



GAHC010106002024



2025:GAU-AS:9861

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

Case No. : WP(C)/2755/2024

JAHIRUL ISLAM
SON OF LATE MAHABBAT ALI, HOUSE NO. 14, BAGHORBORI ROAD,
PANJABARI, GUWAHATI- 781037, KAMRUP METRO, ASSAM, PIN- 781037

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE L.R. AND SECRETARY TO THE GOVERNMENT OF
ASSAM, JUDICIAL DEPARTMENT, DISPUR, GUWAHATI- 781006

2:HONBLE THE GAUHATI HIGH COURT
REPRESENTED BY THE REGISTRAR GENERAL
GAUHATI HIGH COURT
GUWAHATI- 781001

3:THE REGISTRAR ESTABLISHMENT
GAUHATI HIGH COURT
GUWAHATI- 781001

4:BIDYUT BIKASH GOSWAMI
SON OF SRI GIRISH CH. GOSWAMI/O VILLAGE CHAMARKUCHI
P.O.-SANEKUCHI
PS AND DIST.- NALBARI
ASSAM
PIN-781350.

5:HITESH CHANDRA DAS
S/O- SRI J. C. DAS R/O- NABAGRAHA ROAD
SILPUKHURI
GUWAHATI
KAMRUP (M)
ASSAM



PIN-781003

6:SRI ROBERT LALPIANGA NAMPUI
S/O- DAVID SINGA NAMPUI

R/O- GOLDLAND VILLA
NEAR POWER HOUSE
HALFLONG
DIST-DIMA HASAO
ASSAM PIN-788819

7:GAUTAM KUMAR DAS
S/O- SRI TILAK DAS R/O- VILL- BORKHOPA
P.O.
P.S AND DIST.- TAMULPUR
ASSAM PIN-781367

8:GEETANJALI MAYOUR
R/O-PUB SARANIA
BYE LANE 1 (WEST)
GUWAHATI
KAMRUP (M)
ASSAM
PIN-781003

9:KRISHNA SAIKIA
S/O-LT. DIMBESWAR SAIKIA R/O- PUBERUN APARTMENT
NIRIBILI PATH
GHORAMARA
P.O.- BELTOLA
GUWAHATI
KAMRUP(M)
ASSAM pin-781028

10:ANJUM BORAH
S/O-LATE GUNA KANTA BORAH
R/O- HOUSE NO. 11
ASHOK PATH
JATIA
KHAHILIPARA ROAD
GUWAHATI
KAMRUP (M)
ASSAM
ASSAM PIN-781006

11:MAITRYE DEVI
WIFE OF DR. P.P. TALUKDAR R/O- HOUSE NO. 115
NIZARAPAR



BIRUBARI
GUWAHATI
KAMRUP (M)
ASSAM
PIN-781016

12:RAKESH DAS
S/O- LATE JOYDEV DAS
R/O- HOUSE NO. 21
AJOYDHYA PATH
JANAKPUR
JATIA
GUWAHATI
ASSAM
PIN-781019

13:JAMES LALSANDAM NEINGAITE
S/O- LATE NAGAIKHUMSIEK NEINGAITE
R/O- C/O K.K. DAS
HOUSE NO. 20
MANIMMUGHDHA NAGAR
CHACHAL
VIP ROAD
SIX MILE
GUWAHATI
KAMRUP (M)
ASSAM
PIN-781011.

14:PARTHA SAIKIA
S/O- SONTI RAM SAIKIA
R/O- MILAN NAGAR
BYE LANE NO.4
MALIGAON
GUWAHATI
KAMRUP (M)
ASSAM
PIN-781011

15:AHMADUL ALA
S/O- LATE ABDUL KADER
R/O- HOUSE NO. 31
ANUPAM NAGAR
HATIGAON
GUWAHATI
KAMRUP (M)
ASSAM
PIN-781038



16:UTPAL BURAGOHAION
S/O-LATE PUNARAM BURAGOHAIN
R/O- HAPPY VILLA
UZANBAZAR
GUWAHATI
KAMRUP(M)
ASSAM
PIN-781003.

17:MOUSHUMI CHOUDHURY
WIFE OF LATE DEBOJIT DAS
R/O-S.C. GOSWAMI ROAD
PANBAJAR
GUWAHATI
KAMRUP(M)
ASSAM-781001.

18:RITUPARNA DAS
S/O- LATE MOHAN CHANDRA DAS R/O- VILL- GOPALPUR
P.O.-MIRZA
DIST.-KAMRUP(M)
ASSAM
ASSAM
PIN-78112

For the Petitioner(s) : Mr. A. Chamuah, Advocate

For the Respondent(s) : Mr. G. Baishya, Standing Counsel
Mr. R. Mazumdar, Advocate

Date of Hearing : **01.05.2025**

Date of Judgment : **31.07.2025**



**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (CAV)

Heard Mr. A. Chamuah, the learned counsel appearing on behalf of the petitioner. Mr. G. Baishya, the learned Standing Counsel, Gauhati High Court appears on behalf of the respondent Nos. 2 and 3 and Mr. R. Mazumdar, the learned counsel appears on behalf of the private respondent Nos. 4 to 18.

2. The petitioner herein has approached this Court by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India for quashing and/or expunging the last paragraph of his Appointment order dated 18.04.2016 whereby a condition was incorporated that the petitioner would maintain his *inter se* seniority in his original cadre, i.e., Senior Judicial Assistant (hereinafter referred to as, "SJA"). The petitioner has also sought for consequential reliefs to the effect that the petitioner be considered to the post of Assistant Registrar in the Ministerial Stream.

CASE OF THE WRIT PETITIONER

3. The facts of the present case, as would be discerned from the perusal of the pleadings before this Court, are that the petitioner was appointed as a Computer Operator on 14.08.1996. Subsequent thereto, he was promoted to the post of Lower Division Assistant (for



short, "LDA") on 20.06.2007. The petitioner was further promoted to the post of Senior Administrative Assistant later on re-designated as SJA on 30.10.2013.

4. On 04.01.2016, a notice was issued by the Registrar (Administration) of the Gauhati High Court, inviting options from intending Administrative Officer (Judicial) (hereinafter referred to as, "A.O.(J)") and SJA for filling up of 1 clear vacancy of Court Officer in the Principal Seat of the Gauhati High Court. It was mentioned in the said notice that the selected candidate for the post of Court Officer would maintain his or her seniority in the original cadre and his or her further promotion would be considered on the basis thereof. Candidates who were willing to submit their options were directed to submit their service profile to the A.O.(J) (Establishment) on or before 25.01.2016. Subsequent thereto, the Registrar (Establishment) also issued another communication on 04.02.2016 calling for options.

5. The record reveals that 3 candidates submitted their options including the petitioner and they were directed to appear in an interview to be held on 28.03.2016. The petitioner was selected in the said selection process and was appointed temporarily and until further orders as a Court Officer in the Principal Seat of the Gauhati High Court vide an Appointment Notification dated 18.04.2016. It was further mentioned in the said Notification that the petitioner would



maintain his seniority in his original cadre, i.e., SJA and his further promotion would be considered on that basis. The relevant part of the said Notification being pertinent to the adjudication of the present dispute is reproduced herein under:

“NOTIFICATION

Dated Guwahati the 18th April, 2016

No. HC.V-11/94(pt-I)/288/Estt.## In exercise of the powers conferred under Article 229 of the Constitution of India, read with the Rule 7 of the Gauhati High Court Services (Appointment, Condition of service and Conduct) Rules, 1967 amended vide notification No. HC.XI-05/2015/167/RC dtd. 24.7.2015, Hon'ble the Chief Justice has been pleased to appoint ***Sri Jahirul Islam, Senior Judicial Assistant***, temporarily and until further orders as ***Court Officer*** in the Principal Seat of the Gauhati High Court at Guwahati in the Pay Band of Rs. 800035000/- (PB-3) with Grade Pay of Rs. 4900/- per month plus other allowances as admissible under the Rules with effect from the date of his joining vice Sri Dilip Kr. Baruah, Court Officer, reverted back to his original post of Senior Judicial Assistant.

Sri Jahirul Islam will maintain his seniority in his original cadre i.e. senior Judicial Assistant and his further promotion will be considered on that basis.

By order,

REGISTRAR GENERAL

Memo No. HC.V-11/94(Pt-I)/288A/Estt.

Dated 18.4.2016

6. The record further reveals that the petitioner had submitted a representation for regularizing his services as Court Officer-I by fixing



his seniority w.e.f. the date of his joining i.e. on 18.04.2016. The said representation was placed before the Committee for dealing with all matters relating to Officers and Staff in the High Court (Principal Seat and Outlying Benches including the Subordinate Courts of all States) under the jurisdiction of the Gauhati High Court (hereinafter referred to as, "the Hon'ble Committee"). The said Hon'ble Committee in its meeting held on 16.08.2022 considered the representation of the petitioner and requested two (2) Hon'ble Judges, i.e., Hon'ble Mr. Justice Suman Shyam and Hon'ble Mr. Justice Manish Choudhury to examine the matter along with other collateral issues involved.

7. The Hon'ble Sub-Committee so constituted of Hon'ble Mr. Justice Suman Shyam and Hon'ble Mr. Justice Manish Choudhury submitted a report on 15.11.2022. The relevant part of the said report being essential for the adjudication of the present dispute is reproduced herein under:

“In order to examine the validity of the prayer made by the applicant, this Committee has gone through the relevant rules, circulars, notifications as well as the resolutions adopted by the various Committees from time to time pertaining to appointment of Court Officer and finds that Conditions of Services of the employees of the Gauhati High Court (Registry) is governed by the Gauhati High Court Service Rules, 1967 framed by the Hon'ble Chief Justice in exercise of powers conferred under Article 229 of the Constitution of India. The post of Court Officer was originally an ex-cadre post and the same used to be filled up by adopting various temporary measures including calling options from ex-army/ para-military officers. Subsequently, the post of Court Officer No. 1



was made a cadre post by amending the Schedule-I of the Rules of 1967 and 01 (one) post of Court Officer was incorporated as a Class-II(C) in Schedule-I of the Rules. Although originally, only one post of Court Officer was en-cadred, yet, subsequently, by issuing notification dated 24-07-2015, the second post of Court Officer was also en-cadred.

Schedule-I of the Rules of 1967 lays down the grade pay and cadre of the posts coming under the High Court Services. As per the amended Schedule-I of the Rules, 02 (two) posts of Court Officers are included in the Class-II(C) cadre. The other posts forming part of Class-II(C) service of Schedule-I along with their revised pay bands and number of posts, as on date, are indicated here-in-below for ready reference:-

Class-II(C)

<i>Sl.</i>	<i>Name of the post</i>	<i>No. of post</i>	<i>Pay Band</i>	<i>Scale</i>	<i>Grade Pay</i>	<i>PSP</i>
<i>1.</i>	<i>Administrative Officer (Judicial)</i>	<i>27</i>	<i>PB-3</i>	<i>22000-97000</i>	<i>11500</i>	<i>1000</i>
<i>2.</i>	<i>Court Officer</i>	<i>2</i>	<i>PB-3</i>	<i>22000-97000</i>	<i>11500</i>	<i>1000</i>
<i>3.</i>	<i>Protocol Officer</i>	<i>2</i>	<i>PB-3</i>	<i>22000-97000</i>	<i>11500</i>	<i>1000</i>

From a careful examination of the Rules of 1967, more particularly, the posts included in Class-II(C), we find that the post of Administrative Officer (Judicial), Court Officer and Protocol Officer belong to the same cadre, i.e. Class-II(C). It also prima-facie appears that all the three posts incorporated in Class-II(C) carry identical pay scale, are inter-changeable in nature and the materials placed before the Committee suggests that the Registry has also, from time to time, understood the Rules in such a manner. Therefore, going by



the edict of the Rules, it is apparent that all the posts included in Class-II(C) constitute a composite cadre. However, the same cannot be said for the post of Sr. Judicial Assistant (SJA), which post apparently is not a part of Class-II(C) cadre. The post of SJA apparently belongs to a different cadre under the Rules of 1967.

It is settled principle in service jurisprudence that inter-se seniority of employees ought to be determined in respect of those candidates who belong to the same cadre. Therefore, the seniority of the employees occupying any of the aforementioned posts of Class-II(C) including the applicant will have to be determined inter-se the incumbents holding the various post in Class-II(C) cadre and not in the cadre of SJA which is not a Class-II(C) post. However, such a recourse would not be permissible in this case in view of Rule 7(4) of the Rules of 1967, which provides as follows:

"(4) The posts of Court Officer in the Principal Seat of the Gauhati High Court and the Kohima Bench shall be filled up by calling options from the Administrative Officer (Judicial) and the Senior Judicial Assistants. The persons so appointed in the posts of Court Officer(s) shall maintain their respective seniority in their original cadres i.e. in the cadre of Administrative Officer (Judicial)/ Senior Judicial Assistant and their further promotion will be considered on that basis."

We have also noticed that the appointment of the applicant in the post of Court Officer was made against a substantive vacancy in respect of a post belonging to Class-II(C), based on a proper selection process. As such, we are of the view that there is no scope for reversion of the applicant to the previously held post of Sr. Judicial Assistant. If that be so, no meaningful purpose would be served by maintaining the seniority of the applicant in the original cadre of Sr. Judicial Assistant, more so, since the Rules of 1967 do not envisage any provision for reversion of an incumbent holding a Class-II(C) category post to another cadre. However, in view of Rule 7(4), the seniority of



the applicant will have to be maintained in the cadre of Sr. Judicial Assistant only i.e. in the cadre he originally belonged to. This, in the considered opinion of the Committee, has given rise to an anomalous situation, which cannot be resolved until such time, Rule 7(4) is suitably amended."

8. From the above quoted report, it would be seen that the Hon'ble Sub-committee so constituted categorically observed that the petitioner was appointed against the substantive vacancy in respect to a post belonging to Class-II(C) based on a proper selection process. It was further observed that there was no scope for reversion of the petitioner to the previously held post of SJA. On the basis thereof, it was opined that no meaningful purpose would be served by maintaining the seniority of the petitioner in the original grade of SJA, more so, when the Gauhati High Court (Appointment, Conditions of Service and Conduct) Rules, 1967 (for short, "the Rules of 1967") do not envisage any provision for reversion of an incumbent holding a Class-II(C) category post to another cadre. Be that as it may, the Hon'ble Sub-committee was of the view that on account of Rule 7(4) of the Rules of 1967, the seniority of the petitioner will have to be maintained in the cadre of SJA and as such opined that Rule 7(4) of the Rules of 1967 be suitably amended.

9. This report, so submitted by the Hon'ble Sub-Committee was placed before the Hon'ble Committee on 19.09.2023. The Hon'ble Committee accepted the recommendation of the Honb'le Sub-



Committee and directed the matter be placed before the Hon'ble Chief Justice for final decision. The relevant portion of the said resolution taken on 19.09.2023 being pertinent is reproduced herein under:

“ Item No. 5: Consideration of the note dated 18/08/2021 in connection with the prayer submitted by Shri Jahirul Islam, Court Officer-I, for regularizing him in his post by fixing his seniority from his date of joining as Court Officer-I. (deferred item) ”

Resolution: *The Committee on 16.08.2022 constituted a Sub-Committee consisting of Hon'ble Mr. Justice Suman Shyam and Hon'ble Mr. Justice Manish Choudhury to examine the matter along with other collateral issues. The said Sub-Committee after deliberation on 15.11.2022, submitted the report with the finding that the post of Administrative Officer (Judicial), Court Officer and Protocol Officer belong to the same cadre of Class-II (C) carrying identical pay scale and are interchangeable in nature and that the posts included in Class-II (C) constitute composite cadre whereas, the post of Senior Judicial Assistant (SJA) is not a part of Class-II (C) cadre as provided under the Gauhati High Court Service Rules, 1967. The said Sub-Committee also observed that the concerned incumbent was selected to the post of Court Officer and was appointed against this substantive vacancy belonging to Class-II (C) based on proper selection process and they are of the view that there is no scope for reversion of the applicant to the previously held post of Senior Judicial Assistant as such there is no meaningful purpose by maintaining the seniority of the applicant in the original cadre of Senior Judicial Assistant since the said 1967 Rules do not envisage any provision for reversion of the incumbent holding Class-II (C) category post to another cadre. After detailed consideration, the said Sub-Committee in Its decision dated 15.11.2022, observed that the said Rule 7(4) of the Gauhati High Court Rules, 1967 needs to be amended providing more clarity as regards the promotional avenues for the incumbents*



within the Class-II (C) category post by laying down the feeder cadre and the mode of selection in respect thereof. Hon'ble Mr. Justice Michael Zothankhuma, a member of this Committee considered not to give any views as the matter relating to the post of Secretary to the Chief Justice is pending before Division Bench of which Lordship is a member. Excluding Hon'ble Mr. Justice Michael Zothankhuma, we have accepted the recommendation of the Sub-Committee consisting of Hon'ble Mr. Justice Suman Shyam and Hon'ble Mr. Justice Manish Choudhury for necessary amendment of Rule 7(4) of said 1967 Rules. Accordingly, the matter may be placed before Hon'ble the Chief Justice, Gauhati High Court for final decision."

10. It is seen from the very resolution that the Hon'ble Chief Justice had also accepted the said recommendation as would be apparent from the signature appearing of the Hon'ble Chief Justice in the said resolution itself.

11. The record further reveals, more particularly, from the affidavit-in-opposition filed by the respondent Nos. 2 and 3 of the present writ petition that the Hon'ble Chief Justice on the basis of the said recommendation was pleased to direct the matter be placed before the Rule Committee on 03.06.2024. More than a year had passed, nothing concrete in that regard had materialized insofar as amending the Rule 7(4) of the Rules of 1967.

12. The record further reveals that the petitioner had submitted an application seeking information on 10.05.2024 as regards the list of names and date of promotion to the Assistant Registrar w.e.f.



18.04.2016 till the date of the application. The Registrar (Judicial) & PIO, Gauhati High Court had provided information to the petitioner on 21.05.2024 providing the list of names and the date of promotion to Assistant Registrar w.e.f. 18.04.2016 till 21.05.2024. From a perusal of the said list, it would be seen that 35 persons have been promoted to the post of Assistant Registrar (Ministerial Stream) w.e.f. 09.06.2016 and 8 persons were promoted to the post of Assistant Registrar (Stenographer Stream) w.e.f. 09.06.2016.

13. The petitioner's grievance in the present proceedings is that the petitioner having been appointed to the post of Court Officer, which falls in the category of Class-II(C) was not considered for promotion to the post of Assistant Registrar although the post of the Court Officer is a feeder category post to the post of Assistant Registrar. It is the case of the petitioner that though the petitioner was appointed, post a proper selection process to the post of Court Officer which is a cadre post and since the last 8 years, he was never considered on the ground that his seniority is still maintained in the SJA cadre. It is the case of the petitioner that his seniority should have been maintained, in the Court Officer's cadre, but on account of the extraordinary condition stipulated in his Appointment order, the petitioner is deprived of due consideration. It is under such circumstances, the petitioner has approached this Court by filing the present writ petition.



INITIAL PROCEEDINGS AND INTERIM DIRECTIONS

14. The record reveals that this Court vide an order dated 30.05.2024 had issued notice making it returnable on 26.06.2024. Subsequent thereto, on 07.06.2024, an interview process was initiated for filling up of 1 post of Deputy Registrar and 1 anticipated vacancy of Assistant Registrar and the interview was scheduled to be held on 12.06.2024 insofar as the post of Assistant Registrar was concerned. The petitioner filed an application before this Court in the present proceedings which was registered and numbered as I.A.(Civil) No. 1769/2024 seeking appropriate directions upon the respondent Nos. 2 and 3 to call the petitioner for the ensuing interview to be held on 12.06.2024 for the post of Assistant Registrar.

15. This Court vide an order dated 11.06.2024 taking into consideration that as per Rule 7(3) of the Rules of 1967, the post of the Assistant Registrar can be filled up from amongst the State Judicial Service Grade-III Officers or by promotion from Gazetted Officers of the High Court Services belonging to Classes- II(B), II(C) or II(D) or from amongst Advocates having not less than 5 years of continuous service in the bar, permitted the petitioner to participate in the Selection process for the post of Assistant Registrar as notified vide Notification No. HC.V-25/2014/488/Estt. dated 07.06.2024 subject to the petitioner fulfilling other prescriptions under the Rules



of 1967. It was observed in the said order that the participation of the petitioner for selection and promotion to the post of Assistant Registrar would not confer any right on the petitioner and further if any right accrues the same shall be, subject to the outcome of the writ petition, including the parameters laid down in Notification No. HC.V-105/2013/142/Estt. dated 02.03.2021. It was also observed that if the petitioner was selected for promotion to the post of Assistant Registrar then such promotion and Appointment order shall not be issued without the leave of the Court. It is pertinent herein to take note of that the petitioner failed to succeed in the said selection as is apparent from the records.

16. Subsequent thereto, while the present writ proceedings were pending, the Registry of the Gauhati High Court had issued another notice on 24.10.2024 to fill up 3 anticipated vacancies of Assistant Registrar, for which, interview was scheduled on 05.11.2024. In the said notice which was issued on 24.10.2024 only 10 persons were called to be interviewed for the 3 anticipated vacancies of Assistant Registrar to be held on 05.11.2024 and the petitioner's name did not feature in the said list. It is under such circumstances, the petitioner filed another application on 25.10.2024 seeking appropriate direction(s) so that the petitioner can be permitted to participate in the said ensuing selection process to the post of the Assistant Registrar to be held on 05.11.2024. The said application was



registered and numbered as I.A.(Civil) No. 3290/2024. This Court vide an order dated 30.10.2024 passed an order that the petitioner be allowed to participate in the ensuing selection process for the post of Assistant Registrar, which was scheduled to be held on 05.11.2024 as per the notice dated 24.10.2024. It was further made clear by this Court that in the event the petitioner is selected for Appointment to the post of Assistant Registrar, his appointment/promotion shall not be given effect to without the leave of the Court. The petitioner's participation in the selection process to the post of Assistant Registrar by virtue of the order so passed would not accrue any right to the petitioner unless, otherwise, as may be directed by this Court subsequently. The petitioner thereupon participated in the said selection process pursuant to the order dated 30.10.2024. Nothing has been placed before this Court as regards what was the outcome of the said selection proceedings.

STAND OF THE RESPONDENT NOS. 2 & 3

17. The record further reveals that the respondent Nos. 2 and 3 have filed an affidavit-in-opposition. In the said affidavit-in-opposition, the stand so taken was that there were 2 numbers of posts of Court Officer in the Principal Seat of the Gauhati High Court. Out of the two (2) posts, one (1) was ex-cadre post which was later on en-cadred as would be apparent from the Notification dated 24.07.2015. Pursuant



thereto, a proposal was initiated by the Registry of the Gauhati High Court for insertion of a provision in the Rules of 1967 for filling up of the posts of Court Officer in the Principal Seat, the Kohima Bench, the Aizawl Bench and the Itanagar Bench. Insofar as the Principal Seat and the Kohima Bench of the Gauhati High Court, the proposal was that the post of the Court Officer should be filled up by calling options from A.O.(J) and SJA and the person(s) so appointed in the post of the Court Officer(s) shall maintain their respective seniority in their original cadres, i.e., in the cadre of A.O.(J)/SJA and the further promotion would be considered on that basis. Insofar as the filling up of the post of Court Officer in the Registry of the Aizawl and Itanagar Benches of the Gauhati High Court, the proposal was that the post of the Court Officer should be filled up by calling options from the A.O. (J), Assistant and SJA. The person(s) so appointed in the post of Court Officer(s) shall maintain their respective seniority in their original cadres, i.e. in the cadre of AOJ/Assistant/SJA and their further promotion would be considered on that basis.

18. On the basis of such proposal, two (2) Sub-Rules were inserted to Rule 7 of the Rules of 1967. For the Principal Seat as well as for the Kohima Bench of the Gauhati High Court, Rule 7(4) of the Rules of 1967 was inserted. Insofar as Aizawl Bench and the Itanagar Bench of the Gauhati High Court, Rule 7(4)(A) of the Rules of 1967 was inserted. These amendment to the Rules of 1967 were made by



notifying the same vide a Notification dated 24.07.2015. Rule 7(4) being relevant for the purpose of the present dispute is reproduced herein under:

“(4) The posts of Court Officer in the Principal Seat of the Gauhati High Court and the Kohima bench shall be filled up by calling options from the Administrative Officer (Judicial) and the Senior Judicial Assistants. The persons so appointed in the posts of Court Officer(s) shall maintain their respective seniority in their original cadres i.e. in the cadre of Administrative Officer)Judicial)/Senior Judicial Assistant and their further promotion will be considered on that basis.”

19. It would also be seen that vide the same Notification dated 24.07.2015, the Schedule-I to the Rules of 1967 was also amended wherein at serial No. III of Class-II(C) appearing in Schedule-I was inserted as follows:

“III. Court Officer	2	PB-3, Rs. 8000-Rs. 35000,
(En-Cadre)		G.P. Rs. 4900.”

20. Class II(CC) which appeared in Schedule-I which was pertaining to Court Officer ex-cadre was deleted.

21. It is the specific case of the respondent Nos. 2 and 3 in the affidavit-in-opposition that based upon Rule 7(4) of the Rules of 1967, the Notices were issued on 04.01.2016 and 04.02.2016 wherein a condition was duly mentioned that the selected candidate for the post



of Court Officer shall maintain his or her seniority in the original cadre. It was also mentioned in the Appointment Notification dated 18.04.2016 that the petitioner would maintain his seniority in the cadre of SJA in terms with Rule 7(4) of the Rules of 1967. It was also stated that the petitioner joined in the said post of Court Officer on the very same day. In the affidavit-in-opposition, it was stated that prior to the representation submitted by the petitioner on 18.08.2021, the petitioner had submitted another representation on 09.02.2018. The said representation upon being submitted, the Hon'ble Committee in its Minutes of the meeting held on 30.07.2018, observed that the petitioner would maintain his seniority in his original cadre of SJA and his further promotion would be considered on that basis.

22. It was further averred in the affidavit-in-opposition that as the petitioner was maintaining his seniority in the cadre of SJA and SJA was not a part of Class-II (C) post, the next promotion of the petitioner is to the post of A.O.(J) which would be considered in due course, when he falls in the zone of consideration. It was mentioned that prior to the petitioner's Appointment as the Court Officer, the petitioner was holding the post of SJA and was placed at serial No. 87 in the final gradation list published vide Notification dated 20.01.2016 wherein 26 numbers of Officers holding the post of A.O.(J) and 86 numbers of persons holding the post of SJA were senior to him in that list. It was averred that though the petitioner was working as a Court



Officer w.e.f. 18.04.2016, however, his seniority has to be maintained in his original cadre of SJA. It was further mentioned that in terms with the gradation list of SJA published on 10.06.2024, there are total of 47 numbers of Officers/Staff who are senior to the petitioner i.e. 26 numbers of A.O.(J) and 21 numbers of SJA including the Court Master, Protocol Officer and Court Officer who maintain the seniority in the cadre of SJA. It was further stated that as per the existing Rule i.e. Rule 7(4) of the Rules of 1967, the petitioner is not eligible for the post of Assistant Registrar as he is not in the feeder category of A.O. (J) and he would be considered only for the promotion to the post of A.O.(J) as he is retaining his seniority in his original cadre of SJA. It was further mentioned that the petitioner was not borne in Class II(C) cadre of the employees of the Gauhati High Court.

**ANALYSIS OF THE GRADATION LIST AND NOTIFICATION
DATED 02.03.2021**

23. This Court has duly taken note of the gradation list dated 10.06.2024 enclosed as Annexure-A12 to the affidavit-in-opposition. It surprises this Court to note that though the post of Court Officer is a cadre post in Class II(C), there is no gradation list prepared insofar as the post of Court Officer is concerned. On the other hand, it would be seen that Sri Hengoumang Lhoujiem who is a Court Officer and the petitioner have been placed at serial Nos. 12 and 22 respectively in



the gradation list insofar as the SJA along with Court Masters in the Gauhati High Court, Principal Seat.

24. This Court further finds it most pertinent to take note of the Notification dated 02.03.2021 which has been enclosed as Annexure-A6 to the affidavit-in-opposition filed by the respondent Nos. 2 and 3. From a perusal of the said Notification, it transpires that for the purpose of having a proper and uniform execution of the promotion policy (merit-cum-seniority) in respect of Officers and Staff of the Principal Seat of the Gauhati High Court, as well as the Outlying Benches, certain parameters were laid down. The said parameters being relevant are reproduced herein under:

“(i) The number of incumbents in the zone of consideration for promotion in the next higher cadre shall be as follows:-

No. of Vacancies	Size of zone of consideration
1	5
2	8
3	10
4	12
5 to 10	Twice the number vacancies+4
11 to 14	24
15 and above	1 ½ times of the number of vacancies,



	<i>rounded off to the next higher integer +3</i>
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- (ii) *Annual Confidential Report (ACR) of the last 05 (five) years shall be considered and total mark in the ACRs shall be fixed at 30.*
- (iii) *Marking of the ACRs for each year shall be as follows:-*
- a. *Outstanding- 6*
 - b. *Very Good- 5*
 - c. *Good- 4*
 - d. *Average- 3*
 - e. *Below Average- 2*
- (iv) *Minimum eligibility criteria for being considered for promotion shall be fixed at 18 marks out of total marks in the ACR.*
- (v) *Interaction/Viva-voce shall be held to assess the knowledge of office procedure and related issues, communication skill, general awareness level and overall personality of the Officer/Staff and in the said process, 30 marks is allotted. To be eligible to get promotion, an officer/Staff shall have to get at least 60% marks in the aforesaid interaction/viva-voce.*
- (vi) *Merit list of the Officers/Staff, who will be found eligible for promotion as per the above criteria, shall be prepared purely as per merit and seniority is to be counted only when merit is equal.***
- (vii) *Vigilance clearance shall be mandatory for promotion to any higher cadre."*

25. From the above quoted parameters, it would be seen that the



size of zone of consideration have been mandated. For e.g., against 1 vacancy, the zone of consideration is 5; for 2 vacancies, zone of consideration is 8 and so on. But it is interesting to take note of that nothing is spelt out in the said Notification that the said zone of consideration would be applicable on the basis of seniority. Rather, a reading of the Notification and, more particularly, the parameters laid down therein appears that the zone of consideration would be based upon merit. A reading of Clauses (ii) to (iv) quoted herein above would show that a candidate who has minimum eligibility of 18 marks in the last Annual Confidential Reports (ACRs) would have the minimum eligibility criteria for being considered for promotion. A candidate who has the minimum eligibility criteria would then be assessed on the basis of interaction/viva-voce on total marks of 30 and to be eligible for promotion, the candidate shall have to get at least 60% marks in the interaction/viva-voce. Clause (vi) further supports the view of this Court that the zone of consideration would be based on merit and not on seniority wherein it has been mentioned that the candidates would be adjudged purely on merit and seniority would be only counted when the merit is equal. A further analysis of this Notification would be made in the later segment of the present judgment.

STAND OF THE PRIVATE RESPONDENTS



26. Let this Court now take up the affidavit-in-opposition filed by the private respondents. The case of these private respondents is that they are A.O.(J) and they are senior to the petitioners in the rank of SJA. It was further mentioned that the post of the Court Officers belonging to Class-II(C) as per Schedule-I are optional posts and options are open to A.O.(J) as well as SJA and as per Rule 7(4) of the Rules of 1967. It was averred that as per Rule 7(4) of the Rules of 1967, the A.O.(J) and SJA are to maintain their seniority in their respective original cadres, i.e. in the cadre of A.O.(J) or SJA and further their promotions are to be considered on the basis thereof. It was further mentioned that the posts of the Court Officers are not promotional posts as would be reflected from the respective Appointment letters of the respondent Nos. 4 to 18 as A.O.(J) vis-à-vis, the Appointment order of the petitioner. In addition to that, the respondent Nos. 4 to 18 have supported the stand of the respondent Nos. 2 and 3 in their affidavit-in-opposition. It was further mentioned that the petitioner had also challenged the Rule 7(4) of the Rules of 1967 by filing another petition being WP(C) No. 7086/2024 on 27.12.2024 and the said writ petition is presently pending.

CONSOLIDATED AFFIDAVIT FILED BY THE RESPONDENT NOS. 2 & 3

27. This Court further finds it relevant to take note of that when the



instant writ petition along with another writ petition being WP(C) No. 604(AP)/2024 was taken up, this Court made a query on the interplay of Rule 7(3) with Rule 7(4) and 7(4)(A) of the Rules of 1967 and, more particularly, to the aspect, as to whether, the said Rule i.e. Rule 7(4) and Rule 7(4)(A) of the Rules of 1967 overrides Rule 7(3) of the Rules of 1967. To the said query so made vide the order dated 30.01.2025, a consolidated affidavit was filed by the Registrar General of the Gauhati High Court wherein in clear and unambiguous terms, it was stated that Rule 7(4) and Rule 7(4)(A) of the Rules of 1967 do not override Rule 7(3) of the Rules of 1967. It was also mentioned in the said consolidated affidavit that in pursuance to the orders passed by this Court in I.A.(Civil) No. 1769/2024 and I.A.(Civil) No. 3290/2024, the petitioner was allowed to appear for interview for the post of Assistant Registrar. It was specifically stated that no appointment or promotion would be given effect to without the leave of the Court. It was also stated that the petitioner's participation in the selection process did not automatically entitle him to the post, and the selection remains subject to judicial scrutiny.

CONTENTIONS OF THE LEARNED COUNSELS FOR THE PARTIES

28. Mr. A. Chamuah, the learned counsel appearing on behalf of the petitioner submitted at the outset that Rule 7(4) of the Rules of 1967



had been put to challenge in WP(C) No. 7086/2024 primarily on the ground that the said Rule is contrary to the well-established principles of service jurisprudence inasmuch as a person who has been appointed to a post in the higher cadre, his seniority has to be taken on the basis of his appointment in the higher cadre post and not on the basis of his seniority which he maintained in the lower cadre post. The learned counsel submitted that the said Rule 7(4) of the Rules of 1967 is also challenged on the ground that there already exists Rule 7(4) of the Rules of 1967 which relates to the posts of Chief Translators and Senior Grade Translators and as such, the super imposition of Rule 7(4) of the Rules of 1967 relating to Court Officers vide the Notification dated 24.07.2015 appears to be completely without application of mind. Be that as it may, the learned counsel for the petitioner submitted that the legality and validity of Rule 7(4) of the Rules of 1967 is pending before the learned Division Bench.

29. The learned counsel submitted that from the materials on record, it would show that the petitioner was appointed to the post of Court Officer pursuant to options being invited from all concerned and thereupon a selection being conducted wherein the petitioner was found to be the most suitable, for which, the petitioner was appointed as a Court Officer. He submitted that even on the Administrative side, the Hon'ble Sub-committee as well as the Hon'ble Committee have expressed their opinion that the petitioner's seniority should be



reckoned as per his Appointment to the post of Court Officer and accordingly on 19.09.2023 recommended that Rule 7(4) of the Rules of 1967 should be suitably amended. The learned counsel submitted that these recommendations still stands but on the other hand various Appointments to the post of Assistant Registrar (Ministerial Stream) have been made and the grievances of the petitioner remain unredressed. It is under such circumstances, the petitioner having no other option had to approach this Court by filing the present writ petition on 27.05.2024. He further submitted that after the filing of the writ petition, on 03.06.2024, the Hon'ble Chief Justice had placed the matter before the Rule Committee and almost a year have passed, there has been no redressal to the grievances of the petitioner.

30. The learned counsel for the petitioner, further submitted that it is a well-settled proposition that once an incumbent is appointed to a post, according to the Rules, his seniority has to be reckoned from the date of his initial Appointment and not according to the date of confirmation unless the Rules provide otherwise. In that regard, he has referred to the judgments of the Supreme Court in the case of ***Ajit Kumar Rath Vs. State of Orissa & Others*** reported in ***(1999) 9 SCC 596*** as well as in the case of ***Pawan Pratap Singh & Others Vs. Reevan Singh & Others*** reported in ***(2011) 3 SCC 267***. He therefore submitted that Rule 7(4) of the Rules of 1967 though only states that the seniority would be maintained as per the original cadre, but do not



stipulate that a person who has been appointed to the post of Court Officer can be reverted back to his original cadre. He referred to Rule 7(5) of the Rules of 1967 which provides a stipulation that Court Masters appointed can be reverted and Appointment of an employee as Court Master would not be treated as his or her promotion. Under such circumstances, the learned counsel therefore submitted that the petitioner having been appointed in the post of Court Officer and further having been rendering service without any blemish since the last 9 years cannot be disregarded for being considered to the post of Assistant Registrar.

31. The learned counsel further submitted that the perusal of the Rule 7(3) of the Rules of 1967 would further show that the feeder category to the post of Assistant Registrar would be amongst the State Judicial Service Grade-III, or by promotion from amongst the Gazetted Officers of the High Court's Service belonging to Class II(B), Class II(C) or Class II(D); or from amongst the Advocates of not less than 5 years continuous practice at the Bar. He therefore submitted that when the post of the Court Officer which is in Class-II(C) is a feeder category post, merely because the petitioner's seniority is to be reckoned in his original cadre, he cannot be deprived of being considered for promotion, which is a fundamental right of the petitioner enshrined under Article 14 and Article 16 of the Constitution of India.



32. The learned counsel for the petitioner submitted that all the posts in category II(C); be it the A.O.(J), Court Officer, Protocol Officer etc. are feeder posts to the post of Assistant Registrar and as such, the seniority in whichever cadre is maintained would have only relevance where the merit is equal and therefore the question of the petitioner not being taken into consideration is in violation of Article 14 and Article 16 of the Constitution of India.

33. The learned counsel further referring to the Notification dated 02.03.2021 submitted that as the parameter for the zone of consideration mentions about the merit, the petitioner's case was required to be considered by applying the Notification dated 02.03.2021, rather depriving the petitioner. The learned counsel further drew the attention to the judgment of the learned Division Bench of this Court in the case of **Nirod Sarma Vs. Safiqur Rahman & Others** reported in **(2024) SCC OnLine Gau 360** and specifically referred to paragraph No. 62 wherein it was specifically observed in connection with a similar rider as had been imposed in the case of the petitioner to the effect that the said rider does not take away the fact that subsequent promotions made to the cadre post of SJA left vacant by the promotion of SJA to higher post are regular promotions and the bar on the appellant therein for being appointed as regular Protocol Officer, due to the rider cannot continue, when his post of SJA had been filled up on 20.07.2017.



34. Mr. G. Baishya, the learned Standing Counsel, Gauhati High Court appearing on behalf of the respondent Nos. 2 and 3 submitted that Rule 7(3) of the Rules of 1967 has to be harmoniously construed with Rule 7(4) of the Rules of 1967. The learned Standing Counsel submitted that if Rule 7(3) of the Rules of 1967 is read harmoniously with Rule 7(4) of the Rules of 1967, the petitioner cannot be deemed to have been appointed substantively to the post of Court Officer and as such, he would be deemed to be holding the post of SJA and his promotion would only be due when those senior to him have been appointed to the post of A.O.(J) and it is only when the petitioner is appointed to the post of A.O.(J), he can be considered to the post of Assistant Registrar and not before that. Further to that, the learned Standing Counsel appearing on behalf of the Gauhati High Court submitted that the petitioner is maintaining his seniority in the cadre of SJA and as SJA is not a part of Class II(C) post. The next promotion of the petitioner is to the post of A.O.(J) would only be considered in due course of time when he falls in the zone of consideration. The learned Standing Counsel further reiterated its stand as stated in the affidavit-in-opposition filed by the respondent Nos. 2 and 3 as well as the consolidated affidavit filed by the respondent Nos. 2 and 3.

35. Mr. R. Mazumdar, the learned counsel appearing on behalf of the private respondent Nos. 4 to 18 submitted that the Appointment of



the petitioner to the post of Court Officer was an optional appointment and he cannot be deemed to have been promoted and appointed in regular course from the post of SJA. He further submitted that as per Rule 7(4) of the Rules of 1967, if an A.O.(J) is appointed to the post of Court Officer, he would continue to hold the seniority in the cadre of the A.O.(J) and if a SJA is appointed to the post of Court Officer, he would continue to hold their seniority in the category of SJA and their eligibility to enter the zone of consideration for regular promotion to the next higher level i.e. from SJA to A.O.(J) and from A.O.(J) to Assistant Registrar would have to be considered on the basis of their seniority position in their respective cadre.

36. The learned counsel submitted that there is no amalgamated seniority list of A.O.(J) and Court Officer. Therefore, the consideration of a Court Officer for promotion and appointment to the post of Assistant Registrar would only accrue from his position in the seniority list of the A.O.(J), if such incumbent had been holding the post of A.O.(J) prior to his appointment as Court Officer. The learned counsel further submitted that an incumbent who is holding the post of SJA prior to his appointment as Court Officer, would not be at par with an incumbent who had been holding the post of A.O.(J) prior to his appointment as a Court Officer. It was therefore submitted that while being considered for promotion to the next higher post of Assistant Registrar, the seniority both inter-cadre and intra-cadre is required to



be maintained to uphold the administrative fair play. The learned counsel submitted that if any other interpretation is given, it would lead to a situation where person junior in service would steal a march over the senior person and such interpretation would also be in violation to the Rules of 1967, which hold the field. The learned counsel distinguished the judgment of the learned Division Bench of this Court in the case of **Nirod Sarma (supra)** on the ground that the facts therein were completely different from the facts involved in the present proceedings.

ANALYSIS AND DETERMINATION

37. From the pleadings, the materials on record as well as the submissions so made by the learned counsels appearing on behalf of the parties, it would be seen that pursuant to Notices being issued on 04.01.2016 and 04.02.2016 inviting applications from all A.O.(J)(s) as well as SJA(s), 3 persons submitted their options and they were called for interview on 28.03.2016. The record further reveals that pursuant to the interview, the petitioner was found most suitable and was selected. On the basis of the selection, the matter was placed before the Hon'ble Committee. The Hon'ble Committee vide its resolution dated 07.04.2016 had recommended that the petitioner be appointed to the post of Court Officer. The resolution so adopted by the Hon'ble Committee is reproduced herein under:



ITEM NO. 1: *Consideration of this Registry's note dated 30.3.2016 for recommendation of the name of the candidate for appointment to the post of Court Officer in the Principal Seat of Gauhati High Court.*

RESOLUTION: *The Committee is consideration of the relevant materials and taking into account the parameters and yardsticks of selection, including the marks obtained by the candidates in the interview held on 28.03.2016 recommends Shri Jahirul Islam, SJA for the post of Court Officer. However, he will maintain his seniority in his original cadre, i.e. Senior Judicial Assistant and his further promotion will be considered on that basis."*

38. Pursuant thereto, the Hon'ble Chief Justice duly accepted the said recommendation, whereupon the petitioner was appointed vide the Notification dated 18.04.2016.

39. At this stage, this Court further finds it very pertinent to observe that the work to be performed by the persons manning posts such as Court Officer, Protocol Officer, Assistant Protocol Officers are very demanding and challenging due to the exigencies of the work schedule. They are the face of the High Court to those who do not belong to the particular High Court. It is because of the demanding nature of their duties that options are called for as otherwise most of the A.O.(J) or SJA are not interested in the said posts. From the very Notices dated 04.01.2016 and 04.02.2016, it would be seen that though options were sought for from all A.O.(J)(s) as well as SJA(s), only 3 employees submitted their options including the petitioner. Rule 7(4) of the Rules of 1967, specifically mandates that the post of Court



Officer is to be filled up by calling for options from all A.O.(J)(s) and SJA(s). Therefore, the Rules of 1967 are clear, as to how, the post of the Court Officer is to be filled up. It is relevant to take note of that on the basis of appointment to the post of Court Officer, an Officer in the cadre of SJA reaches the status of Class-II(C) which apparently is higher in rank, status, pay etc., from the post of SJA. The materials on record do not show that the appointment of the petitioner to the post of Court Officer or even the procedure adopted for selection of the petitioner to the post of Court Officer are put to challenge. The observations of the Hon'ble Sub-Committee as well as the Hon'ble Committee as quoted above clearly shows that the petitioner was selected for appointment to the post of Court Officer after carrying out a proper selection process. It cannot also be brushed aside that the petitioner herein was appointed against a substantive vacancy to a cadre post of Court Officer and the petitioner had been since then serving as a Court Officer till date i.e. for a period of more than 9 years. The resolution of the Hon'ble Committee dated 07.04.2016 as quoted at Paragraph No. 37 would further show that the petitioner was recommended for appointment for the post of Court Officer. This Court also finds it relevant to take note of the judgment of the learned Division Bench of this Court in the case of **Nirod Sarma (supra)** wherein the learned Division Bench took into consideration the demanding nature of work of the Protocol Officer and Assistant



Protocol Officer. In the opinion of this Court, the nature of work of a Court Officer is no less demanding and challenging. The relevant observations made at Paragraph No. 55 of the said judgment is reproduced herein under:

“55. The official records show that the post of Protocol Officer and Assistant Protocol Officer are very demanding posts, due to the exigencies of the work schedule. They are the face of the High Court to those, who do not belong to the particular High Court. As such, they have to be carefully selected. It is because of the demanding nature of duties of the Protocol Officer that options are called for, as otherwise most of the SJAs are not interested in the said post of Protocol Officer.....”

40. Before dealing with Rule 7(4) of the Rules of 1967 as was inserted vide the Notification dated 24.07.2015 which is quoted in the foregoing segments of the instant judgment, it is relevant at this stage to take into consideration the Note placed by the Registry which was approved by the Hon’ble Chief Justice (Acting) on 10.04.2015 prior to the Notification dated 24.07.2015 which led to the insertion of Rule 7(4) and Rule 7(4)(A) to the Rules of 1967. Paragraph Nos. 6, 7 and 8 of the said Note placed before the Hon’ble Chief Justice (Acting) is quoted herein below:

“[6] In this context, it may be mentioned here that in the Principal Seat, the post of Court Officer-I (en-cadred post) is equivalent to that of AOJ (Class-IIC) and the same is filled up by calling option from in service employees in the cadre of AOJ and SJA.



[7] *It may further be mentioned that the Hon'ble Committee constituted for dealing with all matters relating to officers and staff of the High Court held on 6th April, 2015 while considering the matter regarding filling up of the post of Court Officer No.1 (encadre) in this Registry has resolved as follows*

***“Options be called for from the AOJ and SJA for appointment to the post of Court Officer No.1 in the same terms and conditions as laid down in this Committee’s resolution dated 9th March, 2015 adopted in respect of appointment to the post of PO and APO.*”**

The relevant portion of the resolution dated 9th March, 2015 runs as follows:

“...It is further clarified that although the selected candidates will be appointed as PO and APO from the cadres of SJA and JA, but they will maintain their respective seniority in their original cadres and their further promotion will be considered on that basis.”

These resolutions have already been approved by your Lordship.

(8) In view of the above, the post of Court Officer No. II in the Principal Seat of the Gauhati High Court as well as the post of Court Officers in the Outlying Benches of the Gauhati High Court shall be treated as en-cadre post equivalent to that of AOJ and the same may be allowed to be filled up as mentioned in para [7] hereinabove, if vacant.

Laid for favour of kind consideration and orders.”

41. From the above, it would be seen that the Gauhati High Court on the Administrative side have all along treated the post of A.O.(J) and



Court Officer as equivalent posts. In that backdrop, let this Court now deal with Rule 7(4) of the Rules of 1967.

42. Rule 7(4) of the Rules of 1967 categorically mandates that the post of the Court Officer in the Principal Seat as well as Kohima Bench of the Gauhati High Court would be filled up by calling for options from the A.O.(J) and SJA. Rule 7(4) of the Rule of 1967 further stipulates that person so appointed in the post of Court Officer shall maintain his/her respective seniority in the original cadres, i.e., in the cadre of A.O.(J)/SJA as the case may be and their further promotion would be considered on that basis. It appears that on account of the latter part of Rule 7(4) of the Rules of 1967 that the rider is included in the appointment order dated 18.04.2016 of the petitioner.

43. The post of Court Officer is within the cadre of the Rules of 1967. The post though on administrative exigency can be filled up on ad hoc or stopgap arrangement, but if the post of Court Officer is filled up by following the procedure laid down by the Rule 7(4) of the Rules of 1967, which would be by calling for options from A.O.(J) and SJA and thereupon selecting the most suitable, the appointment to the post of Court Officer cannot be said to be a stopgap, ad hoc or fortuitous. Rather, the appointment would be substantive. In this regard, this Court finds it relevant to take note of the judgment of the Constitution Bench of the Supreme Court in the case of **Rudra Kumar**



Sain & Others Vs. Union of India & Others reported in **(2000) 8 SCC 25** wherein the Supreme Court considered the three terms namely "ad hoc", "stopgap" and "fortuitous". Paragraph No. 20 of the said judgment is reproduced herein under:

"20. In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc". In this view of the matter, the reasoning and basis on which the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be "fortuitous/ad hoc/stopgap" are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous."

44. Let this Court now take into consideration, the effect of the latter part of Rule 7(4) of the Rules of 1967 which stipulate that the SJA/A.O.(J) so appointed to the post of Court Officer would maintain his or her seniority in his or her original cadre and his or her further promotion would be considered on that basis. It is not foreign to service jurisprudence that a person can be promoted to higher cadre but retaining the seniority in his/her erstwhile cadre. The said principle though is an exception but is permissible in certain circumstances. The circumstances would be when promotion is made on ad hoc or officiating basis. Another circumstance would be when



the appointment is made by way of deputation or transfer. Additionally, when the Rules stipulate promotion or appointment subject to reversion or for consideration for further promotion.

In the foregoing discussion, this Court had already observed that the appointment of the petitioner to the post of Court Officer was done in terms with Rule 7(4) of the Rules of 1967 and through a proper selection procedure and with the approval of the Authority concerned. Therefore, the appointment of the petitioner cannot be said to be ad hoc or officiating or stopgap or fortuitous, more so, when the Hon'ble Committee recommended that the petitioner be appointed to the post of Court Officer.

45. The post of Court Officer being a cadre post, the concept of transfer or deputation from A.O.(J) or SJA which are also posts with the meaning of "cadre" as defined in Rule 2(e) of the Rules of 1967 does not arise.

46. The stipulation in Rule 7(4) of the Rules of 1967 do not contain a provision for reversion of a person appointed to the post of Court Officer to the post of SJA. This aspect is also apparent from the observations of the Hon'ble Sub-Committee as well as the Hon'ble Committee which has been accepted by the Honb'le Chief Justice as apparent from the report dated 15.11.2022 and the resolution dated 19.09.2023 respectively. Therefore, the stipulation contained in Rule



7(4) of the Rules of 1967 that the person appointment to the post of Court Officer would retain the seniority in the respective cadre i.e. A.O.(J) and SJA is only for the purpose of consideration in respect to further promotion. At the cost of repetition, it is reiterated that the rider contained therein in the order of appointment of the petitioner which is impugned in the present proceedings, is the fall out of the stipulation contained in the latter part of Rule 7(4) of the Rules of 1967.

47. Be that as it may, Rule 7(4) of the Rules of 1967 nowhere stipulates that merely because a SJA having been selected and appointed as a Court Officer, he would be deprived of being considered to the post of Assistant Registrar. There is also nothing in Rule 7(4) of the Rules of 1967 that the said Rule overrides the mandate of Rule 7(3) of the Rules of 1967.

48. Before moving forward, this Court finds it apt to reiterate again that the petitioner was appointed to the post of the Court Officer in terms with Rule 7(4) of the Rules of 1967 after following a due selection process and with the approval of the Competent Authority. The judgment of the Constitution Bench of the Supreme Court in the case of ***Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra & Others*** reported in ***(1990) 2 SCC 715***, and more particularly, to paragraph No. 47 details out the principles, as to



how, the seniority is to be counted when an incumbent is appointed to a post according to the Rules. Sub-Paragraph A and B of Paragraph No. 47 are quoted herein below:

“ (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.”

49. In view of the above principles, the petitioner’s seniority ought to be reckoned from the date of his Appointment to the post of Court Officer i.e. 18.04.2016. However, on account of Rule 7(4) of the Rules of 1967, the petitioner’s seniority has to be maintained in his erstwhile cadre i.e. SJA. This Court for the sake of clarity finds it important to observe that this Court is not dealing with the legality and validity of Rule 7(4) of the Rules of 1967 which is pending adjudication before the learned Division Bench. Taking Rule 7(4) of the Rules of 1967 as it is, the present adjudication is being carried out.



50. In the present facts, it would be seen that the petitioner's appointment letter contained a rider that his seniority would be counted on the basis of his seniority in his erstwhile cadre for consideration of his future promotion. The said rider as stated above is based upon Rule 7(4) of the Rules of 1967, and more particularly, to the latter portion of Rule 7(4) of the Rules of 1967. The Hon'ble Committee and the Hon'ble Sub-Committee as noted above have suggested and recommended amendment to Rule 7(4) of the Rules of 1967, but almost two years have passed but nothing have been brought on record by the Gauhati High Court in the present proceedings except stating that the Hon'ble Chief Justice had referred it to the Rule Committee. The question therefore arises, as to what, is the effect of the rider or the latter part of Rule 7(4) of the Rules of 1967 in respect to the petitioner's limited right to be considered for promotion to the post of Assistant Registrar. In this regard, this Court finds it pertinent to take into consideration Rule 7(3) of the Rules of 1967. Rule 7(3) of the Rules of 1967 is quoted herein below:

“(3) The Assistant Registrar shall be appointed from among the State Judicial Service Grade-III, or by promotion from among the Gazetted Officers of the High Court's Service belonging to Class-II(B), Class-II(C) or Class-II(D); or from among Advocates of not less than five years' continuous practice at the Bar.”

51. A perusal of the above quoted Rule would show that the feeder category to the post of Assistant Registrar are-



- (i) State Judicial Service Grade-III,
- (ii) By promotion from amongst the Gazetted Officers of the High Court Service belonging to Class II(B), Class II(C) or Class II(D) or,
- (iii) From amongst advocates of not less than 5 years continuous practice at the Bar.

52. For the purpose of the present case, this Court is not concerned with appointment from amongst the State Judicial Service Grade-III or from Advocates of not less than 5 years continuous practice at the Bar. The present case pertains to promotion from amongst the Gazetted Officers of High Court Service belonging to Class II(B), Class II(C) and Class II(D).

53. A perusal of Schedule-I of the Rules of 1967 would show that there is only Class II(B) and Class II(C) and no Class II(D). This Court further finds it relevant to take note of the Gradation list prepared of the Officers and Ministerial Staffs of the Gauhati High Court, Principal Seat as on 10.06.2024. It appears therefrom that the posts of Assistant Registrar are divided amongst two streams. One is Assistant Registrar (Ministerial Stream) and the other is the Assistant Registrar (Stenographer Stream). This aspect of the matter would also be apparent from the reply submitted by the Gauhati High Court dated



21.05.2024 (Annexure-4 to the writ petition) wherein the promotion to the Assistant Registrar (Ministerial Stream) and promotion to the Assistant Registrar (Stenographer Stream) have been separately mentioned. This bifurcation of the posts of Assistant Registrar amongst the Ministerial Stream and the Stenographer Stream assumes importance, taking into account Class II(B) relates to the Stenographer Stream and Class II(C) relates to the Ministerial Stream. Apart from the above, from the gradation list dated 10.06.2024, it also appears that 8 posts have been earmarked for Assistant Registrar (Ministerial Stream) and 3 posts have been earmarked for Assistant Registrar (Stenographer Stream).

54. It further appears from the gradation list of the Assistant Registrar (Ministerial Stream), that the said posts are only filled up from A.O.(J) and not from the other categories of Class-II(C) posts i.e. Stamp Reporter, Court Officer, Protocol Officer, Assistant Librarian and Senior System Officer though all the posts fall with Class-II(C) and are feeder posts to the post of Assistant Registrar. The reason seems to be obvious i.e., the Gauhati High Court has been treating the appointments made to the other categories of posts in Class-II(C), other than A.O.(J), belonging to the SJA cadre.

55. Now let this Court revert back to the question whether the petitioner in view of Rule 7(4) of the Rules of 1967 and the rider



attached to his Appointment order can be deprived from being considered to the post of the Assistant Registrar.

56. The answer to the said question has to be in the negative. The reason being that the said rider as observed earlier is only for the purpose of counting the seniority in the erstwhile cadre of the petitioner for the purpose of future promotion and nothing else. In other words, the petitioner who is a Class-II(C) Officer would have to be considered for promotion to the post of Assistant Registrar but his seniority would be reckoned from the date he entered into the SJA cadre or the seniority he maintains in the SJA cadre.

57. Now let this Court take into consideration the importance of seniority vis-à-vis the Rules of 1967. Rule 18 of the Rules of 1967 stipulates as under:

“18. Vacancies in the higher grades of the Ministerial services shall be filled according to merit, and ordinarily by promotion from the lower grades, seniority being counted only when the merit is equal.”

The above quoted Rule would show that merit would be the consideration and seniority would only come into play when the merit is equal.

58. In view of the above Rule, the petitioner who is an Officer in Category II(C) being appointed in terms with Rule 7(4) of the Rules of 1967 has to be considered for promotion to the post of Assistant



Registrar. It is observed that if the petitioner fares well amongst all the eligible candidates, the seniority would have no role to play. However, if the petitioner's merit is equal to that of another eligible candidate who is senior to the petitioner, then the other eligible candidate would march ahead of the petitioner.

59. This Court had dealt with the Notification dated 02.03.2021 in detail in Paragraph Nos. 24 and 25 hereinabove. The said Notification appears to be in consonance with Rule 18 of the Rules of 1967 wherein also primacy is given to merit and seniority would come into play when the merit is equal. This Court at this stage finds it relevant to take note of the submissions of the learned counsels for the respondents that the zone of consideration has to be applied as per seniority viz. if there is one post vacant, the 5 (five) senior most would be taken into consideration for filling up of the post of Assistant Registrar. In the opinion of this Court, the said submission is not only contrary to Rule 18 of the Rules of 1967, but also to the Notification dated 02.03.2021. The said Notification dated 02.03.2021 does not mention that the zone of consideration would be on the basis of seniority and rightly so inasmuch as if it is construed to limit the zone of consideration on the basis of seniority, it would offend Rule 18 of the Rules of 1967. In the opinion of this Court, the Notification dated 02.03.2021 is a measure adopted by the Gauhati High Court to eliminate the less meritorious.



60. This Court at this stage finds it relevant to take note of a judgment of the Supreme Court which supports the above observations made by this Court. The Supreme Court in the case of ***B. Amrutha Lakshmi Vs. State of Andhra Pradesh & Others*** reported in ***(2013) 16 SCC 440*** while dealing with the Regulation 4 of the Indian Administrative Services (Appointment by Promotion) Regulations, 1955, wherein it was stipulated that the number of persons proposed for consideration of the Committee shall not exceed five times the number of vacancies proposed to be filled during the year, observed that all eligible candidates have to be taken into consideration and not the senior most. The Supreme Court observed that in order to ascertain the numbers of persons whose name can be forwarded as per the Regulation 4, all eligible persons have to be taken into consideration. It was further observed that amongst the eligible persons, further scrutiny on merits as well as other parameters has to be carried out to ascertain those persons whose names can be forwarded. The Supreme Court remarked that the action of the respondents therein not to consider the case of the petitioner therein and sending names of persons on the basis of seniority was illegal and violated Article 14 and Article 16(1) of the Constitution of India. Paragraph Nos. 18 to 20 of the said judgment being relevant are reproduced herein under:

“**18.** *The question for our consideration is whether such a restriction of the*



candidates to be considered, who were otherwise eligible, was permissible under the Rules.

19. *It is not disputed that the petitioner was very much eligible for being considered, and there were so many similar eligible candidates. It was being portrayed by the respondents that from every department 300 persons were eligible, and there are 30 departments and therefore, the number would go to some 9000 and above. Now, what is to be noted is that all that the eligible officers concerned have, is a limited right of being considered, though they do not have a right of promotion, as held in Shankarsan Dash v. Union of India. Mr Narasimha submitted that this limited right should not be denied to the candidates like the appellant, on the basis of the ground that in such a case a large number of names will have to be forwarded. That apart, he submitted that there was no substance in this justification, and it was merely a bogie. This is because what the State Government had to do first was to find out as to who fulfilled the criteria. Undoubtedly, a large number of persons will fulfil the criteria, being gazetted officers with more than 8 years of service, and less than 54 years of age on the relevant date. They would also have to be in the required pay scale. However, as stated in Para 4 of the Principal Secretary's letter, while considering the outstanding merit and ability, those with adverse remarks and those facing departmental enquiries were to be excluded. Therefore, there was no difficulty in excluding such persons on those grounds. Thereafter, what remained to be seen was as to who were the persons with outstanding ability and merit amongst them? The State Government maintains their annual appraisal reports, and for such selection it lays down some criteria of maintaining the outstanding merit and ability over certain period viz. that in the previous five years the officer must have three outstanding reports, or that in the previous three years the officer concerned must have all throughout an outstanding rating, etc. It is for the State Government to lay down by rules as to how the outstanding merit and ability is to be assessed, and over how much period. After all these tests are applied, the number of persons to be*



recommended will not be very large. However, once a candidate comes into the zone of consideration, and satisfies all the requirements, including that of outstanding merit and ability, he cannot be told that merely because he is junior in the seniority, his name will not be forwarded for consideration. The rule requires that from amongst the outstanding officers, 15 names are to be forwarded to the Central Government, and hence it is possible that amongst these 15, a junior officer may as well figure, depending upon the assessment of his merit. He cannot be eliminated merely on the ground that he is a junior officer, and that if selected he will write the ACRs of his superiors.

20. *We have got to accept that, if the rules for selection contain a requirement, the same has to be applied uniformly and strictly, and none from the eligible group can be eliminated from being considered on any criteria, other than those which are provided in the rules. If there is a criteria laid down for selection, the administration has to confine to the same, and it cannot impose an additional criterion over and above whatever has been laid down. If that is done, it will no longer remain an exercise of discretion, but will result into discrimination. It will mean treating similarly situated employees dissimilarly, and denying equal opportunity to some of them in the matter of public employment on the basis of a criterion which is not laid down, resulting into violation of Article 14 and Article 16(1) of the Constitution of India. If the rules were to provide that in the event of large number of persons coming into the zone of consideration, the names of the seniormost alone will be forwarded, then it would have been a different situation. In the absence of any such restrictive rule, as in the present case, the decision of the respondents cannot be justified."*

61. The principles laid down above would squarely be applicable to the present case. The Notification dated 02.03.2021 also mandates a procedure whereby all candidates belonging to the feeder category who obtain 18 marks out of 30 in the Annual Confidential Reports



shall get a chance for being called for interview/viva-voce interaction and those who secure 60% and above out of 30 marks in the interview would be considered for promotion.

62. The Rules of 1967 do not envisage the concept of zone of consideration. Be that as it may, the Gauhati High Court can supplement the requirement by way of Notification(s) which are not in conflict with the Rules of 1967 and it appears that the same had been done by way of the Notification dated 02.03.2021. It is further observed in this context that after elimination of the less meritorious, by applying the parameters mentioned in Clauses (ii), (iii), (iv) and (v) of the Notification dated 02.03.2021, if there are still eligible candidates more than what the zone of consideration stipulates at Clause (i) of the Notification dated 02.03.2021, the Gauhati High Court has to envisage further measures to eliminate on merits the less meritorious. In the opinion of this Court, the eligible candidates in the zone of consideration have also to be selected on the basis of merits. It is only when merit is equal, the seniority can be taken into consideration. Any elimination on the basis of seniority, when the merit is not equal would run foul to Rule 18 of the Rules of 1967.

It may not be out of place to note that the Supreme Court in ***B. Amrutha Lakshmi (supra)*** observed that even if the eligible persons were large in number (it was 9000), the limited right to be considered



for promotion cannot be deprived.

63. Let this Court now take the stand taken by the respondent Nos. 2 and 3 wherein it is contended that the petitioner who had been appointed to the post of Court Officer has to be reverted back to the post of SJA and thereupon upon being promoted to the post of A.O. (J), the petitioner can claim such a right to be considered to the post of Assistant Registrar. The said contention of the respondent Nos. 2 and 3 is untenable, misconceived as well as contrary to the Rules of 1967.

64. The petitioner having being already appointed to the post of Court Officer on 18.04.2016, and as the Rules of 1967 do not provide reversion to the post of SJA, the question of the petitioner being demoted to the post of SJA do not arise except as a consequences of disciplinary proceedings. Asking the petitioner or for that matter any Officer appointed to the posts under Class-II(C) in pursuance to a selection as per the Rules of 1967 with the approval of the Competent Authority would amount to inflicting a major punishment without any enquiry which would violate Article 311(2) of the Constitution of India. The interpretation so sought to be given by the respondent Nos. 2 and 3 on the basis of Rule 7(4) of the Rules of 1967 as well as the rider contained in the Appointment order, is completely fallacious in view of the observation and opinion rendered by this Court in respect



to the interpretation to Rule 7(4) of the Rules of 1967.

65. It is disheartening to observe that the Gauhati High Court for reasons best known have adopted contradictory stands in the case of **Nirod Sarma (supra)** and the present case. In the case of **Nirod Sarma (supra)**, the Appellant therein who was a Protocol Officer appointed with a similar rider, the Gauhati High Court regarded the Appellant therein to be substantively appointed to the post of Protocol Officer i.e. a Class-II(C) post and contended that the appellant therein would be eligible to be promoted to the post of Secretary to the Chief Justice in terms of Rule 7(3A) of the Rules of 1967 in respect to which post, the feeder category is Class-II(C) posts. The contention of the Gauhati High Court in the case of **Nirod Sarma (supra)** can be seen from the arguments made by the learned Standing Counsel of the Gauhati High Court both before the learned Coordinate Bench of this Court as well as before the learned Division Bench of this Court. Paragraph Nos. 8 and 13 of the judgment delivered by the learned Division Bench of this Court in the case of **Nirod Sarma (supra)** are reproduced herein below:

“8. The counsels for the appellant and the High Court submit that the appointment of the appellant to the post of Protocol Officer is on a substantive and regular basis and as such, the maintaining of the appellant's seniority in the cadre of Senior Judicial Assistant cannot bar him from being a part of the cadre of Class-II(C) posts in the High Court service. They submit that the appointment of the appellant as a Protocol Officer was a promotion, without there being any



limit to the consideration zone from the feeder grade of Senior Judicial Assistant (SJA in short). All persons in the cadre of SJA were eligible and invited to submit their option for being considered for appointment as P.O., in terms of the criteria laid down for appointment. As such, all the candidates who had submitted options for being considered for promotion were considered.

13. *The learned counsel for the High Court submits that Protocol Officer being one of the posts in the feeder cadre for promotion to the rank of the Secretary to the HCJ, there was no illegality in the order dated 10.09.2018. As regards the submission of the writ petitioners that there was a pre-conceived notion to give the benefit of substantive appointment to the appellant, he submits that options were invited from all persons of the SJA cadre to fill up the vacant post of Protocol Officer, which is clear from the notice dated 14.09.2018. He also submits that the rider accompanying the order dated 25.11.2016 appointing the appellant as P.O. had been made in terms of the High Court Resolution dated 09.03.2015, while the officiating appointment of the appellant as Secretary to HCJ vide Order dated 10.09.2018 had been made on the basis of the proposal of the Registry."*

66. Considering the above, this Court, therefore, disposes of the instant writ petition with the following observations and directions:

(i) The petitioner who is a Court Officer belongs to Class-II(C) of Schedule-I to the Rules of 1967 and as such has a limited right for being considered for promotion to the post of Assistant Registrar.

(ii) The rider attached to the Appointment Letter dated 18.04.2016 as well as the latter part of Rule 7(4) of the Rules of 1967 would not affect the right of the petitioner to be considered



for promotion to the post of Assistant Registrar (Ministerial Stream).

(iii) This Court further observes that the petitioner who is a Court Officer along with the A.O.(J)(s) and the other Officers who have been appointed to the posts coming within the ambit of Class-II(C) of Schedule-I of the Rules of 1967 have a right to be considered for the promotion to the post of Assistant Registrar (Ministerial Stream).

(iv) The Notification dated 02.03.2021 is a measure adopted by the Gauhati High Court dealing with the parameters how the merit-cum-seniority promotion policy is required to adhere to. The said Notification does not mention that the zone of consideration for promotion is on the basis of seniority, but rather it appears from Clauses (ii) to (vi) of the Notification dated 02.03.2021 that the same is based on merit and when the merit is equal, then only the seniority would come into play.

(v) By the Notification dated 02.03.2021, the Gauhati High Court had set out parameters to eliminate the less meritorious. In terms with Clauses (ii) to (iv) of the Notification dated 02.03.2021, those candidates who apply and do not fulfill the requirement of Clause (iv) of the Notification dated 02.03.2021 are required to be eliminated. Thereupon those candidates who



fulfill the requirement of Clause (iv) of the Notification dated 02.03.2021 have to be considered in terms with Clause (v) of the Notification dated 02.03.2021. It is observed in this context that after elimination of the less meritorious, by applying the parameters mentioned in Clauses (ii), (iii), (iv) and (v) of the Notification dated 02.03.2021, if there are still eligible candidates more than what the zone of consideration stipulates at Clause (i) of the Notification dated 02.03.2021, the Gauhati High Court has to adopt further measures to eliminate on merits the less meritorious. It is further observed that the eligible candidates in the zone of consideration have also to be selected on the basis of merits. It is only when merit is equal, the seniority can be taken into consideration. Any elimination on the basis of seniority, when the merit is not equal would run foul to Rule 18 of the Rules of 1967.

(vi) The seniority amongst the Officers in Class-II(C) category would only come into play when the merit amongst the candidates are equal. Else seniority has no role to play.

(vii) Taking into consideration that the posts of Assistant Registrar (Ministerial Stream) are to be filled up amongst all the Officers falling within Class-II(C) of Schedule-I of the Rules of 1967, the Gauhati High Court may adopt such measures so that



seniority list is prepared amongst all the Officers in Class-II(C) category.

(viii) The directions passed by the learned Coordinate Bench of this Court in the orders dated 11.06.2024 in I.A.(Civil) No. 1769/2024 as well as dated 30.10.2024 in I.A.(Civil) No. 3290/2024 have allowed the consideration of the petitioner in the Interview process initiated vide Notices dated 07.06.2024 and 24.10.2024 for filling up of the posts of Assistant Registrar (Ministerial Stream). This Court is made aware that the petitioner was duly considered. Therefore, for the purpose of the instant case, in view of the directions passed by the learned Coordinate Bench of this Court in the aforesaid orders and the Respondent Authorities having considered the case of the petitioner, the limited right of the petitioner to be considered for promotion to the posts of Assistant Registrar has not been violated.

67. There shall be no order as to costs.

JUDGE

Comparing Assistant