

GAHC010219442017



2026:GAU-AS:7423

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

Case No. : WP(C)/4287/2017

MONIKA DAS
W/O LT. DR. G.K. DAS LOWER DIVISIONAL ASSISTANT RETIRED, OFFICE
OF THE DIRECTOR OF HEALTH SERVICES, ASSAM, HENGRABARI,
GUWAHATI -36, DIST. KAMRUP M, ASSAM

VERSUS

THE STATE OF ASSAM and 8 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF HEALTH AND FAMILY WELFARE, DISPUR, GUWAHATI-
781006.

2:THE DIRECTOR OF HEALTH SERVICES

ASSAM
HENGRABARI
GUWAHATI-781036.

3:SRI ROBINDRA SINHA @ ROBIN SINHA
LDA/JUNIOR ASSISTANT
OFFICE OF THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI - 781036.

4:SMTI. PARUL KALITA

LDA/JUNIOR ASSISTANT
OFFICE OF THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI- 781036.

5:SRI DHARANI DHAR KALITA
LDA/JUNIOR ASSISTANT
OFFICE OF THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI- 781036.

6:SRI SANJU DEORI
LDA/JUNIOR ASSISTANT
OFFICE OF THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI- 781036.

7:SMTI. MALLIKA BORA
LDA/JUNIOR ASSISTANT
OFFICE OF THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI- 781036.

8:SRI HITESH CHANDRA KALITA
LDA/JUNIOR ASSISTANT
OFFICE OF THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI- 781036.

9:SRI MOON MOON DEKA
LDA/JUNIOR ASSISTANT
OFFICE OF THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI- 781036.

10:SMTI MADHUSMITA DEY
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI-781036

11:SRI DWIPEN INGTI
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

12:SMTI. MINU DEVI
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

13:SRI CHINTAMONI DAS
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

14:SRI DEBA KR. CHOUDHURY
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

15:SRI HARSHA VARDHAN KASHYAP
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

16:MD. HAFIZ ALI
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

17:SRI DILIP KR. BORA
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

18:SRI MRIDUL BAISHYA
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

19:MD. MOINUL HAQUE
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

20:SRI SUKKIL BARMAN

O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

21:KARTIK KR. DAS

SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

22:SRI KUSHAL KAKATI

SR. ASSTT
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

23:SRI KUSHAL KAKATI

SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

24:SRI BHAGAWAN BARMAN

SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

25:SRI NABJYOTI DEKA

SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

26:SRI ANJONJYOTI DAS

SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

27:SRI LATU PATHAK

SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

28:SMTI. NITAMONI NATH
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

29:JINAMONI BARUAH
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

30:SMTI. RUMIYA BEGUM
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

31:SMTI. BINITA TAID
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

32:SRI NILOMONI DAS
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

33:SRI MUKUTA KRO
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

34:KHAGESWAR MEDHI
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036.

35:SRI JAYANTA KALKITA
SR. ASSTT.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI-781036

Advocate for the Petitioner : MR.B HUSSAIN, MRA BARMAN,MR M BARDOLOI,DR. P K GOSWAMI

Advocate for the Respondent : MR SISHIR DUTTA (RES. 3 TO 9), MS. D L DEKA(10,11,12,14,16 TO 21,26,27,29TO32,34,35),MR P R SARMA(10,11,12,14,16 TO 21,26,27,29TO32,34,35),MR. SIDHANT DUTTA (RES. 3 TO 9),MS S MOCHAHARI (RES. 3 TO 9),SC, HEALTH,MS. P. DEVI (R 10 TO 35),

BEFORE
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR
ORDER

26/05/2026

Heard Dr. P K Goswami, learned counsel for the petitioner. Also heard Ms. D Bora, learned Standing counsel, Health & Family Welfare Department, appearing for the respondent Nos. 1 & 2, Mr. S Dutta, learned counsel, appearing for the respondent Nos. 3 to 9 and Ms. D L Deka, learned counsel, appearing for the respondent Nos. 10, 11, 12, 14, 16, 17, 18, 19, 20, 21, 26, 27, 29, 30, 31, 32, 34 & 35. None appears for the respondent Nos. 13, 15, 22, 23, 24, 25, 28 & 33.

2. The matter was heard on 30.04.2026 and was directed to be listed today for passing of orders.

3. The petitioner in the present writ petition, has assailed an order dated 29.12.2016, issued by the Director, Health Services, Assam, rejecting the claim of the petitioner for promotion to the post of Upper Division Assistant (UDA) in the establishment of the Director of Health Services, Assam. The petitioner has also assailed the seniority position assigned to her at serial No. 45 in a gradation list issued on 12.03.2015 of the incumbents in the cadre of LDA/Junior Assistant

in the Directorate of Health Services, Assam.

4. The facts requisite for adjudication of the issues arising in the present writ petition are noticed as under:

The husband of the petitioner, Dr. G K Das, while serving as a Deputy Superintendent of Bongaigaon 30 Bedded Hospital, was killed by some unknown miscreants. Pursuant to the death of her husband, the petitioner had applied for consideration of her case for appointment on compassionate grounds.

The respondent authorities on consideration of the case of the petitioner, proceeded vide order dated 24.10.1997 to appoint her as an Lower Division Assistant (LDA) against a vacant post at Golaghat, under the administrative control of the Joint Director, Health Services, Golaghat, Assam, on compassionate grounds. The said place of posting of the petitioner having caused inconvenience to her, the petitioner had approached the Government for consideration of her case for a suitable posting in Guwahati, preferably in the Directorate of Health Services, Assam. The said application is seen to have been placed before the Chief Secretary of the State, who had directed that the appointment of the petitioner be modified and she be appointed against a vacant post in the establishment of the Directorate of Health Services, Assam.

The said aspect of the matter was communicated to the Director of Health Services, Assam by the Deputy Secretary to the Government of Assam, Personnel (B) Department, vide a communication dated 11.11.1997. In pursuance to the said communication, the Director of Health Services, Assam, proceeded vide an order dated 05.12.1997 to direct the petitioner to join the Directorate on attachment basis, until further order and she on her such joining

was to be placed in the Statistics Branch of the Directorate. Thereafter, the petitioner was transferred and posted vide an order dated 15.03.1999, to the establishment of the Government Analyst State Drug Testing Laboratory. The petitioner at this juncture, had approached this Court by way of instituting a writ petition, being WP(C) No. 7556/2003.

A Co-ordinate Bench of this Court vide order dated 18.09.2003, as an interim measure, had directed the respondent authorities to comply with the directions passed by the Government pertaining to the posting of the petitioner, herein.

Accordingly, vide an order dated 05.12.2003, the petitioner was transferred and posted from the establishment of the Government Analyst State Drug Testing Laboratory, Guwahati to the establishment of the Additional Director, Health Services (Rural), Assam in the same capacity and the petitioner complied with the said order of transfer. Thereafter, it is seen that there were further directions from the Government with regard to the posting of the petitioner in the Directorate of Health Services. Accordingly, vide order dated 09.06.2010, the Director of Health Services, Assam, proceeded to transfer and post the petitioner to his establishment as Junior Assistant against a vacant post, arising on account of the incumbent, therein, being promoted to the post of Senior Assistant.

The petitioner, accordingly, in terms of the said order dated 09.06.2010, joined the Directorate on 01.07.2010 against the post of Junior Assistant and continued to discharge her duties, therein. The petitioner having acquired the eligibility criteria for being granted financial upgradation under the Assured Career Progression Scheme (ACPS) of the State Government, the

petitioner was vide order dated 19.11.2014 granted her first financial upgradation, w.e.f. 01.01.2011. It is to be noted that for the purpose of the said upgradation, the date of initial appointment of the petitioner, i.e., 08.12.1997 was so reckoned.

The respondent authorities thereafter, published a gradation list of the incumbents in the cadre of LDA of the Directorate of Health Services, Assam and therein, the petitioner was placed at serial No. 45, by reckoning the date of her joining in the Directorate.

The petitioner, being aggrieved by the denial of her due promotion to the cadre of Senior Assistant as well as her placement in the said seniority list, approached this Court again by way of instituting a writ petition, being WP(C) No. 1721/2014.

A Co-ordinate Bench of this Court vide order dated 18.11.2016, proceeded to dispose of the said writ petition, directing the State respondents to consider the case of the petitioner for promotion to the post of UDA strictly in terms of the provisions of Rule 9 of the Assam Directorate Establishment (Ministerial) Service Rules, 1973 (hereinafter, referred to as the Rules of 1973). This Court had also directed that the State respondents may also consider giving financial upgradation to the petitioner under the ACPS Scheme.

Thereafter, the Director of Health Services, Assam, proceeded to issue a speaking order dated 29.12.2016, rejecting the claim of the petitioner for consideration of her case for promotion to the rank of Senior Assistant in the Directorate.

Being aggrieved, the petitioner has instituted the present writ petition.

5. Dr. Goswami, learned counsel for the petitioner, after reiterating the facts noticed hereinabove, has made the following submissions.

5.1 Dr. Goswami, learned counsel for the petitioner submits the petitioner, although, appointed on compassionate grounds at Golaghat, vide order dated 24.10.1997, the Government had required modification of such posting of the petitioner against a vacant post in the establishment of the Director of Health Services, Assam.

5.2 Dr. Goswami, learned counsel for the petitioner submits that although, such directions were passed, which were binding on the Director of Health Services, Assam, the said authority, did not consider the posting of the petitioner in the Directorate, however, her services only was attached in the Directorate.

5.3 It is submitted that the petitioner, w.e.f. 05.12.1997, was working in the Directorate, till she was transferred and posted to the establishment of the Government Analyst, State Drug Testing Laboratory, vide order dated 15.03.1999.

5.4 Dr. Goswami, by referring to the directions passed by this Court, vide order dated 18.09.2003 in WP(C) No. 7553/2003, submits that the said direction was to effect of posting the petitioner in the Directorate. However, the Director of Health Services, Assam, in violation of the said directions, proceeded to transfer and post the petitioner to the establishment of the Additional Director of Health Services (Rural), Narengi and again attached the services of the petitioner in the Directorate of Health Services, Assam. Accordingly, it is submitted that the petitioner, w.e.f. 05.12.2003, although, was transferred and

posted to the establishment of the Additional Director of Health Services, (Rural) Narengi, in reality she continued to discharge her duties in the Directorate. Accordingly, it is submitted that the Director of Health Services, Assam, for reasons not known had only with the view to cause prejudice to the petitioner, had violated the express directions passed with regard to the posting of the petitioner by the Government as well as by this Court.

5.5 It is also submitted by Dr. Goswami, that the Government had also held that the posting of the petitioner on attachment in the Directorate of Health Services, Assam was an illegal one vide communication dated 04.07.2002. Accordingly, Dr. Goswami submits that w.e.f. 05.12.1997, the petitioner is to be reckoned to be an incumbent in the cadre of LDA in the establishment of the Director of Health Services and accordingly, her seniority, therein, is to be so reckoned.

5.6 Mr. Goswami, learned counsel for the petitioner has also made a feeble submission to the effect that the order dated 09.06.2010, transferring and posting the petitioner against a post of Junior Assistant in the Directorate having been so issued without any stipulation of the petitioner losing her seniority and/or requiring the petitioner to occupy the bottom seniority, the seniority of the petitioner on her joining on regular basis in the establishment of the Director of Health Services, Assam, is to be so reckoned from the date of her initial appointment, i.e., 11.11.1997 and/or with effect from the date of the first attachment of her services made in the Directorate of Health Services, Assam, vide order dated 05.12.1997.

5.7 Dr. Goswami, learned counsel for the petitioner, by referring to the speaking order dated 29.12.2016 has submitted that the Director of Health

Services, Assam, had not appreciated the contentions raised by the petitioner as well as the observations made by the Co-ordinate Bench of this Court, vide order dated 18.11.2016 in WP(C) No. 1721/2014 and accordingly, submits that the speaking order dated 29.12.2016 would mandate an interference from this Court.

5.8 In the above premises, Dr. Goswami, learned counsel for the petitioner submits that appropriate direction be issued to the respondent authorities to assign seniority position to the petitioner in the cadre of LDA in the establishment of the Director of Health Services, Assam, by reckoning the first date of her attachment in the Directorate against the post of LDA effected vide order dated 05.12.1997. It is further prayed that on such assignment of seniority being done, the petitioner be promoted to the cadre of UDA with retrospective effect, i.e., with effect from the date the persons joining after 05.12.1997 were so considered and promoted to the post of UDA with all consequential benefits by applying the "NEXT BELOW RULE". Mr. Goswami, has submitted that the petitioner had superannuated from her services, w.e.f. 31.12.2016.

6. Per contra, Ms. D Bora, learned Standing counsel, Health & Family Welfare Department, submits that on account of non-availability of a vacant post in the cadre of LDA, the petitioner vide order dated 05.12.1997 was required to be brought to the Directorate on attachment basis.

6.1 It is submitted that the petitioner during the period of her attachment had drawn her salaries from the post against which she was originally appointed in Golaghat. It is submitted that after the various transfers and postings effected in respect of the petitioner, she was finally vide order dated 05.12.2003 brought

to the Directorate establishment, against a vacant post of LDA, now becoming available in the establishment.

6.2 It is submitted that prior to the said transfer and posting of the petitioner, the petitioner was serving in the District establishment, which is separate and distinct service. It is submitted that the seniority of the incumbents in the district establishments are not maintained along with the incumbents in the post of LDA in the Directorate of Health and Family Welfare and separate seniority list are maintained for the said two distinct and separate services.

6.3 It is submitted that the petitioner having joined on regular basis in the establishment of the Director of Health Services, Assam, only in pursuance to the passing of the order dated 09.06.2010 and the petitioner having joined her services w.e.f. 01.07.2010, the petitioner cannot be assigned seniority position over the LDAs already working in the establishment of the Director of Health Services, Assam, as on 01.07.2010.

6.4 Accordingly, Ms. Bora, learned Standing counsel, Health & Family Welfare Department submits that the seniority position assigned to the petitioner by reckoning her date of joining in the services of the Directorate, would not mandate an interference by this Court.

6.5 Ms. Bora, learned Standing counsel, Health & Family Welfare Department further submits that the prayer of the petitioner for promotion was duly considered by the Director of Health Services, Assam in the speaking order dated 29.12.2016 and had proceeded to reject her such claim only on the ground that the seniority position of the petitioner did not bring her within the zone of consideration for being considered for such promotion to the post of

Senior Assistant.

6.6 In the above premises, Ms. Bora, learned Standing counsel, Health & Family Welfare Department submits that the claim made by the petitioner in the present proceedings, which admittedly was instituted after she had superannuated from her services on 31.12.2016 would not mandate an acceptance by this Court.

7. The learned counsels appearing for the private respondents have adopted the submissions made by Ms. D Bora, learned Standing counsel, Health & Family Welfare Department and submit that they were promoted to the cadre of Senior Assistant in the establishment of the Director of Health Services, Assam, basing on the seniority position assigned to them in the cadre of Junior Assistant in the Directorate as well as after having acquired the requisite qualifications for being considered for such promotion.

7.1 It is submitted that the petitioner having joined as Junior Assistant in the Directorate after the joining of the private respondents, herein, as Junior Assistants, she cannot be held to be senior to any of the private respondents and accordingly, the claim of the petitioner of being deprived of a due promotion to the cadre of Senior Assistant during her service tenure, would not mandate an acceptance from this Court.

8. I have heard the learned counsels for the parties and also perused the materials available on record.

9. The facts noticed, hereinabove, are not in dispute.

10. It is also not disputed that the petitioner for the first time was posted on

regular basis in the Directorate of Health Services, Assam vide order dated 09.06.2010. The petitioner in pursuance to the said order had joined her services as a Junior Assistant in the establishment of the Directorate of Health Services, on 01.07.2010. Basing on the date of joining of the petitioner, the petitioner was assigned seniority position at serial No. 45 in the gradation list subsequently issued of the incumbents in the cadre of Junior Assistant in the Directorate.

11. It is seen that the petitioner being aggrieved by the seniority position assigned to her as well as the denial to her of a due promotion to the cadre of Senior Assistant had approached this Court by way of instituting a writ petition, being WP(C) No. 1721/2014.

12. A Co-ordinate Bench of this Court vide order dated 18.11.2016, gave a final consideration to the said writ petition and basing on the materials coming on record, had drawn the following conclusions:

“Petitioner submits that on and from 24.10.1997 she has been serving as a Lower Division Assistant under the Directorate of Health Services and in terms of Rule 9 of the Assam Directorate Establishment (Ministerial) Services Rule 1973, she is legitimately entitled to promotion as Upper Division Assistant.

A fringe issue has been raised in the affidavit-in-opposition filed on behalf of respondent no. 3 that the petitioner had remained absent unauthorisedly while under the service of the Regional Drugs Testing Laboratory for the period from 01.10.2002 to 28.02.2004. This issue does not gain significance in view of the fact that the period of absence had been regularised by Order dated 31.07.2012 issued from the Office of the Director of Health Services. Another issue raised in the affidavit-in-opposition is with regard to the fact that the petitioner was included in the Gradation List by giving effect from 01.07.2010 i.e. the date of her joining in the cadre of Lower Division Assistant at

the Directorate level post. The date of her joining as appearing from the Gradation List, not being under challenge, the said issue is not gone into.

Even going by the date of her joining i.e. 01.07.2010 as Lower Division Assistant/Junior Assistant in the Directorate level post, the petitioner has completed more than six years as Lower Division Assistant. Subject to her seniority position in the Gradation List, she is entitled to be considered for promotion as Upper Division Assistant in terms of Rule 9 of the aforesaid Rules of 1973.

Petitioner submits that she will be retiring on 31.12.2016 on attaining the age of superannuation. According to her she had served as a Lower Division Assistant since the year 1997 and had not been given the benefit of promotion to the next higher post all these years. Petitioner also contends that leaving aside the issue of promotion, she is atleast entitled to financial upgradation in terms of the Assured Career Progression Scheme framed by the Govt. of Assam, Finance Department (Estt.- A) Department contained in Notification dated 19.06.2012.

The facts above have been noticed. Counsels representing either side have also been heard. Rule 9 of the aforesaid Service Rules of 1973 contemplates promotion to the post of Upper Division Assistant on the basis of seniority-cum-merit from amongst the Lower Division Assistant who have rendered not less than 4 years of service and have successfully undergone such training and have passed such examination as prescribed by the appointing authority from time to time. Not in dispute is that the petitioner have atleast served as Lower Division Assistant at the Directorate level on and from 01.07.2010. Having regard to the prescription under Rule 9 and subject to the criteria laid down for promotion, the petitioner is atleast entitled to a consideration for promotion to the post of Upper Division Assistant. In that view of the matter, let the required exercise be undertaken for considering the case of the petitioner strictly going by the provisions under Rule 9 of the aforesaid Service Rules, 1973 along with other eligible candidate. The direction for undertaking the exercise shall, however, be subject to any vacancy being available in the post of Upper Division Assistant. Alternatively, the State Respondents may also consider giving financial

upgradation to the petitioner under the Assured Career Progression Scheme as indicated above, subject to the eligibility of the petitioner to be granted such benefit.

The exercise which the State Respondents are to undertake in terms of the directions above be completed as early as possible having regard to the fact that the petitioner will be retiring from service on and from 31.12.2016 on attaining the age of superannuation.”

13. A perusal of the said conclusions would go to reveal that the Court had noticed that the petitioner was included in the gradation list by reckoning that she had joined the services in the Directorate, w.e.f. 01.07.2010. The date of joining of the petitioner in the gradation list not being disputed, the said issue was not gone into. This Court had further noticed that even if, petitioner was held to have joined the services of the Directorate, w.e.f. 01.07.2010, she had acquired the requisite eligibility criteria for being considered for promotion to the cadre of Senior Assistant, however, it was stipulated that such promotion would be subject to her seniority position in the gradation list of Junior Assistants.

14. Having drawn the said conclusions, the Co-ordinate Bench further proceeded to hold that the petitioner is entitled to a consideration for promotion to the post of Upper Division Assistant, in terms of the provisions of Rule 9 of the Rules of 1973 and accordingly, it was directed that an exercise be undertaken for considering the case of the petitioner strictly by following the provisions of Rule 9 of the Rules of 1973, along with other eligible candidates.

15. This Court further provided that the direction for undertaking the exercise was, however, subject to any vacancy being available in the post of Senior Assistant. The Co-ordinate Bench further held that in the alternative that the

State respondents may also consider giving financial upgradation to the petitioner under the ACPS Scheme.

16. A perusal of the conclusions drawn by this Court in the earlier round of litigation would go to reveal that the seniority position of the petitioner in the cadre of LDA was upheld and the same was not in any manner disturbed by the Court. Accordingly, the seniority of the petitioner in the cadre of Junior Assistant in the establishment of the Directorate of Health Services, Assam, would have to be held to be so reckonable only from 01.07.2010 and not from a date prior, thereto.

17. Considering the seniority of the petitioner, w.e.f. 01.07.2010, the petitioner is not found to have come, during her service tenure, within the zone of consideration for promotion to the post of Senior Assistant given the vacant post of Senior Assistant available in the Directorate. Accordingly, on a perusal of the speaking order dated 29.12.2016, this Court finds that the Director of Health Services, Assam had rejected the claim of the petitioner only on the said ground. The operative portion of the said speaking order dated 29.12.2016, being relevant, is extracted hereinbelow:

“As per provision of under Rule 9 of the Assam Directorate Establishment (Ministerial Service Rules) 1973, her prayer could not be considered, as because though she has necessary qualification for the promotion and she has rendered Services more than 4 years, but her name is found in the gradation list of LDA at Sl. No.45. But, at present there is no available vacant posts of UDAs to consider her case along-with other LDA of this Directorate.

Whereas this Directorate has already given one financial upgradation to the petitioner Smti Manika Das, LDA under the Assured Career Progression Scheme vide this Dte. order No.HSE/ACPS/309/2014/41898, dated 19-11-2014 and for her second

financial upgradation she has to complete 24 years of Services in the same category, but in her case she has completed only 19 years 2 month 8 days of Services prior to her superannuation which falls on 31-12-2016. Hence as per finance Deptt. Notification No.FEG/28/2011/12, dated 19th June 2012 and No.FPC. 109/2010/42, dated 25th May'2011. This Directorate is not in position to consider her 2nd Financial upgradation."

18. The said speaking order further brings on record that the petitioner was given one financial upgradation vide order dated 19.11.2014 and given the service length of the petitioner, she was not entitled to the 2nd Financial upgradation.

19. This Court has minutely perused the conclusions drawn by the Director of Health Services in the order dated 29.12.2016 and finds that the said conclusions are in tune with the observations made by this Court vide order dated 18.11.2016 in WP(C) No. 1721/2024 and accordingly, this Court is of the considered view that the speaking order dated 29.12.2016, in view of the attending facts and circumstances involved ,would not mandate an interference from this Court.

20. Having drawn the said conclusions, this Court would also like to observe that the petitioner had superannuated from her services, w.e.f. 31.12.2016 and the present writ petition was filed only on 10.07.2017.

21. It is a settled position of law that after retirement, the claim for a retrospective promotion effective with effect from the date when the employee was in service is not permissible, inasmuch as, the employee concerned on such promotion being effected in his/her respect would not be in a position to assume the charge of the promotional post. The said aspect of the matter was

clarified by the Hon'ble Supreme Court in its decision in the case of *Government West Bengal and Others Vs. Dr. Amal Satpathi and Others*, reported in 2024 SCC Online SC 3512.

22. The Hon'ble Supreme Court, in its decision in the case of *Dr. Amal Satpathi* (supra), in connection with the issue arising in the present proceedings, had drawn the following conclusions;

“19. It is a well settled principle that promotion becomes effective from the date it is granted, rather than from the date a vacancy arises or the post is created. While the Courts have recognized the right to be considered for promotion as not only a statutory right but also a fundamental right, there is no fundamental right to the promotion itself. In this regard, we may gainfully refer to a recent decision of this Court in the case of Bihar State Electricity Board v. Dharamdeo Das, wherein it was observed as follows:

*"18. It is **no longer res integra that a promotion is effective from the date it is granted and not from the date when a vacancy occurs on the subject post or when the post itself is created. No doubt, a right to be considered for promotion has been treated by courts not just as a statutory right but as a fundamental right, at the same time, there is no fundamental right to promotion itself.** In this context, we may profitably cite a recent decision in *Ajay Kumar Shukla v. Arvind Rai* where, citing earlier precedents in *Director, Lift Irrigation Corporation Ltd. v. Pravat Kiran Mohanty* and *Ajit Singh v. State of Punjab*, a three-Judge Bench observed thus:*

*41. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in *Director, Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty* in para 4 of the report which is reproduced below:*

'4..... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent-writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent-writ petitioner was unjustly denied of the same is obviously unjustified.'

42. A Constitution Bench in Ajit Singh v. State of Punjab, laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, C.J., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paras 22 and 27:

'Articles 14 and 16(1): is right to be considered for promotion a fundamental right

22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the 'State shall not deny to any person equality before the law or the equal protection of the laws'. Article 16(1) issues a positive command that:

'there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State'.

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense "equality of opportunity" in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage

in the following words:

'37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in Keshav Chandra Joshi v. Union of India held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotes, it would not be proper to do injustice to the direct recruits.....

38. This Court has consistently held that no retrospective promotion can be granted nor can any seniority be given on retrospective basis from a date when an employee has not even been borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validity in the meantime."

20. In the instant case, it is evident that while respondent No. 1 was recommended for promotion before his retirement, he could not assume the duties of the Chief Scientific Officer. Rule 54(1)(a) of the West Bengal Service Rules, clearly stipulates that an employee must assume the responsibilities of a higher post to draw the corresponding pay, thus, preventing posthumous or retrospective promotions in the absence of an enabling provision."

23. Accordingly, in view of the decision of the Hon'ble Supreme Court in the case of Dr. Amal Satpathi (supra), the claim of the petitioner for a retrospective promotion in her case would also not be mandated to be accepted.

24. For the forgoing reasons, this Court is of the considered view that the

claims made by the petitioner in the present writ petition, would not mandate an acceptance and accordingly, the same stand rejected.

25. Accordingly, the present writ petition is held to be devoid of any merit and consequently, the same stands dismissed. However, there would be no order as to cost.

JUDGE

Comparing Assistant