

(2023) 06 GAU CK 0053

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4082 Of 2010

Uma Kanta Kalita

APPELLANT

Vs

State Of Assam And Ors.

RESPONDENT

Date of Decision : 13-06-2023

Acts Referred:

Citation : (2023) 06 GAU CK 0053

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : S. K. Barkataki, A. Kalita

Final Decision : Dismissed

Judgement

1. Heard Mr. S. K. Barkataki, learned counsel for the writ petitioner. Also heard Mr. A. Kalita, learned Standing Counsel, Industries Department, Assam, appearing for the respondent nos. 1, 2 and 3. None has appeared for the remaining respondents.

2. As per the case projected in the petition, the petitioner herein, was initially appointed as an Assistant Industries Officer in the Cottage Industries Training Institute, Kalapahar, Guwahati, in which post he had joined on 11/09/1970. Thereafter, the petitioner was promoted as Assistant Manager and posted at the District Industries Centre, Dhubri. In the month of September, 1983, the petitioner was promoted as District Industries Officer and thereafter, he was promoted to the post of Deputy Director/Functional manager of Industries under Regulation 4(d) of the Assam Public Service Commission (Limitation and Functions) Regulations, 1951 (herein after referred to as the Regulations of 1951) on 07/10/1986, which promotion was regularized with effect from the month of November, 1986. The respondent nos. 6 & 9 on the other hand were appointed under Regulation 3(f) of the Regulations of 1951 as Functional Manager/Deputy Director in the Industries Department in the year 1984 and subsequently, their services were regularized in the year 1987 with effect from

the date of their initial appointment i.e. 07/11/1984. When the Gradation List of Functional Managers, Deputy Directors in the Department of Industries were published, the petitioner's name appeared in Serial No. 45 whereas, the name of the respondent nos. 6 & 9 appeared at Sl. Nos. 42 and 32 respectively. The respondent nos. 6 & 9 were thereafter promoted to the post of General Manager/Joint Director in the year 1993. The petitioner was also subsequently promoted to the post of General Manager/Joint Director in the Industries Department and he retired on 31/08/2004 on attaining the age of superannuation. However, the respondent nos. 6 & 9 were junior to him but wrongly shown as seniors to the petitioner in the Gradation List, the petitioner as appellant had approached the Assam Administrative Tribunal, Guwahati, by filing case No. 6ATA/2008, which was disposed of by the judgement dated 06/03/2010, dismissing the appeal filed by the petitioner.

3. After the dismissal of the said appeal, the instant writ petition had been filed with a prayer before this Court to issue a rule directing the authorities to assign his seniority over the respondent no. 5 and give retrospective effect to his promotion with effect from the date on which the respondent nos. 6 & 9 were promoted to the post of General Manager i.e. 01/10/1993, thereby, seeking financial benefits with retrospective effect.

4. Mr. Barkataki, learned counsel for the petitioner has argued that since the appointment of the respondent nos. 6 & 9 in the post of Functional Manager was regularized in the year 1987, their seniority ought to have been counted with effect from 1987 and not from their date of initial appointment on 07/11/1984. As such, the period of service rendered by these respondent nos. 6 & 9 under Regulation 3(f) being adhoc service, no benefit of seniority can be given to the said respondents for the period of service rendered by them from 07/11/1984 till 13/07/1987, on which date the services of the respondent nos. 6 & 9 were regularized. In support of his above arguments, Mr. Barkataki has relied upon a decision of this Court rendered in the case of Monoj Kumar Baruah Vs. the State of Assam and others [WP(C) 4086/2009].

5. Mr. A. Kalita, learned Standing Counsel, Industries Department, Assam, on the other hand, has argued that the order of regularization in service of respondent nos. 6 & 9 was given effect to from the date of their initial appointment and, therefore, the said respondents were senior to the writ petitioner in the cadre of Functional Manager. In that view of the matter, the plea raised in the writ petition is wholly untenable and is liable to be rejected by this Court.

6. As noted above, the respondent nos. 6 & 9 were promoted to the next grade of General Manager in the month of October, 1993 whereas, the writ petitioner was promoted to the rank of General Manager with effect from 17/01/1995. Taking note of the facts and circumstances of the case, the learned Administrative Tribunal while dismissing the appeal filed by the petitioner, had made the following observations :-

"Thus it is established that Respondent n. 6 and 9 were senior to the appellant were promoted in the month of October, 1993 whereas the appellant who was junior later on promoted w.e.f. 17/1/95 a per their respective seniority position in the Gradation List. Respondent Authority has not committed any illegality in promoting the appellant to the post of G.M. with effect from 17/1/95.

From the above discussion it is clear that promotion to the post of General Manger/Jt. Director was made according to seniority in the Gradation List. Appellant was not bypassed in giving promotion to the respondents. Further, we find that appellant has failed to substantiate from the record placed before us that a discriminatory treatment meted out to him in the matter of his promotion. In view of above we are of considered view that the appellant was not discriminated and superseded in the year 1993 in the matter of his promotion and therefore he is not entitled for promotion and notional fixation of pay in the post of General Manager/Jt. Director from the date of promotion of Respondent no. 6 and 9 to that post from the month of October, 1993 and for computation of all other consequential benefits."

7. After a careful reading of the judgement and order passed by the learned Administrative Tribunal, this Court is of the opinion that the views expressed by the learned Tribunal does not suffer from any infirmity warranting interference by this Court. It is to be noted herein that although the learned Tribunal had dismissed the appeal preferred by the writ petitioner claiming seniority over the respondent nos. 6 and 9, yet, from the prayer portion of the writ petition, it transpires that the said order is not under challenge in the present proceeding. Moreover, it is the admitted position of fact that the writ petitioner had never challenged the order of regularization in service of the respondent nos. 6 and 9 in the post of Functional Manager/Deputy Director with effect from the date of their initial appointment i.e. 07/11/1984. Therefore, since the petitioner was admittedly promoted to the post of Functional Manager on 07/10/1986, hence, the respondent nos. 6 and 9 were evidently senior to him in the cadre of Functional Manager/Deputy Director. Consequently, the Gradation List was published by the department showing the respondent nos. 6 and 9 as senior to the petitioner. The said Gradation List has remained undisturbed over all these years. Subsequently, the respondent nos. 6 and 9 as well as the petitioner were promoted to the next higher grade of General Manager on the basis of the aforesaid seniority position.

8. It is well established that the respondent nos. 6 & 9 were all along senior to the writ petitioner in service. As such, the question of issuing any direction upon the respondents to give retrospective effect to the promotion of the petitioner to the rank of General Manager with effect from the date from which the respondent nos. 6 and 9 were promoted, so as to give him financial benefit, does not arise in the eyes of law.

9. In so far as the decision of this Court rendered in the case of Monoj Kumar Baruah (Supra) relied upon by Mr. Barkataki, in that case it was held that benefit

of seniority cannot be claimed for the period during which adhoc service was rendered by an employee. However, as noted above, the services of the respondent nos. 6 and 9 rendered in the post of Functional Manager/Deputy Director were regularized with effect from the date of their initial appointment and the said orders are not under challenge. Therefore, the ratio laid down in the case of Monoj Kumar Baruah (Supra), in the opinion of this Court, would have no application in the facts and circumstances of the present case.

10. For the reasons stated herein above, this writ petition is held to be devoid of any merit and the same is accordingly dismissed.

There would be no order as to costs.