
(2007) 02 GAU CK 0067
In the Gauhati High Court

Claudia B. Sangma

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 13-02-2007

Acts Referred:

Citation : (2008) 2 GLT 35

Hon'ble Judges : A. Hazarika, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A. Hazarika, J.—Challenge in this writ petition is to the legality and validity of the Notification dated 28th Feb. 2006, issued by the Commissioner & Secretary to the Government of Meghalaya, Industries Department by which the private respondent No. 5 herein has been promoted temporarily to the post of Joint Director of Industries (Headquarter) under Regulation 4(d) of the Meghalaya Public Service Commission (LOFS) Regulation 1972 (in short MPSC) and allowing him to hold current charge of the post of Director of Industries, Meghalaya, in addition to his own duties with effect from the date of taking over charge of the post until further orders vice Shri S.B. Gurung (Retd.). In fact, the Notification dated 28.2.2006 contains two parts and the later part of the Notification No. IND 148 86/127-A of the same date by which the private respondent No. 5 has been allowed to hold temporarily the current charge of the post of Director of Industries, Meghalaya in addition to his own duties is under challenge in the instant writ petition.

2. I have heard Ms. A. Paul, learned Counsel for the petitioner, Mr. M.F. Qureshi, learned State Counsel for the respondent-State and Mr. V.K. Jindal, learned Senior Counsel, assisted by Mr. L. Lyngdoh, learned Counsel for respondent No. 5.

3. The controversy and the relief sought for in the writ petition lie in a very narrow compass. Background to the interse seniority and the promotion issue.

4. The petitioner who belongs to Garo Scheduled Tribe was initially appointed on

17.12.1976 as Planning-cum-Survey Officer, under the Rural Industries Project, a post equivalent to that of Assistant Director of Cottage Industries in the pay scale of Rs. 700/-1425/-. However, by notification dated 4.5.1978, the Rural Industries Project was merged with the District Industries Centre and the petitioner was allowed to function as Manager (Economic Investigation) in the same scale of pay. The post of planning-cum-Survey Officer was redesignated as Manager (Economic Investigation) and she continued to hold the post till she was transferred and posted as Assistant Director of Cottage Industries, Williamnagar by order dated 16.3.84. The scale of pay of Assistant Director of Industries was of the same as Planning-cum-Survey Officer and therefore the initial appointment of the petitioner was equivalent to that of the Assistant Director of Cottage Industries with effect from 17.12.1976 as reflected in the staffing pattern under the Rural Industries.

5. The facts pleaded by the petitioner is that the Department of Industries had two separate cadre viz.; technical and non-technical and accordingly two different gradation lists were maintained vide gradation list dated 4.1.1980 for non-technical staff and gradation list dated 4.2.1980 for technical staff. However, the Department of Industries had published a common gradation list on 6.6.91 wherein the name of the petitioner appeared at serial No. 3 and one Shri S.B. Gurung at serial No. 4 and respondent No. 5 at serial No. 7.

6. The gradation list so published on 6.6.91 by the Department would reveal that the entry in the cadre was the basis of gradation list. Shri S.B. Gurung joined as Assistant Industries Officer (technical) (in short (AIO)(T) in the scale of Rs. 500/-Rs. 1225/- on 16.8.74 which is a feeder cadre of Assistant Director of Cottage Industries (in short ADCI). However, he was promoted to the post of ADCI (Tech.) on 16.3.1984 on the recommendation of the Departmental Promotion Committee which would indicate that the petitioner is similar to Shri S.B. Gurung. A detail reference would be made in regard to his service career vis-a-vis the petitioner in the subsequent paragraph at the appropriate stage.

7. The controversy relating to interse-seniority of Shri T.K. Chakravorty would reveal that he had joined on 11.2.1977 as AIO (T) in the pay scale of Rs. 500/-Rs. 1225/-which was similar to that of Shri S.B. Gurung and a junior cadre post than the ADCI and therefore, junior to the petitioner. The Industries Department vide Notification dated 28.2.2006 has promoted him to the post of Joint Director of Industries and by the same notification allowed him to hold the current charge of the post of Director of Industries temporarily which is the subject matter in this writ petition and he has been arrayed as party respondent No. 5 in this writ proceeding.

8. The draft gradation list dated 6.6.91 as referred to above was altered by another draft gradation list dated 25.5.93 wherein the name of Shri S.B. Gurung was shown at serial No. 3 and the name of the petitioner was shown at serial No. 4 and the name of Shri T.K. Chakravorty was shown at serial No. 5. However, the Department had published another gradation list on 17.1.97 wherein also Shri

S.B. Gurung was shown senior to the present writ petitioner and consequently thereupon she had submitted representations which continued till 2000 and the department did not make any endeavour to resolve the dispute of seniority between the petitioner and Shri S.B. Gurung.

9. When the matter rested as indicated above, the Government of Meghalaya, Department of Cottage Industries issued an Office Memorandum dated 3.11.2000 by which Shri S.B. Gurung was granted the benefit of higher scale of Rs. 700/- Rs. 1425/- with effect from 16.8.1974 i.e. from the date of initial entry in the cadre of AIO (T) and the said action taken has a reference to notification dated 5.10.78 issued by the Finance Department and the benefit of higher scale of pay were also granted to one Shri A.V. Rangad and Shri R.R Rangad whose initial entry in the service were AIO (T) on 30.1.69 and 10.7.68 following the amendment to the schedule of the Meghalaya Services (Revision of Pay) Rules 1975 published vide Notification dated 7.8.1975. In terms of amendment, the revised scale of pay were extended to Shri A.V. Rangad and Shri R.R Rangad being personal to them and the post held by them were designated as ADCI (T).

10. The benefit of granting higher scale of pay of Rs. 700/- Rs. 1426/- to Shri S.B. Gurung retrospectively with effect from 16.8.74 which paved the way for working him senior to her in the post of ADCI and hence the Office Memorandum dated 3.11.2000 and the gradation list dated 17.1.97 was under challenge being W.P. (C) No. 334 (SH) of 2000 and Shri S.B. Gurung was made party respondent No. 5 in the said writ proceeding.

11. The said writ petition was disposed of by this Court on 1.11.2002 allowing the writ petition by holding that the writ petitioner has made out a case for interference; it was held as under:

In the backdrop of the discussion made hereinabove, I am of the opinion that the petitioner has been able to make out a case calling for interference by this Court with the impugned seniority list of 1997 and the decision of the state respondents in granting the benefit of revised pay scale of Rs. 700/- Rs. 1425/- in favour of the respondent No. 5 with effect from 16.8.74 and further, redesignation of the post of AIO (T) also from the said date. As a result, the impugned gradation list dated 17.1.97 and the Office Memorandum dated 3.11.2000 are set aside and quashed.

Resultantly, the gradation list dated 26.11.97 and Office Memorandum dated 27.11.2000 being consequential to the impugned gradation list and the Office Memorandum dated 3.11.2000 respectively, are also adjudged illegal and unconstitutional and are hereby set aside and quashed. The official respondents are directed to restore the seniority of the petitioner in the post of ADCI in terms of the findings and observations recorded hereinabove. The petition, is, thus, allowed. In the facts and circumstances of the case, there would be no order as costs.

12. The respondent No. 5 in W.P. (C) 334 of 2000 carried the appeal before the

Division Bench of this Court being W. A. No. 34 (SH) of 2002 and the Division Bench on 24.2.2006 interfered with the decision of the learned Single Judge holding that the appellant would rank senior to the petitioner and the final gradation list dated 26.11.97 as well as Office Memorandum dated 3.11.2000 and subsequent Office Memorandum dated 27.11.2000 would hold the field and hence set aside the judgment and order dated 1.11.2002 passed in W.P. (C) No. 34 (SH) 2000. The Division Bench, however, observed in the concluding paragraphs as follows:

Paragraph 47--"The Writ Appeal is answered in the above manner. However, we cannot refrain ourselves from taking note of the fact that although the impugned judgment and order passed by the learned Single Judge was in operation till this very date, the official respondents ignored the same and maintained the seniority of the appellant over the respondent No. 1/writ petitioner. It was on that basis, the appellant was conferred with the benefit of holding the charge of the post of Director. It was stated at the bar that there are two posts of Joint Director, one being held by the appellant and the other being held by the writ petitioner. During the operation of the impugned judgment and order, the writ petitioner being senior to the appellant, in the normal circumstances it was the writ petitioner who ought to have been conferred with the benefit of holding the post of Director as in-charge. But the official respondents conferred the benefit to the respondent No. 1/writ petitioner.

Paragraph 48--With the retirement of the appellant w.e.f. 28.2.2006, it is the writ petitioner who will remain in the fray for shouldering the responsibility of the Director of Industries. In the normal circumstances, in case of temporary appointment providing the charge of higher post, it is the senior most incumbent in the substantive grade who is entitled to the benefit of such temporary arrangement. Since it is the writ petitioner who alone would remain in the fray for the post of Director after 28.2.06, the official respondents will consider the case of the writ petitioner for her appointment as In-Charge, Director.

Paragraph 49--Before parting with the case records, we put on record the apprehension expressed by the writ petitioner that as has been done in the case of the appellant, the official respondents might confer respective benefit of the redesignation and revised pay scale to the other incumbents holding the post of Assistant Industries Officer (T) and in such an eventuality, same may have telling effect on the service career of the writ petitioner. From the material on record, it is not transpired that there are any other incumbents claiming same benefits like that of the appellant and/or the Govt. has been considering any proposal for conferment of same benefit to other incumbents holding the post of Assistant Industries Officer (T) like that of the appellant. Even if any such incumbent makes such a claim, the Govt. will have to consider the long lapse of time. It is expected that the official respondents would not do anything so as to deny the benefit of promotion, be it temporary or regular, to the writ petitioner which she is otherwise entitled upon retirement of appellant w.e.f. 28.2.2006.

Issue of holding current charge

13. The apprehension expressed and the observation made in the concluding paragraph of the judgment rendered by the Division Bench of this Court, was proved to be correct, when the Industries Department, Government of Meghalaya has issued a notification dated 28.2.2006 whereby and whereupon Shri T.K. Chakravorty has been promoted to the post of Joint Director of Industries under Regulation 4(d) of Meghalaya Public Service Commission from the feeder cadre of Deputy Director of Industries and by the said notification he has been allowed to hold temporarily the current charge of the Director of Industries, Meghalaya and the grievances redressed having not been attended by the official respondents, the petitioner has approached this Court for appropriate relief as indicated above wherein Shri T.K. Chakravorty has been made party respondent No. 5 in the writ petition.

14. Assailing the impugned notification dated 28.2.2006, the learned Counsel appearing for the petitioner has drawn the attention of this Court of the observation made by the court in the judgment and order dated 24.2.2006 passed in writ appeal No. 34(SH)/2002 and elaborately pointed out the history of the litigation between the parties commencing from the gradation list of the year 1997 and the order dated 3.11.2000 by which Shri S.B. Gurung was allowed to hold the charge of Director of Industries by giving retrospective revision of pay scale from the date of initial appointment and has also highlighted the subsequent order dated 28.2.2006 by which the private respondent No. 5 has been allowed to hold the current charge of Director of Industries depriving her the benefit of holding the current charge of Director of Industries, though she is senior to the private respondent No. 5 and the action on the part of the official respondents in depriving the benefit to her is the result being departmental bias against the petitioner which can be inferred from the action of the official respondents who were/are unanimously against her.

15. The second contention of the petitioner is that the draft Service Rules of the Department of Industries published vide Notification dated 23.12.98 provide for eligibility criteria in holding the post of Director of Industries is that an employee who is holding the post of Additional Director of Industries and has completed 20 years of continuous service on the basis of seniority-cum-merit is eligible to hold the promotional post of Director and that too, in consultation with M.P.S.C. Thereafter, by corrigendum to the Office Memorandum dated 12.8.03, it was notified that the post of Director of Industries shall be filled up by promotion amongst the Joint Director of Industries who have completed 20 years of continuous service on the basis of seniority-cum-merit in consultation with the MPSC.

16. In that regard, taking into consideration the eligibility criteria of the private respondent No. 5, the same benefit cannot be granted to him, more so, when he is junior to the petitioner and the legitimate claim of the petitioner has been defeated on account of the bias against her, as well as, for not following the

procedure prescribed and the direction issued by this Court in concluding paragraph of the judgment in Writ Appeal and therefore submitted to set aside the second part of the notification dated 28.2.2006 by which the private respondent No. 5 has been allowed to hold the current charge of the post of Director of Industries.

17. Learned Senior Counsel, appearing on behalf of the private respondent No. 5, supporting his case as averred in the affidavit-in-opposition has contended the following points viz;

a) The seniority is not only the criteria for promotion to the post of Director. The Office Memorandum dated 23.12.98 and 12.8.2003 would go to show that the promotion to the post of Director is to be made on the basis of seniority-cum-merit and the Departmental Promotion Committee (DPC for short) held on 15.2.2006 had considered the case of the petitioner but refused to recommend her name due to adverse remark in the ACR and pendency of the Departmental Proceeding and therefore there is no impediment to allow respondent No. 5 to hold the current charge of the post of Director and the judicial review in the matter of promotion and/or allowing to hold the charge being limited, submitted the learned Senior Counsel, not to interfere with the order dated 28.2.2006 by which the respondent No. 5 is allowed to hold the charge.

18. The official respondents in the case has filed an affidavit against the interim prayer as well as an affidavit-in-opposition against the writ petition and the State Counsel has urged that the affidavit filed against the interim prayer may be treated as part of the affidavit-in-opposition in deciding the case and contended that the writ petitioner has already been transferred and posted on deputation as Managing Director, Meghalaya Bamboo Chips Ltd. but she is yet to take charge of the post and a departmental proceeding for misconduct and financial irregularities has been drawn up against the petitioner vide Show Cause Notice dated 20.12.2003 and she cannot be given the charge of the post of Director which is based at Shillong since she has been posted at Tura vide Office Memorandum dated 1.12.98 and lastly, has contended that the ACR for the year 2002 being adverse which has also been considered in the minutes of the Departmental Promotion Committee meeting held on 15.2.2006, wherein it has been observed that "she is not fit for holding the position of responsibility" and therefore her case has been kept under sealed cover and thus prayed for dismissal of the writ petition.

19. Taking the seniority question for promotion to the post of Director of Industries, the Office Memorandum dated 23.12.98 and 12.8.2003 are relevant. The Office Memorandum dated 23.12.98 provides that the post of Director shall be filled up by promotion from amongst the Additional Director of Industries who have completed 20 years of continuous service on the basis of seniority-cum-merit in consultation with the Meghalaya Public Service Commission. The subsequent Office Memorandum dated 12.8.2003 has modified the earlier Office Memorandum dated 23.12.98 which provides that the post of Director shall be

filled up by promotion from amongst the Joint Directors of Industries who have completed 20 years of continuous service on the basis of seniority-cum-merit in consultation with M.P.S.C. There is a proviso of the aforesaid office memorandum which speaks of that in case suitable officers are not available from the Department, the post may be filled up temporarily from senior civil services. The proviso however, will not be applicable in case of availability of officers within the Department.

20. From the facts narrated above would reveal that the petitioner came to occupy the post of ADCI w.e.f. 16.4.1984 and the private respondent No. 5 who has been promoted temporarily under Regulation 4(d) of MPSC (LOFS) on 28.2.2006 to the post of Joint Director of Industries (Headquarter), has been allowed to hold the current charge of the post of Director temporarily in addition of his own duties, ignoring the eligibility criteria of seniority-cum-merit. Therefore, considering the above two Office Memorandum dated 23.12.98 and 12.8.2003, also in view of the order passed by the Division Bench in Writ Appeal No. 34(SH)/2002, this Court has no hesitation to hold that the 2nd part of the notification dated 28.2.06 by which the respondent No. 5 has been allowed to hold the current charge of Director requires to be interfered with, which this Court hereby do by setting aside the second part of the notification dated 28.2.2006.

21. Taking the second question of misconduct and financial irregularity attributed against the petitioner vide show cause Notice dated 20.12.2003, the court has gone through the entire records of the case relating to the show Cause and the departmental proceeding. The record would depict a very sorrow state of affairs relating to the departmental proceeding. The only material available in the record relates to show cause and the reply and thereafter appointment of Enquiry Officer, Presenting Officer and that recording of evidence concluded on 15.10.04.

22. It is really surprising that a departmental proceeding initiated against a seniormost officer of the Industry Department as far back as 2003 is yet to be completed without assigning any reason thereof. Delay in disposal of departmental proceeding itself is violative of the rules of natural justice and it is really surprising that even in this Court, no reason has been assigned by respondent State as to why the departmental proceeding could not be completed during last more than 3 (three) years. Under the circumstances, the pendency of the departmental proceeding for more than 3 years without assigning any reason thereof lacks bonafide on the part of the Govt. In the Division Bench judgment, there was enough indication to consider the case of the petitioner as quoted hereinabove and in view of the same, the petitioner ought to have been allowed to hold the charge of Director of Industries, she being the seniormost officer in the department. Although there is indication of her unfitness for holding the post of responsibility, no reason has been assigned as to why she was considered to be unfit and that unfitness being of the year 2002, there is no indication as to what will be the effect of the same in the year 2006, more so, the observation of

the DPC in its minutes dated 15.2.2006 is contrary to the sealed cover procedure. Sealed cover procedure means, the recommendation of the DPC, be it positive or negative, cannot be made known and it is made known only after opening of the sealed cover.

23. Thus it leads to the irresistible conclusion that the action of the authority is not bonafide, for the fact that they have kept the departmental proceeding hanging over the head of the petitioner for the last more than three years, completing the evidence part way back 2004, but not finalizing the proceeding till date. Thus for the inaction of the respondent authority, petitioner cannot be made to suffer at the fag end of her service career. The same finds support from a decision rendered by Apex Court in *Dr. Bhupinder Singh v. Union of India and Ors.* reported in, (1982) 2 SCC 53 wherein, in a similar circumstances the Apex Court held thus:

We are not inclined to consider the merit of the matter. Of course, the disciplinary authority will go into the tenability of the charges but it cannot keep the proceeding indefinitely pending causing injustice to the petitioner. We, therefore, direct the State of Assam to dispose of the disciplinary proceedings finally within six months from today. In case the State does not so dispose of the disciplinary enquiry it will consider the claim of the petitioner for future promotion as if there were no disciplinary enquiry pending against him. Not that he will be exonerated from the charges but promotions legitimately due to him will not be withheld on the score that disciplinary proceedings are pending.

24. For the foregoing reasons and discussions, and also taking into consideration the observation made by the Apex Court in *Dr. Bhupinder Singh (supra)*, a Writ of Mandamus is issued directing the Commissioner & Secretary to the Government of Meghalaya, Industries Department to dispose of the disciplinary proceedings pending against the petitioner finally within three months from today. In case the State does not dispose of the disciplinary proceedings within the aforesaid period of three months, it will consider the claim of the petitioner for promotion to the post of Director of Industries, as if there were no disciplinary enquiry pending against her. During this period of three months the authority is directed to fill up the post of Director as per proviso to corrigendum issued vide Memo No. IND 62/84 dated 12.8.2003.

25. In the result, the writ petition is allowed as indicated above. However, taking into consideration the facts and circumstances of the case, there would be no order as to cost.