
(2003) 06 GAU CK 0033

In the Gauhati High Court

Case No : Writ Petition (C) No. 81 (SH) of 2001

Ariene Mayne Sangma

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 25-06-2003

Acts Referred:

Meghalaya Civil Service Rules, 1975 — Rule 16(5), 23

Citation : (2004) 2 GLR 278 : (2005) GLT 611 Supp

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : S.R. Sen, P.D.B. Baruah and S. Sinha, for the Appellant; V.K. Jindal, GA and S. Sen, for the Respondent

Final Decision : Dismissed

Judgement

B. Lamare, J.—Heard Mr. S.R. Sen, learned senior counsel assisted by Miss. S. Sinha, for the petitioner. Also heard Mr. V.K. Jindal learned Government Advocate for the State respondents and Mr. S. Sen, learned counsel for the respondent Nos. 12 to 19.

2. Briefly stated the case is that the Meghalaya Public Service Commission (MPSC for short) conducted an examination for recruitment to the post of Meghalaya Civil Services and published the list of successful candidates. On the basis of the said selection made by the MPSC the respondent No 1, Chief Secretary, Government of Meghalaya published a Notification No. PER 68/81/117 dated 2.6.1982, whereby vide Commission Order appointed twenty-four Officers to the Meghalaya Civil Service on probation and in the same Notification they were posted to different places of posting. The petitioner joined, the Service on 18.7.1982, In the said Notification the name of the petitioner appears at serial No. 2 above the names of respondent Nos. 6 to 19, The petitioner and the respondents were transferred and posted to different places from time to time.

3. According to Rule 12 of the Meghalaya Civil Service Rules, 1975, (for short the

Rules) a person appointed to the service shall be on probation for a period of two years. However, provision is made under the Rules that for good and sufficient reasons the period of probation may be extended by a period not exceeding two years. Rule 13 of the Rules provides that every probationer shall complete the training during the period of probation which shall be held by the Public Service Commission from time to time. Clause 2 of Rule 13 provides that a member of the service who was confirmed in the Civil Service Class II but who has not passed, the Departmental Examination prescribed for the Service shall within a period of two years appear, at and pass the prescribed Departmental Examination conducted by the Commission in the subjects which he has not passed.

4. Rule 15 of the Rules provides that the probationer who has completed his period of probation shall be confirmed in the service if he has passed the Departmental Examination completely and has successfully undergone the Survey and Settlement Training and he is considered fit for confirmation by the Governor.

5. The respondent Nos. 6 to 19 duly passed their Departmental Examination and they were confirmed. After the private respondents were confirmed they were promoted to the Senior Grade, The petitioner could not pass her Departmental Examination and she was confirmed only w.e.f. 1.1.1993 vide Notification dated 6.6.1995 with retrospective effect. Vide Notification dated 3.6.96, a Gradation List of the members of the Meghalaya Civil Service was published and in the said Gradation List the name of the petitioner appears at serial No. 38 below the respondent Nos. 6 to 19. Therefore by this Gradation List the petitioner is shown to have been superseded by her Juniors in the Senior Grade of the Meghalaya Civil Service. Being aggrieved by this Gradation List, the petitioner has approached this Court by way of this writ petition.

6. The ground on which the petitioner relied for assailing the said Gradation List is that under the provision of Rule 16(5) of the Rules, although the petitioner failed to pass her Departmental Examination within the probation period as required under the Rules, but after her passing the Departmental Examination her seniority would be restored back meaning thereby that the petitioner should be placed above the private respondents. The petitioner, therefore, submitted representations dated 20.7.1995, 21.6.1996 and 31.12. 1996, but the said representations of the petitioner were rejected by the respondent No. 2 in his letter dated 4.1.1997 on the ground that Rules 16(5) of the Rule speaks of restoration of the original position of the member of the Service in a particular grade, i.e. Junior Grade of the Meghalaya Civil Service. The provisions of Rule 16(5) of the Rules does not apply in the case of the petitioner as she has already been superseded by the private respondents her juniors after they are confirmed, and that they were senior to her in the Senior Grade of the Meghalaya Civil Service. The petitioner thereafter submitted another representation dated 16.11.2000, to the respondent No. 2, and that representation was also rejected

by the respondent No. 2 in view of the earlier order passed by the said respondent.

7. The only question to be examined in this writ petition is therefore the interpretation of Rule 16(5) of the Rules. Rule 16(5) of the Rules reads as follows :-

"16(5) If the confirmation of any member, of the Service is delayed beyond two years of probation on account of his failure to qualify for such confirmation, he shall lose his position in order of seniority vis-a-vis such of his juniors as may be confirmed earlier than he, His original position, shall however, be restored on his confirmation subsequently."

8. Mr. Sen, learned senior counsel for the petitioner, submitted that according to this Rule, if a member of the Service fails to qualify for his confirmation then he shall lose his position in the order of his seniority vis-a-vis his Juniors who may be confirmed earlier than him. The counsel further submitted that on qualifying for confirmation the member of the Service shall be put back and restored to his original position according to the merit list. It is also contended that in the instant case, although the petitioner has failed to pass the Departmental Examination and has passed the same-only after about ten years and in the meantime, her juniors were confirmed and promoted, even on such a situation, according to the counsel, the petitioner is entitled to be restored back to her original position according to the merit list. Her seniority cannot be taken away by her juniors although they were confirmed and promoted earlier to her.

9. Mr. V.K. Jindal, learned Government Advocate, submitted that Rule 16(5), of the Rules, is not applicable in the present case as Rule 16(5) is applicable only when the members of the service are in the junior grade. The Rule applicable in the instant case according to the counsel is Rule 22 of the Rules. According to Rule 22, members of the service in the Junior Grade are eligible for promotion to the Senior Grade after their confirmation and after completing a minimum period of seven years in the Junior Grade. After the promotion of the private respondents to the Senior Grade their seniority shall be counted in the Senior Grade and not in the Junior Grade. Therefore, Rule 16(5) is not applicable to the Senior Grade for fixing their seniority. Fixing of seniority in the Senior Grade shall be from the date of joining in the Senior Grade and not according to the merit list.

10. Mr. S. Sen, learned counsel appearing for the private respondents, while supporting the contention of Mr. V.K. Jindal, has also submitted that the seniority of the members of the Service promoted to the Senior Grade shad be in the order in which their names are arranged by the Selection Board under Sub-rule 2 of Rule 22 as provided under Rule 23 of the Rules. Therefore, the counsel contended that provisions of Rule 16(5) is not applicable in the instant case as the seniority of the members of the service are to be counted as per Rule 23 of the Rules after their service are arranged as per Rule 22 of the Rules.

11. Upon hearing the learned counsel for the parties and on perusal of the records, it is not disputed that according to the merit list the petitioner is placed at serial No. 2 of the merit list, and the private respondents were shown below the name of the petitioner. Record also shows that the private respondents were confirmed earlier to the petitioner. The service of the petitioner was confirmed vide Notification dated 6.6.1995 whereby her service was confirmed with retrospective effect from 1.1.93. Therefore, the petitioner was confirmed much later than the private respondents. It was on the basis of their confirmation that the private respondents were promoted to the Senior Grade and the Gradation list was also published on that basis. In the Gradation List the private respondents were shown above the petitioner. This court therefore, is to examine as to whether Rule 16(5) of the Rules is applicable in this case as claimed by the petitioner.

12. Rule 6(4) of the Rules provides that the MPSC shall prepare a list of all candidates who have qualified in the examination in order of merit. Rule 12 of the Rules provides that every person recruited to the service in accordance with the Rules shall be on probation for a period of two years. However, this period of probation may be extended by another two years. Rule 15 of the Rules, provides that when a person on probation has completed his period of probation to the satisfaction of the Governor, he shall be confirmed in the service if he had passed the departmental examination and also undergone Survey and settlement training.

13. In the instant case, the petitioner passed the Departmental Examination and the training after ten years. By the time the petitioner passed the Departmental Examination and the training the respondents Nos. 6 to 19 were already confirmed and promoted to the Senior Grade.

14. Rule 22, provides for promotion to the Senior Grade time scale. According to this Rule, a member of the service, in the junior Grade shall be eligible for promotion to the Senior Grade if he had completed a minimum period of seven years in the Junior Grade, Rule 22(2), of the Rules requires that appointment to Senior Grade time scale shall be made by the Governor from a list of suitable members of the service as prepared from time to time and as reviewed by the Selection Board, The members shall be selected by the Selection Board and on being promoted shall get the benefit of their seniority under Rule 23 of the Rules. Rule 23 provides that the seniority of the members promoted to the Senior Grade time-scale shall be in the order in which their names are arranged by the Selection Board as required under Rule 22(2) of the Rules for the purpose of promotion to that Grade, Rule 22 and Rule 23 of the Rules reads as follows :-

"22. Promotion to Senior Grade time-scale. -(1) A member of the Service in the junior grade time scale shall be eligible for promotion to the senior grade time-scale but no member of the Service shall be so promoted unless he has served in the junior grade time-scale for a minimum period of seven years and the Governor is satisfied about his ability, integrity and Character.

(2) The appointments to the senior grade time-scale shall be made by the Governor from a list of suitable member of the Service, as prepared from time to time and as reviewed as and when necessary by a Selection Board, consisting of the following, namely :

(a) Chief Secretary-to the Government-Chairman

(b) Commissioner of Division - Member

(c) Two Senior most Secretaries to the Government - Members

23. Seniority of members of service. The seniority of members of the Service promoted to the senior grade time-scale shall be in the order in which their names are arranged by the Selection Board under Sub-rule (2) of Rule 22 for the purpose of promotions to that grade."

15. In the present case, the respondent Nos. 6 to 19 were already promoted to the Senior Grade before the petitioner on their completion, of seven years of service in the junior Grade after their confirmation, therefore, their seniority will be counted in the Senior Grade on the basis of the list prepared under Rule 22(2) of the Rules. The provisions of Rule 16(5) of the Rules, therefore, does not apply to the case of the respondent Nos. 6 to 19 as they, were already in the Senior Grade. The provision of Rule 16(5) would apply only if the respondent Nos. 6 to 19 still remain the Junior Grade and in such a situation, the petitioner's seniority would be restored back to her original position in the merit list prepared by the MPSC and the petitioner shall remain senior to the private respondents although she passed the Departmental Examination and the training much later than the respondents.

16. Mr. S.R. Sen, learned senior counsel for the petitioner, draws the attention of this Court to the case of *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, and submitted that as per the holding of the Apex Court in paragraph 47(A) the seniority of the petitioner is to be counted from the date of appointment and not according to the date of confirmation. In the said case, it may be mentioned, with respect, that the Apex Court had dealt with the seniority of the person who were given officiating promotion and thereafter they were regularised to the post in which they held as officiating promotion. In such situation, the Apex Court held that the period of seniority shall be taken from the date of officiating promotion and not from to the date of confirmation to the post. But in the instant case, a specific provision is made under Rule 15 of the Rules whereby it was provided that probationer on completion of the period of probation shall be confirmed in the service if he passed the Departmental Examination and also Survey and Settlement training. Therefore, when there is a specific provision under Rule 15 of the Rules whereby it was provided that probationer on completion of the period, of probation shall be confirmed in the service if he passed the Departmental Examination and also Survey and Settlement training, Therefore when there is a specific provision under Rule 15, a person in the Meghalaya Civil

Service can be confirmed only on passing the Departmental Examination and the training. The said decision of the Apex Court in the case of Direct Recruit Class II Engineering Officers" Assn. (supra) is therefore not applicable in the instant case.

17. In view of the above discussions and observations, I am of the opinion that the petitioner cannot claim her seniority on the basis of the provisions made under Rule 16(5) to the Rules as the Rules applies only in respect of members of the service in the junior Grade, Seniority in the Senior Grade has to be counted on the basis of the provisions made u/s 23 of the Rules. Rule 23 is applicable in this case and not Rule 16(5) of the Rules.

18. For the aforesaid reasons, I find no merit in this writ petition and accordingly it is dismissed. Considering the facts and circumstances of the case, I leave the parties to bear costs.