

(2021) 08 GAU CK 0051

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3798 Of 2021

Swahanaz Yasmin

APPELLANT

Vs

State Of Assam And 7 Ors

RESPONDENT

Date of Decision : 13-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 08 GAU CK 0051

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : A K Hussain

Judgement

1. Heard Mr. A.K. Hussain, learned counsel for the petitioner. Also heard Mr. J.K. Goswami, learned Senior Government Advocate appearing for the respondents.
2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has, inter alia, challenged the action of the respondents in not confirming the name of the petitioner, to the rank of Sub-Inspector (UB), to forbear from giving effect to the decision of the departmental proceeding to consider the case of the petitioner for confirmation in service as Sub-Inspector (UB) and to not include the name of the petitioner in the pre-promotion cadre course for promotion to the rank of Sub-Inspector (UB) and subsequent promotion to the rank of Inspector (UB) and for a direction to the respondents for confirmation of his service in the rank of Sub-Inspector (UB).
3. The case of projected by the petitioner is that while serving as an Incharge of Borjhar Police Outpost, a departmental proceeding was drawn

against her being DP No.15/2019 and a show cause notice was served upon her in connection with Azara P.S. Case No.666/2019 by the Deputy

Commissioner of Police (Admin), Guwahati, Assam. The learned counsel for the petitioner further submits that she has no way connection/ involved in

the Azara P.S. Case No.666/2019 and this case has already been ended into a final/ closure report except the departmental proceeding i.e. DP

No.15/2019, no any other departmental proceeding or criminal case is pending against the petitioner.

4. The learned counsel for the petitioner submits that the petitioner is awaiting confirmation of promotion in the rank of Sub Inspector (UB) w.e.f.

01.12.2014. Accordingly, it is submitted that the proceedings against the petitioner of a later date cannot be a cause of consideration for not giving

promotion to the petitioner w.e.f. 01.12.2014. It is submitted that the criminal proceedings as well as the departmental proceedings took effect

prospectively and therefore, for a subsequent action, the confirmation of the promotion of the petitioner w.e.f. 01.12.2014 would not have been

interfered with. Accordingly, the learned counsel for the petitioner prays for interim relief.

5. The learned Govt. Advocate opposes the prayer for interim relief on the ground that as the name of the petitioner is not included in the order dated

19.06.2021 by the Director General of Police, Assam, the petitioner would not be entitled to have pre-promotion cadre training course. It is also

submitted that he would require instructions from the respondents as to whether any departmental proceeding is pending/ contemplated against the

petitioner. Accordingly, the prayer for interim relief is opposed.

6. Issue notice returnable on 20.08.2021.

7. No steps are required to be taken as the respondents are represented by the learned Govt. Advocate. However, requisite additional copies of the

writ petition be furnished to him within 2 (two) days.

8. Considered the prayer for interim relief. The Court has taken note of the submissions made by the learned counsel for the petitioner that no

departmental proceeding was initiated against the petitioner at the relevant time when the order of promotion was passed. The Court has also taken

note of the submission made by the learned counsel for the petitioner that promotional training is not a regular feature and is periodically taken up after

2-3 years and batch to batch wise and it is submitted that if the petitioner cannot undergo the pre-promotion cadre training course, even if the writ

petition stands allowed, he would not become entitled to be confirmed in the rank of Sub Inspector (UB) and therefore, he would lose the opportunity

of promotion.

9. Considering the above stated situation, this Court is inclined to provide that the respondent nos.2, 3, 4 and 6 shall permit the petitioner to undergo

pre-promotion cadre training course for promotion to the rank of Sub Inspector (UB). However, it is provided that participation in such training course

shall not give, confer and/ or create any substantive right on the petitioner for being confirmed in the rank of Sub Inspector (UB) and the issue of

promotion of the petitioner would be subject to further orders that may be passed in the writ petition.

10. The petitioner is allowed to provide a downloaded copy of this order to the learned Govt. Advocate and to the competent authority and the said

authority is at liberty to verify the correctness of the order from the website of the Court and act accordingly.

11. It would be open to the authorities to take appropriate decision as to whether the training period for the petitioner is to be extended for such time

he has missed out in training so far.

12. List on 20.08.2021.