

(2004) 06 GAU CK 0024

In the Gauhati High Court

Case No : WP (C) No"s. 36 of 1998 and 22 of 2003

B. Rokima

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 10-06-2004

Acts Referred:

Citation : (2004) 3 GLR 534

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : H. Lalrinthanga, Lalthanmuani, C. Lalramzauva, A.R. Malhotra, Helen Dawngliani and R. Lalduhawni, for the Appellant; Aldrin Lallawmzaula, for the Respondent

Judgement

B. Lamare, J.—Heard Mr. H. Lalrinthanga, learned counsel for the petitioner in WP(C) No. 36 of 1998, Mr. C. Lalramzauva, learned counsel for the petitioners in WP(C) No. 22 of 2003 and also heard Mr. Aldrin Lallawmzaula, learned Government advocate for the respondents.

2. Briefly stated the fact is that the petitioner Shri B. Rokima was appointed temporarily as Forest Ranger by order dated 26-9-75. Subsequently, the respondents by notification dated 8-1-80 appointed 2 (two) Assistant Conservator of Forest (ACF) for a period of 2 years with effect from 7-5-79. By another order dated 15-12-81 another person was appointed as ACF on ad hoc basis. By order dated 15-12-81 one more ACF was appointed on ad hoc basis with effect from 25-10-80. By notification dated 15-12-82, 4 (four) more ACF were appointed on ad hoc basis with effect from 30-10-82. By another order dated 16-3-82 one ACF was appointed on ad hoc basis with effect from 31-1-82. By notification dated 8-8-83, 5 (Five) more ACF/DCF were appointed on ad hoc basis with effect from 1-5-83.

3. The ACF who were so appointed 16 of them were regularised by notification dated 14-11-83. This notification was however modified by a corrigendum dated 16-1-84 whereby the date of their regularisation were taken from the date of

appointment.

4. By notification dated 20-3-84 one ACF was appointed on ad hoc basis. By another notification dated 19-8-86, 11 more ACF/DCF were appointed on temporary stop- gap basis. The services of the ACF.DCF so appointed were regularised by notification dated 28-2-91. By this notification the services of 12 ACFs were regularised.

5. While the petitioner was serving as Forest Ranger, Departmental Promotion Committee was held on 20-4-83 to consider the promotion of the Forest Rangers to the posts of ACF. The name of 10 candidates were placed before the DPC and the DPC after considering their ACRs selected 5 candidates for promotion. The case of one Shri S.R. Laskar was not recommended and his case was placed under sealed cover since there was a vigilance case against him. Out of 5 Rangers recommended by the DPC, the name of the petitioner appears at Serial No. 5. On the basis of the said recommendation of the DPC, the candidates appearing at Sl. Nos. 1, 2 and 3 of the list recommended by the DPC were promoted vide order 7-5-83. The case of the other 2 appearing at Sl. Nos. 4 and 5 including the petitioner were not promoted as according to the rules there were only 3 (three) posts available for the reserved quota for promotion. The petitioner was however subsequently promoted by a notification dated 6-5-88 after another DPC was held. Since then, the petitioner has been holding the post of ACF till date, The grievance of the petitioner in this petition therefore is that he should have been promoted since the time he was selected by the DPC held on 20-4-83 by which the respondents 5 and 6 were given retrospective promotion with effect from 1-5-83.

6. The claim of the petitioner for retrospective promotion was based on the basis of the Mizoram Forest Department (Class-II Post) Recruitment Rules, 1975. According to the Rules the method of recruitment is that 25% of the post of ACF are to be filled up by promotion from amongst the Forest Rangers and the remaining 75% by direct recruitment. The promotion of the Forest Rangers can be made in respect of those who passed the Rangers Course and with not less than 5 years of service in the grade. According to the petitioner this quota Rules have not been followed by the respondents. But instead, the respondents have made appointment as narrated above in excess of 75% meant for direct recruit. Instead of promoting the petitioner and other eligible candidates, the respondents have not filled up the 25% quota rules for promotion. But the respondents had resorted to direct recruit and appointed the ACF more than the quota meant for direct recruit.

7. The petitioner has submitted representations from time to time for consideration of his case for promotion from the date the private respondents 5 and 6 were promoted but his representations were not considered by the respondents.

8. While the writ petition WP(C) No. 36 of 1998 was pending before this court,

this court has passed an order dated 18-2-99 directing the respondents 1, 2 and 3 to look into the representations submitted by the petitioner Shri B. Rokima in WP(C) No. 36 of 1998 and to pass orders thereon giving reasons for denying retrospective promotion to the petitioner B. Rokima. On receipt of the order of this court the representations of the petitioner B Rokima was examined and the matter was referred to the Mizoram Public Service Commission (MPSC) and the MPSC after considering the matter has recommended the claim of the petitioner along with 3 other for retrospective promotion to the ACF with effect from 19-8-86. In spite of the said recommendation of the MPSC the Government did not take any action. The matter, was again referred to the MPSC to make fresh recommendation in favour of the petitioner and 3 others. However, the MPSC in its letter dated 20-8-02 has informed the Government that since the matter regarding retrospective promotion of Shri B. Rokima is pending in the High Court, the review DPC could not be held until the case is decided by the Court. In spite of the said letter dated 20-8-02 from the MPSC the respondent No. 2 has proposed for creation of 3 posts of ACF. In response to the said proposal of the Department the DCF (Hqrs) by letter dated 10-12-02 has informed that in order to ratify the mistake committed by ignoring the prescribed quota for promotion in 1986, it is proposed to create 2 temporary posts of ACF to accommodate the petitioner Shri B. Rokima and 3 others.

9. The petitioners in the WP(C) No. 22 of 2003 being aggrieved by this proposal to promote the petitioner Rokima and 3 other with retrospective effect and for creation of the 3 posts to accommodate them has approached this court in WP(C) No. 22 of 2003 assailing the said proposal to promote the petitioner B Rokima and 3 others with retrospective effect.

10. It is admitted fact that according to the Rules, 25% of the posts of ACF are to be filled up by promotion from amongst Forest Rangers who had passed Ranger course and with not less than 5 years of service in the grade of Ranger. In compliance with the Rules, the case of 10 Rangers were forwarded to the DPC, to fill up this quota in the year 1983. Out of the 10 candidates, the DPC had recommended 5 candidates including the petitioner who was placed at serial No 5 of the list. However, sin"ce there were only 3 posts for promotion quota, the petitioner being placed at serial No. 5 could not be promoted and those who were at serial Nos. 1, 2 and 3 were prompted. The petitioner was promoted only on 6-5-88 from the date of taking over charge and not with retrospective effect. The promotion of the petitioner B. Rokima along with 7 others were made as per quota available for promotion. In between 1983 and 1988 the Government had made many appointments by direct recruit to the post of ACF. The petitioner B. Rokima did not challenge the orders of direct appointment to the post of ACF but had only made representation to the respondents to consider his case for promotion.

11. The case of Shri S.R. Laskar was considered by the State respondents on the basis of the recommendation of the DPC as his case was kept in sealed cover.

However, after the vigilance case was completed, his case was considered and he was promoted as he was found to be senior to the petitioner. The case of Shri R. Pachhunga was considered by the respondents on extraneous ground and he was prompted initially from the date of promotion but subsequently, the promotion was modified with retrospective effect with effect from 1-5-83. The consideration of the case of Shri R. Pachhunga was made on extraneous consideration and not on the basis of quota rules. There is nothing in the retrospective promotion order dated 16-4-91 to show that Shri R. Pachhunga was promoted on the basis of quota rules. The promotion of Shri R. Pachhunga with retrospective, effect on extraneous consideration cannot be the basis for granting the same benefit to the petitioner.

12. Record also, shows that Shri R Pachhunga and Shri S.R. Laskar are senior to the petitioner in the cadre of Forest Ranger, Therefore, when the quota vacancies were available, they were promoted to the post of ACF. The petitioner was however promoted along with Shri R. Pachhunga as already observed that the promotion of Shri R. Pachhunga was made on extraneous ground without following the quota rules. From the records available in WP(C)NO. 22 of 2003 it is seen that the MPSC by letter dated 29-5-2001 had recommended for retrospective promotion of the petitioner. Rokima and 3 others with effect from 19-8-86 but this was not implemented by the Government. The matter was again referred to the MPSC and the MPSC by letter dated 20-8-02 addressed to the Under Secretary, Government of Mizoram, Department of Personnel & Administrative Reforms declined to make the recommendation as the matter is pending before this Court. In spite of the said letter from the MPSC, the Deputy Conservator of Forest (DCF)(Hqrs) in his letter dated 10-12-02 addressed to the Secretary, Government of Mizoram, Environment and Forest Department had proposed for creation of 2 posts for promotion of the petitioner and 3 others with retrospective effect, i.e., 19-8-86 till 5-5-88. This proposal for creation of post was made in spite of the fact that the MPSC had declined to recommend the case of the petitioner due to pendency of the case WP (C) No. 36 of 1998.

13. From the facts as narrated above, it is seen that the petitioner was not promoted in the year 1983 as there was no vacancy of promotion quota. He was promoted only in the year 1988 when vacancy quota was available. The petitioner did not approach this Court in spite of denial of promotion to him. In the meantime, the respondents had made direct appointment to the post of ACF by over-looking the quota for direct recruitment. In spite of these direct recruitments made by the respondents the petitioner did not exert his right to assail the appointment of those persons who were directly appointed as ACF. The petitioner had chosen to remain silent all along knowing fully well that the quota rules for promotion was not followed by the respondents. Even in his writ petition the petitioner did not assail those appointments made in excess of the direct recruitment quota. His only grievance is to promote him from the date when Shri S.R. Laskar and Shri R. Pachhunga were granted retrospective promotion.

14. The Apex Court in the case of P.S. Sadasivaswamy Vs. State of Tamil Nadu, has held as follows : -

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

15. Taking the above principle in the case of the petitioner it is clear that the petitioner knowing fully well that the direct appointments were made in excess of the quota but did not exert his right for a long time since 1983 and preferred to approach the Court only in 1998.

16. In the case of State of Haryana and Others Vs. Miss Ajay Walia, the Apex Court has dealt with the case where the selection was made in the year 1982 and the writ petition was filed in the year 1995 where there is an inordinate delay. In such a situation, the Apex Court has held that the representations given to various authorities do not furnish a fresh cause of action to file a writ petition.

17. Similar is the case of the petitioner B. Rokima when he submitted his representations repeatedly to the authorities but his representations were not considered by the respondents. Even then, he did not approach the court but preferred to remain silent, therefore, the petitioner cannot agitate the matter at the belated stage.

18. In view of the fact and circumstances as discussed above, this Court is of the opinion that the claim of the petitioner for retrospective promotion as that of respondents 5 and 6 Shri S.R. Laskar and Shri R. Pachhunga cannot be considered at this stage. The proposal dated 29-5-01 made by the MPSC to grant retrospective promotion to the petitioner B. Rokima and 3 others is also not just and proper as it was made during the pendency of WP(C) No. 36 of 1998. Needless to say that when the matter was again referred to the MPSC, the MPSC by letter dated 20-8-2002, (Annexure-15A) addressed to the Under Secretary, Department of P & AR has declined to make its recommendation realising that the matter was pending before this court. In spite of the said letter of the MPSC, the Deputy Conservator of Forest (Hqrs) on his own made the proposal for creation of 2 (two) posts by his letter dated 10-12-2002 addressed to the

Secretary, Environment & Forest Department. This proposal was also made without the recommendation of the MPSC and while the matter was pending before this Court.

19. As a result, the writ petition, viz., WP(C) No. 36 of 1998 is hereby dismissed. The impugned letter dated 29-5-2001 issued by the MPSC to the Under Secretary, Department of Personnel & Administrative Reforms recommending the name of the petitioner Shri B. Rokima and 3 others and the letter dated 10-12-02 issued by the Deputy Conservator of Forest (Hqrs) to the Secretary, Environment & Forest Department are hereby set aside and quashed and the writ petition, viz., WP(C) No. 22 of 2003 is allowed.

Both the writ petitions are accordingly disposed of.