

GAHC010224802014



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

Case No. : WP(C)/688/2014

SYED HABIBUR RAHMAN

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, DEPTT. OF
FISHERY, DISPUR, GHY- 6.

2:THE SECY. TO THE GOVT. OF ASSAM
DEPTT. OF FISHERY
DISPUR
GHY- 6.

3:THE DIRECTOR OF FISHERIES
ASSAM
MEEN BHAVAN
GOPINATH NAGAR
GHY- 16

Advocate for the Petitioner : MS.B BORA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

Date : 23-11-2023

Judgment and Order (Oral)

Heard Mr. K.K. Phukan, learned counsel appearing for the writ petitioner. I have also heard Mr. D. Nath, learned Sr. Govt. Advocate, Assam appearing on behalf of the respondents.

2. The writ petitioner herein had retired from service as In-Charge, District Fisheries Development Officer (DFDO) w.e.f. 31-12-2013. Aggrieved by the fact that the respondents did not consider his case for promotion to the post of District Fisheries Development Officer on regular basis, the petitioner has approached this Court, by filing the instant writ petition, for the second time seeking a writ of mandamus directing the respondents to consider his case for promotion.

3. Ordinarily this Court would be reluctant in entertaining a writ petition filed by an employee after his retirement, seeking the relief as prayed for. However, having regard to the peculiar facts and circumstances of the case, I am inclined to examine the matter.

4. The facts of the case, in a nutshell are that, the petitioner was originally appointed as Fisheries Extension Officer pursuant where to, he had joined the department in the year 1982. In the year 1992, the petitioner was promoted to the post of Sub-Divisional Fisheries Development Officer (SDFDO). In the year 2005, the petitioner was entrusted with the charge of District Fisheries Development Officer (DFDO), although he was not promoted to the said post on regular basis. The basic case of the petitioner is that there were vacancies available in the cadre of DFDO for being filled up by way of promotion on regular basis. Notwithstanding the same and despite the fact that the date of

superannuation of the petitioner was approaching fast, no steps were being taken by the authorities to consider his case for promotion. With the above grievance the petitioner had earlier approached this Court by filing W.P.(C) No. 5663/2013, which was disposed of by the learned Single Judge by order dated 04-10-2013 with the following direction and observation:-

“Considering the nature of grievance raised and having regard to the first approaching date of retirement of the petitioner, this writ petition is disposed of directing the respondents to consider the case of the petitioner and pass appropriate order, as expeditiously as possible but at any date ahead of his retirement.

With the above directions and observations, the writ petition stand disposed of, without however, any order as to cost.”

5. In the meantime, vide notification dated 10-10-2013 the writ petitioner, who was holding the substantive post of SDFDO and was the In-Charge, DFDO, Sivasagar, was transferred and posted as Superintendent, Fisheries Training, Joysagar. Eventually, by the order dated 30-12-2013, the claim of the petitioner was disposed of in terms of the direction of this Court issued by order dated 04-10-2013, thereby declining any relief to the writ petitioner. The operative part of the order dated 30-12-2013 is reproduced herein-below for ready reference:-

“The matter of promotion of Fishery Officers including the petitioner of the rank of Sub-Divisional Fishery Development Officer to the next higher rank is under active consideration of the Government. Despite sincere and constant efforts to clear up the anomaly in the Fishery Services and to provide promotion to the petitioner within the time set by the Hon’ble Gauhati High Court could not be finalized due to those difficulties mentioned above, which is time taking.

Hence, the matter of promotion of Syed Habibur Rahman, Sub-Divisional Fishery Development Officer, Sivasagar is hereby disposed of.”

Aggrieved by the communication dated 30-12-2013, the petitioner has been compelled to approach this Court once again by filing the instant writ petition.

6. Mr. Phukan, learned counsel for the writ petitioner has argued that there was no justifiable ground for the authorities to deny regular promotion to the petitioner to the substantive post of DFDO prior to his retirement. The learned counsel submits that the petitioner had approached this Court while he was in service and a favourable order for consideration of his case was also passed by this Court on 04-10-2013. Notwithstanding the same, the case of the petitioner was once again turned down on grounds which are wholly untenable in the eyes of law. By referring to a decision of this Court rendered in the case of ***Krishna Kumar Sharma Vs. State of Assam & Ors.*** reported in ***2017 (1) GLT 686***, Mr. Phukan submits that in view of the grounds stated in the impugned order dated 30-12-2013 this is a fit case where this Court may issue a direction to the authorities to consider the case of the petitioner afresh and give notional promotion to the post of DFDO by giving retrospective effect to such promotion from the date on which vacancies arose and also direct payment of consequential pecuniary benefits.

7. Mr. Nath, learned Sr. Govt. Advocate, Assam, on the other hand, has relied upon and referred to the affidavit-in-opposition filed by the respondent No. 2 to submit that the petitioner was not eligible for being considered for promotion to the post of DFDO since he had failed to complete the mandatory requirement of Post Graduate Training in Fishery Science in CIFRI/ CIFE or any other equivalent training recognized by the ICAR. By contending that although the petitioner had joined the Post Graduate Training Centre held at Barakpur in the year 1994-95, yet he did not complete the same and had pulled out of

the same midway by citing health reasons. Therefore, the petitioner was not eligible for being considered for promotion to the post of DFDO.

8. The said submission of Mr. Nath has, however, been countered by Mr. Phukan by referring to the order dated 20-05-1997 bearing No. FISH.225/94/32, issued by the Deputy Secretary to the Govt. of Assam, Fisheries Department to submit that the Govt. had already granted relaxation to the petitioner thus, exempting him from undergoing the training at Barakpur as per requirement of Schedule -1 of the Assam Fisheries Service (Recruitment and Promotion) Orders, 1989 and therefore, the ground urged by the learned Govt. Advocate, Assam is wholly untenable.

9. From a careful reading of the impugned order dated 30-12-2013, I find that the said order has been passed just a day before the retirement of the petitioner, primarily on two grounds. Firstly, after re-designation/ bifurcation of the post of District Fisheries Development Officers by creation of posts of Addl. District Fisheries Development Officers, there were certain anomalies coming in the way of consideration of candidates for promotion to the post of Sub-Divisional Fisheries Development Officers (SDFDO), as a result of which, no regular promotion could be given to the eligible candidates. Secondly, there was delay in regularization of the promotion given to the petitioner in the post of SDFDO. The reasons cited in the order dated 30-12-2013, in the considered opinion of this Court, cannot be treated as valid grounds to deny promotion to the petitioner. If the petitioner was eligible under the Rules/ Orders for being considered for promotion and if there were vacant post of DFDO available in the department, the respondents could not have denied promotion to him merely by citing the reason of anomalies, more so, when

there was an order of this Court directing the respondents to consider the case of the petitioner. Moreover, since the petitioner was holding the charge of the post of DFDO since the year 2005 till the date of his retirement on 31-12-2013, hence, the grounds stated in the impugned order dated 30-12-2013 for not considering the case of the petitioner is found to be wholly unacceptable.

10. It appears that by the notification dated 22-04-2015 issued by the Joint Secretary to the Govt. of Assam, Fishery Department, as many as 18 (eighteen) SDFODs had been given promotion to the post of DFDO. However, by that time the petitioner had retired from service.

11. Law is well settled that the right to be considered for promotion is a facet of fundamental right. Whether a particular candidate is entitled to be promoted or not is a matter that would depend on application of the promotional criteria to the candidature of such candidate, i.e. in the facts and circumstances of each case. But if there are vacancies available for being filled up by way of promotion and there are eligible departmental candidates who had a right to be considered for promotion to such posts, the authorities cannot deny such candidates, coming within the zone of consideration, an opportunity of being promoted and thereby deprive them not only of the satisfaction of career progression but also the consequential pecuniary benefits.

12 In the present case, there is no doubt or dispute about the fact that the Service Rule is yet to be framed and therefore, the condition of service of the departmental candidates are being governed by the provisions of the Assam Fisheries Service (Recruitment and Promotion) Orders, 1989. However, it appears that as per the provisions

of the Orders of 1989, the writ petitioner was eligible for being considered for promotion. Yet, he was not promoted while in service.

13. In the case of ***Krishna Kumar Sharma (Supra)*** this Court had taken note of similar nature of grievance expressed by the writ petitioner therein and the matter was remanded back to the departmental authorities with appropriate directions. That was also a case, where the petitioner had retired from service without being considered for promotion to the next higher post although he was eligible for such consideration under the rules. Having regard to the facts and circumstances of the present case, I am of the opinion that a similar approach is called for in the present case as well.

14. In view of the above discussions, this writ petition is being disposed of by providing that within 06 (six) weeks from today, the petitioner shall submit a fresh representation, ventilating his grievance in the matter, by enclosing a certified copy of this order.

If such a representation is submitted by the petitioner, as provided by this Court, the matter may be considered afresh in the light of observations made hereinabove and appropriate order be passed therein within 03 (three) months thereafter, after considering the case of the petitioner for promotion to the post of DFDO on merit with reference to the position obtaining on the date of his retirement from service.

With the above observation, this writ petition stands disposed of.

Parties to bear their own cost.

JUDGE

GS

Comparing Assistant