

GAHC010145592022



undefined

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

Case No. : WP(C)/4849/2022

HEMANTA CHANGMAI
S/O LT. RATNESWAR CHANGMAI,

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
URBAN DEVELOPMENT DEPARTMENT,

2:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
URBAN DEVELOPMENT DEPARTMENT

3:THE DIRECTOR OF MUNICIPAL ADMINISTRATION

4:THE DEPUTY COMMISSIONER

5:THE SIBSAGAR MUNICIPAL BOARD
REP. BY ITS CHAIRMAN

6:THE EXECUTIVE OFFICER
SIBSAGAR MUNICIPAL BOARD

Advocate for the Petitioner : MR. S CHETIA, MR. J P MORE

Advocate for the Respondent : GA, ASSAM, MR. T J MAHANTA - S.C for Resp. No.5 (Sivsagar Municipal Board)

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 28-11-2024

Heard Mr. S. Chetia, learned counsel for the writ petitioner. Also heard Ms. B. Bhattacharjee, learned Addl. Sr. Govt. Advocate, Assam appearing for the respondent Nos. 1 to 4 and Mr. P.P. Dutta, learned standing counsel, Sivasagar Municipal Board (SMB) appearing for the respondent Nos. 5 and 6.

2. By filing this writ petition, the petitioner has assailed the order dated 10-06-2022 issued by the respondent No. 6 cancelling his promotion to the post of Upper Division Assistant (UDA) and thereafter, his appointment as Head Assistant (HA) of the Sivasagar Municipal Board (SMB) and reverting him back to the original post of Lower Division Assistant (LDA) on the ground that the entire process was vitiated by serious irregularities. The primary ground of challenge made to the impugned order dated 10-06-2022 is that the order has been issued in utter violation of the principles of natural justice.

3. The facts of the case, in a nutshell, are that the writ petitioner was appointed as

LDA in the SMB way back in the year 1995. While serving as an LDA, the petitioner was promoted to the post of UDA vide order dated 13-02-2020 issued in deference to the resolution No. 4(A) adopted in the meeting of the Board held on 28-08-2019 in the conference hall of SMB. Thereafter, the writ petitioner was entrusted with the charge of Head Assistant of the Board with immediate effect, vide order dated 15-02-2020. Subsequently, the respondent No. 6 had issued the impugned order dated 10-06-2022 cancelling the assignment of charge to the petitioner in the post of Head Assistant and also his promotion to the post of UDA vide order dated 13-02-2020 and reverted him back to the original post of LDA. That apart, in the impugned order, a direction was also issued to recover the excess salary which the petitioner had drawn in the post of Head Assistant. The promotion given to the petitioner from the post of LDA to UDA was apparently interfered with on the ground that the same was issued without obtaining administrative approval from the relevant committee and was also in violation of the Govt. guidelines. It appears that the respondents have relied upon the order dated 17-12-2016 issued by the Secretary to the Govt. of Assam, Urban Development Department which had made it mandatory for the Municipal Board and Town Committees to obtain prior approval before making fresh recruitment/ engagement of personnel in Municipal Boards and Town Committees.

4. By referring to the materials available on record, Mr. Chetia, learned counsel for the writ petitioner has argued that the circular dated 17-12-2016 is applicable in case of fresh recruitments and the same would not have any bearing in the cases of promotion given to the internal departmental candidates. That apart, submits Mr. Chetia even assuming that

there was some valid ground for the respondents to issue the impugned order dated 10-06-2022, even then, the petitioner ought to have been given an opportunity of being heard before being reverted to the post of LDA thus, adversely affecting his interest in the matter. On such ground, the learned counsel for the writ petitioner has made a request to set aside the order dated 10-06-2022.

5. Responding to the above arguments, Mr. Dutta, learned counsel appearing for the respondent Nos. 5 and 6 has argued that the procedure adopted for promoting the petitioner from the post of LDA to the post of UDA was not in accordance with the provisions of the rules or guidelines laid down by the Govt. of Assam. That apart submits Mr. Dutta, within 02 days from his promotion to the post of UDA, the petitioner was asked to discharge the function of Head Assistant, that too, by giving a go by to the requirement of the rules. Therefore, there is no illegality in the impugned order dated 10-06-2022 issued by the respondent authority. Mr. Dutta has, however, submitted in his usual fairness that since reversion of the petitioner from the post of UDA to LDA would have adverse consequence upon him, the authorities were legally obliged to serve a prior show-cause notice upon him and hear the petitioner before issuing the impugned order.

6. I have considered the submissions made at the Bar and have gone through the materials available on record. The basic facts, as noted hereinabove, are not in dispute. What is apparent from the materials on record is that the petitioner was promoted from the post of LDA to the post of UDA on 13-02-2022 in terms of the resolution No. 4(A) of the SMB. However, there is nothing to show that the petitioner was ever promoted to the post of Head Assistant. Rather, it appears that he was only asked to hold the charge of

Head Assistant, which was apparently a temporary arrangement. In that view of the matter, no substantive right of the petitioner in the post of Head Assistant can be recognised by this Court in the facts and circumstances of the case. However, the same cannot be said with regard to the promotion of the petitioner from the post of LDA to UDA, which appears to be a regular promotion, given on the basis of the resolution adopted in the meeting of the Board. If such an order of promotion is revoked and the petitioner is demoted to the post of LDA for whatever may be the reason, it would certainly have adverse civil consequence on the petitioner. Under such circumstances, if the order of demotion is passed without giving an opportunity of being heard to the petitioner, the same would undoubtedly militate against the principles of natural justice and administrative fair play and hence, would be unsustainable in the eyes of law on such count alone.

7. Having regard to the facts and circumstances of the case in its entirety and after taking note of the submissions made at the Bar, this Court is of the unhesitant opinion that the impugned order dated 10-06-2022, insofar as the same seeks to demote the petitioner from the post of UDA to the post of LDA is concerned, is vitiated due to total non-compliance of the principles of natural justice. The same is accordingly set aside.

8. Liberty is, however, granted to the respondents to initiate fresh process in the matter, if so advised, by serving prior show-cause notice upon the petitioner and by giving him proper opportunity of being heard in the matter. It is made clear that the right of the petitioner of being heard in terms of the order of this Court would be confined only in respect of his demotion from the post of UDA to the post of LDA, recovery of any excess

drawn amount and denial of consequential benefits, if any, attached thereto and not in respect of any other claim.

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

JUDGE

GS

Comparing Assistant