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v.

GAUHATI HIGH COURT THR. REGISTRAR & ORS.  
(Writ Petition (Civil) No(s). 31 of 2004)

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JANUARY 11, 2012

[R.M. LODHA AND H.L. GOKHALE, JJ.]

**SERVICE LAW:**

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*Promotion - Denial of - Judicial service - Member of Tripura Judicial Service (Grade-II) - Criteria for promotion being merit-cum-seniority - Held: In view of the remarks in the ACRs of the officer for three years immediately preceding the date of consideration of the officer's promotion, that he was not found fit for promotion, it cannot be said that he was wrongly denied promotion to Grade-I - Tripura Judicial Service Rules, 1974 - r.7.*

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*Retirement - Judicial service - Member of Tripura Judicial Service - On completion of 58 years of age, service not extended upto 60 years - Held: Clause (B) has overriding effect over Clause (A) of the amended r.20 of the Tripura Judicial Service Rules, 2003 - Petitioner is not entitled to the relief - Tripura Judicial Service Rules, 2003 - r. 20(A) and (B)..*

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**In the instant writ petition and the interlocutory application filed by a member of Tripura Judicial Service (Grade-II) and holding the post of Civil Judge (Senior Division), the issue for consideration before the Court was the propriety of: (i) denial of promotion to the petitioner to Grade-I; and (ii) not extending the service of the petitioner upto the age of sixty years under r. 20(B) of the Tripura Judicial Service Rules, 2003.**

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**Dismissing the writ petition and the interlocutory application, the Court**

**HELD: 1. According to r.7(1) of the Tripura Judicial Service Rules, 1974, appointment to the post of Grade-I and Grade-II by promotion from the next grade below shall be made on the ground of merit-cum-seniority. In the petitioner's ACRs for the last three years, i.e., 2000, 2001 and 2002, immediately preceding the date of consideration of his case for promotion, it has been recorded that he was not found fit for promotion. Based on these remarks in the ACRs, if the petitioner has been denied promotion in July 2003, such action can hardly be faulted. The remarks in ACRs do enable the authority to assess comparative merit once the question of promotion arises when the criteria for promotion is merit-cum-seniority. Thus, it cannot be said that the petitioner has been wrongly denied promotion to Grade-I. [para 6] [131-E-H; 132-A-C]**

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**2.1. The mode and manner of assessment and evaluation of the potential of continued utility is prescribed in r. 20(B)(I) of the Tripura Judicial Service Rules, 2003. Clause (B) of r. 20 of the 2003 Rules, as amended in 2006, makes it clear that the High Court is empowered to assess and evaluate the record of a judicial officer for continued utility in service upto 60 years. Clause (B) has overriding effect over Clause (A) of the said rule. This is clear from the expression "Notwithstanding anything contained in Clause (A)" with which Clause (B) begins. [para 10] [134-E-F]**

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**2.2. No legal flaw has been pointed out to the exercise undertaken by the High Court in respect of the assessment and evaluation of the petitioner's service for continued utility in service upto 60 years. [para 10] [134-F-G]**

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*All India Judges' Association & Ors. Vs. Union of India & Ors., 2002 (2) SCR 712 =2002 (4) SCC 247 - referred to.*

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**Case Law Reference:**

**2002 (2) SCR 712 referred to para 4**

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 31 of 2004.

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Under Article 32 of the Constitution of India.

Manoj Swarup, Hiren Dasan, Uday Gupta, Harish Dasan, Suwendu S. Das, Preshit Surshe, Salra Chandra for the Petitioner.

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Vijay Hansaria, P.I. Jose, Sneha Kalita, Anupam Mishra, Rituraj Biswas (for Gopal Singh) for the Respondents.

The Judgment of the Court was delivered by

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**R.M. LODHA, J.** 1. The petitioner on the date of filing the Writ Petition under Article 32 of the Constitution of India was a member of Tripura Judicial Service (Grade II) and was holding the post of Civil Judge (Senior Division) and Assistant Sessions Judge, North Tripura. He has prayed for diverse reliefs in the

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Writ Petition, including the direction to the High Court to incorporate "court suitability test" in the Tripura Judicial Service Rules, 2003 (for short, '2003 Rules') and further direction that the petitioner should be considered for promotion on the post of Grade-I.

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2. On February 3, 2004 this Court issued limited notice on the question of not making any provision for judging the suitability of Judicial Officers for the purposes of promotion in the 2003 Rules and relaxation in the age of qualifying service.

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3. The petitioner has retired from service on December 31, 2006, during the pendency of the Writ Petition, as Civil Judge (Senior Division) and Assistant Sessions Judge, Grade-

II.

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4. The petitioner made application being Interlocutory Application No. 3 of 2005 and prayed to quash the Memo dated June 7, 2005 issued by the Gauhati High Court and for direction to the Gauhati High Court to consider the case of the petitioner for the benefits of Assured Career Progress in accordance with the recommendations of Shetty Commission Report which was accepted by this Court in *All India Judges' Association & Ors. Vs. Union of India & Ors.*, 2002 (4) SCC 247. A B

5. On October 7, 2010, while disposing of Interlocutory Application No. 3 of 2005, the matter was adjourned to enable the petitioner to challenge the order dated June 7, 2005 by which the benefits under Assured Career Progress were denied to him in appropriate proceedings. We are informed that the petitioner has not challenged the order dated June 7, 2005 pursuant to the above liberty. C D

6. Mr. Manoj Swarup, learned counsel for the petitioner, submitted that the petitioner was wrongly denied promotion in July 2003 although his juniors were accorded promotion. He further submitted that in July 2003, the petitioner's case for promotion ought to have been considered under the Tripura Judicial Service Rules, 1974 (for short, '1974 Rules'). In this regard, he referred to Rule 7(1) of the 1974 Rules. Rule 7(1) of the 1974 Rules provides for qualifications for recruitment to the service in Grade-I and Grade-II. According to this Rule, appointment to the post of Grade-I and Grade-II by promotion from the next grade below shall be made on the ground of merit-cum-seniority. In the petitioner's ACR of the year 2000, it has been recorded that he was not yet fit for promotion. Similar remarks have been recorded in 2001 and 2002 ACRs. Thus, in last three years immediately preceding the date of consideration of the petitioner's case for promotion, his ACRs show that he was not found fit for promotion. Based on the remarks in the ACRs of the years 2000, 2001 and 2002 if the petitioner has been denied promotion in July 2003, such action E F G H

A can hardly be faulted. The remarks in ACRs do enable the authority to assess comparative merit once the question of promotion arises when the criteria for promotion is merit-cum-seniority. It is pertinent to notice that the adverse remarks in the ACRs of 2000 and 2001 were communicated to the  
 B petitioner on November 28, 2002 and the adverse remarks for the year 2002 were communicated to him on May 19, 2003. The adverse remarks were thus communicated to the petitioner before July 29, 2003 and these remarks continued to remain on record though the petitioner had submitted his  
 C representation/reply thereto. Be that as it may, in view of the petitioner's service record of the years 2000, 2001 and 2002, it cannot be said that he has been wrongly denied promotion to Grade-I.

D 7. Mr. Manoj Swarup, learned counsel for the petitioner, also raised the grievance that the petitioner has been made to retire on December 31, 2006 on attaining the age of 58 years although the superannuation age stood enhanced to 60 years. He invited our attention to the prayer made in Interlocutory  
 E Application No. 5 of 2006.

F 8. From the communication dated January 7, 2006 sent by the Registrar, Gauhati High Court to the Secretary, Law Department, Government of Tripura, it appears that the matter pertaining to extension of services of the petitioner under the  
 G 2003 Rules was considered by the Gauhati High Court and the High Court was satisfied that the extension of petitioner's services upto the age of 60 years did not deserve to be recommended. The only ground raised in the Interlocutory Application No. 5 of 2006 is that the amended Rule 20 of the  
 H 2003 Rules has enhanced the age of superannuation upto the age of 60 years which is not subject to any discretion to be applied by the High Court. We are unable to accept the contention of the petitioner in this regard. Rule 20 of the 2003 Rules prior to amendment reads as follows :-

**"RETIREMENT**

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(A) Except as otherwise provided in these Rules, every Judicial Officer shall retire from the service on the afternoon of the last date of the month in which he attains the age of 58 years.

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Provided that all Judicial Officers whose date of birth is the 1st day of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of 58 years.

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(B) Notwithstanding anything contained in Clause (A) above, a Judicial Officer, who in the opinion of the High Court, have the potential to continue with his service, shall be retained in service up to 60 years.

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(I) The potential for continued utility shall be assessed and evaluated by appropriate Committee of Judges of the High Court, constituted and headed by the Chief Justice and the evaluation shall be made on the basis of the Officer's past record of service, character roll, quality of judgments and other relevant matters.

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(II) The High Court should undertake and complete the exercise well within time before the Officer attains the age of 58 years and take a decision whether the benefit of extended service is to be given to the officer or not.

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(III) In case he is found fit for being given the benefit of extended age of superannuation, the Governor shall, on the recommendation of the High Court, issue necessary order."

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9. Rule 20 of the 2003 Rules came to be amended with effect from May 19, 2006. In Clause (A) of Rule 20 for the figure

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A '58' at both the places, the figure '60' was substituted. For Clause (B), the following was substituted :-

B "Clause (B) Notwithstanding anything contained in Clause (A) above, the High Court shall have power to assess and evaluate the record of the Judicial Officer for his continued utility in service upto 60 years.

C (I) The potential for continued utility shall be assessed and evaluated by appropriate Committee of Judges of the High Court, constituted and headed by the Chief Justice and the evaluation shall be made on the basis of the Officer's past record of service, character roll, quality of judgments and other relevant matters.

D (II) The High Court shall undertake and complete the exercise well within time before the Officer attains the age of 58 years."

E 10. A bare perusal of the Clause (B) of amended Rule 20 leaves no manner of doubt that the High Court is empowered to assess and evaluate the record of a judicial officer for continued utility in service upto 60 years. Clause (B) has overriding effect over Clause (A) of Rule 20. This is clear from the expression "Notwithstanding anything contained in Clause (A)" with which Clause (B) begins. The mode and manner of assessment and evaluation of the potential of continued utility is prescribed in Rule 20(B)(I) of the 2003 Rules. No legal flaw has been pointed out to the exercise undertaken by the High Court in respect of the assessment and evaluation of the petitioner's service for continued utility in service upto 60 years.

F We are satisfied that the petitioner is not entitled to the relief claimed in Interlocutory Application No. 5 of 2006. Interlocutory Application No. 5 of 2006 is, accordingly, dismissed.

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H 11. It is not necessary to consider the other prayers in the Writ Petition as Mr. Manoj Swarup, learned counsel for the

petitioners, did not press for prayers 1 to 4 made in the Writ Petition. A

12. Accordingly, Writ Petition has no merit and deserves to be dismissed and is dismissed.

13. We record the statement of Mr. Vijay Hansaria, learned senior counsel for the respondent No. 1-Gauhati High Court-that the petitioner has been paid all his retiral benefits, including accumulated pension. B

R.P.

Writ Petition dismissed. C