

Upon Chandra Gogoi

Vs

State of Assam

(Sujata V. Manohar, D. P. Wadhwa JJ)

20.03.1998

JUDGMENT

MRS. SUJATA V. MANOHAR J

1. This appeal is from a judgment and order dated 3.8.1988 of the High Court of Gauhati setting aside the appointment of the appellant as Officer on Special Duty in the Secretariat of the Assam Legislative Assembly pursuant to an advertisement dated 18.6.1985.

2. The post of an Officer on Special Duty (O.S.D.) in the rank of Joint Secretary in the Assam Legislative Assembly Secretariat was created in November, 1983. One P.N. Hazarika who was serving as Deputy Secretary in the Assam Legislative Assembly Secretariat was promoted to the post of O.S.D. so created. The post, however, fell vacant in 1985 when Hazarika was promoted as the Secretary of the Assam Legislative Assembly Secretariat.

3. On 18.6.1985 an advertisement was issued by the Assam Legislative Assembly Secretariat inviting applications for the post of O.S.D. in the rank of Joint Secretary. The following qualifications were prescribed for this post in the advertisement:-

"Candidate must be an Advocate of High Court or a pleader of a District Court who has practised as such for at least 7 years or a Judicial Officer qualified to be appointed as a District or Additional District Judge. Preference will be given to those who possess practical experience of Legislative procedure, Drafting of Bills, Rules, Regulations etc." The appellant applied for the said post pursuant to this advertisement. A qualifying examination and viva voce were held. The appellant was selected and appointed to the post of O.S.D. on 17th September, 1985. The post of O.S.D. was re-designated as the post of Joint Secretary on 30th of September, 1986.

4. Respondent No. 5 filed a writ petition in the High Court of Gauhati challenging the selection and appointment of the appellant to the post of O.S.D. and asking for various other reliefs. This writ petition to the extent that it challenged the appointment of the appellant, has been allowed by the High Court. It has set aside the appointment of the appellant as O.S.D on the ground that the appellant did not possess the necessary qualifications for the post.

5. The appellant joined judicial service of the state of Assam Judicial Magistrate Grade III. He had completed 8 years of service as Judicial Magistrate Grade III when he was sent on deputation to the Assam Legal Service as Deputy Secretary and Legal Remembrancer which is a Grade III post in the Assam Legal Service. The appellant was holding the post of Deputy Secretary and Legal

Remembrancer in the Assam Legal Service with a lien on his post as Judicial Magistrate Grade III in the Assam Judicial Service, when he applied for the post of O.S.D. The qualifications which are set out above for the post of O.S.D. require that the applicant must be a Judicial Officer qualified to be appointed as a District or Additional District Judge or he should be an advocate of a High Court or a pleader of a District court who has practised as such for at least 7 years. The appellant had not practised as an advocate or pleader for 7 years. We have to examine whether he was a judicial officer qualified to be appointed as a District Judge or Additional District Judge. The appellant was holding the substantive post of Judicial Magistrate Grade III in the Assam Judicial Service and was on deputation in a Grace III post in the Assam Legal Service. Under the Assam Judicial Service Rules, 1967, the posts of District Judge and Additional District Judge are Grade I posts in the Assam Judicial Service. Under Rule 5 sub-rule (4) (a) appointment to a post in Grade I shall be made either by promotion from Grade II or by direct recruitment from the Bar on the recommendation of the High Court. Under sub-rule (4) (b) appointment to a post in Grade II shall be by promotion from Grade III or by direct recruitment from the Bar on the recommendation of the High Court. Under Rule 6 appointments to posts in Grade I and II by promotion from the next grade below shall be on merit and ability, seniority being considered only when merit and ability are approximately equal. The appellant who held the post of Judicial Magistrate which is a Grade III post was, therefore, eligible for appointment to a Grade II post provided he met the requisite criteria for promotion. He was not eligible for appointment to Grade I post of District Judge or Additional District Judge. He had first to secure promotion to a Grade II post before he could become eligible for promotion to a Grade I post. The appellant, therefore, was not a Judicial Officer qualified to be appointed as a District or Additional District Judge. It is the case of the appellant that since he had put in 8 years of service in Grade III he was eligible for promotion to Grade II and thereafter to Grade I. We fail to see how this helps the appellant. In order that he should be qualified to be appointed as a District or Additional District Judge he should be holding at least a post in Grade II.

6. It is next contended by the appellant that in 1986 Assam Legislative Assembly Secretariat Rules came into effect. Under these Rules qualifications were prescribed, inter alia, for the post of joint Secretary in the Assam Legislative Assembly secretariat. In schedule III of these Rules the minimum qualifications prescribed for direct recruitment to the post of joint secretary are seven years' standing practice at the Bar or "person qualified to be appointed to Assam Judicial service Grade-I and Grade-II and the Assam Legal Service Grade-II and Grade-III". The appellant contends that since he was holding a Grade-III post in the Assam Legal Service on deputation, he had the necessary qualification for being appointed as Joint Secretary. The Assam Legislative Assembly Secretariat Rules, 1986, however, came into force only on 28.10.1986, much after the appointment of the appellant. We fail to see how the qualifications prescribed subsequently can help the appellant. The respondents have also contended that these qualifications were inserted by the appellant himself in the Draft Rules in order to validate his own appointment. Be that as it may, the subsequent Rules cannot affect the qualifications prescribed for the post of O.S.D. under the advertisement of 18th of June, 1985. The appellant was appointed pursuant to this advertisement. He had to meet the qualifications prescribed. The appellant has drawn our attention to Rules 38 of the Assam Legislative Assembly Secretariat Rules 1986, under which all orders made or action taken before these Rules came into force shall be deemed to have been made or taken as if these were made or taken under these Rules. Rule 38 can apply only to orders lawfully made or action lawfully taken before these Rules came into force. It cannot validate an action which was not lawful at inception.

7. The High Court has, therefore, rightly come to the conclusion that the appellant did not possess the prescribed qualifications at the time when he was appointed in 1985 as Officer on Special Duty.

We are informed that the appellant has since been reverted to Assam Judicial Service in a Grade III post and has thereafter also been promoted to a Grade II post.

8. In the premises, the appeal is dismissed with costs.