

## **Dr. Satyabrata Dutta Choudhury vs State Of Assam And Ors. on 4 December, 1975**

**Equivalent citations: AIR1976SC487, (1976)ILLJ151SC, (1976)1SCC283, 1976(1)SLJ135A(SC), 1976(8)UJ112(SC), AIR 1976 SUPREME COURT 487, 1976 LAB. I. C. 393, 1976 2 LABLJ 151, 1976 (1) SCWR 374, 1976 (1) SCC 283, 1976 SERVLJ 135, 1976 (1) SERVLR 189, 1976 UJ (SC) 112**

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**Bench: A.N. Ray, M.H. Beg, P.N. Shinghal, R.S. Sarkaria**

### **JUDGMENT**

R.S. Sarkaria, J.

1. These two appeals by special leave are directed against a common judgment of the High Court of Assam and Nagaland dated August 13, 1971. They arise out of facts which are common, and both the cases have been argued together by the counsel for the parties. We shall therefore dispose of them by this judgment.

2. The facts which have been admitted before us are quite simple and may be stated shortly. Dr. Satyabrata Dutta Choudhury, appellant in Civil Appeal No 1454 of 1972, and Dr. Guru Prasad Sarma, appellant in Civil Appeal No. 1455 of 1972, were appointed as Registrars in Surgery in Government colleges of Assam in 1961, under Regulation 3(f) of the Assam Public Service Commission (Limitation of Functions) Regulations, 1951 (herein-after referred to as the Regulations). They were then appointed Assistant Professors of Surgery under Regulation 3(e), and took overcharge on April 23, 1962. Thereafter respondents Dr. Hamiduddin Ahmad, Dr. Pradipta Kumar Das Gupta and Dr. Jyotimay Dutta were similarly appointed as Assistant Professors of Surgery. The Assam Public Service Commission was consulted in regard to recruitment to the posts. It interviewed the appellants and the respondents in September 1963, along with some other candidates. The Commission recommended, in its letter dated October 3, 1963, that Dr. Hameeduddin Ahmed, (respondent No. 4), Dr. P K. Das Gupta (respondent No. 5), Dr. Jyotimay Dutta (respondent No. 6), Dr. S.D. Choudhury (appellant) and Dr. Guru Prasad Sharma (appellant) may be appointed Assistant Professors of Surgery, in that order. They were accordingly appointed as Assistant Professors by a notification dated December 9, 1963. It was stated in the notification that the inter se seniority of the officers would be decided and notified in due course. That was done by a notification dated May 14, 1964 by which the appellants were made junior to respondents Nos. 4, 5 and 6. The appellants made representations against the fixation of their seniority but to no avail. In the mean time, respondents 4 and 5 were promoted as Professors of Surgery on April 25, 1964,

under Regulation 4(d) of the Regulations. A provisional seniority list of Assistant Professors was also notified. The appellants felt aggrieved and filed separate writ petitions in the High Court. Both the petitions were dismissed by the judgment under appeal.

3. The High Court has taken the view that although there was no statutory rule for fixation of inter se seniority of persons recruited through the Assam Public Service Commission, the following instructions of the state government notified under notification No. AB. 51/63/1 dated February 5, 1964. would govern the seniority.-

102. Appointments made under Regulations 3(e) and 3(f) of the A.P.S.C. (Limitations of Functions Regulations) and later regularised through the A.P.S.C., Normally the appointments made under these two Regulations should be regularised within the time specified in the Regulation itself. The seniority of the persons whose appointments have been regularised should be determined as follows:

(i) If the appointments of two persons are regularised earlier should be considered senior to the persons whose appointments were regularised later.

(ii) If the appointments of a number of persons are regularised on 'one batch, then the inter se seniority of these persons should be according to the merit list of A.P.S.C. Even if the A.P.S.C. does not give any merit list, the Appointing Authority should request the A.P.S.C. to indicate the order of preference of these persons.

The High Court has stated in its judgment that the inter se seniority of the appellants and the respondent "was fixed on the recommendation of the Assam Public Service Commission" under that notification and that fact has not been controverted before us.

4. What has been argued is that as the appellants joined earlier as Assistant Professors, they were entitled to rank senior to the respondents who joined later. Reference in this connection has been made to Article 16 of the Constitution.

5. It is not in dispute that the appellants and respondents 4, 5 and 6 were initially appointed Assistant Professors under Regulation 3(e) of the Regulations, on an officiating basis, to avoid delay, and it was obligatory, in terms of that regulation, to consult the Service Commission as soon as possible. The appointments were thus defeasible, and could not give rise to any legal right in favour of the parties. It is therefore futile to contend that as the appellants joined as Assistant Professors on an earlier date, they were entitled to rank senior to respondents 4, 5 and 6 irrespective of the result of the final recruitment through the Service Commission.

6. It is no doubt true that no rule had been made to govern the seniority of Assistant Professors, but it is not in controversy that Government had notified the aforesaid instructions dated February 2, 1964 in regard to the seniority of the persons appointed under Regulations 3(e) and 3(f) of the Regulations. As the appointments of the appellants and respondents Nos. 4, 5 and 6 were admittedly regularised in one batch, after reference to the Service Commission, by the order dated

December 9, 1963, their inter se seniority had to be determined according to the merit list of the Commission. As has been pointed out, it is not in dispute that the impugned seniority list has been fixed on the recommendation of the Commission, so that it is in accordance with the instructions of the Government. The High Court has therefore rightly held that the instructions would hold the field in the absence of the service rules. In these facts and circumstances, there can be no question of applying Article 16 to these cases.

7. The appeals fail and are dismissed.