
(2005) 03 GAU CK 0105
In the Gauhati High Court
Case No : Writ Petition (C) No. 6 of 2004

Engzuali Ralte

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 07-03-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 309

Citation : (2005) 2 GLT 288

Hon'ble Judges : T. Nanda Kumar Sungh, J

Bench : Single Bench

Advocate : C. Lalramzauva and A.R. Malhotra, for the Appellant; Nelson Sailo and George Raju, for the Respondent

Judgement

T. Nanda Kumar Singh, J.—By this petition the Petitioner challenges the inter-se-seniority list of the Assistant Superintendent of Accounts under the Food and Civil Supplies Department, Government of Mizoram as on 5.2.2003 (Annexure-17 dated 6.2.1993 to the writ petition) in which name of the Petitioner appears below the private Respondent Nos. 5 to 17 who were working in the lower post of Accounts Assistants when the Petitioner was appointed on direct recruitment to the post of Assistant Superintendent of Accounts/Accountant against regular vacant post vide order dated 25.7.1990 on the recommendation of a duly constituted Selection Committee (at Annexure-4 to the writ petition) and also for quashing the notification dated 6.2.2004 (at annexure-22 to the writ petition) for giving benefit of counting the services of the present Respondent Nos. 5 to 17 in the lower posts of Account Assistant while determining relative seniority in the higher post of Assistant Superintendent of Accounts.

2. Heard Mr. C. Lalramzauva, learned Counsel assisted by Mr. A.R. Malhotra, learned Counsel for the Petitioner and Mr. Nelson Sailo, learned GA for the official Respondent Nos. 1, 2, 3 and 4 as well as Mr. George Raju, learned Counsel for the private Respondent Nos. 5 to 17.

3. The fact of the Petitioner's case itself will show that an injustice had been

done to the writ Petitioner inasmuch as private Respondents who were not even born in the Grade of Assistant Superintendent of Accounts when the Petitioner was appointed on direct recruitment to the post of Assistant Superintendent of Accounts vide order dated 25.7.1990, the private Respondent Nos. 5 to 17 were working in the lower posts of Account Assistants which were feeder posts for promotion to the post of Accountant (Assistant Superintendent of Accounts). But by dint of impugned notification dated 6.2.2004 (Annexure-22) which was said to have been issued by the Governor of Mizoram in exercise of his power conferred by proviso to Article 309 of Constitution of India, the length of service of the private Respondent Nos. 5 to 17 in the lower post of Assistant Accountant had been counted for the purpose of seniority in the higher post of Assistant Superintendent of Accounts (Accountant). And it appears that the said impugned notification dated 6.2.2004 (at Annexure-22) had been issued for the purpose of justifying the impugned final inter-se-seniority list dated 6.2.2003 (Annexure-17) of the Assistant Superintendents of Accounts in which the name of the Petitioner is placed below the names of the private Respondent Nos. 5 to 17.

4. The Governor of Mizoram, in exercise of the power conferred by the proviso to Article 309 of the Constitution of India made Rules called "Mizoram Civil Supply Department (Grade C Post) Recruitment Rules, 1987" vide notification No. A. 12018/6/87-PAR (GS), the 8.4.1988. According to the said Recruitment Rules of 1987 there are three posts in the hierarchy of posts in the Food and Civil Supplies Department, Government of Mizoram such as, (1) Superintendent of Accounts (seniormostpost), (2) Accountant (second seniormost post) and (3) Account Assistant (Lower post). According to the said Recruitment Rules, 1987 the post of Accountant is a Selection Post and methods of recruitment are 75% by promotion and 25% by direct recruitment. The Account Assistant with three years regular service in the grade is eligible for promotion to the post of Accountant, as such the post of the Account Assistant is a feeder post for promotion to the post of Accountant. The Governor of Mizoram in exercise of the power conferred under Article 309 of the Constitution of India was pleased to accept the report and recommendation of the Pay Review Committee for the change of pay scale as shown in Schedule-A and B of the recommendation attached thereto. Vide notification No. G.12011/3/87-F.Est., dated 3.4.90 (at Annexure-2 to the writ petition). Clause (iv), (v) and (vi) of Schedule-A to the said notification dated 3.4.90 speak about the hierarchy of the posts of Accountants and their respective pay- scales, which reads as follows:

(iv) The Government also have been considering about the desirability of having uniform set up for all the three feeder posts to Mizoram Finance and Accounts Service posts for quite sometime past, so that one organization may not feel inferior to the other and if a common cadre for these three organizations could be evolved. To this end in view, it is considered necessary to have a two tier system in the Treasury service as are the case in Accounts and Treasuries Directorate and P.W.D.

(v) It is therefore, recommended that the post of Treasury Accountant should carry the pay scale of Rs. 2000-3200/-. The next lower post of Senior Accounts Assistant may be redesignated as Assistant Treasury Accountant in the pay scale of Rs. 1640-2900/-. This post should be the entry qualification. The post of Junior Account Assistant may be made as a withering post and no more recruitment made to this post. Those Junior Accounts Assistants who are graduates and those of them who have completed 5 years of service in this grade may be upgraded to the post of Assistant Treasury Accountant as soon as obtaining degree qualification till all of those are finally upgraded. For those of them who remain as Junior Accounts Assistant, a pay scale of Rs. 1400-2300- maybe allowed.

(vi) The position in respect of accounts post under Food and Civil Supplies and Transport Departments is exactly the same as that of posts in District treasuries. To become Superintendent of Accounts in these two Departments, one has to enter service as Account Assistant in the scale of Rs. 1200-2040/- promoted to Accountant in the scale of Rs. 1400-2300/- and then promoted to Superintendent of Accounts in the scale of Rs. 1640-2900/-. It is considered desirable to bring the post of Superintendent of Accounts as a feeder post of Mizoram Finance and Accounts Service posts by amending the existing recruitment Rules of this service. With this, it is, further recommended that there should be a two tier system of posts of Superintendent of Accounts and Assistants Superintendent of Accounts in the scale of Rs. 2000-3200/- and Rs. 1640-2000/- respectively. The manner in which the existing Accountants and the Account Assistants should be adjusted in the two tier system will be the same as that of posts in District treasuries highlighted at para I(v) above.

5. From bare perusal of Clause (iv), (v) and (vi) it is clear that the post of Account Assistant carrying the pay-scale of Rs. 1200-2040 is a feeder post for promotion to the post of Accountant in the scale of Rs. 1400-2300 and then promoted to the post of Superintendent of Accounts in the scale of Rs. 1640-2900/-. But as per the recommendation of the Review Committee there shall be two tier system of posts i.e. (1) Superintendent of Accounts in the Scale of Rs. 2000-3200/- and (2) Assistant Superintendent of Accounts in the scale of Rs. 1640-2900/-, the Account Assistant who are graduate and those of than who have completed five years of service in the grade maybe upgraded to the post of Assistant Superintendent of Accounts as soon as obtaining degree qualification till all of them are finally upgraded. The post of Account Assistant is a withering post, no more recruitment be made to this post. Admittedly, private Respondent Nos. 5 to 17 were appointed to the posts of Account Assistant. The Petitioner on the recommendation of the DPC/Selection Committee held on 30.8.1989 and 31.8.1989 was appointed to the post of Accountant (Assistant Superintendent of Accounts) in the Food and Civil Supplies Department in the scale of pay of Rs. 1640-2900/- per month vide office order No. 193 of 1990, Memo No. ZALN-5/ 90/ ZCS/LTE(SPY)/3 dated 25.7.1990 (Annexure-4 to the writ petition). The private Respondents who were only Account Assistants on completion of five years

regular service in the grade of Account Assistants or obtaining Degree (Graduate) were upgraded to the post of Assistant Superintendent of Accounts carrying the pay scale of Rs. 1640-2900/- per month by virtue of the said notification of the Governor of Mizoram in exercise of the power under Article 309 of the Constitution of India dated 3.4.90, more particularly the said Clause (iv), (v) and (vi) of the Schedule-A to the said notification which are quoted above. The admitted dates of entry of the private Respondent Nos. 5 to 17 into service as Account Assistant and the dates of up-gradation to the post of Assistant Superintendent of Accounts are mentioned hereunder:

SI. No. and Name Date of Entry Date of into service as Assistants of Accounts
Date of of Accounts

R.No. 5 Smt. Lalthansangi 23.10.1986 23.10.1991

R.No. 6 Smt. V.L. Malsawmi 23.10.1986 23.10.1991

R.No. 7 Sh. Lalbiakkima 26.10.1986 26.10.1991

R.No. 8 Sh. Chhiarkunga 18.08.1987 18.08.1992

R.No.9 Sh. Lalfakzuala 01.02.1989 01.02.1994

R.No. 10 Sb. Ramengmawia 01.02.1989 01.02.1994

R.No. 11 Sh. Malsawnikima 07.02.1989 01.07.1992

R.No. 12 Sh. Ramngaihzuala 02.02.1989 01.07.1992

R.No. 13 Sh. Lalbiakkunga 02.02.1989 02.02.1994

R.No. 14 Sb. D. Lalbiakmawia 10.03.1989 10.03.1994

R.No. 15 Sh. Paulunglian 27.01.1989 01.07.1992

R.No. 16 Smt. Denghmingliani 28.02.1989 28.02.1994

R.No. 17 Sh. Lalrinawma-I 22.01.1990 22.01.1995

6. Respondent No. 3 had fixed the final inter-se-seniority list of Assistant Superintendent of Accounts vide order dated 1.10.1993 (Annexure-6) wherein name of the Petitioner appears at SI. No. 27 and while the names of Respondent No. 5 and 6 appear at SI. No. 25 and 26 and those of Respondent Nos. 7, and 8 appear below the Petitioner at SI. No. 30, 31, 32 and 39 respectively and the name of Respondent Nos. 9, 10, 12, 13, and 17 were not even included in the said inter-se-seniority list of the Assistant Superintendent of Accounts as they had not been upgraded to the Assistant Superintendent of Accounts on that date. Again Respondent No. 3 has prepared Anr. final seniority list of Assistant Superintendant of Accounts vide order being No. A. 22015/5/5/92/ACS/DTE (SPY) Pt dated 21.4.1998 (Annexure- 7 to the writ petition) wherein name of the Petitioner appear at SI. No. 21 while the names of Respondent Nos. 5 and 6 appear at SI. No. 19 and 20. Those of the Respondent Nos. 7, 12, 15 and 8

appear below the Petitioner at SI. No. 24, 25, 26 and 33 respectively. But the other private Respondents i.e. No. 9, 10, 12, 13, 16 and 17 were not included in the said final inter-se-seniority list dated 21.4.1998 as they had not been upgraded to the post of Assistant Superintendent of Accounts on that date. Thereafter, Respondents circulated inter-se-seniority list of Assistant Superintendent of Accounts in the Food and Civil Supplies Department, Govt. of Mizoram vide order being No. A.23021/1/2001/DFCS/AE/19 dated 15.11.2001 (Annexure-9 to the writ petition) wherein inviting representations from all concerned. In that seniority list dated 15.11.2001 name of the Petitioner appear at SI. No. 7 while those of the Respondent Nos. 5 to 17 were placed below the writ Petitioner at SI. No. 15, 16, 17, 19, 20, 21, 22, 24, 25, 26, 27, 29 and 30 respectively. There were many correspondences regarding the fixation of seniority of Assistant Superintendent of Accounts under the Food and Civil Supply Department, Government of Mizoram, where the Petitioner and private Respondents are working as Assistant Superintendent of Accounts. In one of the letter of Govt. of Mizoram dated 22.1.2003 (Annexure-16 to the writ petition) Govt. of Mizoram had clearly directed the Director, Food and Civil Supplies, Mizoram, Aizawl to count the seniority of the Petitioner from 25.7.1990 as she was given appointment as Accountant (Assistant Superintendent of Accounts) in the pay scale of Rs. 1640-2900/-. The said letter of the Government of Mizoram dated 22.1.2003 reads as follows:

No. A. 23020/5/84-SPY

Government of Mizoram

Food and Civil Supplies Deptt.

Aizawl, the 22th Jan., 2003.

To,

The Director, Mizoram, Aizawl. Subject: Treatment of Pi Engzuali Ralte as Accountant or Assistant Superintendent of Accounts under Food and Civil Supplies Department.

Sir,

With reference to your letter No. A. 230121/ 1/2001/ACS/DTE (SPY)/56 dt. 26.11.2002, I am directed to inform you that though Pi Engzuali Ralte was recommended by the Departmental Promotion Committee for the post of Accountant in the scale of pay of Rs. 1400-2300/- pre-revised, she was given appointment as Accountant (ASA) only on 25.7.90 after the post of Accountant and Account Assistant were clubbed together into the post of Assistant Superintendent of Accounts and given the pay scale of Rs. 1640-2900/-. Hence, her seniority may thus be treated as Assistant Superintendent of Accounts and not as Accountant as there was no post of Accountant at the time of her appointment.

This issues with the observation of DP and AR (GSW) vide their I.D. No. 5/2003/379 dt. 20.1.2003. This supersedes previous I.D. No. GSW. 5/2002/61 dt. 17.6.2002 conveyed under this Department's letter No. A. 23020/5/84-SPY dt. 18.6.2002.

You are, requested to take necessary action on the preparation of inter-se seniority list of Assistant Superintendent of Accounts to this effect.

Yours faithfully,

Sd/-

(LIANCHHINGPUII)

Under Secretary to the Govt, of Mizoram

Food and Civil Supplies Department.

7. The Petitioner further submits that surprisingly the Director of Food and Civil Supplies, Govt. of Mizoram issued the final inter- se-seniority list of Assistant Superintendent of Accounts as on 5.2.2003 under office order No. 35/2003 dated 6.2.2003 (at An- nexure-22) in which, name of the Petitioner appear below the names of all the private Respondent Nos. 5 to 17. Being aggrieved by the said order dated 6.2.2003 (final seniority list) of Assistant Superintendent of Accounts as on 5.2.2003, the Petitioner filed a representation dated 10.5.2003 to the Director, Food and Civil Supplies, Govt. of Mizoram requesting him to move the Govt. of Mizoram to review decision of the DP and AR (GSW) convey under letter dated 22.1.2003 and to treat her as Accountant (Assistant Superintendent of Accounts) as she was appointed to the post of Accountant (Assistant Superintendent of Accounts) and to place her name at SI. No. 7, i .e. above all the private Respondent Nos. 5 to 17. The Director, Food and Civil Supplies, Govt. of Mizoram issued a corrigendum dated 14.7.2003 (Annexure-19 to the writ petition) which reads as follows:

CORRIGENDUM

No. A.23021 /1 /2001 /ACS/DTE (SPY)/76 dt. 14.7.2003. The words "appointed temporarily as Accountant (ASA)" mentioned in this Office Order No. 193 of 1990 issued under Memo No. SALN/5/90/ACS/DTE(SPY)/3 dt. 25.7.1990 may be read as "appointed temporarily as Asstt. Supdt. of Accounts (ASA)" instead of appointed temporarily as Accountant (ASA). All the rest remain the same.

Sd/-THANHAWLA

Directorate of Food and Civil Supplies,

Mizoram : Aizawl.

8. Learned Counsel for the Petitioner vehemently submitted that for the purpose of justifying the illegal order of the Directorate of Food and civil Supplies dated 6.2.2003 (Annexure-17) for preparing the final seniority list of the Assistant

Superintendent of Accounts, in which the name of the Petitioner is placed below all the private Respondent Nos. 5 to 17 issued the impugned notification dated 6.2.2004 (Annexure-22) under Article 309 of the Constitution of India wherein, it is stated that for the purpose of determining relative seniority list of the Assistant Superintendents of Accounts Grade, the entire service rendered by the private Respondent Nos. 5 to 17 who were upgraded to the post of Assistant Superintendent of Accounts on the different dates much latter the date on which writ Petitioner was appointed to the post of Assistant Superintendent of Accounts, in the lower post of Account Assistant will be taken into account.

9. Learned Counsel for the Petitioner vehemently submitted that the said impugned notification dated 6.2.2004 (Annexure-22) is not acceptable under the law inasmuch as the Governor of Mizoram in exercise of the power conferred by proviso to Article 309 of the Constitution of India cannot issue the impugned notification dated 6.2.2004 for effecting the vested right of the Petitioner being the senior Assistant Superintendent of Accounts, appointed even before the private Respondent Nos. 5 to 17 were born in the Assistant Superintendents of Accounts Grade.

10. The Apex Court in *Ex-Major N.C. Singhal Vs. Director General Armed Forces Medical Services, New Delhi and Another*, held that the Government has no power under Article 309 of the Constitution of India to alter or modify the condition of service of Government servant with retrospective effect to the prejudice of the Government servant.

11. The Apex Court in *T.R. Kapur and Others Vs. State of Haryana and Others*, held that though Rules can be amended retrospectively-benefit acquired under the existing Rules cannot be taken away. Paragraph-16 of the SCC in *T.R. Kapoor (Supra)* is quoted hereunder:

16. It is settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect: *B.S. Vadhwa v. Union of India*, *Raj Kumar v. Union of India*, *K. Nagaraj v. State of A.P. and State of J and K. v. Triloki Nath Khosa*. It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well recognized principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which effects or impairs vested rights. Therefore, unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled. In other words, such rules

laying down qualifications for promotion made with retrospective effect must necessarily satisfy the tests of Articles 14 and 16(1) of the Constitution: *State of Mysore v. M.N. Krishna Murty*, *B.S. Yadav v. State of Haryana*, *State of Gujarat v. Raman Lai Keshav Lal Soni* and *Ex-Captain K.C. Arora v. State of Haryana*.

12. The Apex Court in *Uday Pratap Singh and Others Vs. State of Bihar and Others*, clearly held that determining the relative seniority of direct recruit (senior branch) and mergees (from the junior branch) in the case of merger of junior and senior branches into one, direct recruit shall be senior even if mergees, i.e. junior branch merge to the common cadre with effect from the date prior to the date of appointment of direct recruitment inasmuch as junior branch is the feeder cadre for promotion to the senior branch. Apex Court in *Uday Pratap Singh (supra)* observed that:

In the present case it has to be kept in view that the contesting Respondents were directly recruited and appointed in the Senior Branch on 12.5.1974 and 25.5.1974 respectively, while the Appellants were appointed on 2.11.1975 in the merged cadre. It is true that their order of appointment purports to give them appointment retrospectively from 1.4.1974 but such effect cannot be given so as to destroy the seniority rights of the writ Petitioners, Respondents herein, who were inducted as direct recruits in the Senior Branch prior to 2.11.1975. As rightly found by the High Court if the Appellants who entered the merged cadre of the Senior Branch only on 2.11.1975 are to be treated as senior to the Respondents who had entered the Senior Branch as direct recruits prior thereto, the Respondents would clearly get their constitutional rights guaranteed under Articles 14 and 16 violated.

13. In the present case, it is a clear case for violation of the right of the Petitioner under Article 14 and 16 of the Constitution of India inasmuch as by the impugned notification dated 6.2.2004 had not only deprived the vested right accrued to her on her appointment to the post of Superintendent of Accounts on the recommendation of Selection Committee from a date even before the private Respondents were born in the Assistant Superintendent of Accounts Grade but also denied the equal treatment to the writ Petitioner by the Government of Mizoram by treating two unequals as equals by taking the service of private Respondent Nos. 5 to 17 in the lower post of Accountant Assistant for the purpose of counting seniority in the higher grade of Assistant Superintendent of Accounts.

14. The Apex Court in *R.S. Ajara and Others Vs. State of Gujarat and Others*, held that benefit that has accrued under the existing Rules cannot be taken away by an amendment with retrospective effect, no Statutory Rules or Administrative order can whittle down or destroy any right which has become crystallized. No Rule can be framed under the proviso to Article 309 of the Constitution with effect or impair the vested right. It may here be recalled that the Apex Court in *Gaurav Jain Vs. Union of India and others*, held that "it is necessary to remember that the arms of law are long enough to mould the law to operate on an even

keel."

15. For the reasons mentioned above, I am of the considered view that the impugned notification dated 6.2.2004 (Annexure-22) and order of the Director of Food and Civil Supplies, Govt. of Mizoram dated 6.2.2003 (Annexure-17) for preparing inter-se-seniority list of the Assistant Superintendent of Accounts as on 5.2.2003 are illegal and arbitrary. Hence, I do hereby quash the impugned order dated 6.2.2003 (Annexure-17) and impugned notification dated 6.2.2004 (Annexure-22). No order as to costs.