

(2008) 02 GAU CK 0004

Gauhati High Court

Case No: Writ Petition (Civil) No. 6436 of 2007

Anil Kumar Singha

APPELLANT

Vs

Gauhati High Court and ors.

RESPONDENT

Date of Decision: Feb. 6, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226, 226
- Gauhati High Court Services (Appointment, Conditions of Service and Conduct) Rules, 1967 - Rule 7II(iii), 7II(iii)

Citation: (2008) 4 GLR 338

Hon'ble Judges: Jasti Chelameswar, C.J. and Asok Potsangbam, J

Bench: Division Bench

Advocate: A.K.Purkayastha, B.Das, B.Sinha, R.Islam, Advocates appearing for Parties

Judgement

Asok Potsangbam, J

1. Heard Mr. A.K. Purkayastha, learned counsel for the petitioner and also heard Mr. B. Das, learned standing counsel, Gauhati High Court.

2. In this petition, the prayers and reliefs sought for by the petitioner are manifold and this is evident from the prayers, which read as follows :

"In the premises, it is most humbly prayed that this hon'ble court would be pleased to admit this petition, call for the records and issue rule calling upon the respondents to showcause as to why :

(A) An appropriate writ shall not be issued declaring the rule 7II(iii) insofar as appointment to the post of L.D. Assistant by way of promotion from among the Graduate Typist having 4(four) years experience as salaried typist is ultra vires.

(B) A writ in the nature of certiorari shall not be issued in setting aside the rule 7II(iii) of the Gauhati High Court (The High Court of Assam, Nagaland, Meghalaya,

Manipur, Tripura, Mizoram and Arunachal Pradesh) Service (Appointment, Condition of Service and Conduct) Rules, 1967 insofar as the appointment to the post of the L.D. Assistants by way of promotion from among the Graduate Typist having 4(four) years experience as salaried typist.

(C) A writ in the nature of certiorari shall not be issued setting aside the order vide Memo No. HC.V66/2004/287438S5/Estt. Dated 16.10.2004 in respect of the respondent Nos. 4 to 8 and order vide Memo No. HC.V17/2002/25841638/Estt. dated 25.7.2007 in respect of the respondent No. 4.

(D) A writ in the nature of Mandamus shall not be issued to amend the rule 7II(iii) of the Gauhati High Court (The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh) Services (Appointment, Condition of Service and Conduct) Rules, 1967 subject to the provision of Law of the State Legislature with retrospective effect providing only the Senior Grade Typist of the Principal Seat of the Gauhati High Court establishment shall be considered for promotion to the 30 per cent vacancies of L.D.A./Junior Administrative Assistant.

(E) A writ in the nature of Mandamus shall not be issued considering promotion of the petitioner to the post of L.D.A./Junior Administrative Assistant and U.D.A./Senior Administrative Assistant with effect from the date when the respondent No. 4 has been promoted to the said post.

(F) A writ in the nature of Mandamus shall not be issued directing the respondent No. 2 to fix inter se seniority of the petitioner over the respondent Nos. 4 to 8 in the cadre of L.D.A./Junior Administrative Assistant.

(G) Pass such further or other orders as deem fit and proper in the interest of justice and on perusal of records and after hearing the parties make the rule absolute.

AND

Pending disposal of the Rule issued further promotion of U.D.A./Senior Administrative Assistant in the Principal Seat of the Gauhati High Court establishment may be stayed.".

3. The facts of the case, as narrated above, disclose that the petitioner was appointed as extra typist by an order dated 15.5.1989 issued by the Registrar (Administration) of the Gauhati High Court and, thereafter, he was appointed as regular typist vide order dated 8.9.1993, in the establishment of the Principal Seat of the Gauhati High Court. By notification dated 19.3.2004, 59 posts of Lower Division Assistants in the establishment of the Principal Seat of the Gaulati High Court, were advertised inviting eligible candidates for filling up the same. 30 per cent of the 59 posts, which have been advertised for, were to be filled up by promotion from amongst the qualified graduate typists having four years continuous service in terms of rule 7II(iii) of the Gauhati High Court Services (Appointment, Condition of Service and Conduct) Rules, 1967.

4. Pursuant to the aforesaid advertisement dated 19.3.2004, the petitioner, a graduate typist, who had the requisite qualifying years of four years continuous service, was given a call letter dated 7.9.2004 to appear in an interview fixed on 20.9.2004 for consideration of promotion to LDA against the 30 per cent promotion quota. In the writ petition, it is admitted that the petitioner did not appear in the said interview due to some personal problem and, as such, his case could not be considered for promotion. There is nothing to indicate that the petitioner has taken any grievance against the nonconsideration of his case for promotion to LDA. The respondent Nos. 4 to 8, who appeared in the interview conducted by the High Court for filling up the post of LDA against the 30 per cent promotion quota, as mentioned above, were recommended and they were appointed as LDA along with five others vide order dated 16.10.2004 issued by the Registrar General, Gauhati High Court, Guwahati. Petitioner did not take any grievance against the order dated 16.10.2004 appointing the respondent Nos. 4 to 8, who were junior to him in the grade of typist. Subsequently, by order dated 28.6.2007, the petitioner and six others have been appointed on promotion as LDA against the 30 per cent quota for promotion in the establishment of the Principal Seat of the Gauhati High Court. In the meantime, by order dated 25.7.2007, 51 Lower Division Assistants (LDAs)/Library Assistants have been promoted to the post of Upper Division Assistants in the Principal Seat of the Gauhati High Court and, in that, Respondent No. 4 has been included as one of the promotes to the higher post of UDA, now redesignated as Senior Administrative Assistant vide notification dated 15.9.2007 issued by the Registrar General, Gauhati High Court.

5. As noticed above, the petitioner has not taken any grievance against the nonconsideration of his case by the High Court for promotion to the post of LDA in the year 2004, nor has he taken any grievance against the order dated 16.10.2004 by which the respondent Nos. 4 to 8 have been appointed as LDA, as recommended by the Selection Committee. By this writ petition dated 14.12.2007, the petitioner is now challenging the order dated 16.10.2004 under No. HC.V66/2004/28743885/Estt. appointing the respondent Nos. 4 to 8 on promotion as LDA, after more than three years. Much water has flown in the river. The petitioner is also challenging the order dated 25.7.2007 in respect of the promotion of respondent No. 4 from LDA to UDA and, that apart, the vires of the Gauhati High Court Services (Appointment, Condition of Service and Conduct) Rules, 1967, particularly rule 7II(iii) is put to challenge. In substance, the petitioner is seeking refixation of seniority/gradation list in the grade of Lower Division Assistant after quashing the order dated 16.10.2004 promoting the respondent Nos. 4 to 8 as LDA and the order dated 25.7.2007 promoting the respondent No. 4 as UDA, by reckoning his seniority in the grade of typist.

6. Assuming that the petitioner has a right to challenge the appointment of the respondent Nos. 4 to 8 as LDA, such right is hit by delay and laches inasmuch as he has slept over his right for the last more than three years during which the

respondent No. 4 had again been promoted to the higher post of UDA (Senior Administrative Assistant). It is not in dispute that all the private respondents and the writ petitioner are in the service of the Principal Seat of the Gauhati High Court and petitioner has been working in the Principal Seat since 1989 till this day and he allowed the promotion of respondent Nos. 4 to 8 to LDA for more than three years as he could not challenge the aforesaid appointment of the respondent Nos. 4 to 8 as LDA because his nonconsideration for promotion to LDA at the relevant time, was due to his own failure to appear in the interview. In fact, the petitioner has acquiesced and abandoned his right.

7. The Apex Court in *P.S. Sadasivaswamy v. State of Tamil Nadu*, (1975) 1 SCC 152 held that a person aggrieved by an order of promotion of his junior over his head should approach the court as expeditiously as possible and the observation of the Apex Court made in this regard is as follows :

"2.....A person aggrieved by an order of promoting a junior over his head should approach the court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the courts to exercise their powers under article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

8. Relying on the aforesaid judgment of the Supreme Court, a Division Bench of this Court in *State of Manipur and Others v. A. Subhas Singh*, 2006 (1) GLT 464 held that a writ petition challenging promotion and seniority of the private respondent therein after three years, without explanation of delay could not be entertained as entertaining such petition and granting the relief prayed for, would amount to unsettling many positions already settled at different grades and, as such, the writ petition was dismissed.

9. Having considered the legal position, as discussed above, and in the backdrop of the fact situation, we are of the view that the petitioner has failed to make out a case for interference of this court and, accordingly, this writ petition is dismissed. No costs.