

1. This writ petition has been filed calling into question an order dated 16.12.2005 passed by the Chief Judicial Magistrate, Barpeta, by which order, on the grounds and reasons assigned, the 'excess' salary drawn by the petitioner in the pay scale of qualified Stenographer has been ordered to be recovered from her monthly emoluments at the rate of Rs.2000/- per month.

2. The facts are long and, therefore, only what is essential is being recited hereinunder.

The petitioner after qualifying as a Grade-III Stenographer from the Industrial Training Institute at Barpeta in the year 1998 enrolled herself in the local Employment Exchange. A vacancy in the post of Stenographer Grade-III in the office of the Chief Judicial Magistrate, Barpeta, having occurred the name of the petitioner was forwarded to the said authority by the Employment Exchange. Thereafter, the Chief Judicial Magistrate, Barpeta, on 16.3.99 wrote to the petitioner for submission of a formal application for the post alongwith all testimonials. The petitioner acted accordingly and on 29.7.99 she was asked to appear in a selection which was to be held on 14.8.99. Subsequently she received another communication dated 4.10.99 requiring her to be present for the viva voce test/interview which was to be held on 12.10.99. It may be noticed, at this stage, that the selection process, as initiated, comprised of a shorthand and a speed typing in English besides a viva voce test.

3. According to the petitioner, she appeared in the interview which was eventually held 26.12.99. Thereafter, on 16.11.2000 the Chief Judicial Magistrate, Barpeta, appointed the petitioner in the post of Stenographer Grade-III which was vacant but in the underqualified scale of pay of Rs.3010/- to 6075/-. According to the petitioner, she joined her duties on 23.11.2000 and thereafter devoted herself to sincere work in recognition of which, according to the petitioner, by order dated 16.9.2002 she was allowed to draw the scale of qualified Stenographer Grade-III i.e. Rs.3850/- to 7350/-. This was with effect from 16.9.2002. Thereafter, a series of notices were issued to the petitioner, details of which need not be specifically noticed, informing the petitioner that the National Trade Certificate issued by the National Council for Vocational Training had not been submitted by her so as to entitle her to the regular scale of a qualified Stenographer. The petitioner was asked to produce the certificate. The petitioner replied to the said notices by stating that she was appointed in the post of Grade-II Stenographer after due selection and that at the time of her appointment she was holding a provisional National Trade Certificate issued by the Secretary, State Council for Vocational Training, Assam and further that the certificate issued by the National Council for Vocational Training was not yet ready and made available to her. In such circumstances, the petitioner prayed before the concerned authority that she should be allowed to draw the scale of qualified Grade-III Stenographer as granted to her with effect from 16.9.2002.

4. It is on consideration of the several communications from the petitioner in this regard that the impugned order dated 16.12.2005 has been passed, details of which have already been noticed. It may further be noticed, at this stage, that by the aforesaid impugned order dated 16.12.2005 the petitioner was granted three months time to produce the necessary certificate from the National Council for Vocational Training so as to enable due consideration of her case for further continuation in service. Aggrieved by the aforesaid order dated 16.12.2005 the writ petition has been filed.

5. Mrs. Hazarika, learned Senior Counsel appearing for the petitioner, has submitted that the initial appointment of the petitioner though in the underqualified scale was after a selection undertaken by a duly constituted Board pursuant to a process initiated by the Employment Exchange. The parameters of the selec

tion consisted of a dictation test as well as a typing test besides viva voce. The petitioner participated in all segments of the selection and being found to be the most meritorious amongst the candidates who had offered themselves for selection, she was appointed though in the underqualified scale by the order dated 16.11.2000. Mrs. Hazarika, learned counsel for the petitioner, has also submitted that prior to the appointment of the petitioner all requisite testimonials, documents and certificates were submitted by her to the authority for due verification and the appointment in question was made on due satisfaction arrived at on the basis of the documents submitted by the petitioner. Learned counsel has further submitted that at that point of time the petitioner was holding a provisional National Trade Certificate issued by the Assam State Council for Vocational Training and that the materials on record particularly the communications addressed by the petitioner to the concerned authority make it amply clear that till the date of such communications the original certificate by the National Council for Vocational Training had not been made available to the petitioner as the same was not ready. Relying on the additional affidavit filed by the petitioner, Mrs. Hazarika has submitted that the original certificate of the National Council for Vocational Training was made available to the petitioner on 05.01.2007. The said certificate issued by the National Council has been enclosed to the additional affidavit of the petitioner dated 8th January 2007. The learned counsel has also pointed out that the said certificate issued by the National Council clearly recites that the petitioner had passed the trade test in Stenography (English) in the year 1998 i.e. before her appointment in the year 2000.

Referring to the affidavit filed by the respondents, Mrs. Hazarika has further submitted that confronted with the above position i.e. the certificate issued by the National Body on 29.6.2006, which was received by the petitioner on 05.1.2007, the respondents have now taken an additional ground to find fault with the initial appointment of the petitioner which additional ground was not the subject matter of the notices earlier issued to the petitioner. Mrs. Hazarika has pointed out that in the aforesaid affidavit filed the respondents have now contended that the petitioner had not passed the selection test/speed test conducted by the duly constituted selection board under the provisions of the Assam Stenographers' Service Rules, 1995. According to the learned counsel, as the said ground was not the subject matter of the earlier notices issued to the petitioner, the same must be construed by the Court to be an afterthought and the respondents should not be permitted to act prejudicially against the petitioner on the basis of the said additional ground.

6. Controverting the submissions advanced on behalf of the petitioner, Mr. U. K. Nair, learned counsel for the Respondent No.2, has vehemently contended that at the time when the petitioner was appointed i.e. in the year 2000 and also at the time when the petitioner was allowed to draw the regular scale of pay Grade-III Stenographer i.e. in the year 2002 she was not in possession of the requisite testimonial issued by the competent body i.e. National Council for Vocational Training. The petitioner, therefore, must be held by the Court to be ineligible for appointment and in any case not entitled to the benefit of the regular scale of pay. Sri Nair has also contended, by relying on the affidavit filed by the Chief Judicial Magistrate, Barpeta, that the petitioner had not undergone the requisite selection by the duly constituted Board under the provisions of the Assam Stenographers' Service Rules, 1995 and therefore the continuance of the petitioner in service and in any case in the regular scale of pay is open to serious doubt.

7. The rival submissions advanced on behalf of the parties have been duly considered. The subject matter of the notices issued to the petitioner prior to the impugned order dated 16.12.2005 were only as regards the certificate issued by the National Council for Vocational Training. The ground projected in the counter affidavit of the respondents i.e. that the petitioner was not selected by the duly constituted Board did not form a part of the aforesaid notices issued to the petitioner. The materials on record make it amply clear that the requisite certificate of the National Council for Vocational Training was not made available to the petitioner till January 2007. If the petitioner was not issued/granted

the said certificate by the National Body it is difficult to see as to how the petitioner could be penalized for the said deficiency which was not attributable to her. That apart, the materials on record also make it clear that the petitioner was all along holding a provisional certificate issued by the Assam State Council for Vocational Training. The said certificate was duly considered by the Respondents prior to the initial appointment of the petitioner. If that be so, the Court cannot find any infirmity in the initial appointment of the petitioner.

8. Though there may be some irregularity in the grant of the regular scale to the petitioner by order dated 15.9.2002, as the certificate issued by the National Body in the year 2006 certifies that the petitioner had qualified in the Trade of Stenography in the year 1998, i.e. before her appointment, the said certificate issued by the National Body will have the effect of obliterating the irregular grant of the regular scale to the petitioner made in the year 2002. On the said basis the Court can find little justification in the actions of the respondents in taking the view that the petitioner was not entitled to the regular scale of pay granted to her in the year 2002 which should now be recovered from the emoluments of the petitioner at the rate of Rs.2000/- per month.

9. In so far as the ground urged in the affidavit filed by the respondents with regard to the petitioner not qualifying in a selection held by the duly constituted Board under the Service Rules in force, is concerned, it may be noticed that under the said Service Rules the Chairman of the Selection Board is the Chief Secretary. There is no dispute that in practice such functions under the Rules is being performed by the Head of the office in which recruitment is being made. Whether the said practice has come to hold the field by an act of delegation is not known. Be that as it may, in so far as the present case is concerned, the records available make it clear that the selection in which the petitioner participated and on the basis of which she was appointed was conducted by a Board of which the Chief Judicial Magistrate was the Chairman. If that be so, the Court can hardly find any infirmity in the selection of the petitioner and her appointment as a Stenographer Grade-III.

10. For the aforesaid reasons and in view of the discussions that have preceded this writ petition has to be allowed which I hereby do. The impugned order dated 16.12.2005 is set aside. The petitioner is directed to be allowed to continue as Stenographer Grade-III in the regular scale of pay without effecting any recoveries from the pay and allowances drawn by her. Any amount withheld/recovered, which will now be due in terms of the present direction, be paid to her forthwith and without any delay.