

GAHC010139132021



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

Case No. : WP(C)/2472/2022

MRS. RITA BEYPI
W/O DHARMAKANTA DAIMARY
R/O 10 AP BN
2ND GATE
NEAR MRITYUNJOY SIKH MANDIR
KAHILIPARA
GUWAHATI
ASSAM-781019

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
DEPARTMENT OF EDUCATION (HIGHER)
DISPUR GUWAHATI-6

2:THE DIRECTOR OF HIGHE REDUCATION
ASSAM
KAHILIPARA
GUWAHATI
DIST-KAMRUP(M)
ASSAM
PIN-781019

3:THE DEPARTMENTAL PROMOTION COMMITTEE
REPRESENTED BY ITS CHAIRMAN
O/O THE PRINCIPAL
KAMAKHYA RAM BARUAH GIRLS COLLEGE
FATASIL AMBARI
P.O.-BHARALUMUKH
P.S.-FATASIL AMBARI
GUWAHATI
DIST-KAMRUP(M)
PIN-781009

4:THE GOVERNING BODY OF THE KAMAKHYA RAM BARUAH GIRLS

COLLEGE
REPRESENTED BY ITS PRESIDENT
K.R.B. GIRLS COLLEGE
FATASIL AMBARI
P.O.-BHARALUMUKH
P.S.-FATASIL AMBARI
GUWAHATI
DIST-KAMRUP(M)
PIN-781009

5:THE PRINCIPAL
KAMAKHYA RAM BARUAH GIRLS COLLEGE
FATASIL AMBARI
P.O.-BHARALUMUKH
P.S.-FATASIL AMBARI
GUWAHATI
DIST-KAMRUP(M)
PIN-781009

6:MANTU MEDHI
S/O ASHWINI MEDHI
R/O KALAPAHAR
LUTUMA
HOUSE NO. 52
P.O.-BINOVA NAGAR
P.S.-FATASIL AMBARI
DIST-KAMRUP(M)
ASSAM
PIN-781018

7:RABINDRA NATH DAS
R/O SITALA ENCLAVE
BLOCK-B/5
KHARGULI
GUWAHATI
ASSAM
PIN-781004 AND FORMERLY THE PRINCIPAL OF THE KAMAKHYA RAM
BARUAH GIRLS COLLEGE

Advocate for : MR. N BARUAH
Advocate for : SC HIGHER EDU appearing for THE STATE OF ASSAM AND 6
ORS

**:::BEFORE:::
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 21.03.2024
Date of Judgment & order: 21.03.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. N. Baruah, learned counsel, appearing on behalf of the petitioner. Also heard Mr. S. Das, learned standing counsel, Higher Education Department, appearing on behalf of Respondents No. 1, 2 & 3; Mr. R. M. Deka, learned counsel ,appearing on behalf of Respondent No. 6; and Ms. Somila, learned counsel, appearing on behalf of Respondent No. 7.

2. The petitioner by way of instituting the present proceedings, has assailed the promotion as effected in the case of the Respondent No. 6 to the cadre of Senior Assistant in Kamakhya Ram Baruah Girls College, Bharalumukh, vide an order, dated 21.05.2015. The petitioner has also assailed the seniority list as prepared by the college authorities for the cadre of Senior Assistant of the said college wherein, the petitioner was placed below the Respondent No. 6, herein.

3. The brief facts requisite for adjudication of the issues arising in the present proceedings, are noticed hereinbelow:

The petitioner was initially appointed as a Library Bearer on 01.02.2001

and thereafter, her services was confirmed on 13.11.2003, as a non-teaching staff of the said college. Thereafter, along with other staff of the said college; the services of the petitioner was provincialized under the provisions of Assam College Employees(Provincialization) Act, 2005. Thereafter, the petitioner was promoted as a Library Assistant vide an order, dated 28.02.2011. The Respondent No. 6 was appointed as a direct recruit Junior Assistant in the said college on 14.03.2012.

A vacancy arising in the cadre of Senior Assistant in the said college, a process was initiated by the college authorities for having the cases of the incumbents in the cadre of Junior Assistant and allied cadres considered for promotion against the said post of Senior Assistant now lying vacant in the said college. Accordingly, options were sought for, from the incumbents in the feeder cadre including from the petitioner, herein.

The petitioner, on 14.06.2014, submitted an application before the Principal of Kamakhya Ram Baruah Girls College, intimating the latter that although she was eligible for being considered for promotion against the post of Senior Assistant, however, on account of some personal inconvenience, she was relinquishing her claim for the said post at that relevant point of time and had also stated that it was hoped that she would be considered for appointment against the second post of Senior Assistant as and when the same becomes vacant. Basing on the said relinquishment as made by the petitioner, herein, the Governing Body of the college in its meeting held on 17.06.2014, proceeded to resolve to promote the Respondent No. 6, herein, to the post of Senior Assistant

of the said college. The Governing Body in the said resolution as adopted in its meeting held on 17.06.2014, noticed the fact that the petitioner, herein, had submitted an application foregoing her promotion to the post of Senior Assistant against the vacancy as available in the said college. The said resolution of the Governing Body of the college, was thereafter placed before the Director, Higher Education Department, Assam, and the Director, Higher Education Department, Assam, on accepting the said resolution of the Governing Body of the college; proceeded vide order, dated 21.05.2015, to promote the Respondent No. 6, herein, to the post of Senior Assistant against the vacant post so available.

Thereafter, it is seen that another vacancy had occasioned in the said college and the petitioner herein, had submitted an application seeking consideration of her case for promotion against the said post of Senior Assistant. The said post of Senior Assistant had occasioned on account of resignation of the incumbent therein, w.e.f. 31.12.2014. Accordingly, the Governing Body of the college, in its meeting held on 02.05.2015, proceeded to resolve to promote the petitioner, herein, to the vacant post of Senior Assistant. The proposal on being placed before the Director, Higher Education Department, Assam; the same was examined and thereafter, vide order, dated 10.06.2015, the petitioner, herein, was promoted to the post of Senior Assistant becoming vacant on account of resignation of one Shri Pankaj Tamuli on 31.12.2014. The petitioner accordingly accepted the said appointment and joined against her such post. It is seen that thereafter, on 21.07.2021, the college authorities prepared a seniority list of the incumbents in the cadre of Senior Assistant and therein, the Respondent No. 6 was placed above the name of petitioner reckoning the date of their respective joining as Senior Assistant in the college.

It is also seen that thereafter, the petitioner, herein, had approached the college authorities praying for consideration of her case for promotion against the post of Head Assistant as becoming available in the said college. Basing on the said application of the petitioner; the college authorities constituted the Departmental Promotion Committee (DPC) for considering the case of the petitioner. It is further seen that the Departmental Promotion Committee(DPC) in its meeting held on 24.08.2021, considered only the case of the petitioner, herein, and on such consideration made; proceeded to recommend the name of the petitioner, herein, to the post of Head Assistant. Thereafter, the report of the Departmental Promotion Committee(DPC) was discussed in the meeting of the Governing Body of the said college held on 24.08.2021, and on discussion, the said recommendation as made in favour of the petitioner, herein, was so accepted and accordingly, it was required to be placed before the Director, Higher Education Department, Assam.

It is to be noted that at this stage; the Respondent No. 6, herein, as petitioner, had instituted WP(c)4428/2021, assailing the consideration as made in the case of the petitioner, herein. This Court vide order, dated 06.09.2021, on appreciating the facts involved and also noticing that the Respondent No. 6, herein, was senior to the petitioner; proceeded to direct that until further orders; the resolution of the Governing Body of the college, dated 24.08.2021, recommending the name of the petitioner, herein, for promotion against the post of Head Assistant, shall not be given effect to. The present proceedings has been instituted by the petitioner, herein, after the passing of the said order, dated 06.09.2021, in WP(c)4428/2021.

4. A perusal of the pleadings as brought on record by the petitioner, would reveal that the petitioner has contended that the communication as issued by her on 14.06.2014, was so issued by her succumbing to the pressure exerted upon her by the Respondent No. 7 i.e. the then Principal of Kamakhya Ram Baruah Girls College. It is contended by the petitioner that the said communication was not submitted by her on her own free will but was so extracted from her under duress and harassment by the Respondent No. 7.

5. The Respondent No. 7 has entered appearance in the matter and has filed an affidavit-in-opposition and therein, has categorically denied the allegation as levelled against him by the petitioner in the writ petition. The Respondent No. 7 has submitted that the application as submitted by the petitioner was placed before the Governing Body of the said college and the Governing Body had duly considered the same before recommending the name of the Respondent No. 6, herein, for promotion to the post of Senior Assistant. It is further submitted by the Respondent No. 7 that the allegations as now levelled against him by the petitioner were never so levelled at any point of time before the post of Head Assistant had fallen vacant and the allegations as now levelled against him, has been so levelled to cover up the act on her part in preferring the communication, dated 14.06.2014, foregoing her promotion to the post of Senior Assistant as was existing in the said college at that point of time.

6. It is to be noted that the contentions as made by the Respondent No. 7 in his affidavit-in-opposition, has not been countered by the petitioner, herein, by filing a rejoinder affidavit, thereto.

7. The petitioner, in the present proceedings, has assailed the promotion of the Respondent No. 6, herein, after a long lapse of around 7 years. The promotion of the Respondent No. 6, herein, was effected on 21.05.2015, and the present proceedings was instituted by the petitioner, herein, only on 31.03.2022. It is trite law that the delay so occasioning in assailing the said promotion goes to the root of the matter and on the ground of delay and laches; the instant writ petition is liable to be dismissed.

8. The only contention raised by the petitioner herein, is that the letter, dated 14.06.2014, as preferred by her foregoing her promotion to the post of Senior Assistant available in the said college, was so extracted from her under duress and harassment by the Respondent No. 7 and the said letter was not so submitted by the petitioner, herein, on her own free will. It is seen that after the promotion of the Respondent No. 6, herein, as well as the petitioner; the respondent authorities had published a seniority list in the cadre of Senior Assistant and therein also; the Respondent No. 6 was placed above the name of the petitioner, herein. The said seniority list was also not assailed by the petitioner, immediately, after publication of the same. There is no material brought on record to demonstrate that after the promotion of the Respondent No. 6, herein, basing on the letter, dated 14.06.2014, as submitted by the petitioner, the petitioner had brought to the notice of either the college authorities and/or the authorities of the Higher Education Department that she was forced to forego the said promotion under duress and harassment from the Respondent No. 7.

9. The said aspect of the matter not being raised by the petitioner, herein, at any point of time, proximate to the submission of the said letter, dated 14.06.2014, and/or promotion of the said Respondent No. 6, herein, on 21.05.2015; the said issue cannot be permitted, at this late stage, to be raised by the petitioner only with a view to claim her promotion to the post of Head Assistant of the college now becoming available in the said college.

10. It is to be noted that the provisions of Rule 17(b) of the Assam College Employees(Provincialization) Rules, 2010, mandates that in the event, the persons are appointed on recommendation of the selection committee in different batches, the persons recommended in the earlier batch, shall be senior to the persons who are recommended in the later batches.

11. In the case on hand; while the Respondent No. 6, herein, was promoted as a Senior Assistant in terms of the recommendations made by the Governing Body of the college on 17.06.2014; the petitioner, herein, was so promoted basing on a subsequent recommendation of the Governing Body of the said college, dated 02.05.2015, and accordingly, the Respondent No. 6, herein, having been recommended and promoted basing on a process initiated prior in point of time than that of the process which led to the promotion of the petitioner, herein; the Respondent No. 6 was rightly denoted to be senior to the petitioner in the seniority list as published by the college authorities for the cadre of Senior Assistant.

12. In view of the conclusions as reached hereinabove and this Court having

held that the promotion as effected in the case of the Respondent No. 6, herein, does not suffer from any infirmity and the ground as assigned by the petitioner for assailing such promotion of the Respondent No. 6, herein, to the post of Senior Assistant, being not acceptable; this Court would proceed to uphold the promotion as effected in the case of the Respondent No. 6, herein, vide the order, dated 21.05.2015. Consequently, the seniority list, dated 27.07.2021, as prepared by the college authorities for the post of Senior Assistant, available in the said college also, does not call for any interference.

13. In the above view of the matter; this writ petition is held to be devoid of any merit and the same accordingly stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant