
(2009) 05 GAU CK 0025
In the Gauhati High Court

Umesh Chandra Roy and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 26-05-2009

Acts Referred:

Assam Stenographers Service (Amendment) Rules, 1999 — Rule 11(1)
Assam Stenographers Service Rules, 1995 — Rule 11, 11(1), 6, 6(1)
Constitution of India, 1950 — Article 226

Citation : (2009) 5 GLR 844

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Judgement

C.R. Sarma, J.—This writ petition under Article 226 of the Constitution of India has been preferred by the petitioners seeking direction in the nature of certiorari or setting aside/or quashing the amendment of Rule 11(1) of the Assam Stenographers" Service (Amendment) Rules, 1999 and for issuance of Mandamus directing the respondents to upgrade the petitioners from Grade-III to Grade-II and Grade-I stenographer.

2. The petitioners" case, in brief, may be stated as follows:

The petitioners are working as stenographers in the different district offices of the Deputy Commissioners and the Foreigners Tribunals, Assam. According to the petitioners, the petitioner No. 1 joined service in the year 1985, the petitioner Nos. 2 and 3 joined in the year 1987 and 1995 respectively, the petitioner Nos. 4, 5 and 6 were appointed in the year 1984, and the petitioner No. 7 joined the service in the year 1986. According to the petitioners, they have not been given promotion during the last 10 years to 20 years. It is the case of the petitioners that the Government vide "the Assam Gazette Notification dated 11th October, 1999" amended Rule 11 of the Assam Stenographers" Service Rules, 1995 deleting the words "other offices of the State Government" appearing before the words, "the Chief Minister"s Secretariat" in Rule 11(1) of the said rules, and thus deprived the petitioners from getting their promotion to higher cadre and higher

pay scale. It is contended that due to such amendment, a large number of stenographers are suffering due stagnation for a considerable period. The petitioners submitted numbers of representation before the State Government for upgrading the petitioners to higher pay scale and to promote them to higher grade after giving due consequential financial benefit. Failing to get any response from the Government in respect of upgradation of their services and higher pay scale, the petitioners have come with this writ petition.

3. The State respondent contested the petitioners' claim by filing an affidavit-in-opposition. In their affidavit-in-opposition, the respondents stated that the services of stenographers were assessed from time to time by different authorities of respective offices for filling up the vacancies and that the vacancies were filled up by giving promotion. It was further stated that the petitioners would get promotion as Stenographer Grade-I and Grade-II according to their merit as per the seniority list. It was further contended that the case of upgradation to the next higher post, in respect of Stenographers in the district offices, as a whole was under consideration and that the Government was going to take up the proposal of the Personnel Department with concurrence of the Finance Department.

4. I have heard Mr. A. Dasgupta, learned Counsel for the petitioners and Mr. B.C. Choudhury, learned Government Advocate, Assam for the respondents.

5. Mr. Dasgupta, learned Counsel for the petitioners submitted that the petitioners are not interested to challenge the amendment of Rule 11(1) of the Assam Stenographers' Service Rule, 1995 as published in the Assam Gazette Notification dated 11.10.1999. It is further submitted, on behalf of the petitioners, that the petitioners' prayer for upgradation to higher pay scale and higher post may be considered and direction may be issued to the respondents in this regard.

6. The learned Counsel for the State respondents drawing attention of this Court to Rule 6(1) has submitted that the Assam Stenographers' Service Rules, 1995 provides the procedure for recruitment and filling up of vacancies in Grade-I, Grade-II and Grade-III stenographers. It is stated that the vacancies in Grade-III stenographer are filled up by direct recruitment while the vacancies in Grade-I and Grade-II are filled up on the basis of the recommendation made in accordance with the procedure provided by the Rules.

7. In their affidavit in reply, the respondents also contended that the petitioners' case for promotion to higher Grade was considered from time to time and that the petitioners would get promotion in due course subject to the availability of the vacancies. The relevant portion of Rule 6(1) of the Assam Stenographers' Service Rule, 1995, which reads as follows, provides for promotion from Grade-III to Grade II and Grade-I stenographers.

6. (1) Appointment to the cadre of Stenographer Grade-III shall be made by direct recruitment and the cadre of Stenographer Grade-II and Grade-I shall be

filled up by recruitment in accordance with the procedure as provided in this rule.

8. In view of the above, it appears that it is not correct that the petitioners do not have the scope for promotion. Relying on the decisions held in the cases of (1) Dr. Ms. O.Z. Hussain Vs. Union of India and others, (2) Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another, and (3) State of Tripura and Others Vs. K.K. Roy, the learned Counsel for the petitioners submitted that the petitioners are entitled to get promotion to higher grade to earn higher pay scale. The petitioners, who are suffering due to stagnation in service are also entitled to get promotion to higher grade for getting benefit of higher pay scale,

9. In the case of (1) O.Z. Hussain v. Union of India (supra), group "a" Scientists of Ministry of Health and Family Welfare was not given any promotional benefit causing large scale stagnation in the service, while similar Scientists in other Ministry such as Ministry of Science and Technology, Ministry of Defence, Ministry of Environment and Ministry of Oceanography had the promotional avenues. Due to such stagnation, the petitioners approached the hon"ble court by filing writ petition. The writ petition was allowed directing the Ministry of Health and Family Welfare to frame a set of appropriate rules, inter alia, providing suitable promotional avenue for "a" Group Scientists in the non-medical wing of the establishment of Director General of Health Services alongwith the allowances such as book allowance, higher degree allowance, risk allowance and conveyance allowance at the same rate as is admissible to other. In deciding the said case, it was observed by the hon"ble Supreme Court in paragraph 7 of the said judgment as follows:

(7) This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service....

10. In the case of The Council of Scientific and Industrial Research and Anr. v. K.G.S. Bhatt (supra) the petitioner, who was a civil Engineer in the Central Food and Technological Research Institute, Mysore, was not given any kind of promotion for nearly two decades. He approached the Central Administrative Tribunal, Bangalore Bench and the learned Tribunal allowed his claim. Against the said order, an appeal was preferred before the Supreme Court. The Hon"ble Supreme Court why refusing to interfere with the impugned order observed in paragraph 9 of the said judgment as follows:

9. ...The person is recruited by an organization not just for a job, but for a whole career. One must therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organization....

11. In the case of the State of Tripura and Ors. v. K.K. Roy, (supra), the petitioner was appointed as Law Officer-cum-Draftsman in the Directorate of

Cooperation, Government of Tripura. There was only one post in the cadre and it had no promotional avenues. The petitioner filed representations for upgradation or for promotional avenues. His representations having failed to yield any result, he approached High Court and the High Court directed the respondents to provide "the graded scale" to the petitioner by providing three grades, the initial being Grade-III, which is the post of Law Officer-cum-Draftsman and thereafter Grade-II and Grade-I officer of the Tripura Judicial Service. Being aggrieved by the said directions, the State respondents preferred appeal before the Apex Court. The hon'ble Apex Court directed to provide two promotions to the petitioner-respondent in the next higher scale of pay upon his completion of 12 years and 24 years in service. It was observed that the respondent was entitled to get two higher grades, one after expiry of 12 years from the date of joining in the service and another one on completion of 24 years thereafter.

12. In the cases relied upon by the learned Counsel for the respondents there was no promotional avenue in favour of the incumbents. In our present case as provided by the Assam Stenographers' service rules 1995, there is promotional avenue, but due to limited resources and non-availability of the vacant post, the petitioners could not be given promotion.

13. As stated earlier in their affidavit-in-reply, the respondents have stated that the case of the Stenographers for upgradation to next higher post was under consideration and that the same was pending for approval of the Personnel Department and concurrence of Finance Department. It was also contented that due to limited resources, the promotion could not be given to all the stenographers and that the petitioners will get promotion in the higher cadres according to their merits (seniority list).

14. In view of the specific provisions as provided by the Rule 6 of the Assam Stenographers' Service rules, 1995 for promotion to Grade-II and Grade-I of the stenographers, it cannot be held that the petitioners do not have any promotional avenue. But due to limited vacancies, the petitioners could not get their promotion in due course resulting stagnation.

15. From the pleadings, it appears that the petitioners joined service in 1984, 1985, 1987, 1995 and 1998. In spite of rendering services for 13 years to 22 years, the petitioners have not got promotion to higher scale.

16. As observed by the Apex Court, employees should get opportunity to advance in service career and such advancement is a basic requirement for human development and progress of the association. Without promotional avenues, in due time, there can be no human development and enhancing of the efficiency for contributing towards the growth of the institution as well as the country. In all organizations and institutions, there should be sufficient opportunities, assuring scope, for advancement in the career. It is needless to say that the growth/development of an organization, institution depends on the working capacity of its employees. Without any scope for acquiring higher

position in due course/appropriate time there cannot be any incentive for the employees for increasing their performance capability. Therefore, in all institutions/organizations, there should be sufficient scope for promotion to higher grade within a specific period of service career. As the petitioners are working in the same capacity for the last 13/22 years, it is high time that the respondent Government being administrator of a welfare State may consider for enhancing the promotional scope of the petitioners for the cause of administration and human resource development.

17. In view of the statement made by the respondent No. 3 regarding steps taken for upgradation to the next higher post in respect of the stenographers in the distinct offices, the respondents are directed to expedite the matter.

18. With the above observations, this writ petition stands disposed of.

19. No costs.