

Ram Shankar Bhattacharjee Vs. Gauhati High Court and ors.

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Court : Supreme Court of India

Decided On : Dec-08-2004

Reported in : AIR2005SC245; 2005(1)CTC73; [2009(104)FLR309]; [2005(1)JCR151(SC)]; JT2005(11)SC98; 2004(10)SCALE288; (2005)9SCC702

Judge : K.G. Balakrishnan and; AR. Lakshmanan, JJ.

Acts : Gauhati High Court (Appointment, Conditions of Service and Counduct) Rules, 1967

Appeal No. : Civil Appeal No. 4023 of 2004

Appellant : Ram Shankar Bhattacharjee

Respondent : Gauhati High Court and ors.

Advocate for Def. : P.K. Goswami and ; Vijay Hansaria, Sr. Advs., ; Rajiv Mehta

Advocate for Pet/Ap. : Sunil Gupta, Sr. Adv.,; Jamshed Bey and; Parmanand Gaur,

Disposition : Appeal dismissed

Prior history : From the Judgment and Order dated 8.10.2002 of the Gauhati High Court in W.A. No. 180 of 2001 (Gau)

Judgement :

K.G. Balakrishnan, J.

1. This is an appeal directed against the Judgment of the Division Bench of the High Court of Gauhati at Agartala Bench. The appellant Ram Shankar Bhattacharjee was appointed as Stenographer Grade I on 12.6.1987 at the Principal seat of the Gauhati High Court and he joined duties on 28.8.1987. Thereafter, he was transferred to the Agartala Bench of the Gauhati High Court on 14.3.1988 in a resultant vacancy that was caused on promotion of one Saradindu Bhattacharjee (senior). He was confirmed in his post with effect from 23.8.1990 at the Principal seat of the High Court at Gauhati. The present appellant filed a Writ Petition before the High Court claiming seniority over respondents 4 & 5. Respondent No. 4 Saradindu Bhattacharjee (Junior) was appointed as Stenographer Grade I on 28.7.1986 at Agartala Bench and later on he was transferred to the Principal seat of the Gauhati High Court on 2.12.1986 and by an order dated 2.4.1990, his service was confirmed as Stenographer Grade I at the Agartala Bench. Respondent no. 5 Manik Dey was appointed as a Stenographer Grade I on 12.6.1987 at the Principal seat of the Gauhati High Court. His service was confirmed on 20.6.1990 at the Principal seat of the High Court at Gauhati and on 9.6.1992 he was transferred to the Agartala Bench of Gauhati High Court as Stenographer Grade I. The claim of the appellant was that on his transfer to the Agartala Bench of the Gauhati High Court, the Chief Justice of the Gauhati High Court was pleased to adjust him as a member of the staff of the Agartala Bench temporarily and he was promoted to the post of Private Secretary to Hon'ble Judge at Agartala Bench in the scale of pay of Rs. 3000-90-3730-95-4100-100-5000 plus other allowances admissible under the rules and his pay was fixed in the scale of pay of Rs.3000-5000 with effect from 23.5.1992. According to the appellant, his posting as Private Secretary at the Agartala Bench was a promotional posting and thus he gained seniority over the present respondents 4 & 5, namely, Saradindu Bhattacharjee (Junior) and Manik Dey. The Writ Petition filed by the appellant was allowed and the learned Single Judge held that the present appellant Ram Shankar Bhattacharjee was senior to respondents nos. 4 & 5. The respondent nos. 4 & 5 filed a writ appeal before the High Court and the Division Bench set aside the Judgment of the learned Single Judge, and held that the present appellant Ram Shankar Bhattacharjee was junior to Respondent Nos. 4 & 5. That

finding of the Division Bench is challenged before us.

2. We heard the appellant's Counsel and Counsel for the respondent nos. 4 & 5 and also learned Counsel for the High Court.

3. Going by the date of appointment, it could be seen that the present appellant was appointed as Stenographer Grade I only on 12.6.1987. He joined the service on 28.8.1987 whereas the respondent No. 4 was appointed as early as 28.7.1986 as Stenographer Grade I and he was confirmed on 2.4.1990. Respondent no. 5 was appointed as Stenographer Grade I on 12.6.1987 and was confirmed on 20.6.1990. The appellant claimed seniority over these two respondents on the basis of his posting as Private Secretary to Hon'ble Judge in the scale of pay of Rs. 3000-5000. In the North Eastern States, the Benches of the Gauhati High Court were established in different States on different dates and the Officers and staff of the Court with the various benches of the High Court were being given different pay scales as had been approved by the respective State Governments. The appellant was given pay scale of Rs. 3000-5000, whereas the pay scale of Stenographer Grade I was Rs. 2275-4450. As per the Gauhati High Court (Appointment, Conditions of Service & Conduct) Rules, 1967, Schedule I 2(B), the cadre of Stenographers consisted of the following posts:-

CLASS-II(B)-----	I	Private Secretaries
Rs.2275-60-2395-80-2875-EB-100-(Grade-I Stenographers	3575-125-4450/-	P.M. Plus special
attached to the	Hon'ble	Judges.III
Grade Stenographers-----		Other

4. Going by these rules, there is no post as such of Private Secretary to Hon'ble Judge with a different pay scale. However, those who are appointed as Private Secretaries are entitled to a special pay of Rs. 100. The Private Secretaries (Grade I Stenographers) in different benches of the High Court of Gauhati were in different scales of pay. This led to resentment and a Writ Petition was filed by the High Court Employees Association claiming 'Tripura pay scales' for all the posts. That Writ Petition was allowed and the State Government granted 'Tripura pay

scales' for all the posts, which were in the Assam scales of pay. Consequently, the post of Stenographer Grade I also was re-designated as 'Private Secretary' in the pay scale of Rs. 3000- 5000/-. In the counter-affidavit filed before the High Court, these facts are disclosed.

5. The short question that came up for consideration is whether the appellant Ram Shankar Bhattacharjee when appointed as Private Secretary in the pay scale of Rs. 3000-5000 got a promotion to a higher grade superceding the claims of the present respondents 4 & 5. The contention of the appellant's learned Counsel that he was given promotion cannot be accepted for various reasons. Firstly, there was no post as such as Private Secretary to the Hon'ble Judge with a different pay scale. Moreover, whenever promotion is effected, the claims of other officers are also to be considered, and in the instant case the claims of respondent nos. 4 & 5 were not considered for such promotion. The materials produced in this case would only show that the appellant was posted as Stenographer Grade I and Private Secretary to the Hon'ble Judge which carried a higher pay scale. It was never a promotion superceding the claims of Respondent nos. 4 & 5. The learned Single Judge was not justified in holding that the post of Private Secretary was a promotional post at Agartala Bench at the relevant time and it has been rightly reversed by the Division Bench. Promotion could be given only to a post which is given in the classification of the Gauhati High Court Rules. As there was no such post mentioned in the Schedule, there could not have been a promotion to that post.

6. The Division Bench has taken the correct view and we see no reason to interfere with the same. The appeal is accordingly dismissed. There will be no order as to costs.