

GAHC010025722023



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

W.A. 5/2023

1. Nirod Sarma
Secretary to the Honble Chief Justice,
Gauhati High Court, Guwahati 1**Appellant.**

Versus

1. Safiqur Rahman
S/o Mahibur Rahman, Vill and P.O.-Dampur,
Near Dampur Higher Secondary School, Pin-781102.
2. Surjya Kanta Ramchiary
S/o Megharam Ramchiary, Daimuguri,
Fatashil Ambari, Guwahati-25
3. Hari Prasad Medhi
S/o Late Chandra Nath Medhi, KRB Road,
Bharalumukh, Guwahati-781009
4. Tilok Konwar
S/o Late Prabhat Konwar, House No. 21,
Yubanagar, Forest Gate, Narengi, Guwahati-781026
5. Gregory Daimari
S/o Elias Daimari, Vill-Niz Ghoprabari,
P.O.-Paneri, Dist-Udalguri, Assam
6. Newman Sangma
S/o Sudhir J Sangma, Birubari,

- Gopinath Nagar, Guwahati-781016
7. Ajit Kr Kuli
S/o Sri Ganesh Chandra Kuli,
8th Mile Garo Basti, P.O.-Amerigog,
P.S.-Basistha, Dist-Kamrup (M), Guwahati-23
8. Gandhi Ram Kathar
S/o Late Sukura Kathar,
Vill-Chakanibari Khat, Tetelia,
P.O.-Gandhinagar, Dist-Kamrup(M), Pin-782403
9. Christellyn S Marak
D/o Late J S Marak,
South Sarania, Baikuntha Path,
House No. 1, Guwahati-7
10. Neil Jongske Sangma
S/o Sudhir J Sangma, Birubari,
Gopinath Nagar, Guwahati-781016
11. Pradip Sinha
S/o Manabendra Sinha,
Borbari, Guwahati-781036
12. Sahidul Hoque
S/o Late Mahtab Ali,
Jyoti Path Bye Lane, GRC Road,
Nizarapar, Noonmati, Guwahati-781020
13. Tomizudiin Ahmed
S/o Late Taharuddin Ahmed,
House No. 6, Six Mile, VIP Road,
Mohapurushmadhabdev Path, Guwahati-781022
14. Borthan Thaosen
S/o Late Sobendra Thaosen,
House No. 4, Swaraj Path,
Near IIBM, Khanapara, Guwahati-22
15. Pradip Sarma
S/o Late Rohini Kr Sarma,
House No. 4, Kandurarabha Path,

- Odalbakra, Guwahati-34
16. Aporna Das
W/o Bhabendra Nath Das,
Kamakhya Natun Para,
P.O.-Kamakhya, P.S.-Jalukbari, Dist-Kamrup(M)
17. Jitumoni Hazarika Thakuria
W/o Late Harinath Thakuria,
Krishna Nagar Housing Colony,
Building No. 3, Unit-3, Chandmari, Guwahati-3
18. Robert Lalpianga Nampuii
S/o David S. Nampuii,
Goldland Villa, Haflong, Dima Hasao-788819
19. Dipak Prasad
S/o Late Jagadish Prasad,
Gauhati High Court Staff Quarter,
Malibagan, P.O.-Kharguli, Guwahati-781004
20. Raj Kumar Kalita
S/o Late Jatin Chandra Kalita,
R/o Bhutnath, Milan Path, House No. 3,
P.O.-Bharalumukh, Guwahati-781009.

.....**Respondents.**

21. The Gauhati High Court
Represented by the Registrar General, Guwahati-781001
22. The Registrar General,
Gauhati High Court
Guwahati-781001
23. The Registrar (Administration),
Guahati High Court
Guwahati-781001
24. The Registrar (Establishment),
Gauhati High Court
Guwahati-781001.

.....**Proforma Respondents.**

For the appellant : Mr. K.K. Mahanta ... Sr. Advocate

For the respondents : Mr. K.N. Choudhury ... Sr. Advocate
Mr. J. Patowari Advocate.

For the proforma-respondents : Mr. H.K. Das ... SC, GHC
Mr. A. Chamuah Advocate.

W.A. 71/2023

1. The Gauhati High Court
Represented by the Registrar General, Guwahati-781001
2. The Registrar General,
Gauhati High Court
Guwahati-781001
3. The Registrar (Administration),
Guahati High Court
Guwahati-781001
4. The Registrar (Establishment),
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Guwahati-781001.

.....Appellants.

Versus

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.....**Respondents.**

21. Nirod Sarma

Secretary to the Honble Chief Justice,
Gauhati High Court, Guwahati 1

.....**Proforma Respondents.**

For the appellants	:	Mr. H.K. Das	... SC, GHC
		Mr. A. Chamuah Advocate.
For the respondents	:	Mr. K.N. Choudhury	... Sr. Advocate
		Mr. J. Patowari Advocate.
For the proforma-respondent	:	Mr. K.K. Mahanta	... Sr. Advocate

BEFORE

**HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE MALASRI NANDI**

Dates of hearing	:	09.01.2024.
Date of Judgment	:	28.03.2024

JUDGMENT AND ORDER (CAV)

(M. Zothankhuma, J)

Heard Mr. K.K. Mahanta, learned Senior Counsel for the appellant in WA No. 5 of 2023 and Mr. H.K. Das, learned counsel for the Gauhati High Court (Appellant in WA No. 71 of 2023). Also heard Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. J. Patowary, learned counsel for the private respondents/writ petitioners. The placement of the parties in the Cause Title in WA No. 5 of 2023 is being applied while disposing of the above two appeals.

2. The two appeals have been made against the common Judgment & Order

dated 05.01.2023 passed by the learned Single Judge in WP(C) No. 1376/2019 and WP(C) No. 3845/2021 wherein, it has held that the appointment of the appellant as Secretary to the Hon'ble Chief Justice, Gauhati High Court on officiating basis and the subsequent order regularizing his service was unsustainable in law.

3. The appellant's case is that the appellant, who was holding the post of Senior Judicial Assistant, had been appointed to the post of Protocol Officer vide Notification dated 25.11.2016, on the basis of a selection process that had been preceded by an option for being considered for the said post in terms of Notice dated 02.09.2016. The appellant, amongst others, had applied for the said post by giving his option for consideration for the post and in the selection process, he was selected and consequently appointed temporarily to the said post. However, the appointment order of the appellant as Protocol Officer contained a condition to the effect that the seniority of the appellant shall be maintained in the grade of Senior Judicial Assistant and his further promotion was to be considered on that basis.

4. The appellant was thereafter appointed temporarily as Secretary to the Hon'ble Chief Justice on officiating basis in the Pay Band of Rs. 30000-110000/- with Grade Pay of Rs. 14500/-, vide Notification dated 10.09.2018. The Notification carried a condition that the appellant would maintain his seniority in his original cadre i.e., Senior Judicial Assistant and his further promotion would be made on that basis. Thereafter, in exercise of the power conferred under Article 229 of the Constitution of India read with Rule 63A of the Gauhati High Court Services (Appointment, Conditions and Conduct) Rules, 1967 (hereinafter referred to as "the 1967 Rules"), the Hon'ble Chief Justice (hereinafter referred

to as the HCJ) was pleased to regularize the appointment of the appellant as Secretary to the Hon'ble Chief Justice, with effect from 04.07.2020, vide Notification dated 24.08.2020. The stand of the appellant is that as he had been appointed to the post of Protocol Officer, which was never put to challenge by the writ petitioners, he came into the cadre of Class-II(C) posts, which is in Schedule-I of the 1967 Rules and which had been made in pursuance to Rule 11 of the 1967 Rules.

5. The appellant's further case is that in view of Rule 7(3A) of Part-II of the Gauhati High Court Service Rules, 1967, the appellant who was holding a Class-II(C) post as a Protocol Officer, was in the feeder post for being considered and appointed to the next promotional post of Secretary to the Hon'ble Chief Justice. Further, the appointment to the post of Secretary to the Hon'ble Chief Justice was to be made on the sole discretion of the Hon'ble Chief Justice in terms of Rule 63A of the 1967 Rules. The counsel for the appellant submits that the appointment to the post of Protocol Officer had been made on the basis of the Resolution passed by the "Committee constituted for dealing with all matters relating to Officers and Staffs of the High Court" in it's meeting held on 09.03.2015 read with Resolution adopted on 25.07.2014. He submits that there is no service rule for appointment of Protocol Officer, except the Resolutions stated above.

6. The regularization of the officiating appointment of the appellant as Secretary to the Hon'ble Chief Justice, vide notification dated 24.08.2020, had been made with the approval of the Hon'ble Chief Justice on 04.07.2020, in terms of Rule 63A of the 1967 Rules.

7. The stand of the appellant is that the challenge made to the appointment of the appellant by the writ petitioners, had been allowed by the learned Single Judge, vide the impugned Judgment & Order dated 05.01.2023, by giving an erroneous interpretation to the rider/conditions stipulated in the appointment order dated 25.11.2016 of the appellant as Protocol Officer (P.O in short) and order dated 10.09.2018, appointing the appellant on officiating basis as Secretary to the Hon'ble Chief Justice, where it was stated that the appellant would maintain his seniority in his original cadre, i.e., Senior Judicial Assistant and his further promotion would be considered on that basis.

8. The counsels for the appellant and the High Court submit that the appointment of the appellant to the post of Protocol Officer is on a substantive and regular basis and as such, the maintaining of the appellant's seniority in the cadre of Senior Judicial Assistant cannot bar him from being a part of the cadre of Class-II(C) posts in the High Court service. They submit that the appointment of the appellant as a Protocol Officer was a promotion, without there being any limit to the consideration zone from the feeder grade of Senior Judicial Assistant (SJA in short). All persons in the cadre of SJA were eligible and invited to submit their option for being considered for appointment as P.O., in terms of the criteria laid down for appointment. As such, all the candidates who had submitted options for being considered for promotion were considered.

9. The learned counsels for the appellants submit that the learned Single Judge could not have held that the opinion of the HCJ dated 04.07.2020, which was made in the exercise of his discretion under Rule 63A of the 1967 Rules was inadequate, as the relaxing of the appellant's educational qualification for promotion to the post of Secretary to the HCJ, Gauhati High Court had been

made under Rule 63A of the 1967 Rules. They submit that the discretionary exercise of power by the Hon'ble Chief Justice was reasonable and the learned Single Judge could not have substituted his views to that of the Hon'ble Chief Justice.

10. The learned counsel for the appellant further submits that even if it is presumed that the appellant was not holding the post of P.O in a substantive capacity to be appointed as Secretary to the Chief Justice, then also the Hon'ble Chief Justice had the power to relax the qualification required in terms of Rule 7(3A) and Rule 63A of the 1967 Rules.

11. The counsel for the appellant further submits that there was no violation of any prescribed Rules, while appointing the appellant as Secretary to the Chief Justice. As the post of Protocol Officer is an encadred post in terms of the 1967 Rules, the appointment of the appellant to the post of Protocol Officer has to be considered to be a substantive appointment, even though the word temporary has been used in the appointment order dated 25.11.2017.

12. Mr. H.K. Das, learned counsel for the High Court submits that there is no illegality or irregularity in the impugned orders dated 10.09.2018 and 24.08.2020. Drawing the attention of this Court to the prayer made in the first writ petition WP(C)/1376/2019, it is submitted that it is the order dated 10.09.2018 by which the appellant was made the Secretary to the HCJ on officiating basis which was under challenge, along with another order pertaining to another incumbent, who was appointed as Protocol Officer. The said incumbent had however left the said post and the only challenge remaining was the order dated 10.09.2018. The learned counsel submits that the appointment

of the appellant as Protocol Officer, vide order dated 25.11.2016, is however not under challenge. According to the learned counsel, the said order dated 25.11.2016, by which the appellant was appointed as P.O. is a substantive appointment.

13. The learned counsel for the High Court submits that Protocol Officer being one of the posts in the feeder cadre for promotion to the rank of the Secretary to the HCJ, there was no illegality in the order dated 10.09.2018. As regards the submission of the writ petitioners that there was a pre-conceived notion to give the benefit of substantive appointment to the appellant, he submits that options were invited from all persons of the SJA cadre to fill up the vacant post of Protocol Officer, which is clear from the notice dated 14.09.2018. He also submits that the rider accompanying the order dated 25.11.2016 appointing the appellant as P.O had been made in terms of the High Court Resolution dated 09.03.2015, while the officiating appointment of the appellant as Secretary to HCJ vide Order dated 10.09.2018 had been made on the basis of the proposal of the Registry.

14. The learned counsel for the High Court further submits that the Rules being silent for the procedure/manner to be applied for filling up the post of Protocol Officer, which is the feeder post for the post of Secretary to the HCJ, coupled with the fact that powers of relaxation have been conferred upon the HCJ, the impugned orders should not be interfered with. The learned counsel has referred to Article 229 of the Constitution of India which gives absolute power to the HCJ to make appointments. Reference has also been made to Section 63A of the 1967 Rules, as per which, the HCJ has the power to relax the qualification and eligibility in case of any appointment. He accordingly submits that the

present writ petitions be dismissed and appeals be allowed.

15. The learned counsel for the High Court submits that appointment as Secretary to the Hon'ble Chief Justice is a discretionary power. It is not based on merit or seniority. The responsibility of a Secretary to the Hon'ble Chief Justice is to look after the household of the Hon'ble Chief Justice and to maintain confidentiality, besides a myriad of other works.

16. The learned counsel for the High Court also submits that the rider/condition put in the appointment order of the appellant as P.O, with regard to his seniority and further promotion, is a misnomer and cannot be taken literally to mean that the appellant still remains in the cadre of Senior Judicial Assistant. There being no separate Rules for making promotion of a Senior Judicial Assistant to the post of Protocol Officer, the Resolutions of the High Court Committee on 04.06.2014 and 09.03.2015 would have to be considered to be an administrative instruction for promotion to the said post, which would hold the field till proper Rules were made by the High Court.

17. The learned counsel for the writ petitioners, by referring to the 1967 Rules, submits that from the cadre of SJA, one is normally promoted to the post of Administrative Officer (Judicial), which is equivalent to the post of Protocol Officer, as they are included in the Class-II(C) cadre. The cadre of Administrative Officer (Judicial), Court Officer and Protocol Officer are also the feeder posts to the post of Secretary to the HCJ. In other words, promotion as Secretary to the HCJ can be made from persons holding the post of Administrative Officer (Judicial), Court Officer and Protocol Officer. In the instant case, the appellant who was a Senior Judicial Assistant, was temporarily appointed as Protocol Officer vide order dated 25.11.2016. The said order was

however accompanied with a rider as per which, the appellant would maintain his seniority in the original cadre of Senior Judicial Assistant and his further promotion would be considered on that basis. The learned counsel for the writ petitioners contends that in the Gradation List of SJA, the position of the appellant was no. 45, which is below the writ petitioners, though most of them have now been promoted to the next higher post.

18. The writ petitioners contend that in principle, they are not aggrieved by the order of 25.11.2016, as options were called for from all the other SJAs at that time for selection and appointment to the vacant post of Protocol Officer. The grievance arose with the subsequent action of issuing the impugned order dated 10.09.2018, when the appellant who was temporarily holding the post of Protocol Officer, was appointed as Secretary to the HCJ on officiating basis. Despite the same rider being attached to the order dated 10.09.2018 that the appellant would maintain his seniority in his original cadre (Senior Judicial Assistant) and his further promotion would be made on that basis, vide the subsequent impugned order dated 24.08.2020, the officiating appointment of the appellant as Secretary to the HCJ was regularized w.e.f., 04.07.2020.

19. The learned counsel for the writ petitioners submits that appointment to the post of Secretary to the HCJ is a promotional post and cannot be made by way of regularizing an officiating arrangement. He submits that the concept of regularization of service to the post of Secretary to the HCJ is alien to the 1967 Rules. He further submits that not only have the rights of the petitioners for a fair consideration for promotion to the post of Secretary to the HCJ been violated, the appellant has been given undue favour, both in appointing him as Secretary to the HCJ on officiating basis and regularizing the aforesaid

arrangement. The learned counsel submits that the basic requirement to be a beneficiary of such an action is to be a member in the feeder cadre on substantive basis. In the instant case, as the appellant is still in the substantive post of SJA, as his promotion to the post of Protocol Officer was on temporary basis, the further promotion of appellant as Secretary to the HCJ was illegal. He accordingly prays that the appeals should be dismissed.

20. We have heard the learned counsels for the parties.

21. The issues that are required to be decided in this appeal are -

I) Whether the Learned Single Judge was correct in holding that the appointment of the appellant as Protocol Officer was a temporary appointment and whether the same could have been deemed to be a regular substantive appointment, when the appellant's post of SJA was filled up on 20.07.2017 ?

II) Whether the HCJ or the Registry of the Hon'ble Gauhati High Court had violated any prescribed Rules, while appointing the Appellant as the Secretary to the HCJ and whether the HCJ had the power under Rule 63A of the 1967 Rules to relax the educational qualification required for appointment as Secretary to the HCJ ?

III) Whether the Learned Single Judge, in judicial review, could have gone into the merit of the decision or discretion exercised by the HCJ under Rule 63A of the 1967 Rules ?

22. The facts of the case show that the post of one Protocol Officer had been created on 24.02.1999 and thereafter the same was en-cadred into the 1967 Rules w.e.f. 25.02.1999, vide Notification dated 08.06.2011. As on date, there are two posts of P.O. The post of Protocol Officer is in the rank of Superintendent, which is equivalent to the post of Administrative Officer (Judicial). Protocol Officers are appointed after inviting options from SJA, while the post of Assistant Protocol Officers are filled up after inviting options from

Judicial Assistants (JA in short).

23. Rule 7(3A) of the 1967 Rules provides that the Secretary to the Hon'ble Chief Justice shall be appointed from among the Gazetted Officers of the High Court's service belonging to Class-II(AA), Class-II(B) or Class-II(C), having a degree in Law, considered suitable by the Chief Justice.

24. Schedule-I of the 1967 Rules shows that Protocol Officer along with Administrative Officer (Judicial), Stamp Reporter, Court Officer, Assistant Librarian and Senior System Officer belong to the cadre of Class-II(C). As such, the post of Protocol Officer is one of the feeder post for promotion to the post of Secretary to the Hon'ble Chief Justice in terms of Rule 7(3A).

25. The 1967 Rules does not provide the manner for promotion to the post of Protocol Officer. However, as the post of Protocol Officer had been encadred into the 1967 Rules w.e.f. 25.02.1999, the past practice of filling up the post of Protocol Officer was followed, i.e., by inviting options from candidates in the cadre of SJA. Thereafter, selection was done from amongst the persons who opted for appointment to the post of Protocol Officer. This is reflected in the Resolution adopted in relation to Agenda No.1 by the "Committee constituted for dealing with all matters relating to officers and staff of the High Court", in it's meeting held on 25.07.2014.

26. The "*Committee constituted for dealing with all matters relating to officers and staff of the High Court*", in it's subsequent meeting held on 09.03.2015, adopted the resolution passed on 25.07.2014.

27. At the time of consideration of filling up one substantive regular post of

Protocol Officer by the High Court in the year 2016, options were invited from Senior Judicial Assistants, vide Notice dated 02.09.2016 with a rider, which is reproduced below :

“NOTICE

Dated Guwahati the 2nd September, 2016

Options are hereby invited from the intending Senior Judicial Assistant of this Registry for filling up of 1 (one) vacant post of Protocol Officer in the Principal Seat of the Gauhati High Court in the pay band of (PB-3) Rs. 8000-35000/- plus Grade pay of Rs. 4900/- p.m. plus other allowances as admissible under the Rules. Preference will be given to those Senior Judicial Assistant, who have completed 5 (five) years of service.

The selected candidate for the post of Protocol Officer will maintain his/her seniority in the original cadre and his/her further promotion will be considered on that basis.

Willing candidates may submit options mentioning their service profile to the A.O.(J) (Establishment) on or before 17.9.2016.”

- 28.** It is also seen that prior to filling up the other earlier vacant post of Protocol Officer, options had also been invited/called for from all Senior Judicial Assistants. The appointments of Protocol Officers to the vacant posts had always been made in a similar manner, i.e. by calling for options from all Senior Judicial Assistants of this Registry. Thereafter, on the basis of a selection process, wherein the records of the officers were seen and after being subjected to interview, the successful candidate was appointed to the post of Protocol Officer. In the Notices dated 10.04.2014 and 05.12.2014, for filling up the other earlier regular vacant post of Protocol Officer, no condition had been stipulated to the effect that the selected candidate for the Protocol Officer would maintain their seniority in their original cadre and their further promotion would be considered on that basis. However, the Notification dated 06.05.2015 appointing the other person Mr. Benjamin Nampui for the post of Protocol Officer contains

the condition that his seniority would be maintained in the original cadre of Senior Judicial Assistant and that his further promotion would be considered on that basis. The said person is apparently still holding the post of P.O even though nearly 9 (nine) years have gone by.

29. In the present case, the appellant had been appointed temporarily as Protocol Officer, vide Notification dated 25.11.2016. In the said Notification, it was stated that the appellant would maintain his seniority in his original cadre i.e. Senior Judicial Assistant and his further promotion would be considered on that basis. The Notification dated 25.11.2016 is re-produced below as follows:

“NOTIFICATION”

Dated Guwahati the 25 November, 2016

No. HC.V-21/2014/922/Estt. ## In exercise of the powers conferred under Article 229 of the Constitution of India, read with Rule 6 of the Gauhati High Court Services (Appointment, Condition of Service and Conduct) Rules, 1967, Hon'ble the Chief Justice has been pleased to appoint Sri Nirod Sarma, Senior Judicial Assistant, temporarily and until further orders as Protocol Officer in the Principal Seat of the Gauhati High Court at Guwahati in the Pay Band of Rs. 8000-35000/- (PB-3) with Grade Pay of Rs. 1900/- per month plus other allowances as admissible under the Rules with effect from the date of his joining vice Sri Diganta Goswami, Protocol Officer, released from High Court service.

Sri Nirod Sarma will maintain his seniority in his original cadre i.e. Senior Judicial Assistant and his further promotion will be considered on that basis.”

It may be mentioned here that this Notification dated 25.11.2016, appointing the appellant to the post of Protocol Officer, has not been put to challenge by the writ petitioners.

30. Rule II(C) of Schedule-I of 1967 Rules provides that the sanctioned strength of Protocol Officer is 2 (two) posts and that the appellant had been appointed against one of the two sanctioned regular posts. In the normal course of appointment, a person having been appointed against a permanent sanctioned post of Protocol Officer, after going through a selection process would become a member of that particular cadre, even if his appointment order may be stated to be temporary. However, the difficulty arises with appellant's appointment order as P.O, where it states that the appointment is on temporary basis and the condition inserted in the Notification dated 25.11.2016, which states that his seniority would be maintained in his original cadre of Senior Judicial Assistant and his further promotion would be considered on that basis.

31. The Resolution with regard to Agenda No. I adopted by the "*Committee constituted for dealing with all matters relating to officers and staff of the High Court*", in its meeting held on 25.07.2014, is to the following effect:

"A G E N D A

1. *Consideration of this Registry's note dated 4th June, 2014 for filling up of the posts of Protocol Officer and Assistant Protocol Officer in the Principal Seat of the Gauhati High Court, Guwahati.*

RESOLUTION

The Committee in continuation of its earlier meeting held on 23rd June, 2014 has made further deliberations in reference to the materials made available in the file including the earlier practice being followed and the representation made by the High Court Employees' Association. Options have been invited from SAA (now SJA) and JAA (now JA) for filling up the post of Protocol Officer (PO) and Assistant Protocol Officer (APO). The Government accorded sanction for creation of the said posts way back in 1999 for a separate Protocol Cell in the Registry on the request of the Registry. The post has also been encadred with retrospective effect from

25th February, 1999 vide notification dated 8th June, 2011. Pursuant thereto, earlier the posts had been filled up inviting options from the intending candidates in the cadres of JAA (now JA) and SAA (now SJA).

Considering the matter in its entirety, the Committee is of the considered opinion that while continuing with the past practice being followed in the matter of selection and appointment to the posts of Protocol Officer (PO) and Assistant Protocol Officer (APO) for the present, further options may be called for from the other intending candidates of the said 2 (two) cadres. As pointed out by the Registry, since a minimum length of 5 (five) years is required for a JA to be considered for promotion to SJA, from amongst the intending candidates, preference will be given to those JA, who have completed 5 (five) years of service, while considering their cases alongwith other candidates from both the cadres.”

- 32.** The Agenda No.1 and the Resolution passed in the proceedings of the meeting of the “Committee constituted for dealing with all matters relating to officers and staff of the High Court” held on 09.03.2015 is as follows :

“A G E N D A

- 1. Consideration of the representation submitted by the Gauhati High Court (Principal Seat) Employees' Association regarding filling up of the vacant posts of Protocol Officer and Assistant Protocol Officer in this Registry.*

RESOLUTION No. 1

The Committee in consideration of all the relevant materials including the Registry's note dated 27 January, 2015 reiterates the Committee's earlier resolution adopted in its meeting held on 25th July, 2014. It is further clarified that, although the selected candidates will be appointed as PO and APO from the cadres of SJ und JA but they will maintain their respective seniority in their original cadres and their further promotion will

be considered on that basis.

For the purpose of selection, a Committee is constituted comprising of Hon'ble Mr. Justice T. Vaiphei and Hon'ble Mr. Justice C.R. Sarma. The interview will be conducted on 13th March, 2015 at 3:00 PM.

The Registry shall take necessary steps in this regard."

33. In view of the fact that the appointment of the appellant has been made temporarily as Protocol Officer with a condition that his seniority would be counted in his original cadre i.e. Senior Judicial Assistant and his further promotion would be considered on that basis, the issue arises as to whether the appellant had been substantively appointed to the post of Protocol Officer on a temporary/regular basis.

34. As can be seen from the pleadings and the submissions made by the learned counsels for the parties, there was no challenge to the appointment of the appellant to the post of Protocol Officer. The challenge made by the writ petitioners to his appointment was only with regard to the order dated 10.09.2018, by which the appellant was appointed as Secretary to the Hon'ble Chief Justice on officiating basis and the subsequent regularization of his service as Secretary to the Hon'ble Chief Justice, vide Notification dated 24.08.2020.

35. In terms of Rule 7(3A) of the 1967 Rules, the Secretary to the HCJ is to be appointed from the Officers of the High Court's Service belonging to Class-II(AA), Class-II(B) or Class-II(C), having a degree in law considered suitable by the Chief Justice. Rule 7(3A) of the 1967 Rules is reproduced below :

"7(3A) The Secretary to the Hon'ble Chief Justice shall be appointed from

among the Gazetted Officers of the High Court's Service belonging to Class-II(AA), Class-II(B) or Class-II(C), having a degree in Law, considered suitable by the Chief Justice."

Schedule-I of the 1967 Rules provides the list of Class-II(C) Officers, which are the following :-

- I. Administrative Officer (Judicial)*
- II. Stamp Reporter*
- III. Court Officer*
- IV. Protocol Officer (Ex-Cadre)*
- V. Assistant Librarian*
- VI. Senior System Officer*

36. Thus, in terms of the above Rule 7(3A) and Schedule-I of the 1967 Rules, it is clear that a Protocol Officer is a feeder post for appointment to the post of Secretary to the HCJ, if he has a degree in law and is considered suitable by the Chief Justice. In the present case, the appellant does not have a degree in law. Despite not having a degree in law, the appellant was appointed on officiating basis as Secretary to the Hon'ble Chief Justice, vide Notification dated 10.09.2018. Vide a subsequent Notification dated 24.08.2020, the Hon'ble Chief Justice, in exercise of powers conferred under Article 229 of the Constitution read with Rule 63A of the 1967 Rules, regularized the officiating appointment of the appellant as Secretary to the Hon'ble Chief Justice, vide Notification dated 24.08.2020.

37. The Notifications dated 10.09.2018 and 24.08.2020 are re-produced hereinbelow as follows :

“NOTIFICATION”

the Dated Guwahati, the 10 September, 2018

No. HC.V-42/97/ 818 /Estt. ## In exercise of the powers conferred under Article 229 of the Constitution of India, Hon'ble the Chief Justice has been pleased to appoint Sri Nirod Sarma, Protocol Officer, temporarily and until further orders as Secretary to Hon'ble the Chief Justice on officiating basis in the Principal Seat of the Gauhati High Court, Guwahati in the Pay Band of Rs. 30000-110000/- (PB-4) with Grade Pay of Rs. 14500/- per month plus other allowances as admissible under the Rules with effect from the date of his assuming charge.

Sri Nirod Sarma shall maintain his seniority in his original cadre i.e., Senior Judicial Assistant and his further promotion will be made on that basis."

“NOTIFICATION”

Dated, Guwahati, the 24th August, 2020

No. HC.V-42/97/682 /Estt. ## In exercise of the powers conferred under Article 229 of the Constitution of India, read with Rule 63A of the Gauhati High Court Services (Appointment, Conditions of Service and Conduct) Rules, 1967, Hon'ble the Chief Justice has been pleased to regularize the appointment of Sri Nirod Sarma as Secretary to Hon'ble the Chief Justice w.e.f. 04.07.2020, which was made vide Registry's Notification No. HC.V-42/97/818/Estt. dtd. 10.9.2018.”

38. Rule 63A of the 1967 Rules states as follows :

“The Chief Justice shall have powers to relax age or qualifications for appointment to the service of the High Court in appropriate cases according to his discretion.”

39. As stated earlier, one of the issues that is to be decided is whether the HCJ had the power to relax the essential qualification required for a candidate to be appointed as Secretary to the HCJ, in terms of Rule 63A of the 1967 Rules, inasmuch as, the appellant did not possess an LLB degree.

40. In the case of ***Suraj Parkash Gupta and Ors. Vs. State of J&K and Ors.***, reported in **(2000) 7 SCC 561**, the Supreme Court has held that there can be no relaxation of the basic or fundamental rules of recruitment. The conditions of recruitment and conditions of service are distinct and the latter is preceded by an appointment according to Rules. The former cannot be relaxed. However, the above case is not applicable to the facts of this case, inasmuch as, Rule 63A of the 1967 Rules permits the HCJ to relax age or qualifications. In the case referred to above, the relaxation clause provided in the Rules did not have a provision for specifically relaxing educational qualifications.

41. In the case of ***Laishram Randhoni Devi Vs. Gauhati High Court and Ors.***, reported in **2000 (1) GLT 36**, the Single Judge of this Court has held that the power of the Chief Justice under Section 63-A of the 1967 Rules cannot be used by the Chief Justice in an arbitrary or capricious manner. However, the said decision had been made on the ground that the HCJ could not have one practice or procedure for one outlying Bench of the Gauhati High Court and another norm for another Bench, while applying the 1967 Rules. The facts in this case are however different. It is not the question of the HCJ applying Rule 63A differently in similar cases. As such, this Court is of the view that the Judgment of the learned Single Judge passed in ***Laishram Randhoni Devi (Supra)*** is not applicable to the facts of this case, as the facts therein and the facts in this case are different. Further, as held by the Supreme Court in numerous cases, a decision is only an authority for what it actually decides and not what follows from it. A little difference in facts changes the precedential value of a decision. In the case of ***Bharat Petroleum Corporation Ltd Vs.***

N.R. Vairamani, reported in **(2004) 8 SCC 579**, the Supreme Court held that “Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid’s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.”

42. In the case of ***State of West Bengal and Ors. Vs. Debasish Mukherjee and Ors***, reported in **(2011) 14 SCC 187**, the Supreme Court has held that the orders of the Chief Justice granting certain relief to High Court employees whose service conditions are governed by the rules, is justiciable, as the Chief Justice does not have the power to ignore the Rules. With respect to the above judgment, there is nothing to show that Rule 63-A of the 1967 Rules barred the HCJ from relaxing the educational qualifications. In fact Rule 63-A allows for the same.

43. There is nothing to show that the HCJ applied Rule 63-A of the 1967 Rules in an arbitrary manner. Rule 63-A provides that the Hon’ble Chief Justice shall have the power to relax age or **qualifications for appointment**. As such, it is clear that the Hon’ble Chief Justice can relax the educational qualification of the appellant, who did not have a Law Degree. The note regarding regularisation of the appellant’s service for appointment as Secretary

to the Hon'ble Chief Justice, which was approved by the Hon'ble Chief Justice on 04.07.2020 states as follows.

“ORDER IN REFERENCE TO PRE-PAGE

Considering, (i) the consistently good work done by Mr. Nirod Sarma while attached with various Chief Justices as depicted from his ACR's;

(II) The efficiency, integrity, punctuality, dedication towards duties without taking break, knowledge of computer applications, thoroughness in performance of all tasks, searching judgments and preparing templates of judgments, quality of interaction with officers/officials within the institution and of other institutions, confidentiality maintained by him, his good and differential behaviour with the Registrars, as observed by me during his attachment as Secretary to the Chief Justice;

(iii) That Sri Sarma has attended office every single day of my tenure as Chief Justice of Gauhati High Court from 9.30 A.M., or earlier if required, till late night;

(iv) the earlier precedence of Sri Shailendra Choudhury;

(v) absolute discretion vested with the Chief Justice to appoint suitable person to hold the post of Secretary to the Chief Justice;

(vi) powers vested with the Chief Justice under Article 229 of the Constitution of India in this regard; (vii) the law laid down by the Hon'ble Supreme Court of India as referred to in the note put up before me;

(viii) the fact that Mr. Sarma has been serving on temporary and officiating basis as Secretary to Chief Justice of Gauhati High Court for the last over two years, and in case of such sensitive post ad-hocism is not good for managing and administrating the Secretariat of the Chief Justice; I hereby, by virtue of powers vested under Article 229 of the Constitution of India, read with Rule 63A of the Gauhati High Court Service Rules, 1967, exercise my discretion and relax the qualification for appointment to the post of Secretary to the Chief Justice, Gauhati High Court; and regularize the appointment of Sri Nirod Sarma as Secretary to the Chief Justice, Gauhati High Court.

CHIEF JUSTICE”

44. In the case of ***M. Gurumoorthy Vs. Accountant General, Assam and Nagaland*** reported in **(1971) 2 SCC 137**, the Supreme Court has held that Article 229 contemplates full freedom to the Chief Justice of the High Court in the matter of appointment of officers and servants of the High Court and their conditions of service. The unequivocal and obvious intention of the Framers of the Constitution in enacting Article 229 is that in the matter of such appointments, it is the Chief Justice or his nominee, who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided in the article. Even the legislature cannot abridge or modify the powers conferred on the Chief Justice.

45. In the case of ***Chief Justice of Andhra Pradesh & Others vs. L.V.A. Dixitulu & Others***, reported in **(1979) 2 SCC 34**, the Supreme Court has held that in regard to the servants and officers of the High Court, Article 229 makes the power of appointment, dismissal, removal, suspension, reduction in rank, compulsory retirement etc. including the power to prescribe their conditions of service, the sole preserve of the Chief Justice, and no extraneous executive authority can interfere with the exercise of that power by the Chief Justice or his nominee except to a very limited extent indicated in the Provisos. In conferring such exclusive and supreme powers on the Chief Justice, the object which the Founding Fathers had in view, was to ensure independence of the High Court.

46. In the case of ***Parmatma Sharan vs. Hon. Chief Justice, Rajasthan High Court***, reported in **AIR 1964 Raj 13**, the Division Bench of the High Court of Rajasthan has held that the Constitution makers in their wisdom

conferred the power of making appointment in the High Court on the Chief Justice. This power has been entrusted to the safe custody of the Chief Justice in order to insure the independence of the Judiciary, which is one of the vital organs of a Government. It further held that the Constitution has also recognised that in the internal administration of the High Court, no other power, except the Chief Justice, should have domain and that it would require a very strong and convincing argument to show that this power has been abused.

47. In the case of ***Union of India & Others vs. Dwarka Prasad Tiwari***, reported in **(2006) 10 SCC 388**, the Supreme Court has held that the Court should not interfere with the administrators decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesburys case (supra), the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

48. On perusing the discretionary power exercised by the HCJ for regularizing the appointment of the appellant as Secretary to the HCJ, we find that the HCJ has the power to relax the qualifications for appointment for filling up the post of Secretary to the HCJ, in terms of Article 229 of the Constitution of India and Rule 63A of the 1967 Rules. The power given to the HCJ in terms of Rule 63A shows that he has been given the specific power to relax the educational qualification, which is not there in the cases referred to above. As such, we are

of the view that the Hon'ble Single Judge could not have termed the reasons given by the HCJ to be inadequate, as the discretion exercised by the HCJ was subjective in nature. The HCJ has considered various parameters and qualities of the appellant, which was suitable to the HCJ for appointing him to the post of Secretary to the HCJ. The learned Single Judge could not have substituted it's views vis-a-vis the view of the HCJ. It is also noticed that the earlier Secretary to the HCJ, Shri Sailendra Choudhury, Stenographer Grade-I, Class-II (B) did not possess an LLB degree and despite the same, he was appointed as Secretary to HCJ. The same had been done by use of the discretionary power of the HCJ. Shri Sailendra Choudhury has been further promoted to the post of Deputy Registrar. The above being said, one of the issues that is to be decided is whether the appellant could be said to be appointed to the post of Protocol Officer on a substantive and regular basis, keeping in view the fact that he has been appointed "temporarily", with the rider that had been put in the appointment order dated 25.11.2016.

49. In the case of ***Union of India & Others vs. Arun Kumar Roy***, reported in **(1986) 1 SCC 675**, the Supreme Court has held that the question whether the terms embodied in the order of appointment should govern the service conditions of employees in Government service or the rules governing them, is now well settled that a Government servant whose appointment, though originates in a contract, acquires a status and thereafter is governed by his service rules and not by the terms of contract. Once appointed, a Government servant acquires a status and thereafter his position is not one governed by the contract of appointment. Public law governing service conditions steps in to regulate the relationship between the employer and employee.

50. In the case of ***Tabond Pasar vs. State of Arunachal Pradesh & Others***, reported in **(1999) 2 GLR 550**, the Division Bench of this Court reiterated the decision of the Supreme Court in ***Arun Kumar Roy (supra)***, where the Supreme Court held that where statutory rules were in force, the terms of the services would be governed by such statutory rules and not by any condition of service, which may be incorporated in the letter of appointment. Therefore, merely saying in the order that the appointment was temporary will not make it temporary, since no such appointment is envisaged under the Rules. Pertaining to the present case, the stand of the appellant is that the appointment to the post of Protocol Officer is a substantive appointment, against an encadred post, made on the basis of the Resolutions passed by the High Court, which is akin to an Executive Instruction. As such, the appointment of the appellant to the post of Protocol Officer would have to be considered to be a substantive appointment against a regular encadred post. As such, the selection and appointment of the appellant to the next post of Secretary to the Hon'ble Chief Justice is in conformity with the Rule 7(3A) read with Rule 63A of the 1967 Rules, as the post of Protocol Officer is a Class-II-C post in terms of the 1967 Rules, which is a feeder post to Secretary to the Hon'ble Chief Justice.

51. In the case of ***Baleshwar Dass and Others vs. State of U.P. and Others***, reported in **(1980) 4 SCC 226**, the Supreme Court has held that a cadre post can be permanent or temporary and if an engineer was appointed substantively to a temporary post, he becomes a member of the service. The touchstone is the substantive capacity of the appointment. It further held that substantive capacity refers to the capacity in which a person holds the post and

not necessarily to the nature or character of the post. A person is said to hold a post in a substantive capacity, when he holds it for an indefinite period especially of long duration, in contradistinction to a person who holds it for a definite or temporary period, holds it on probation subject to confirmation.

52. In the case of ***O.S. Singh & Another vs. Union of India & Another***, reported in **(1996) 7 SCC 37**, the Supreme Court made a distinction between substantive appointment and officiating appointment and has held at paragraph 8 as follows :

"8. In service jurisprudence a distinction is made between a "substantive appointment" and an "officiating appointment". While substantive appointment confers on the person so appointed a substantive right to the post, an officiating appointment does not confer any such substantive right. The appointment on officiating basis is usually made when the incumbent substantively holding that post is on leave or when the permanent post is vacant and no substantive appointment has yet been made to that post. Such an officiating appointment comes to an end on the return of the incumbent substantively holding the post from leave in the former case or a substantive appointment being made to that permanent post in the latter case. An appointment on officiating basis, is, from the very nature of such employment, itself of a transitory character and, under the ordinary law of master and servant, is terminable at any time. (See: Parshotam Lal Dhingra v. Union of India. The expression "officiated continuously in a senior post" in Rule 3(3(b) of the Seniority Rules must, therefore, be construed to mean holding a senior post on officiating basis prior to substantive appointment on such senior post. Since a person cannot be treated as officiating on a post after he has been substantively appointed on that post, the said expression cannot be construed as referring to the period of officiation subsequent to the date of substantive appointment. For ascertaining the period of continuous officiation on a senior post, which is required to be taken into

consideration for the purpose of assigning the year of allotment to a promotee officer. Rule 3(3)(b) has to be read with Explanation I wherein it has been prescribed that in respect of an officer appointed to the Service by promotion for the purpose of determination of his seniority the period of his continuous officiation in a senior post shall count only from the date of the inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post whichever is later. Thus two conditions are required to be fulfilled: (i) inclusion of the name in the Select List prepared for the purpose of promotion under the Recruitment Rules and Promotion Regulations: and (ii) continuous officiation on a senior post. Explanation I postulates that both these conditions must coexist for a promotee officer to take the benefit of continuous officiation in a senior post from the date prior to the date of his substantive appointment."

53. In the present case, the appointment of the appellant as P.O was not on officiating basis, but on a temporary basis with the rider. The appointment was to a substantive regular vacant post and the nature of the appointment was substantive for all purposes, albeit the rider.

54. In the case of ***Indian Railway Construction Co. Ltd. vs. Ajay Kumar***, reported in **(2003) 4 SCC 579**, the Supreme Court has held that the Court in judicial review, can only examine the decision making process and not the decision.

55. The official records show that the post of Protocol Officer and Assistant Protocol Officer are very demanding posts, due to the exigencies of the work schedule. They are the face of the High Court to those, who do not belong to the particular High Court. As such, they have to be carefully selected. It is

because of the demanding nature of duties of the Protocol Officer that options are called for, as otherwise most of the SJAs are not interested in the said post of Protocol Officer. The official records also show that the calling for options from all the SJAs, for appointment to the post of Protocol Officer, which is a Class-II(C) post, has been the norm all along. There is no Rules or procedure prescribed for appointment of the Protocol Officer, except in terms of the Resolutions passed by the "*Committee constituted for dealing with all matters relating to Officers and Staff of the High Court*" dated 04.06.2014 and 09.03.2015. Though the manner in which the appellant has been appointed to the post of Protocol Officer may be faulted on the ground that it enables a junior to supersede a senior, the fact remains that the said procedure is the only procedure in existence which is being used by the High Court, for appointment to the post of P.O, in the absence of rules. As such, the fault regarding the absence of rules and the alleged inadequacy in the procedure being applied till date by the High Court for appointment to the post of P.O, if any, lies with the High Court.

56. Thus, if not for the rider, coupled with the use of the word 'temporary' in the appointment order of the appellant, the post of Protocol Officer being a regular cadre post (Class II(C) post), the appointment of the appellant would have to be considered a substantive promotion order. Be that as it may, the rider clarifies the fact that the appointment of the appellant was not on a regular basis, but on a temporary basis. Further, it is noticed that due to the officiating appointment of the appellant as Secretary to HCJ, a resultant vacancy had occurred in the post of Protocol Officer. The said resultant vacancy in the post of Protocol Officer was filled up by following the same procedure applied

earlier. Options had been called for from all persons in the cadre of SJA and thereafter selection was made, which resulted in the temporary appointment of Bidyut Bikash Goswami as Protocol Officer, vide Notification dated 20.02.2019 on officiating basis, vice the appellant, who was appointed as Secretary to HCJ on officiating basis. Thereafter, one Jayanta Barman, A.P.O was appointed as P.O on officiating basis vice Bidyut Bikash Goswami who was promoted as A.O.J. However once the appellant's officiating appointment, as Secretary to HCJ was regularized, all appointments made to the post of P.O did not contain the word officiating in their appointment orders. However, the rider continued to be there. It may be clarified here that the appellant's appointment order as P.O was not on officiating basis. The appointment was on a temporary basis, coupled with the rider. The fact that a person has been regularly appointed as Protocol Officer by following the same procedure, subsequent to the officiating appointment of the appellant as Secretary to the HCJ, indicates that the appointment of the appellant as Protocol Officer was regular for all purposes, but for the rider.

57. In the present case, the appointment order of the appellant as Protocol Officer, vide Notification dated 25.11.2016 and his officiating appointment as Secretary to the HCJ, vide Notification dated 10.09.2018, carries a rider that states that the appellant would maintain his seniority in his original cadre of Senior Judicial Assistant and his further promotion was to be considered on that basis. This rider was reflected in the Notice dated 02.09.2016, wherein options had been invited from all SJAs, for filling up the vacant post of Protocol Officer. Thus, this is not a case where the writ petitioners or those senior to the appellant in the post of SJA, were not given the option to be considered for appointment as P.O. Though, for all practical purposes the appointment of the

appellant as Protocol Officer was on a regular basis, as there is no other procedure for appointment laid down by the High Court for appointment as Protocol Officer, except for the resolutions passed by the High Court, the rider/condition inserted in the appointment order shows that the appointment as Protocol Officer was not on a regular basis, as his next promotion was still to be considered from the post of SJA, by counting his seniority position in the cadre of SJA. The appellant had been appointed to the post of Protocol Officer, after giving his option along with other SJA candidates for the said post, in terms of the notice dated 02.09.2016. The rider in the appointment order, vide notification dated 25.11.2016, shows that the appointment was not a regular appointment, though it was made to a substantive vacant encadred post. This rider was also placed in the officiating appointment order of the appellant as Secretary to the HCJ, vide the Notification dated 10.09.2018 and the same would have to be read as such. There can be no different meaning assigned to the rider, except that the substantive post of the appellant continued to be SJA.

In the case of ***Krishnadevi Malchand Kamathia & Others vs. Bombay Environmental Action Group & Others***, reported in **(2011) 3 SCC 363**, the Supreme Court has held that all official decisions are presumed to be valid until set aside or otherwise held to be invalid by a court of competent jurisdiction.

58. The above being said, what is discernible is the fact that the procedure consistently being followed by the High Court for appointment to the substantive encadred post of P.O is the calling of options from all SJAs. The procedure is no doubt a departure from normal promotion cases, where a procedure is normally prescribed and there is a zone of consideration.

Nevertheless, there is a procedure in place, which is not under challenge. The question that arises is what was the requirement of putting the rider in the appointment order of the appellant as Protocol Officer, when the procedure followed for appointment was the only procedure available and being used by the High Court in appointing a Protocol Officer. The procedure followed by the High Court for appointing the appellant to the post of Protocol Officer would be akin to an Executive Instruction, prior to making Rules for appointment to the post of Protocol Officer. As there is no challenge to the appointment of the appellant as Protocol Officer and keeping in view the fact that he had been appointed as Protocol Officer against a regular substantive vacancy, vide notification dated 25.11.2016, the appointment of the appellant as Protocol Officer, which was a regular appointment for all practical purposes, sans the rider, he would have to be regularized in the cadre of Protocol Officer.

59. We have noticed from the records that all the writ petitioners have been appointed/promoted from the cadre of SJA to posts equivalent to Protocol Officer i.e. Class-II(C) post. Further, two persons who were junior to the appellant in the cadre of SJA, have also been promoted to posts equivalent to Protocol Officer i.e. Class-II(C) post.

In view of the above reason, there is no reason for the appellant to still remain in the cadre of SJA. Further, the appellant had been promoted as Protocol Officer on 25.11.2016.

60. The rider put in the appointment order of the appellant as Protocol Officer cannot be a bar for regularizing the service of the appellant as Protocol Officer for all times to come, keeping in view the fact that the official records do not

provide the basis for putting the rider in the appointment order, though the representations of the Gauhati High Court (Principal Seat) Employees Association request for framing of rules for filling up the post of P.O could have been a reason for putting the rider. As such, the appellant would have to be given seniority in the post of P.O from a specific date. As stated earlier, the appointment of the appellant as P.O had been made on 25.11.2016 with the rider. Subsequent to the appointment of the appellant as P.O. and promotion of 15 other SJAs to the post of P.O, Court Masters and Court Officers, the 16 posts of SJA left vacant by the appellant and 15 others, were filled up in order of merit from amongst Judicial Assistants (J.A. in short), vide order no.HC.V-8/2012(Pt-I)/630/Estt. dated 20.07.2017. The order dated 20.07.2017, by which 16 vacant posts of SJA including the vacancy left behind by the appellant had been filled up, provided that the promotion was subject to the condition that upon reversion of the said Court Masters/Protocol Officers and Court Officer to the post of SJA, the new promotees would stand reverted to their original post of Judicial Assistant. Similarly, another order dated 09.08.2017 was issued by the Gauhati High Court promoting a further 9 (nine) persons to the post of SJA, with the condition that upon reversion of the Court Masters/Protocol Officers to the post of SJA, the new promotees would stand reverted to their original post of Assistant.

61. The contents of promotion order no. HC.V-8/2012(Pt-I)/630/Estt. dated 20.07.2017 is reproduced as below :

“The following Judicial Assistants are promoted and appointed, in order of merit, on adhoc basis until further orders, as Senior Judicial Assistant in the Principal Seat of the Gauhati High Court, Guwahati in the

Pay Band of Rs.22000-87000/- (PB-3) with Grade Pay of Rs.9100/- p.m. plus other allowances as admissible under the Rules with effect from the date(s) of their joining, vice Sri Sahidul Haque, Sri Tomizuddin Ahmed, Sri Tilok Konwar, Sri Bhaben Ch Das, Smt. Geetanjali Mayour, Sri Rupam Kr. Sarma, Sri Dipak Prasad, Smt. Maitreyi Devi, Sri Partha Saikia, Sri Chandan Das, Sri Anjum Borah, Sri Manoj Kr. Goswami, Sri Deabo Dutta Boro, all Senior Judicial Assistants, appointed as Court Masters; Sri Benjamin Nampui and Sri Nirod Sarma, both Senior Judicial Assistants, appointed as Protocol Officer and Sri Jahirul Islam, Senior Judicial Assistant appointed as Court Officer, subject to the condition that upon reversion of the said Court Masters/Protocol Officers/Court Officer to the post of Senior Judicial Assistant, they will stand reverted in their original post of Judicial Assistant.

1. *Sri Bikram Sarma*
2. *Sri Anjan Jyoti Gogoi*
3. *Sri Madhurjya Kumar Parasar*
4. *Sri Jayanta Barman (now Assistant Protocol Officer)*
5. *Sri Nayan Jyoti Nath*
6. *Sri Kulajit Pathak*
7. *Sri Sudip Das*
8. *Sri Jayanta Das (now Assistant Protocol Officer)*
9. *Sri Krishanu Bordoloi*
10. *Smt. Meenakshi Devi*
11. *Sri Neel Kamal Baro*
12. *Sri Pranjal Rajkhowa*
13. *Smt. Smita Deb Adhikary*
14. *Sri Jnandeeb Bora*
15. *Smt. Jahnabi Gayan*
16. *Sri Samujjal Saikia"*

62. The above two orders clearly show that the vacant posts of SJA had occurred due to promotion of SJAs as Court Masters/Protocol Officers and Court Officer etc. The condition put in the above two orders which states that upon reversion of the Court Masters/Protocol Officers and Court Officer to the post of SJA would result in the new promotees being reverted to their original post of Judicial Assistant, has been done in a routine manner. The same appears to have been put there specifically due to the post of Court Master being in a different cadre than P.O and Court Officer. While the post of Court Master is a Class II(DD) post, equivalent to Assistant Protocol Officer, the posts of Court Officer and P.O are Class II(C) post, i.e. the promotional post of Court Masters, in terms of Rule 7(5) of the 1967 Rules. The rider/condition put in the above two orders dated 20.07.2017 and 09.08.2017 does not take away the fact that the subsequent promotions made to the cadre post of SJA, left vacant by promotion of SJAs to higher posts, are regular promotions. As such, the bar on the appellant's appointment as regular P.O, due to the rider cannot continue, when his post of SJA had been filled up on 20.07.2017. Further, if the appellant's post of SJA is to be considered to be the substantive post of the appellant, the same could not have been filled up. In any event, the persons who have been promoted to the posts of Court Master/Protocol Officers and Court Officer from the post of SJA, on the basis of the above two orders have not been reverted back to the post of SJA till date and as such, the promotions would have to be considered to be regular appointments/promotions.

63. One clarification needs to be made regarding the posts of Court Master, Protocol Officer and Court Officer. The post of Court Master is equivalent to the

post of Assistant Protocol Officer. The post of Court Master is not equivalent to P.O and Court Officer. Rule 7(5) of the 1967 Rules provides for promotion of Court Master to the post of Administration Officer (Judicial), "AOJ" in short, which is also a Class-II(C) post and equivalent to the post of P.O, as per their seniority position in the SJA, even though the SJA is holding the post of Court Master. However, it should be remembered that Court Officer is a Class-II(C) post and equivalent to the post of Protocol Officer, while a Court Master is a Class-II(DD). As such, Rule 7(5) of the 1967 Rules is not applicable to the case of appellant. Rule 7(5) states as follows :

"Rule 7(5) Method/Procedure of recruitment – The post of Court Master may be filled up by selection, on the basis of merit-cum-seniority, from amongst the (Senior Judicial Assistant/Judicial Assistant) working at the Principal Seat of the Gauhati High Court having 8 years of experience as [SJA/JA] or both combined. Preference may be given to [SJA/JA] having Degree in Law from any recognized University.

Nature of appointment- The appointment to the post of Court Master will be temporary and subject to review every year. Selection and appointment of an employee as Court Master will not be treated as his/her promotion.

Pay Rs. 4210-90-4480-120-5200-175-5725-EB-175-6600-250- 8100-325-10,375/- P.M. and as may be revised from time to time plus allowances as admissible.

Status-Gazetted. (Class-II-DD, Service of the Gauhati High Court)

Promotion-An employee from the [SJA] cadre holding the post of Court Master will be considered for promotion as [Administrative Officer (Judicial)] as per his/her own seniority in the rank of [SJA]. The [JA], holding the post of Court Master, will be considered for promotion to the post of [Administrative Officer (Judicial)] on the basis of his/her seniority

as may be determined on his/her notional date of promotion to the rank of [SJA], i.e., the date when his/ her turn for promotion as [SJA] would have come.

Seniority-Seniority of an employee, holding the post of Court Master, will be maintained in the original post/cadre of the employee concerned, irrespective of his/her placement in the Select List prepared for appointment as Court Master. Holding of the post of Court Master, by itself, will not entitle an employee to claim any promotion over his/her senior in the original post/cadre.

Reversion-Prayer for reversion to the original post, if made by an employee, holding the post of Court Master, may be allowed at the discretion of the authority concerned.”

- 64.** There is another aspect of the matter to be considered with regard to the filling up the vacant post of SJA by J.As, including the post of SJA earlier held by the appellant. As stated in the foregoing paragraphs, the appellant's post of SJA had been filled up vide order dated 20.07.2017, with the rider/condition that the new promotees to the post of SJA would be reverted back to the post of J.A, if those in the cadre of P.O./Court Master/Court Officers were reverted back to the post of SJA. In this respect, we have noticed in the official records that the up-to-date Gradation List of J.A had been published vide notice dated 22.06.2018, Memo No. HC.V-25/2013/569A/Estt. dated 22.06.2018. In terms of the Gradation List of J.A, it is seen that there are 99 sanctioned posts of J.A and that all the 99 posts were filled up as on 09.02.2018. Thus when all the sanctioned posts of J.A were filled up as on 09.02.2018, there was no way that any J.A, who had been promoted to the post of SJA, could have been reverted back to J.A subsequent to 09.02.2018. Consequently, those persons, who had been promoted from the post of SJA, to posts above SJA, vide the order dated

20.07.2017, could also not have been reverted back to the post of SJA subsequent to 09.02.2018. Thus, the appellant, who was appointed as P.O on temporary basis vide notification dated 25.11.2016, could not be reverted back to the post of SJA, in the absence of any vacant post subsequent to 20.07.2017 or from 09.02.2018. Thus, it cannot be said that the appellant was still holding the substantive post of SJA as on 20.07.2017, when the appellant's post of SJA was filled up, or on 09.02.2018, when all the posts of J.A had been filled up. Accordingly, the appointment by promotion of the appellant as P.O would have to be regularized from 20.07.2017. As the appointment by promotion of the appellant to the post of P.O was regular for all practical purposes, except for the rider, the validity/effect of the rider in the appellant's appointment order dated 25.11.2016 would have to be deemed to have ceased w.e.f 20.07.2017. Accordingly, the appellant's seniority would have to be considered in the post of P.O w.e.f 20.07.2017 and his appointment as P.O would be deemed to be a substantive appointment w.e.f. 20.07.2017. It may also be noted here that the writ petitions were filed in the year 2019 and 2021, i.e. after all the SJA posts were filled up on 20.07.2017 and JA posts were filled up on 09.02.2018.

65. As all the writ petitioners have now been promoted to Class-II(C) posts or their equivalent, including two juniors of the appellant, we are of the view that the subsequent officiating appointment of the appellant as Secretary to the HCJ should not be disturbed. We have also noticed from the official records that at the time of consideration for filling up the post of Secretary to HCJ on officiating basis, all the service particulars of persons belonging to the feeder posts were sent for consideration to the HCJ vide note dated 04.09.2018 issued by the Registrar General. The HCJ then chose the appellant as Secretary to HCJ on

officiating basis, as a proposal had been made by the Registry of this Court that the appointment of the appellant should be made on officiating basis, due to the rider in the appellant's order as P.O. Thus, in view of the peculiar facts and circumstances of the case and as there is no vacant post of Protocol Officer, the setting aside of the officiating appointment of the appellant by the learned Single Judge is interfered with. The observation made by the learned Single Judge that the entry of the appellant into the post of Secretary to the HCJ was not preceded by any discernible selection process, is belied by the official records, as there was a consideration of all the persons in the feeder posts prior to appointing the appellant on officiating basis. Further, in view of the findings made in the foregoing paragraphs, the appellant would have to be deemed to be holding the post of P.O on a substantive basis from 20.07.2017.

66. It may be reiterated here that there is no procedure prescribed for promotion of a P.O to the post of Secretary to HCJ, except by way of Rule 7(3A) and Rule 63A of the 1967 Rules. Rule 7(3A) provides that the Secretary to HCJ shall be appointed from Gazetted Officers of the High Court Service belonging to Class- II(AA), Class- II(B) and Class- II(C), having a degree in law and considered suitable by the HCJ. Thus in terms of Rule 7(3A), the HCJ can promote any person as Secretary to HCJ belonging to Class II(AA), II(B) & II(C) posts, provided he has a law degree and is considered suitable by the HCJ. As stated earlier, Rule 63A gives the power of relaxation of age or qualification of appointment to the HCJ in appropriate cases, according to his discretion. No procedure for promotion of the eligible Officers from the feeder post is discernible in the Rules. The only method of promotion of Officers of the feeder post to the post of the Secretary to the HCJ depends upon whom HCJ considers

suitable. It can cause heartburn. However, no other procedure for promotion to the post of the Secretary to HCJ has been made. The relevant rules shows that the HCJ can appoint the junior most officer of the feeder posts, if he considers the said candidate to be suitable. The all pervasive power given to the HCJ to appoint a suitable Secretary to HCJ, on the sole satisfaction of the HCJ does not appear to be fair. However, the rules provide for the same. In our view, the said rules have not been violated. As such, the regularization of the appellant's officiating promotion to the post of Secretary to HCJ could not have been interfered with, as there is no challenge to Rule 7(3A) or Rule 63A of the 1967 Rules. In view of the reasons stated above, we are not in agreement with the decision of the learned Single Judge in setting aside the regularization order of the appellant as Secretary to HCJ. The common judgment and order dated 05.01.2023 passed by the learned Single Judge in WP(C) No.1376/2019 and WP(C) No.3845/2021 is accordingly set aside.

67. The above being said, a perusal of the official records goes to show that the post of Secretary to the HCJ is a very demanding post, which requires utmost dedication and responsibility on the part of the Secretary to the HCJ, while doing his duty. The Secretary to the HCJ would have to have the absolute confidence of the HCJ, keeping in mind the nature of duties to be performed by the Secretary to the HCJ. No doubt, the post of Secretary to the Hon'ble Chief Justice should be given importance. However, the problems lies in the fact that as per the Schedule-I of the 1967 Rules, there is only one post of Secretary to the HCJ and as such, if an incumbent Secretary to the HCJ is not upto expectation and does not continue to enjoy the confidence/pleasure of the HCJ or an incoming new Chief Justice, he would have to be shunted back to his

substantive post, to make way for another, who enjoys the confidence of the Hon'ble Chief Justice. In that view of the matter, it might be best if the post of Secretary to the HCJ is made an isolated post, which is held by way of deputation, so that persons who are appointed to the post can be considered for promotion on the basis of the substantive post that they are holding. That is to say, the post of Secretary to the HCJ would not be a feeder post or a promotional post. This would enable the incumbent/incoming Hon'ble Chief Justice to choose his own Secretary to the HCJ, who enjoys his absolute confidence, without disturbing the overall administration of the High Court, when the said Secretary to the HCJ is reverted back to his substantive post. If the Gauhati High Court decides to keep the post of Secretary to the HCJ as a Class-II(A) post, proper procedure for promotion should be made. We are also of the view that proper Rules and procedure for appointment to the post of Protocol Officer should be made by the High Court.

68. The writ appeals are accordingly allowed.

JUDGE

JUDGE

Comparing Assistant