



GAHC010080722021



2025:GAU-AS:3065

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

Case No. : WP(C)/2940/2021

GUNAKANTI GOHAIN AND 20 ORS.
W/O DR. AMULYA KUMAR HAZARIKA, R/O ANANDANAGAR, BYE LANE
NO. 3, PRAGJYOTISH APARTMENT, DIST. KAMRUP (M), PIN 781032

VERSUS

THE STATE OF ASSAM AND 23 ORS.
REPRESENTED BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM,
HEALTH AND FAMILY WELFARE (A) DEPTT., DISPUR, GUWAHATI 781006

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE (A) DEPTT.
DISPUR
GHY- 6.

3:THE SECY. TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE (A) DEPTT.
DISPUR
GUWAHATI- 6.

4:THE DIRECTOR OF HEALTH SERVICES
GOVT. OF ASSAM
HENGRABARI
GHY- 36
ASSAM.

5:ADDITIONAL DIRECTOR OF HEALTH SERVICES (ADMN)
ASSAM
HENGRABARI
GHY- 36.

6:THE JOINT DIRECTOR OF HEALTH SERVICES (NURSING)



HENGRABARI
GUWAHATI
ASSAM
PIN- 781036.

7:ALL ASSAM GRADUATE NURSES ASSOCIATION
HAVING ITS REGD. OFFICE AT RUKMINIGAON
NABARATNA PATH
REP. BY ITS GENERAL SECY.
SMT. JUNU SARMA.

8:SMT. JUNU SARMA
W/O- SRI NIRANJAN SARMA
R/O- RUKMINIGAON
NABARATNA PATH
HOUSE NO. 4
P.O.- KHANAPARA
GUWAHATI- 781022
DIST.- KAMRUP (M)
GENERAL SECRETARY OF ALL ASSAM GRADUATE NURSE ASSOCIATION
HAVING ITS REGD. OFFICE AT RUKMINIGAON
NABARATNA PATH.

9:GEETANJALI KALITA
MEMBER OF ALL ASSAM GRADUATE NURSES ASSOCIATION
HAVING ITS REGD. OFFICE AT RUKMINIGAON
NABARATNA PATH
PIN- 781022.

10:DEBOJANI NEOG
MEMBER OF ALL ASSAM GRADUATE NURSES ASSOCIATION
HAVING ITS REGD. OFFICE AT RUKMINIGAON
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11:MERAWATI DEVI
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12:SONU RONGPI
MEMBER OF ALL ASSAM GRADUATE NURSES ASSOCIATION
HAVING ITS REGD. OFFICE AT RUKMINIGAON
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13:MAMANI BALIMARA



MEMBER OF ALL ASSAM GRADUATE NURSES ASSOCIATION
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14:MRIDULI RONGHAPI
MEMBER OF ALL ASSAM GRADUATE NURSES ASSOCIATION
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15:ANJU THAKURIA
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16:GRAULALMISANG
MEMBER OF ALL ASSAM GRADUATE NURSES ASSOCIATION
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17:HIRUMONI PAIT
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18:ANU SAIKIA
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19:MAMITA DUTTA
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20:RIJUMONI GOGOI
MEMBER OF ALL ASSAM GRADUATE NURSES ASSOCIATION
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21:REKHA BORAH



MEMBER OF ALL ASSAM GRADUATE NURSES ASSOCIATION
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22:POLY SAIKIA
MEMBER OF ALL ASSAM GRADUATE NURSES ASSOCIATION
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23:LINA BORGHAIN
MEMBER OF ALL ASSAM GRADUATE NURSES ASSOCIATION
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24:SHOVE ROY
MEMBER OF ALL ASSAM GRADUATE NURSES ASSOCIATION
HAVING ITS REGD. OFFICE AT RUKMINIGAON
NABARATNA PATH
PIN- 781022

Advocate for the Petitioner : MR. R C SAIKIA, MR B P BORAH

Advocate for the Respondent : SC, HEALTH AND F W, MR R SINGHA,MS S PATOWARY,MR R SINGHA (R-7,8, 17 TO 23),MR. U K NAIR (R-7,8, 17 TO 23)

Linked Case : WP(C)/6006/2021

GUNAKANTI GOHAIN
B.SC. NURSE AND 20 ORS.
W/O DR. AMULYA KUMAR HAZARIKA
R/O ANANDANAGAR
BYE LANE NO. 3
PRAGJYOTISH APARTMENT
DIST-KAMRUP(M)
PIN-781032

2: KHADEZA KHATUN
B.SC. NURSE
W/O S.H BORBHUYA
R/O NANAK NAGAR



BHANGAGARH
GMCH ROAD
P.O.-DISPUR
PIN-781005

3: JURI BHUYAN
B.SC NURSE
C/O MATRON OFFICE
GUWAHATI MEDICAL COLLEGE AND HOSPITAL
PIN-32

4: UPASANA DEKA
B.SC. NURSE
C/O MATRON OFFICE
GMCH BHANGAGARH
GHY-32

5: SUWALA DEKA
B.SC NURSE
W/O DIPAK DAS
R/O VILL-BORBARI
VIP ROAD
SHIVA NAGAR
P.O.-UDAYAN VIHAR
DIST-KAMRUP(M)
GHY-781171
ASSAM

6: PANCHAMI DEKA
B.SC NURSE
D/O LATE LAKHIRA DEKA
R/O VILL-SENIGAON
P.O.-GARESHWAR
DIST-BAKSA
ASSAM
PIN-781364

7: NIRALA DEKA
B.SC NURSE
W/O RAJANIKANTA DEKA
R/O VILL-RUPNAGAR
NEAR L.P. SCHOOL
P.O.-INDRAPUR
P.S.-PALTANBAZAR
DIST-KAMRUP(M)
GHY-32

8: KABITA KALITA



B.SC NURSE
W/O GUNAJIT DAS
R/O SIXMILE
KHANAPARA
GUWAHATI-781022
DIST-KAMRUP (M)
ASSAM

9: MINA BALA DAS
B.SC NURSE
C/O ARJUN THAKURIA
HENGRABARI
LICHUBAGAN
P.O.-HENGRABARI
DIST-KAMRUP(M)
GHY-781036

10: PABITRA DEKA
B.SC NURSE
W/O DEBEN KALITA
R/O SHIVALIK ENCLAVE
BRIDABAN PATH
RUPNAGAR
GHY
PIN-781032
DIST-KAMRUP(M)
ASSAM

11: NAMITA PATHAK
B.SC NURSE
W/O MATILAL DAS
VILL- GANDHINAGAR
P.O.-BARPETA
DIST- BARPETA
ASSAM
PIN-781301

12: BIJAYA LAHON
GNM
C/O MUNIN GOGOI
GNM
R/O RAJGARH SARASWATI PHARMACY
P.O.-RAJGARH
GUWAHATI-781003
DIST-KAMRUP(M)
ASSAM

13: DEBA BALA TAMULI



GNM
C/O BRAJEN DUTTA
R/O VILL- RANGAIHABI GAON
P.O.-CHALIHA
DIST- JORHAT
ASSAM
PIN-785004

14: DEVA PROVA PHUKON
GNM
C/O DR ANANADA NEOG
R/O SAMANNAY PATH
JAIL ROAD
JORHAT
DIST-JORHAT
ASSAM
PIN-785001

15: JUNAIL CHUTIA
GNM
C/O RAHUL KUMAR DUTTA
R/O TENGAKHAT MODEL HOSPITAL
DIST-DIBRUGARH
PIN-786103

16: HEMA PRAVA HAZARIKA
GNM
C/O HARESWAR DAS
TEOK TELIA GAON
P.O.-TEOK
DIST-JORHAT
PIN-785112

17: LABANYA DEVI
GNM
C/O HARAKANTA DEKA
VILL-MORIGAON
P.O.-MORIGAON
DIST-MORIGAON
PIN-782105
ASSAM

18: REKHA BORA
GNM
W/O DR. BANAMALI BHUYAN
KALYANPUR
P.O.-BISWANATH CHARIALI
DIST-BISWANATH



ASSAM

19: ARUNA SAIKIA
GNM
W/O SHIR KAMALA KALITA
SANTIPUR HILL SIDE
GUWAHATI-781301
DIST-KAMRUP(M)
ASSAM

20: KAJEK INGTIPI
GNM
C/O LATE STEPHEN KILLING HAMREN CIVIL HOSPITAL
P.O.-HAMREN
PIN-782486
DIST- KARBI ANGLONG
ASSAM

21: MONORAMA SONOWAL
GNM
C/O UDDAB CHANDRA NATH
R/O NEAR ISKCON TEMPLE
VILL-RONGHENG-A
P.O.-DIPHU
DIST-KARBI NAGLONG
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7:ALL ASSAM GRADUATE NURSES ASSOCIATION
HAVING ITS REGISTERED OFFICE AT RUKMINI GAON
NABARATNA PATH REPRESENTED BY ITS GENERAL SECRETARY SMT
JUNU SARMA

8:SMTI JUNU SARMA
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16:GRAULAL MISANG
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21:REKHA BORAH
MEMBER OF ALL ASSAM GRADUATE NURSES ASSOCIATION HAVING ITS
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ASSAM



23:LINA BORGOHAIN
MEMBER OF ALL ASSAM GRADUATE NURSES ASSOCIATION HAVING ITS
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MEMBER OF ALL ASSAM GRADUATE NURSES ASSOCIATION HAVING ITS
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NABARATNA PATH
PIN-781022
DIST-KAMRUP(M)
ASSAM

Advocate for : MR. R C SAIKIA
Advocate for : SC
HEALTH appearing for THE STATE OF ASSAM AND 23 ORS.

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners: Shri RC Saikia, Sr. Counsel
Ms. K. Saikia
Ms. R. Bharali

Advocate for the respondent: Shri DP Borah, SC-Health Department
Shri R. Singha, Pvt. Respondents

Dates of hearing : **03.03.2025 & 04.03.2025**
Date of Judgment : **21.03.2025**

JUDGMENT & ORDER

Both the writ petitions being intrinsically connected and filed by the same petitioners, the same were analogously heard and disposed of by this common judgment and order. The grievance is on the aspect of promotion



of the petitioners vis-à-vis the private respondents.

2. There is a chequered history in these cases. The petitioners were promoted to the rank of Assistant Matrons in the Health and Family Welfare Department, Government of Assam (hereinafter the Department) as per recommendation of the DPC in the year 2018. Such promotions were however the subject matter of WP(C)/3069/2018 instituted by the All Assam Graduate Nurses Association. The said writ petition was allowed by this Court vide judgment and order dated 16.11.2020 as it was noticed that such promotions were made on the basis of two Gradation Lists which had culminated in the order dated 11.04.2018. The promotions orders were accordingly interfered with a further direction that a fresh promotion exercise be made in accordance with law. The petitioners herein had assailed the said judgment in WA/25/2021 which was however dismissed vide judgment and order dated 01.02.2021. Certain other writ appeals were also dismissed in the same line. After the matter was remanded, a common Gradation List in the rank of Staff Nurse was prepared. The grievance of the petitioners is that the private respondents are junior to them but have been placed above them in the Gradation List. It is contended that the appointments of the private respondents as Staff Nurse were not in accordance with law and in any case were made after that of the petitioners and therefore, they could not have stole a march over the petitioners in the Gradation List. It is also contended that it is only in the year 2021 upon publication of the Draft Gradation List that the petitioners could come to know about such appointments and therefore, could make the challenge.

3. In the first writ petition being WP(C)/2940/2021, the Gradation List



dated 30.03.2021 was put to challenge and in the subsequent writ petition WP(C)/6006/2021, the promotion to the post of Sister Tutors to the private respondents have been specifically challenged.

4. I have heard Shri RC Saikia, learned Senior Counsel assisted by Ms. R. Bharali, learned counsel for the petitioners. I have also heard Shri DP Borah, learned Standing Counsel of the Department and Shri R. Singha, learned counsel for the private respondents.

5. Shri Saikia, learned Senior Counsel for the petitioners has, at the outset, clarified that so far as the earlier promotions made in the year 2018 are concerned, which were interfered by this Court, he is not joining any issue. The grievance is however in the manner the subsequent Gradation List was prepared and from the said Gradation List, promotions to the rank of Sister Tutors / Assistant Matrons have been affected. He submits that it was only on the publication of the Draft Gradation List on 13.03.2021 in the rank of Sister Tutor / Ward Sister that the promotion / appointment of the private respondents could be noticed. He has also submitted that against the Draft Gradation List, an objection was filed on 12.04.2021 and after taking recourse to the RTI Act to obtain certain information, a pleader's notice dated 12.07.2021 was also served on the Director, which however were not responded to.

6. By drawing the attention of this Court to the Assam Nursing Services Rules, 1991 (hereinafter the Rules of 1991), the learned Senior Counsel has submitted that the said Rules lay down the procedure for appointment and promotion. He has submitted that under Rule 22, the Gradation List is to be prepared and published every year and in the instant case, the same has not been done. He has also submitted that the post of Sister Tutor is a



promotional post which is to be filled up from Staff Nurse and there is no procedure for direct appointment. He has also referred to Rule 11 pertaining to appointment by promotion and under Rule 11(3)(b) there is a requirement of serving at least 5 years as Staff Nurse to be eligible for next promotion. He has also referred to Rule 12 which lays down the "General Procedure for Promotion". Reference has also been made to the Schedules to the Rules, more particularly Schedule I and Schedule III and under Schedule III, the qualification of Staff Nurse is laid down.

7. He has clarified that out of the 21 nos. of petitioners, petitioner Nos. 1 to 11 are all B.Sc. Nurses and petitioner Nos. 12 to 21 are Diploma holders with the requisite training. He has also informed that out of the aforesaid 21 petitioners, about 9 of them have retired from service on attaining the age of superannuation.

8. He has also drawn the attention of this Court to the details furnished by the Department on the aspect of Staff Nurse and has submitted that with regard to the incumbents against Sl. Nos. 90 to 94, who have been made respondents, even the dates of joining as Staff Nurse were not indicated. The learned Senior Counsel accordingly submits that the relief prayed for may be granted.

9. *Per contra*, Shri Borah, learned Standing Counsel of the Department has raised the preliminary objection on the maintainability of the writ petitions. He has submitted that the prayers in the writ petitions are to interfere with the orders of promotion to the rank of Sister Tutors of the private respondents which were in the period 2004-2017 and the petition have been instituted in the year 2021 and therefore, on the ground of delay itself, the writ petitions are not maintainable.



10. By referring to the Rules of 1991, the learned Standing Counsel has submitted that so far as the post of Sister Tutor is concerned, there is no particular mention of the said post with regard to the nature of entry i.e. whether it is by direct recruitment or by promotion. So far as the appointments of respondent nos. 9, 10, 11, 12, 13 and 14 are concerned, they were appointed directly as Sister Tutor by Karbi Anglong Autonomous Council (KAAC) as the post is equivalent to Grade III and powers of appointment to Grade III are conferred upon the Council. He has submitted that Health is a transferred subject on which the Council exercises powers of appointment. He submits that in any case, KAAC has not been made a party respondent and therefore, the challenge to the aforesaid appointments is not proper as the decision to appoint was of the Council.

11. With regard to the other respondents, Shri Borah, the learned Standing Counsel has submitted that all of them were initially appointed as Staff Nurse and after completion of 5 years, they were considered and promoted to the rank of Sister Tutor. He reiterates that such appointments / promotions were made by following the due process of law.

12. The learned Standing Counsel has also submitted that during the pendency of the writ petitions, all the petitioners and private respondents have further been promoted to the rank of Assistant Matron and therefore, for all practical purposes, there is no existing cause of action to be adjudicated. He has submitted that after such promotion, the seniority in the cadre of Sister Tutor has become inconsequential.

13. Endorsing the submission made on behalf of the Department, Shri R. Singha, learned counsel for the private respondents has at the outset, submitted that the prayer in both the writ petitions are identical and



therefore, the second writ petition is barred under the provisions of Order II Rule 2 of the CPC. He has also referred to the findings of this Court in the judgment and order dated 16.11.2020 passed in WP(C)/3069/2018, pursuant to which the Gradation List was published and promotions made. He has submitted that apart from the fact that respondent nos. 9 to 14 were appointed by the KAAC, such appointments were made more than a decade ago and in fact, few of the appointments are of the year 2004 and in the instant writ petitions have been filed in the year 2021.

14. He has submitted that all the petitioners are not B.Sc. Nurses and few of them are G.N.M. He has also submitted that the petitioners have prayed for setting aside the entire list dated 30.03.2021 whereas all the parties who would be affected have not been arrayed as respondents and therefore, on the ground of non-joinder, the writ petitions are liable to be dismissed. He has also raised the point of approbation and reprobation by contending that the petitioners are themselves beneficiaries of the same Gradation List inasmuch as, they have also been promoted to the rank of Assistant Matron and therefore, cannot maintain the challenge.

15. He has also contended that the challenge is a belated one and therefore, is liable to be rejected at the threshold. He submits that in matters of promotion, the challenge has to be instituted within a maximum period of 12 months and in the instant case, the cause of action with regard to certain private respondents had arisen in the year 2004 and thereafter, and the challenge has been instituted in the year 2021. In this connection, he has placed reliance upon the judgment of the Hon'ble Supreme Court in ***P.S. Sathasivaswamy Vs. State of Tamil Nadu*** reported in ***(1975) 1 SCC 152***. For ready reference, the relevant extract



has been reproduced hereinbelow-

“2. ... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal.”

16. In his rejoinder, Shri Saikia, the learned Senior Counsel has however taken exception to the manner in which the private respondents have filed a common affidavit-in-opposition by submitting that the defence has to be made individually and in any case, there is no authorization letter by the other private respondents in favour of the deponent of the said affidavit. With regard to the aspect of filing two writ petitions, he has submitted that due explanation have been given in paragraph 34 as to why the second writ petition has been filed. As regards the educational qualification, he has



reiterated that while the petitioner nos. 1 to 11 are all having B.Sc. Nursing qualification, the rest are G.N.M. with however the requisite period of training. He has therefore refuted that the petitioners are not duly qualified.

17. As regards the objection concerning delay in filing the writ petitions, the learned Senior Counsel has submitted that it was only on publication of the notice dated 30.03.2021 inviting objections with which the provisional Gradation List was published that the petitioners came to know the facts of such appointments / promotions. He submits that though there is a mandate under the Rules to make yearly publication of the Gradation List, that was not done and therefore, the aspect of delay would not come in the way of making the present challenge.

18. He has also highlighted that in the second writ petition, there is an order dated 12.11.2021, as per which, the appointment of the private respondent nos. 8 to 14 to the rank of Sister Tutors would be subject to the outcome of the writ petition. The learned Senior Counsel has however fairly submitted that in case, on account of delay or for any other reason including the aspect that further promotions have been made in the meantime to the rank of Assistant Matron, the challenge is not considered by this Court, a direction should be given to duly consider the cases of the petitioners for further promotion to the rank of Matrons.

19. On the objection of delay in instituting the writ petition, Shri Saikia, learned Senior Counsel has refuted the same and has relied upon the case of **ONGC Ltd. Vs. Nippon Steel Corpn. Ltd.** reported in **(2007) 2 SCC 382**. In the said case, it was held that the objections to an arbitral award was not barred by time.



20. The rival contentions of the learned counsel for the parties have been duly considered.

21. The grounds of challenge which reveal from the materials on record are on the aspect that the private respondents were junior to the petitioners. There is also a specific allegation against respondent nos. 9, 10, 11, 12, 13 and 14 who were directly appointed as Sister Tutors by contending that such post can only be filled up by promotion. The Rules holding the field have also been relied upon by the rival parties. There is also a preliminary objection that the second writ petition being WP(C)/6006/2021 is not maintainable and in this connection, the learned counsel for the private respondents has relied upon Order 2 Rule 2 of the CPC.

22. Let this Court first deal with the preliminary objection on the maintainability of the second writ petition. The second writ petition has been instituted mainly to call for the records of Sister Tutor of the parties involved by making a specific challenge as such prayer was not there in the first WP(C)/2940/2021. Though ideally, there should not be any multiplicity of proceedings, in the instant case, no prejudice, whatsoever has been caused to the contesting respondents by filing of the second writ petition. As regards the reliance upon Order 2 Rule 2 of the CPC, it is trite law that it is only the spirit of the CPC which can be made applicable in a writ proceedings and in any case, the explanation to Section 141 of the CPC has clarified that the procedure provided in the Code is not required be followed in a proceeding under Article 226 of the Constitution of India. For ready reference, Section 141 of the CPC is extracted hereinbelow-

“141. Miscellaneous proceedings:



The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

[Explanation .-In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution.]"

23. Let this Court now deal with the challenge regarding respondent nos. 9, 10, 11, 12, 13 and 14. It is not in dispute that the said respondents were directly appointed as Sister Tutors. The learned Standing Counsel of the Department had however submitted that the aforesaid appointments were made by the KAAC as the concerned Health and Family Welfare Department is a transferred subject wherein the Council is empowered to make appointments. He has also submitted that the concerned post is of Grade III wherein such powers of appointments are vested with the Council. This Court has however noticed that the appointing authority, namely, the KAAC has not been made a party respondent and therefore, it would not be proper at all to enter into the said dispute without giving an opportunity. It is also seen that the appointments were made long before (more than a decade) and it would otherwise also not be in the interest of justice to interfere with such appointments in these writ petitions instituted in the year 2021.

24. As regards the challenge *qua* the other private respondents, this Court has noticed that initially, two Gradation Lists were prepared and the said action was the subject matter of challenge in WP(C)/3069/2018 instituted by the respondent nos. 7 – Association and the said writ petition was allowed vide judgment dated 16.11.2020. The said judgment was also



upheld by the Hon'ble Division Bench in WA/25/2021 whereafter, the Gradation List was published in the year 2021. Admittedly, there is no further challenge to the said Gradation List. The challenge rather is on the initially appointment / promotion of the private respondents which were of a period which is sufficiently long. The said aspect has been tried to be explained by the learned Senior Counsel for the petitioners by contending that it was only on the publication of the notice dated 12.04.2021 that the entire facts were revealed. Whether such explanation can be readily accepted is itself an issue. The case of **Nippon Steel** (supra) relied upon by the petitioners will have no application in the instant case as the same was in the context of filing of objection to an arbitral award which was held not to be barred by time.

25. On the contention / objection raised on behalf of the petitioners on a common affidavit filed by the private respondents, this Court is of the view that while a number of parties approaching the Court as petitioners in one petition filed jointly can have the pleadings verified by an affidavit by one of the petitioners who has to be authorized, when the appointment / promotions of a number of persons are put to challenge, the counter affidavit to such pleadings has to be individually made. This is required inasmuch as, each of such respondents would have to defend his own case in which the particulars would be different. There however would be no bar to have such respondents representing by a common counsel but the pleadings opposing such petition is required to be distinct. However, there are certain other factors which are to be taken into consideration in the adjudication of the present case.

26. As would reveal from the submissions made by the learned Standing



Counsel of the Department, in the years 2021 and 2022 all the petitioners who were in service and the private respondents (members of the respondent - Association) have been given the benefit of promotions to the rank of Assistant Matron. It therefore, appears that the aspect of seniority in the cadre of Sister Tutor has become inconsequential, more so, when for subsequent promotion, it is the seniority in the feeder cadre which would play some role. This Court has also noticed that under Rule 12(4), the procedure for promotion have been laid down to be "Merit with due regard to Seniority". It therefore become clear that the aspect of seniority would not be the prominent aspect for such promotion.

27. When such facts and submissions were made on behalf of the Department, it was responded by the learned Senior Counsel for the petitioners that so far as the further promotion from the rank of Assistant Matron to Matron is concerned, the petitioners' cases should be considered in accordance with law. The learned Standing Counsel had however informed that the Gradation List in the rank of Assistant Matron is yet to be prepared in which any party aggrieved by the seniority or any other issue would have the opportunity to lodge a complaint before its finalization and only thereafter, the promotions can be affected. This Court is of the view that the apprehension raised on behalf of the petitioners cannot be countenanced at this stage, as no such cause of action has arisen as yet.

28. In the case of **P.S. Sathasivaswamy** (supra) it has been laid down that a challenge to promotion should be made within an outer limit of 12 months as any belated challenge would amount to unsettling settled position. In any case, a Writ Court is a Court of Equity wherein the *bona fide* and diligence of a party approaching the Court are relevant



considerations. This Court is also of the view that since further promotions to the rank of Assistant Matron have been affected in the years 2021 and 2022 giving benefits to the rival parties, the said aspect of challenge belatedly made is not required to be gone into.

29. As would reveal from the submissions made on behalf of the Department, the Gradation List in the rank of Assistant Matron is yet to be prepared and only after such preparation, further promotion to the rank of Matron would be able to be made. This Court has also taken into consideration that though the writ petition was instituted by 21 petitioners, 9 of them have already retired from the service on attaining the age of superannuation. However, considering the prayer made on behalf of the petitioners with regard to further promotions to the rank of Matron, it is directed that the Gradation List in the rank of Assistant Matron be made strictly in accordance with law and if the Department decides to undertake an exercise for any promotions, the same is to be done strictly in accordance with law and particularly by following the prescription of the Rules of 1991.

30. Both the writ petitions accordingly stand disposed of in the manner indicated above. Interim order, if any, stands merged with the final order.

31. No order as to cost.

JUDGE

Comparing Assistant