

Namita Rabha vs Gauhati High Court on 28 January, 2020

Bench: Sanjay Kishan Kaul, K.M. Joseph

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.786 OF 2020
(@ out of SLP (C) No.25/2018)

NAMITA RABHA

VERSUS

GAUHATI HIGH COURT & ORS.

O R D E R

Leave granted.

The appellant before us is stated to have joined the services of the Gauhati High Court-Respondent No.1, as an Extra Typist on 29.05.1996, whereafter she was regularized as a regular typist on 24.12.1999. She was promoted to the post of Lower Division Assistant on 20.06.2007, which post was later renamed as Junior Administrative Assistant (for short “JAA”) . A Departmental Promotion Committee (for short “DPC”) was constituted to consider cases for promotion to the next post of Senior Administrative Assistant (for short “SAA”) from the cadre of JAA in terms of Order of the Chief Justice dated 13.06.2011. The DPC was to scrutinize the Annual Confidential Reports (for short “ACRs”) of all the concerned officials for the last five years and promotions were to be recommended accordingly.

Reason: The relevant Rule 18 of the Gauhati High Court Services (Appointment, Conditions of Services and Conduct) Rules, 1967, as is read at that stage of time is as under:

“Rule 18:

Vacancies in the higher grades of Ministerial Services shall be filled up according to merit, and ordinarily by promotion from the lower grades, seniority being granted only when the merit is Equal”.

In terms of recommendations of the DPC dated 30.8.2011, 13 JAAs including the appellant were recommended to the post of the SAA. The private-respondents moved a representation for reconsideration of the recommendation of the DPC which was rejected on 24.9.2011 and a second endeavour in the same direction was rejected on 5.11.2011 after recording reasons. On 16.11.2011, the appellant was promoted and appointed temporarily as SAA until further orders.

It appears that the private-respondents, though did not challenge the aforesaid order judicially, considered it appropriate to keep making representations. All the representations were once again placed before the third review DPC, even though the second representation had narrated the detailed reasons.

The third review DPC passed an order making recommendation on 18.9.2012. There are three significant aspects of the order of the DPC.

(A) The DPC found that the private-respondents had not been communicated their adverse ACRs and the manner of recording of ACRs needed reconsideration. The DPC thus wrote the ACRs of the private respondents.

(B) On reconsideration by the DPC, it was opined that the appellant and five others who had been promoted out of the thirteen persons ought not to have been considered for promotion as they had not completed five years of service in the feeder cadre i.e. JAA. Thus, their consideration on merits was not good.

(C) As a sequel to the aforesaid, the appellant and others were directed to be reverted and fresh promotions were made.

In pursuance of the aforesaid recommendations, notice qua reversion was given to inter alia the appellant and three others and finally after considering the reply of appellant dated 27.06.2013, the impugned order was passed by the Registrar (Admn.) of the High Court on 18.07.2013, reverting the appellant and three others to the cadre of JAA from the post of SAA and the order promoting the private-respondents was passed on the very next day i.e. on 19.7.2013. The endeavour of the appellant to assail the last decision did not succeed before the learned Single Judge in CWP No.4085/2013, and the case was dismissed on 04.04.2016 and the Writ Appeal preferred by the appellant before the Division Bench also met the same fate on 21.09.2017.

In the interregnum period of the decisions of the learned Single Judge and the Division Bench, a subsequent development took place on 07.08.2013, when the rule in question was amended for promotion to the post of SAA by providing five years' continuous service in the feeder cadre of JAA. In this regard, the Division Bench considered the plea of the appellant that such a change of Rule ought not to affect the initial consideration by the DPC, may have some merit but opined that since in the Review DPC the appellant and others have been considered, and there were other reasons like re-writing of the ACRs, there was no ground to intervene on behalf of the appellant.

We may note, at this stage itself that we do not agree with the observation that the appellant and others had been considered since it is factually not correct, as is clear from the minutes of the review DPC.

In the conspectus of the aforesaid fact, we have heard the learned counsel for the parties. Much water has flown since disputes arose, as all persons have been promoted and some of them have retired. Thus any endeavour now to redo the whole exercise would have administrative consequences which, we feel, is not desirable, considering what has transpired already. Thus we are of the view that a practical approach has to be adopted. While considering the aforesaid aspect, we must note that once a DPC is held and representation is made, there cannot be infinite number of representations which ought to be permitted as that gives rise to an absence of finality to the recommendation of DPC. This is what has happened in the present case, where a third representation, after rejection of first two representations, found favour when the review DPC was held. We say no more. The second infirmity, and a major one, is in the manner in which the review DPC carried out its exercise, in not considering the appellant and other persons, on the premise that when they were considered, the rule of minimum five years service in the feeder cadre ought to be considered to be the existing rule.

The fact that such a rule did not exist is fortified by the subsequent amendment, consciously made. Thus the experience had been taken of the last five years, either in the feeder cadre, or the cadre below. This is how the exercise was carried out and the promotions were made originally by the DPC.

We see no purpose, as noticed aforesaid, in remitting the matter back now, once again revisiting the issue through another DPC.

Suffice it to say, we are of the view that the appellant has been dealt with less than fairly. The appellant earned seniority and promotion on 16.11.2011. We have already commented on the exercise taken thereafter, which has many loopholes. The other persons affected may have accepted the position or may have retired, thus cannot now raise a grievance on this issue.

We are of the view, that justice can be done to the appellant by exercising our power under Article 142 of the Constitution of India by directing that, in the seniority list, the appellant should be placed over the private respondents in view of her earlier promotion dated 16.11.2011 as SAA. We say so, as the case of the private respondents have subsequently been reviewed by DPC and they have been promoted with effect from the same date.

The appeal stands allowed to the extent of making the appellant entitled to all the consequential benefits of having been promoted on 16.11.2011 and of ranking senior over the private respondents.

However, insofar as monetary benefits are concerned, if they have been given so retrospectively from 16.11.2011 to the private respondents, then this principle shall also apply to the appellant. The appeal is accordingly allowed leaving parties to bear their own costs.

.....J. (SANJAY KISHAN KAUL)J. (K.M. JOSEPH) New Delhi January 28, 2020.

ITEM NO.12

COURT NO.11

SECTION XIV-A

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Civil Appeal No(s). 786/2020

Petition(s) for Special Leave to Appeal (C) No(s). 25/2018 (Arising out of impugned final judgment and order dated 21-09-2017 in WA No. 211/2016 passed by the Gauhati High Court NAMITA RABHA Appellant(s) VERSUS GAUHATI HIGH COURT & ORS. Respondent(s) Date : 28-01-2020 This appeal was called on for hearing today. CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL HON'BLE MR. JUSTICE K.M. JOSEPH For Appellant(s) Mr. Parthiv K. Goswami, Adv.

Mr. Rahul Pratap, AOR Mr. Ishan Bisht, Adv.

Ms. Ragini Pandey, Adv. For Respondent(s) Mr. P. I. Jose, AOR Mr. Prashant K. Sharma, Adv., Mr. Jenis Francis, Adv.

Mr. Manish Goswami, Adv. Mr. Rameshwar Prasad Goyal, AOR UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications, if any, also stands disposed of.

(INDU MARWAH)
COURT MASTER (SH)

(ANITA RANI AHUJA)
COURT MASTER (NSH)

(Signed order is placed on the file)