

GAHC010017952022



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

Case No. : WRIT PETITION [C] NO. 742/2022

1. Keshab Chandra Paul, aged – 59 years, S/o Late Makhan Chandra Paul, R/o Kokrajhar Town, Ward no. – 1, near Circuit House, P.O. & District – Kokrajhar, BTAD, Assam, Pin - 783370.

.....*Petitioner*

-VERSUS-

1. The Gauhati High Court [The High court of Assam, Mizoram, Nagaland and Arunachal Pradesh], Represented by the Registrar General, Guwahati, Pin - 781001.
2. The Registrar (Administration), The Gauhati High Court, Guwahati-781001.
3. The District & Sessions Judge, Kokrajhar, Assam, Pin-783370.
4. The Chairman, Selection Board of establishment of District & Sessions Judge, Kokrajhar, P.O. - Kokrajhar, Pin-783370, Assam.
5. Subhash Mazumdar, Civil Sheristadar, Office of the Civil Judge, District & Sessions Judge Complex, Court Para, Kokrajhar, BTAD, Assam, Pin – 783370.

.....*Respondents*

Advocates :

Petitioner	: Mr. P.K. Das, Advocate
Respondent nos. 1 - 4	: Mr. H.K. Das, Standing Counsel, Gauhati High Court
Respondent no. 5	: Mr. P. Mahanta, Advocate
Date of Hearing, Judgment & Order	: 05.03.2024

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

In the present writ petition instituted under Article 226 of the Constitution of India, the petitioner has assailed an Order bearing no. 183 passed under Memo no. DJK.1-1/2021/1653-58 dated 29.11.2021 by the respondent no. 3 whereby the respondent no. 5 has been promoted to the post of Civil Sheristadar in the office of the Civil Judge, Kokrajhar with effect from 01.12.2021.

2. The relevant and necessary facts for the purpose of consideration of the challenge made herein can be expository, briefly, as follows :-

2.1. The petitioner was initially appointed as a Lower Division Assistant [LDA] in the establishment of District & Sessions Judge, Kokrajhar and he joined his service on 23.05.1990. As the petitioner joined later in the post of Lower Division Assistant [LDA] than few other appointees from the same recruitment process, his position in the Gradation List in the post of LDA was shown at a lower position than them. For the purpose of recruitment to those posts of LDA,

the selection process was undertaken in the year 1990 and on completion of the selection process, a select list was prepared and published on 20.04.1990. In the said select list, the name of the petitioner appeared at serial no. 2. By an Order dated 23.04.1990, few of the selected candidates from the said select list whose merit positions were lower than the petitioner in the select list, were appointed as Lower Division Assistants [LDAs] but the case of the petitioner was not considered for appointment on 23.04.1990 on the ground that there was some objection raised regarding the involvement of the petitioner in a criminal case. A writ petition, Civil Rule no. 859/1990 was preferred previously by the petitioner, contending that he had been acquitted by the appellate court's judgment and order passed in the criminal proceedings registered against him. By the Judgment and Order dated 16.05.1990 rendered in the said writ petition, Civil Rule no. 859/1990, the respondent no. 3 was directed to give appointment to the petitioner and the appointment of the petitioner in the post of LDA was accordingly made on 23.05.1990.

2.2. When in an inter-se seniority list of incumbents holding the post of LDA was provisionally circulated by the establishment, the position of the petitioner was shown below the other appointees who were appointed pursuant to the Order dated 23.04.1990. Aggrieved thereby, the petitioner preferred another writ petition, W.P.[C] no. 1959/2000. By a Judgment and Order dated 21.05.2003 rendered in the writ petition, W.P.[C] no. 1959/2000, it was *inter alia* observed that the petitioner was entitled to be appointed at least from the date on which the other selected candidates from the select list dated 20.04.1990 were appointed and the petitioner would be senior to the other appointed candidates in view of his higher merit position in the select list.

Remedial measures were accordingly directed.

2.3. Pursuant to the Judgment and Order dated 21.05.2003, the respondent no. 3 passed an Order dated 25.08.2003 by placing the petitioner above four other appointees in the posts of LDA, who were appointed on 23.04.1990 and accordingly, the petitioner was also granted all the consequential benefits. By an Office Order dated 25.08.2004, the petitioner was promoted to the post of Upper Division Assistant [UDA] in the establishment of the respondent no. 3. By a subsequent Office Order no. 32 dated 18.09.2004, the respondent no. 3 had ordered correction in respect of the seniority position of the petitioner in the Gradation List of the establishment and as per the said Order, the petitioner's promotion to the post of UDA was given retrospective effect from 27.07.2000.

2.4. When there arose a vacancy in the post of Civil Sheristadar in the office of the Civil Judge, Kokrajhar, the respondent no. 3 constituted a Selection Board for the purpose of considering the incumbents in the feeder cadre of Upper Division Assistant [UDA] for promotion to the said vacant post of Civil Sheristadar. The Selection Board held its Meeting on 26.11.2021 and in the Meeting held on 26.11.2021, the Selection Board recommended the name of the respondent no. 5 for promotion to the post of Civil Sheristadar in the office of the Civil Judge, Kokrajhar. The petitioner was one of the incumbents in the feeder cadre whose case was considered along with two others including the respondent no. 5. Aggrieved by and dissatisfied with the impugned Order dated 29.11.2021, the petitioner has preferred the instant writ petition challenging the Order of promotion made in favour of the respondent no. 5.

3. I have heard Mr. P.K. Das, learned counsel for the petitioner; Mr. H.K. Das, learned Standing Counsel, Gauhati High Court [GHC] for the respondent nos. 1 – 4; and Mr. P. Mahanta, learned counsel for the respondent no. 5.

4. The petitioner has projected that the petitioner was on earned leave for a period of 14 days from 17.11.2021 to 30.11.2021. When after the leave period the petitioner joined his service, the petitioner was informed that by the impugned Order dated 29.11.2021, the respondent no. 5 whose position was lower than the petitioner in the Gradation List, was promoted as Civil Sheristadar in the office of the Civil Judge, Kokrajhar by the respondent no. 3. Aggrieved by the said impugned Order of promotion, the petitioner stated to have submitted a Representation before the respondent no. 3 on 29.11.2021. It was only thereafter, the petitioner was provided with a copy of the Annual Confidential Report [ACR] for the year 2020 wherein the petitioner was given an average grade. Aggrieved by the average grade given in the ACR for the year 2020, the petitioner submitted another Representation on 08.12.2021 before the respondent no. 2. It is the contention of the petitioner that neither the Selection Board gave any prior notice with regard to the process of promotion nor appearances of the candidates before the Selection Board for any interview process were called for. It is the contention of the petitioner that as per Rule 6[3] of the Assam District & Sessions Judge Establishment [Ministerial] Service Rules, 1987, the criterion for promotion from the post of Upper Division Assistant [UDA] to the post of Civil Sheristadar in the office of the Civil Judge-cum- Assistant Sessions Judge is 'seniority-cum-merit'. But, the criterion of 'seniority-cum-merit' was not followed while giving promotion to the respondent no. 5 and depriving the petitioner from being promoted despite the fact that the

petitioner was senior to the respondent no. 5 in service.

5. The respondents have contested the case of the petitioner by filing counter affidavits. The respondent no. 5 in the counter affidavit has averred that the Selection Board considered the cases of three Upper Division Assistants [UDAs] including the petitioner and the respondent no. 5, and it was after consideration of relevant service records including the available ACRs of the previous years, the Selection Board recommended the name of the respondent no. 5 for promotion in its Meeting held on 26.11.2021. It has been highlighted that in the ACR of the petitioner for the year 2020, a copy of which was furnished to the petitioner on 06.12.2021, contained an adverse remark, regarding his dishonesty, with grading as average. But, at a later point of time, the remark regarding dishonesty was expunged. But the grading remained as average and the same has not changed.

6. The official respondents have brought on records the details of a criminal prosecution involving the petitioner in that the petitioner had faced a criminal trial in connection with a crime case, Kokrajhar Police Station Case no. 558/2017 registered for offences under Sections 341/325/294, Indian Penal Code [IPC]. The charge against the petitioner was of causing grievous hurt to an employee of the same establishment. The fellow employee submitted a complaint in the connection with the said incident before the respondent no. 3. When the said complaint stood forwarded to the Officer In-Charge, Kokrajhar Police Station, a case was registered and investigated into and after completion of investigation, the Investigating Officer of the case submitted a charge sheet against the petitioner finding a *prima facie* case for the offences under Sections

341/323/294, IPC. In the trial of G.R. Case no. 896/2017, arising out of Kokrajhar Police Station Case no. 558/2017, the trial court of learned Additional Chief Judicial Magistrate, Kokrajhar after trial, found the petitioner guilty of the charge under Section 323, IPC. By a Judgment and Order dated 03.10.2018, the learned trial court convicted the petitioner under Section 323, IPC and sentenced him to pay a fine of Rs. 1,000/-, in default of payment of fine, to undergo simple imprisonment for 1 [one] month. When the matter was taken forward by way of appeal by the petitioner before the Sessions Judge, Kokrajhar, the criminal appeal was dismissed on contest. However, a modification in the sentence part was made by the appellate court by releasing the petitioner, that is, the appellant therein on probation under Section 360, Code of Criminal Procedure, 1973 ['CrPC' or 'the Code', for short] after admonition. After his conviction in the criminal case, the respondent no. 3 as the Disciplinary Authority drew a departmental proceeding, Departmental Proceeding no. 01/2019, initiated on the basis of the conviction of the petitioner, and the departmental proceeding, Departmental Proceeding no. 01/2019 was disposed of without inflicting any sort of penalty upon the petitioner. In the final order passed in Departmental Proceeding no. 01/2019, the Disciplinary Authority had, however, gave caution to the petitioner to avoid repeating similar kind of incident in future during his service career.

7. By drawing attention to such previous events, it has been urged on behalf of the official respondents that when the Selection Board considered the matter of promotion to the post of Civil Sheristadar on 26.11.2021, the Selection Board after due consideration of the cases of all the persons in the zone of consideration and the materials on record, had found the petitioner not suitable

for promotion to the post of Civil Sheristadar. The Selection Board finding the respondent no. 5 eligible, promoted him by the impugned Order dated 29.11.2021.

8. I have given due consideration to the submissions of the learned counsel for the parties and I have also perused the materials brought on record by the parties through their pleadings.

9. The Assam District & Sessions Judges Establishment [Ministerial] Service Rules, 1987 [hereinafter referred to as 'the Rules, 1987' or 'the 1987 Rules', for easy reference], framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, regulate and govern the matters of recruitment and conditions of service of persons appointed to the Assam District & Sessions Judge Establishment [Ministerial] Service. As per Rule 2[1], 'Appointing Authority' means the District & Sessions Judge. Rule 2[3] has provided that 'District & Sessions Judge Establishment' means and includes all non-gazetted ministerial staff in the Office of the District & Sessions Judge, Additional District & Sessions Judge, Assistant District & Sessions Judge, Special Judge and Munsiffs of the District. As per Rule 2[5], 'Member of the Service' means a member of the Assam District & Sessions Judges Establishment [Ministerial] Service and as per Rule 2[10], 'Service' means the Assam District & Sessions Judges Establishment [Ministerial] Service.

10. The categories of posts and cadres in the Assam District & Sessions Judge [Ministerial] Service are found mentioned in Rule 3 of the 1987 Rules. Rule 3 has provided as under : -

Service 3.

[1] The Service shall comprise of the following categories of Posts :–

- [i] Sheristadar of District and Sessions Judge.
- [ii] Sheristadar of Additional District and Sessions Judge.
- [iii] Sheristadar of Assistant District and Sessions Judge.
- [iv] Head Assistant.
- [v] Supervisory Assistant / Sheristadar of Munsiff / Upper Division Assistant.
- [vi] Lower Division Assistant.

[2] Each of the categories of posts in sub-rule [1] shall form an independent Cadre. Members of a lower cadre shall have no claim for appointment to any of the higher cadres except in accordance with the provisions made in these rules.

11. The promotion to the post of Sheristadar of Assistant District and Sessions Judge is governed by the provisions of sub-rule [3] of Rule 6 of 1987 Rules. Sub-rule [3] of Rule 6 has inter alia prescribed that the post of Sheristadar is to be filled up by promotion from amongst the Upper Division Assistants [UDAs] of the District & Sessions Judges Establishment [Ministerial] concerned, on the basis of 'seniority-cum-merit', who have rendered not less than 7 [seven] years of service in the District & Sessions Judges Establishment [Ministerial] concerned out of which at least 3 [three] years shall be continuous service as Upper Division Assistant [UDA] on the 1st day of the year in which the promotion is made. The Note appended to sub-rule [3] of Rule 6 has provided that for the purpose of promotion from the post of Upper Division Assistant [UDA], the District & Sessions Judge shall prepare a select list at the beginning

of each year taking into account the number of vacancies likely to occur during the year in question. The District & Sessions Judge shall associate the Additional District & Sessions Judge, Assistant District & Sessions Judge and Munsiff in the selection process. The select list is to remain valid for 1 [one] year from the date of recommendation of the Selection Board.

12. Rule 9 has provided for a Gradation List and it states that a Gradation List of the staff of the amalgamated establishment is to be prepared every year and the same shall be approved by the District & Sessions Judge concerned and is to be published once a year. As regards the matter of seniority in the cadre of Upper Division Assistant [UDA], it is stipulated in sub-rule [ii] of Rule 12 that in the Upper Division Assistant [UDA] [including Sheristadar of Munsiff] cadre, the seniority shall be according to the position in the select list from which the promotion to posts of Upper Division Assistant [UDA] is made. Thus, the matters regulating recruitment and conditions of service of the petitioner and the respondent no. 6 are regulated and governed by the provisions of the Rules, 1987.

13. It transpires from the Minutes of the Meeting of the Selection Board, held on 22.01.2019, that the Selection Board considered the matter of promotion to the post of Sheristadar in the office of the Civil Judge-cum-Assistant Sessions Judge, Kokrajhar but the matter was deferred by taking note of the fact that the petitioner who was then holding charge of the said post, was served with a show cause notice in view of his conviction in G.R. Case no. 896/2017 by the Judgment and Order dated 03.10.2018.

14. It needs iteration, at the cost of repetition, that by the Judgment and Order dated 03.10.2018 passed in G.R. Case no. 896/2017, the trial court of learned Additional Chief Judicial Magistrate, Kokrajhar after trial, found the petitioner guilty of the charge under Section 323, IPC. The petitioner was, therefore, convicted for the offence under Section 323, IPC and was sentenced to pay a fine of Rs. 1,000/-, in default of payment of fine, to undergo simple imprisonment for [one] month. Though the charges were also for the offences under Section 341 and Section 294, IPC, the petitioner was acquitted of those charges. The learned trial court was, however, not inclined to give the petitioner the benefit of probation as because he was a service holder and an employee of the Judicial Department, who was found to have acted in haste and in the most irresponsible way and used physical force upon his colleague.

15. The petitioner had thereafter, preferred an appeal under Section 374[3], CrPC and the said appeal was registered and numbered as Criminal Appeal no. 18/2018. The appellate court of learned Sessions Judge, Kokrajhar dismissed the appeal finding no illegality in the Judgment and Order rendered by the learned trial court. The criminal appeal was dismissed on contest, thereby, upholding the Judgment and Order of conviction and sentence passed by the learned trial court in G.R. Case no. 896/2017. The learned appellate court had, however, observed by taking into consideration the circumstances and other aspects of the matter under which the offence was found to have been committed by the appellant, that is, the petitioner that the sentence imposed on the petitioner was not justified and the case was a fit one to allow the petitioner to be released on probation under Section 360, CrPC after admonition. Accordingly, the learned appellate court made a slight modification in the

sentence part and the petitioner was thereby, released on probation under Section 360, CrPC after admonition.

16. It is also pertinent to mention that a departmental proceeding being Departmental Proceeding no. 01/2019, was drawn up immediately after the conviction of the petitioner in G.R. Case no. 896/2017. After dismissal of the criminal appeal, Criminal Appeal no. 18/2018 on 30.05.2019, the Disciplinary Authority decided to proceed with the departmental proceeding. In the departmental proceeding, two charges were framed against the petitioner finding his involvement in the commission of the offence committed upon his office colleague as acts of misconduct under the Assam Services [Discipline & Appeals] Rules, 1964. In the course of the departmental proceeding, four witnesses were examined before the Enquiry Officer who, in turn, submitted an Enquiry Report giving his opinion in respect of both the charges. By taking into consideration the findings recorded in the Enquiry Report, the Disciplinary Authority had observed that such kind of behavior of an employee of the Judicial establishment was not acceptable and the petitioner was cautioned to avoid himself from repeating such kind of incident in future during his service career. The departmental proceeding was disposed of without, however, imposing any penalty upon the petitioner but with a caution, as mentioned above.

17. From the proceeding of the Selection Board Meeting, it is found that they had considered the cases of three persons, that is, the petitioner, the respondent no. 5 and one Kunja Bihari Roy, all of whom were serving as UDAs at the relevant point of time. The Selection Board stated to have considered the ACRs and the seniority of the candidates and the Selection Board in its

proceeding had observed that they did not find the petitioner suitable for promotion to the Civil Sheristadar in the office of the Civil Judge, Kokrajhar in view of his ACRs, though he was the senior most. The proceeding further observed that the respondent no. 5 was the next senior person in the cadre of UDA. The Selection Board unanimously recommended the respondent no. 5 for promotion to the post of Civil Sheristadar in the office of the Civil Judge, Kokrajhar. It is not very much clear from the proceeding of the Meeting of the Selection Board as to what materials were considered by the Selection Board for the purpose of recommending the promotion. The materials placed on record by the official respondents go to indicate that the entire records of ACRs of the previous 5 [five] years for each of the employees were not available before the Selection Board. If for some years, the ACRs of the petitioner were available, the ACRs for some years were not available. The ACRs in respect of the respondent no. 5 were available for few years and not available in respect of few years. From such materials, it transpires that the records of the services of the incumbents in the cadre of UDA in the establishment of the respondent no. 3 were not properly maintained and as such, it is difficult for this Court to arrive at a definite opinion as regards the consideration of the matter of promotion entirely on the basis of properly maintained records.

18. One of the contentions advanced on behalf of the official respondents is that the fact of release of the petitioner on probation of good conduct under Section 360, CrPC did not obliterate the order of conviction passed by the learned trial court, which was, later on, upheld also by the appellate court. To appreciate such contention, it is necessary to look into the provisions contained in sub-section [1] of Section 360, CrPC. As per sub-section [1] of Section 360,

CrPC, when any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period [not exceeding three years] as the court may direct, and in the meantime to keep the peace and be of good behavior; provided, that where any first offender is convicted by a Magistrate of the Second Class not specially empowered by the High Court and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section [2]. Sub-section [4] of Section 360 has provided that an order to release on probation of good conduct can also be made by any Appellate Court. Thus, from the provisions contained in Section 360[1] and Section 360[4] of the Code, it is evident that a court of competent jurisdiction including the appellate court can release a person on probation of good conduct instead of sentencing him at once to any punishment, only if it is found expedient by the court, after having regard to the age, character or antecedent of the offender.

19. An order of release on probation comes into existence only after the accused is found guilty of an offence and is convicted for the offence. Thus, the conviction of the accused after the finding of the Court that he is guilty is not washed off at all because that is the sine qua non for the order of release on probation of the offender. The order of release on probation is merely in substitution of the sentence imposed by the court after trial. This has been made permissible by the Statute with a humanist point of view in order to reform some categories of offenders and to prevent them from becoming hardened criminals. The provisions of Section 360[1] of the Code, extracted above, clearly shows that the control of the offender is retained by the criminal court and where it is satisfied that the conditions of the bond have been violated by the offender who has been released on probation, the court can sentence the offender for the original offence. This clearly indicates that the factum of guilt on the criminal charge is not swept away merely with the passing of the order releasing the offender on probation. It has been held in Divisional Personnel Officer, Southern Railway vs. T.R. Chellappan, [1976] 3 SCC 190], that the stigma continues and the finding of the misconduct resulting in conviction must be treated to be a conclusive proof. It is settled that a trial court or an appellate court while invoking the provisions relating to release on probation of good conduct does not deal with the conviction as it only deals with the sentence which the offender has to undergo. In the case of release on probation of good conduct, the court instead of sentencing the offender, releases him on probation of good conduct. As a result, the conviction remains untouched and the stigma of conviction is not obliterated. An offender is released on probation with the condition that if the condition of the bond is

broken by the offender during the period of probation, the court can sentence the offender for the original offence. The petitioner in the case in hand has maintained conspicuous silence as to for what period the petitioner had executed the bond for his release on good conduct pursuant to the Order dated 30.05.2019 passed by the learned appellate court.

20. For the purpose of promotion to the post of Civil Sheristadar in the court of Civil Judge, Kokrajhar from the post of UDA, the criteria is seniority-cum-merit as per the 1987 Rules. But while considering the case of a candidate within the zone of consideration, the Selection Board/the Appointing Authority has the discretion to consider the fact as to whether such a candidate considering his antecedents and/or past records etc., should be promoted to discharge the duties and responsibilities of the higher post.

21. Mr. Das has referred to the decisions of the Hon'ble Supreme Court of India in Union of India and others vs. K.V. Jankiraman and others, reported in [1991] 4 SCC 109, and Ram Ashish Dixit vs. Chairman, Purvanchal Gramin Bank Limited and another, reported in [2013] 6 SCC 309, wherein the decision of K.V. Jankiraman [supra] has also been referred to. It has been observed in K.V. Jankiraman [supra] to the effect that an employee cannot be rewarded by promotion as a matter of course as an employee has no right to promotion. An employee only has a right to be considered for promotion and promotion to a post depends upon several circumstances. It has gone on to observe as follows :-

29....An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon

several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified...

22. The principle deciphered from K.V. Jankiraman [supra] is that to qualify for promotion, the least that is expected of an employee is to have an unblemished record. After referring to K.V. Jankiraman [supra], the Hon'ble Supreme Court of India in Ram Ashish Dixit [supra] has also observed that the appellant therein did not have any right to be promoted automatically on completion of minimum length of service as he had to be declared suitable for promotion on the criteria applicable. The appellant therein was all along facing the departmental proceedings whilst his case for promotion, along with other eligible candidates in his category, was being considered for promotion in the consecutive years. The criterion for promotion therein was seniority-cum-merit. The Hon'ble Supreme Court of India has observed that since the appellant thereafter was punished for misconduct, the same would form a part of his record in of service which would be taken into consideration whilst adjusting his

suitability on the criteria of seniority-cum-merit. If on such assessment of his record of service the appellant is not promoted, it cannot be said to be by way of punishment. It would be a non-promotion on account of the appellant not reaching a suitable standard to be promoted on the basis of the criteria. Finding no merit in the civil appeal, the Hon'ble Supreme Court dismissed the civil appeal.

23. Reverting back to the facts of the case in hand, it is established from the materials on records, the stigma of conviction pursuant to the Judgment and Order dated 03.10.2018 of the trial court and the Judgment and Order dated 30.05.2019 of the appellate court had remained and the petitioner was released by the learned Appellate Court after dismissal of the appeal, only on probation of good conduct under Section 360, CrPC, that too, on admonition. Such release of the petitioner on good conduct required execution of a bond with the undertaking that the offender would exhibit good conduct during the period of the bond. If during the period of the bond the petitioner violates any of the conditions of the bond, the trial court can revive the sentence. The fact of conviction remains for the period for which the petitioner was released on probation of good conduct on execution of a bond. The fact of conviction of the petitioner is one which cannot be ignored. The said factor has been stated to have taken into consideration by the Selection Board as well as by the Appointing Authority to decide as to whether the petitioner should be promoted to discharge the higher duties and responsibilities associated with the higher post. The question arose at the time of consideration of the cases of the persons within the zone of consideration for promotion to the higher post of Civil Sheristadar in the office of the Civil Judge to discharge higher duties and

responsibilities in the establishment. The recommendation of the Selection Board was not in favour of the petitioner in view of his conviction and subsequent release on probation of good conduct, without the factum of guilt on the criminal charge being obliterated during the period of probation.

24. The power of judicial review under Article 226 in examining legality and validity of an order of promotion is limited. The recommendation made by the Selection Board and the discretion exercised by the Appointing Authority in the case, are found to be for a clean and efficient administration and the same were taken by consideration of the service records of the candidates within the zone of consideration. It is submitted at the Bar that the petitioner has, in the meantime, retired from service on reaching the age of superannuation.

25. In the obtaining facts and circumstances of the case, the Court is not persuaded to arrive at a view that the process of assessment by the Selection Board as well as by the Appointing Authority for considering the matter of promotion to the higher post of Civil Sheristadar in the office of the Civil Judge, Kokrajhar from the feeder cadre to UDAs is liable to be interfered with either on account of any biasness or arbitrariness or irrationality. Considering the matter in its entirety, this Court is of the view that the writ petition has failed to make out any case for interference and consequently, the writ petition is liable to be dismissed. It is accordingly dismissed. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant