

(2005) 08 GAU CK 0017

In the Gauhati High Court

Case No : Writ Petition (C) No. 92 (AP) of 2005

Chidananda Moral

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 19-08-2005

Acts Referred:

Citation : (2005) GLT 96 Supp

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : R. Deka, R.B. Yadav and R.C. Paul, for the Appellant; B.L. Singh and M. Boje, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—The challenge made in this writ petition is in respect of recruitment rules for promotion to the post of Health Education Officer (H.E.O.) from the feeder cadre of Health Educator who have rendered 8 years of regular service in the grade.

2. The Petitioner who is presently serving as Deputy Mass Education and Information Officer (Dy. M.E.I.O.) in the scale of Rs. 5500-9000/- in the Directorate of Health Services, initially entered the services of the Respondents in December, 1971 as Para Medical Assistant. Riding the ladder of promotion, he became the Dy. M.E.I.O. with effect from 26.6.1995. At the time of filing of the writ petition, he was 56 years old and thus, is at the verge of his retirement from service on attaining the age of superannuation.

3. As per the recruitment Rules, the Petitioner is now entitled to be promoted as Mass Education and Information Officer (M.E.I.O.), a Group-B gazetted post. The promotional post is to be filled up 100 per cent by promotion from the rank of Dy. M.E.I.O. with 5 years regular service in the Grade.

4. There is another post called Health Education Officer (H.E.O.) which according to the Petitioner is equivalent to that of M.E.I.O. in rank, status, duties and

responsibilities with identical pay scale of Rs. 6500-10500/-. In this connection, the Petitioner has placed reliance on Annexure-P-8 letter dated 13.10.2004 issued by the Directorate of Health Services, A.P. enclosing therewith the chart showing the job responsibility of both the posts.

5. A proposal was made to frame the Recruitment Rules for promotion to the post of H.E.O. under the State Information, Education and Communication (I.E.C.) Bureau in the Department of Health and Family Welfare. The Annexure-P-9 letter was issued from the Directorate of Health Services highlighting various aspects relating to promotion to the post of M.E.I.O. and H.E.O. It was suggested that since as per the Recruitment Rules, the Dy. M.E.I.O. is to be promoted to the rank of M.E.I.O. on seniority basis and the present incumbent could not be promoted due to non-availability of vacancy of M.E.I.O., it would not be prudent to make provision for promotion to the rank of H.E.O. unless promotion is also made from Dy. M.E.I.O. to H.E.O. It was also indicated that if Recruitment Rules for promotion to the post of H.E.O. are framed separately keeping provision for promotion from the feeder cadre of Health Educator, same would lead to promotion prospects to the Health Educator in both the sides. It was indicated as to how in the past two Health Educators were promoted as Dy. M.E.I.O. and even working in the same status. In a nutshell, the suggestion made was that the Health Educator must not be allowed to jump over the Dy. M.E.I.O. which is a Grade between Health Educator and H.E.O.

6. In spite of the aforesaid suggestions made by the Directorate of Health Services, the impugned notification dated 14.2.2005 has been issued framing the Recruitment Rules called the Recruitment to the Posts of Health Education Officer Rules, 2005 making the Health Educators only who have rendered 8 years of regular service in the Grade, eligible for such promotion. As per the said Recruitment Rules, the post of H.E.O. is to be filled up 100 per cent by promotion from amongst the Health Educators.

7. The Petitioner who had entered the services of the Respondents way back in 1971 as Para Medical Assistant and is now holding the post of Dy. M.E.I.O. riding the ladder of promotion, was also promoted as Health Educator way back in 1986 (23.10.1986). Thus, had the Petitioner been still in the rank of Health Educator, he would have been eligible for promotion as H.E.O. However, since no provision has been made for consideration of the incumbents holding the post of Dy. M.E.I.O. for promotion to the rank of H.E.O., the Petitioner who had held the post of Health Educator way back in 1986 will be deprived of his promotion as H.E.O.

8. As per Annexure-P-4 notification dated January, 1984, both the post of Health Educator and District Extension Educator are Group-C post having the same pay scale with same educational qualification and according to the Petitioner they are equal in status, responsibilities and duties. The officers of both Grades were made eligible for promotion to the rank of Dy. M.E.I.O. as per the Recruitment Rules of 1992 notified on 27.5.1992. As per the said Recruitment Rules, the post of Dy. M.E.I.O. is to be filled up 100 per cent promotion from amongst the

District Extension Educator and Health Educator having 5 years of regular service.

9. It is in the aforesaid circumstances the Petitioner is aggrieved by the impugned Annexure-P-11 notification dated 14.2.2005 framing the aforesaid Rules of 2005 providing promotional avenues only to the Health Educators to the deprivation of others. It is the case of the Petitioner that in the process the Petitioner is likely to be superseded by Health Educator by far junior to him and who are not even in the rank of Dy. M.E.I.O. which if materializes apart from seriously telling upon his service career would also lead to demoralizing effect. In this connection, he has pointed out that the Respondent No. 3 who is now aspiring for promotion as H.E.O. which is equivalent to the post of M.E.I.O., is only 33 years of age in sharp contrast to the Petitioner who is at the verge of his retirement from service. Thus, the prayer made by the Petitioner is either to provide him promotional opportunity to the rank of M.E.I.O. before his juniors are promoted as H.E.O. or to make him eligible for promotion as H.E.O. ahead of his juniors. Alternatively, the prayer made is to set aside and quash the Recruitment Rules of 2005 by which only the Health Educator is made eligible for promotion as H.E.O.

10. The official Respondents have filed their counter-affidavit. The Respondent No. 3 has also filed a separate counter-affidavit. They have justified the framing of the Rules of 2005 on the analogy that there are two Bureaus under the Health Department, namely State Health Education Bureau (S.H.E.B.) and Information Education and Communication Bureau, Family Welfare. However, there is no denial on the part of the Respondents that both the Bureaus are under the Directorate of Health Services. They have also not denied that on earlier occasions Health Educators were promoted as Dy. M.E.I.O. They have contended that promotional avenues of the Health Educators and Dy. M.E.I.O. being distinct and separate, the Petitioner cannot make any grievance in respect of the Recruitment Rules providing promotional avenues for the Health Educators. However, they admit that pay scale of Dy. M.E.I.O. is higher than the pay scale of Health Educator. Thus, in a nutshell, their case is that since there are two separate Bureaus, promotional avenues in both the Bureaus would be guided by separate Recruitment Rules. In paragraph 14 of the counter-affidavit the Respondents have stated that if all out efforts are to be made, the Petitioner should apply through proper channel for his promotion to the post of M.E.I.O.

11. I have heard Mr. R. Deka, learned Counsel for the Petitioner and Mr. B.L. Singh, learned Sr. G A., A.R for the official Respondents. I have also heard Mr. M. Boje for the Respondent No. 5. All of them argued in tune with their respective stand in the writ petition and in the counter-affidavits.

12. There is no dispute that the Petitioner now holding the post of Dy. M.E.I.O. is stagnated in the same post from 1995. There is also no dispute that he had held the post of Health Educator way back in 1986 and continued to be as such till his promotion as Dy. M.E.I.O. in 1995. Thus, had he been in the cadre of Health Educator without any promotion as Dy. M.E.I.O., he would have been eligible for

promotion as H.E.O. as per the Recruitment Rules, 2005 which is under challenge. However, since he has been promoted as Dy. M.E.I.O. and the same has not been made a feeder cadre along with Health Educator for promotion to the rank of H.E.O., naturally, the Petitioner stands excluded from the purview of consideration for promotion as H.E.O. While the Petitioner is in much higher rank and status than that of the Respondent No. 5, but in view of the impugned Recruitment Rules, the Respondent No. 5 is now eligible to score a march over the Petitioner which needless to say, if materializes, will have demoralizing effect on the Petitioner.

13. It is in the above context, Annexure-P-9 letter dated 27.1.2005 was issued by the Joint Director of Health Services to the Director of Health Services highlighting as to how in the event of framing Recruitment Rules providing promotion prospects only to the Health Educators, would lead to anomalous situation. In this connection, the relevant part of the said letter is quoted below:

9. Of late, I have come to know that a proposal is being initiated for framing R/R of the post of Health Education Officer without examining pros and cons of existing notified R/R of Dy. MEIO, as stated in the order No. MEST-89/144 pt. dated 27th May, 1992.

10. As per the provision laid down in the R/R of Dy. MEIO, promotion of Dy. MEIO to MEIO has to be made according to seniority basis. But due to non-availability of vacancy of MEIO, they are still in the status of Dy. MEIO. On the other hand they cannot be promoted to HEO, unless provision is kept in the R/R for promotion from Dy. MEIO to HEO. If R/R of HEO is framed separately, keeping provision for promotion from Health Educator to Health Education Officer, opportunity for promotion in respect of Health Educator will be in both side and may cause complications and confusion as per as seniority is concerned. Amongst Health Educators, two have already been promoted to Dy. MEIO and are still working in the same status. As such another Health Educator cannot jump over Dy. MEIO, i.e., (one grade which is in the between HE and HEO) to get promoted to the post of Health Education Officer.

Since all the above-mentioned posts under DFWB, DHEB and SHEB have been integrated vide Govt. notification No. MFW-97/41 (IEC), dated 19th Jan., 1998, there should be a streamlined promotion scope in favour of all the officers and staff under State IEC Bureau without depriving anybody and service seniority specially in respect of Dy. MEI Os who have already been promoted from Health Educator be maintained.

The promotion of above mentioned officers and staffs may be done as suggested and shown below:

Mass Education and Information Officer/Health Education Officer (Pay scale 6500-10500, Group B, Gazetted)

Dy, Mass Education and Information Officer (Pay scale 5500-9000, Group B, Non-

Gazetted) Health Educator/District Extension Educator (Pay scale 4500-7000, Group C, Non-Gazetted)

11. The grade/status and the present pay scale are furnished below:

12. A copy of the post sanction order No. MFW-82/30, dated 13.12.1988 in respect of MEIOs and Dy. MEIOs is enclosed at Annexure-I for ready reference.

13. A copy of the R/R in respect of MEIO, Dy. MEIO, Health Educator and District Extension Educator are annexed at Annexure-II, III, IV and V respectively for ready reference.

The R/R in respect of HEO is not yet framed. The R/R in respect of MEIO is amended vide Govt. notification No. MFW-2000/65, dated 24th December, 2002.

14. (a) The job responsibilities of MEIO and HEO are same, a copy of the job responsibilities of MEIO and HEO is enclosed at Annexure-VI

(b) The job responsibilities of Dy. MEIO is enclosed at Annexure-VII

(c) The job responsibilities of Health Educator and District Extension Educator are same and is enclosed at Annexure-VIII for ready reference.

15. Since, Jt. DHS (FW) of this Directorate is the controlling officer for the function of the State IEC Bureau, he may be kept in touch for giving constructive suggestion/advice/comments before submission of related file of the Department to the Government for approval and notification, please

In view of the above circumstances and for streamlining the promotional avenues in respect of all the in service incumbents, such as DEE, HE and Dy. MEIOs etc. the proposal for framing of R/R may be routed through the Jt. DHS (FW) of this Directorate so that disputes and Court cases can be avoided.

14. It appears that the Respondents did not take into account the above quoted factors so seriously urged and indicated by the Joint Director of Health Services. As a consequence of framing of the impugned Rules, the Respondent No. 5 who is by far junior to the Petitioner is now at a stage in which he will score a march over the Petitioner in the matter of promotion. An anomalous situation has been created by framing the recruitment rules in which the Petitioner who once held the post of Health Educator which is now a feeder cadre as per the impugned Recruitment Rules for promotion as HEO, will be deprived of his promotion as HEO which is equivalent in rank, status and responsibilities with the pay scale equivalent to that of MEIO.

15. The plea of the Respondents that since there are two different Bureaus under the Directorate of Health Services, separate avenues of promotion have been provided for the officers for both the Bureaus and thus, the Petitioner is not entitled to raise any grievance in respect of the Recruitment Rules providing avenues of promotion to the Health Educators belonging to another Bureau, is also not tenable. The materials placed on record are overwhelming to indicate

that no such distinction was made in the past and it is only with the promulgation of the impugned Rules, the Respondents have resorted to such a plea. Even otherwise also when the Petitioner had already held the post of Health Educator from which he was promoted as Dy. MEIO and the Respondent No. 5 came to the cadre of Health Educator as per his own admission only in 1996, i.e., 10 years after the Petitioner, the plea of the Respondents is not tenable. The Respondents while framing the Rules of 2005 ought to have taken care of the anomalous situation which has now been created with promulgation of the Recruitment Rules.

16. The Respondents while making room for promotion for the Health Educators who are by far junior to the Petitioner, ought to have considered the stagnation being faced by the Petitioner by not earning any promotion from 1995. Although he has the avenue of promotion to the post of MEIO, the Respondents are not taking any step to consider his case for promotion. On the other hand, they have taken a strange stand in the affidavit that if all out efforts are to be made, the Petitioner should apply through proper channel for his promotion to the post of MEIO. The Respondents in their counter-affidavit have not denied that in the past promotions were made to the rank of Dy. MEIO from amongst the Health Educators. Now, if the Health Educators are allowed to jump over the earlier post of Dy. MEIO to the post of HEO same will lead to an anomalous and absurd situation demoralizing the officers in the cadre of Dy. MEIO.

17. In view of the above, I dispose of the writ petition with the following directions:

(i) The Respondents shall reconsider the matter towards suitable amendment of the impugned Recruitment Rules of 2005 so as to remove the anomalies pointed out above and also in Annexure-P-9 letter dated 27.1.2005 relevant portion of which has been quoted above. While doing so they will also take into account Annexure-P-8 communication dated 13.10.2004 enclosing therewith a chart laying down the job responsibility.

(ii) In any case, the Petitioner and for that matter the officers in the cadre of Dy. MEIO shall not be allowed to be superseded by their erstwhile juniors. The Respondents will bear in mind that the Petitioner once held the feeder grade/post of Health Educator way back in 1986 from which Grade he was promoted to the present rank of Dy. MEIO. They will also bear in mind that in the past Health Educators were promoted to the rank presently being held by the Petitioner, i.e., Dy. MEIO.

(iii) The Respondents may also consider the promotion of the Petitioner to the rank of MEIO and before such consideration no junior to the Petitioner shall be promoted as HEO without first considering the case of the Petitioner for such promotion.

18. Entire exercise which is now required to be carried out by the Respondents in terms of this order, shall be so carried out by them within a period of two months

from the date of furnishing the certified copy of this judgment and order. They will bear in mind that the Petitioner is now at the verge of his retirement and he has been stagnating in the present post of Dy. MEIO since 1995.

19. The writ petition stands allowed to the extent indicated above leaving the parties to bear their own costs.