

(2006) 01 GAU CK 0021
In the Gauhati High Court
Case No : Writ Appeal No. 547 of 2005

Bengin Mack

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-01-2006

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2006) 2 GLR 163

Hon'ble Judges : B. Sudershan Reddy, C.J.; Brojendra Prasad Katakey, J

Bench : Division Bench

Advocate : A.K. Roy, for the Appellant; B. Banerjee and C.K. Sarma Barua, for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, C.J.—The short question that falls for our consideration in this writ appeal is whether the Child Development Project Officer (Group-B) Recruitment (Amendment) Rules, 2004 suffers from any vice and whether they are liable to be struck down on the ground that they are contrary to the guidelines issued by the Union of India.

2. In order to consider that question, few relevant facts may have to be noticed. The writ appellant herein is at present working as Supervisor in the Social Welfare, Women and Child Development Department of the Government of Arunachal Pradesh. Her next promotion avenue is to the post of Child Development Project Officer (hereinafter referred to as "CDPO") and her service conditions are regulated by the Rules called "Child Development Project Officer (Group-B) Rules, 1995". As per the Rules prior to the impugned amendment, the 50 per cent of the posts of CDPO are to be filled by direct recruitment and the remaining 50 per cent by promotion from amongst the officers of feeder category such as, Supervisor and Statistical Assistant, etc. By the impugned amendment brought vide Notification dated 9th January, 2004 as against 50 per cent of promotion quota 70 per cent posts have been reserved for Supervisors and

remaining 30 per cent for the Statistical Assistants. The appellant is aggrieved by the impugned Rules under which 30 per cent quota is exclusively made available for consideration of the cases of the Statistical Assistants for their promotion as CDPO. The Rules, in all other respect remained to be the same prescribing a minimum of 8 years of service in substantive grade for both the feeder categories, which before the amendment was 7 years for both categories.

3. It appears that the appellant and others being aggrieved by the impugned amended Rule made some representations to the authorities making grievance against the aforesaid amended part of the recruitment rules, which were directed to be disposed of by this Court vide order dated 16.12.2004 passed in Writ Petition (C) No. 407(AP)/2004.

4. The State of Arunachal Pradesh having considered the representations so made by the appellant and others took a view that there is no need to make any further amendment to the Rules and accordingly reiterated its view to provide and earmark specific quota for the Statistical Assistants of non-ministerial cadre on the basis of representations made by the Statistical Assistants.

5. The case set up by the appellant is that there was no need or necessity to prescribe separate quota in favour of Statistical Assistants, which according to them, has taken away a major chunk of the posts adversely affecting the chances of promotion of the Supervisors.

6. The State of Arunachal Pradesh in its counter affidavit has stated in details the reasons for bringing amendment to the Rules. It is stated in clear and categorical terms that 100 per cent reservation in favour of female candidates to fill the promotional posts of CDPO in terms of the guidelines formulated by the Central Government could not be given effect to due to practical difficulties. It is stated that having regard to the hilly terrain and other difficulties, female candidates find it very difficult to go to rural areas and for that reason the decision was taken not to provide 100 per cent reservation to female candidates. The reasons, which called for amendment of the rules, are clearly stated in the affidavit-in-opposition filed in the writ petition.

7. The learned Counsel for the appellant appears to have contended before the learned Single Judge that the earlier practice of providing promotion to the Supervisors and Statistical Assistants on the basis of seniority itself was to the satisfaction of all concerned and no such dissatisfaction was expressed by any one including the Statistical Assistants and, therefore, there was no necessity to provide 30 per cent reservation out of the 50 per cent promotional quota to the Statistical Assistants. It was urged that the impugned amendment has adversely affected the chance of promotion of the Supervisors. On the contrary, it was contended on behalf of the State that even after the impugned amendment of the Rules 70 per cent out of 50 per cent of promotional quota, are still available to the Supervisors for consideration of their cases for promotion as CDPO.

8. The learned Judge having meticulously considered the rival contentions and

materials available on record found that the State was well within its jurisdictional competence to remove the stagnation and streamline the promotional avenues so far as the Statistical Assistants are concerned by providing separate quota in their favour against the promotional quota available for both the categories, namely, Supervisor and Statistical Assistant. The learned Judge found that even after the impugned amendment of the Rules the Supervisors retain the major chunk of promotional quota for consideration of their cases for promotion to the post of Supervisor and the impugned amendment to the Recruitment Rules have not obliterated the chances of Supervisors. The learned Judge accordingly found no merit in the writ petition and dismissed the same.

9. In this writ appeal, the learned Counsel for the appellant, more or less reiterated the same submissions and, inter alia, contended that the impugned amendment to the Rules are ultra vires the guidelines issued by the Union of India. It is very well settled that the Rule framed by the Governor in exercise of powers conferred under proviso to Article 309 of the Constitution enjoy the same immunity as that of law made by a competent Legislature. Such Rule can be struck down only on the ground of being unconstitutional and on no other ground. The writ appellant did not challenge the impugned amendment on the ground of any constitutional infirmity. The Rule framed by the Governor cannot be struck down on the ground that they are contrary to the circulars/guidelines issued by the Union of India. In the circumstances, we find no merit in the contention.

10. As regards the other contention urged by the learned Counsel for the appellant, we are in complete agreement with the view taken by the learned Single Judge that the impugned amendment in no manner adversely affected any of the guaranteed rights of the appellant and others of their service conditions including their right to promotion to the next higher post. In order to balance the competing rights of both the Supervisors and Statistical Assistants for promotion the Rule making authority in its wisdom thought it fit to earmark specified quota for both the feeder categories, namely, Supervisor and Statistical Assistant. By no stretch of imagination the rule can be characterized as irrational adversely affecting any of the guaranteed rights of the Supervisors.

11. No other point is urged.

12. We find no merit in the writ appeal and the same shall accordingly dismissed with no order as to costs.