Constable in Assam Police on 11.03.1994. He was promoted to the rank of Havildar Clerk (Armed Branch) on 31.12.2004. Thereafter, he was converted to Head Constable (Unarmed Branch) on 23.04.2008. It was mentioned that his seniority in the rank of Head Constable (Unarmed Branch) will be effective from the date of his physical joining on conversion.

3. In the month of June 2010, it was notified that a Departmental Examination for promotion to the post of Sub-Inspector (Unarmed Branch) would be conducted and those Assistant Sub-Inspector/Head Constable (Unarmed Branch) who had completed minimum 5 years of service in the rank would be eligible to sit in such departmental examination. Writ petitioner/respondent had also offered his candidature for the post aforesaid. However, his application was not

accepted since, according to appellant, in 2010, he had not completed 5 years of service in the rank of Head Constable (Unarmed Branch)/Assistant Sub-Inspector.

4. Being aggrieved, he had approached this court by the way of WP(C) No. 3070/2010 with a prayer for allowing him to appear in the said departmental examination. This court by its order dated 07.06.2010 was pleased to direct the authority concerned to allow the writ petitioner/respondent herein to appear in the examination but to keep the result withheld till disposal of the writ petition. Vide order dated 05.10.2012, this court allowed the writ petition with a direction to the State respondents to declare immediately the result of the writ petitioner/respondent and to take further action depending on the performance of the writ petitioner/respondent in the examination aforesaid.

5. Being highly aggrieved and dissatisfied with the aforesaid judgment and order dated 5.10.2012, passed in WP(C) No. 3070/2010, the present appeal has been filed on grounds more than one.

6. Referring to the letter dated 20.04.2008 from Inspector General of Police (A) Assam, Guwahati (Annexure 3 of the petition), it has been stated that since the seniority of the writ petitioner/respondent as Head Constable (Unarmed Branch) could be counted from the date of his conversion i.e., on 23.04.2008 and since on the date of advertisement in 2010, the writ petitioner/respondent had not completed 5 years in the rank of Head Constable (Unarmed Branch), he was not entitled to sit in the said department promotional examination.

7. In that connection, the letter dated 10.11.2009 addressed to S.P., GRP, Pandu, Guwahati from D.I.G. of Police (Admn.) Assam, Guwahati was referred to (At Annexure 4 to the writ appeal) to contend that unless one completes 5 years in the rank of ASI/Head Constable (Unarmed Branch), he will not be eligible to sit in the departmental promotional examination for promotion to Sulj-Inspector of Police. Learned Addl. A.G. submits that in 2010, when examination in question was held, the writ petitioner/respondent had completed only 3 years in the rank of Head Constable (Unarmed Branch) and as such, he could not have been allowed to sit in the examination aforesaid. Being so, the judgment of the learned Single Judge, allowing the petition of the writ petitioner, is unsustainable in law and liable to be quashed and set aside.

8. Mr. K. Sarma, learned counsel for the respondent submits that the Departmental Rules requires that for a police officer, who completes 3 years in the rank of Head Constable or ASI, regardless of his being in the Armed Branch or Unarmed Branch in the police department, is entitled to sit in the departmental examination for promotional to the post SI of Police. He therefore, urges this court not to quash the order of the learned Single Judge as prayed for by the appellants.

9. Learned Single Judge on hearing arguments advanced by both the parties was pleased to allow the petition. For ready reference, the relevant part of the same is reproduced below:--

"9. I have given my anxious consideration to the submissions made by the learned counsel for the parties and have also considered the entire materials on record. In the writ petition, the petitioner has given three instances of considering the cases of allowing to sit in the examination for promotion. The instances have been cited in paragraph-11 of the writ petition. In the counter affidavit filed by the respondents dealing with the said instances, it has been admitted that one Smt. Lina Hazarika who was earlier in the Armed Branch and later on converted to Unarmed Branch was allowed to sit in the examination even before completion of five years of service. Said Smt. Lina Hazarika was converted to Unarmed Branch from Armed Branch by order dated 10.03.2004 and immediately thereafter she was allowed to sit in the departmental examination conducted in the year 2005. However, as regards the other two instances, the respondents have denied the same stating that they were allowed to sit in the examination only on completion of five years of service in the Unarmed Branch stream.

10. During the course of hearing, learned counsel for the petitioner has cited some more instances to bring home her point of argument that some other incumbents who were also converted to Unarmed Branch like that of the petitioner had been allowed to sit in the examination without requiring them to complete five years of service in the Unarmed Branch.

11. Mr. K.N. Choudhury, learned Addl. Sr. Advocate General has fairly admitted that the requirement of five years of service in the Unarmed Branch has not been laid down by office memorandum and/or notification. He also fairly concedes that such requirement cannot be laid down by a WT message.

12. The provision of Rule 40 of the Assam Police Manual-Part-III has been noted above. The said Rule refers to appointment of Sub-Inspector in the Unarmed Branch by promotion from the rank of ASI/HB. Laying down the requirement of promotion, the Rule provides that ASI must ordinarily have served with credit of full three years in the department and sufficiently well educated to make him eligible for promotion.

13. On perusal of the Rule 40, what is seen is the requirement of full three years of service is in the department and not in the Branch/Stream. The petitioner having been appointed in the department way back in 1994, he had to his credit more than five years of service at the time of consideration of the case of the incumbents on 01.01.2010.

14. Learned counsel for the respondents has submitted that the petitioner having worked in the Armed Branch upto 20.04.2008, he may not have experience of work in the Unarmed Branch. To counter such argument, learned counsel for the petitioner has referred to Annexures-1 and 2 letters dated 30.05.2007 and 12.06.2007 which speak of services rendered by the petitioner in the particular Commission of Enquiry which involved service of summons/contempt orders etc. The said two letters referred appreciation of the petitioner in the particular

Commission. Such service was rendered by the petitioner at the time when he was working in the Armed Branch. It is in this context, learned counsel for the petitioner submits that irrespective of the stream in which the petitioner has been serving and/or had served, the services of both the streams are required to be computed together towards consideration of his case for promotion.

15. While entertaining the writ petition, an interim order was passed allowing the writ petitioner to sit in the departmental examination. However, the results are yet to be declared.

16. In view of the above, I have no hesitation to hold that the petitioner is fully eligible to sit in the said examination as the requirement is three years of service in the department irrespective of the stream in which he has been serving. If the analogy adopted by the respondents in counting the seniority of petitioner from 20.04.2008, i.e. on the date on which the petitioner was converted from Armed Branch to Unarmed Branch is accepted, his entire period of earlier service would get effaced. Seniority and experience on the length of service are two distinct and different concepts. The petitioner would get seniority from the date of conversion in the present stream w.e.f. 20.04.2008, but so far as experience is concerned, same will have to be counted from his initial date of entry in his service, i.e. 11.03.1994. Thus, even if the plea of the respondents that requirement is five years of service is accepted, he fully conforms to the requirement to the said eligibility.

17. In view of the above, the writ petition is allowed by interfering with Annexure-6 letter dated 08.03.2010 with further direction to the respondents to declare the results of the petitioner's examination immediately. Depending upon the outcome of the same, the respondents will take the further course of action in the matter."

10. We have considered the rival submissions in the light of judgment in question as well as the Rule 40 of the Assam Police Manual Part-III. For ready reference same is also reproduced below:--

"40. Promotion of Assistant Sub-Inspector to the rank of Sub-Inspector of the Unarmed Branch:

Not more than 50 percent of the appointments of Sub-Inspector in the Unarmed Branch may be filled by Promotion from the rank of Assistant Sub-Inspector.

The officers selected for Promotion will be ordinarily go through the prescribed course of training along with the cadets appointed direct. An Assistant Sub-Inspector who has completed his departmental examinations and has acted satisfactorily as Sub-Inspector may be exempted from under-going training, or may be permitted to undergo a shortened course in drill and discipline before appointment as Sub-Inspector.

An Assistant Sub-Inspector must ordinarily have served with credit for full 3 years in the department and be sufficiently well educated to make him eligible for

promotion."

11. On going through the judgment under challenge in the light of Rule 40 of Assam Police Manual, we have found that Rule 40 of the Assam Police Manual Part-III requires that in order to sit in a departmental examination for promotion to the post of Sub-Inspector of Police, a police officer must have 3 years of experience in the police officer who had 3 years experience as ASI/Head Constable in the department regardless of his being in Unarmed Branch/Armed Branch shall be entitled to sit in the departmental examination for promotion to the post of Sub-Inspector of police. Being so, the writ petitioner/respondent who has such experience is entitled to sit in the aforesaid departmental promotional examination. In view of above, we find no merit in the appeal and same is accordingly dismissed, however, without any cost.