
(2016) 11 GAU CK 0076
In the Gauhati High Court
Case No : W.P(C) No. 31 (K) of 2015

Er. Alemtoshi imsong

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision : 29-11-2016

Acts Referred:

Citation : (2017) 1 GauLT 343

Hon'ble Judges : A. K. Goswami, J.

Bench : Single Bench

Advocate : Mrs. Nuksungtila, Ms. Arepha, Mr. Pfosekho and Mr. Arenlong, Advocates, for the Petitioners; Mr. K. Wotsa, Sr. GA, Mr. A. Zhimomi, Mr. Imti Longjem, Mr. Ester, Ms. Vinitoli, Mr. Imti Longchar, Mr. Renpemo, Mr. Sentianger, Mr. Supongwati, Ms. Sashimongla,

Final Decision : Allowed

Judgement

A. K. Goswami, J. (Oral) - Heard Ms. Nuksungtila, learned counsel for the petitioners. Also heard Mr. K. Wotsa, learned State counsel appearing for the respondent Nos. 1 to 5, Mr. Imti Longjem and Ms. Esther, learned counsel appearing for the respondent No. 6 and Mr. Imti Longchar, learned counsel appearing for the private respondents.

2. This writ petition is filed by the Association of Mechanical Engineers and its General Secretary. The Association is registered under Societies Registration Act, 1860 and the members of the Association are possessing degree of Bachelor of Engineering (Mechanical). It is not in dispute that the members of the Association are qualified and eligible under the Nagaland Engineering Service (Group-A & B) Rules, 2012 (for short, 2012 Rules) for the post of Sub-Divisional Officer (SDO)/Assistant Mechanical Engineer (AME).

3. It is relevant to take note of the fact that prior to coming into force of the 2012 Rules, initially, the Nagaland Engineering Service Rules, 1997 (for short, 1997 Rules) and thereafter, the Nagaland Engineering Service Rule, 2006 (Class-

I and Class-II), (for short, 2006 Rules) were in force. All the aforesaid Rules are applicable to Public Works Department, Public Health Engineering Department and Power Department. 60% of the posts of SDO/AME are to be filled up by direct recruitment from degree holders in the concerned Engineering discipline from a recognised university and 40% by way of promotion from the feeder post. The private respondents are the promotees and the grievances expressed by the petitioners is that while filling up the posts of Sub Divisional Officers/ Assistant Mechanical Officers, transgressing into the quota for direct recruitment, promotions had been effected beyond the quota prescribed for the promotees for a period of time commencing from the year 2003 upto 2013. Categorical averments are made that during the aforesaid period, 15(fifteen) vacancies had arisen in the post of Assistant Mechanical Engineer and 11 (eleven) numbers of promotees had been promoted eating up the quota of direct recruits and only 4 (four) direct recruits were appointed, whereas in terms of extant Rules, 9(nine) direct recruits should have been appointed and promotion could have been given only to 6 (six) persons. Such categorical assertion made in paragraph-6 of the writ petition is not denied in the affidavit but promotions given to the promotees beyond the quota earmarked for them is sought to be justified on the ground that unless Junior Engineers were promoted as SDO/AME, Work-charged Mechanical Officer (M.O) cannot be regularised.

4. The affidavit of the respondent Nos. 7 to 12 and 16 to 19, however, goes to show that 13 (thirteen) promotees were promoted to the post of AME.

5. The respondent Nos. 13 & 14 had expired in the meantime and the respondent Nos. 14 & 17 had also retired.

6. So, the position that has emerged is that the State respondents had given promotion to the promotees in excess of the quota earmarked for them. The ground cited by the respondents for effecting promotion beyond the quota prescribed for promotees cannot be sustained in view of the extant Rules which govern the service condition of the employees of the 3(three) departments mentioned in the earlier part of the judgment. When the Rules prescribe mode of recruitment to the post of SDO/AME to the extent of 60% by direct recruitment through Nagaland Public Service Commission and the remaining 40% by way of promotion from the serving Junior Engineers, any other mode contrived by the respondents to promote officers beyond their prescribed quota cannot have stamp of approval of the Court. The promotees cannot be given promotion beyond the quota earmarked for them. Such action of the Government needs to be deprecated.

7. Having said so, further question that will have to be considered by the Court is whether such promotions need to be quashed and set aside. The Court cannot lose sight of the fact that the promotees had been promoted at various points of time and they are continuing in the service for last many years in the promoted post. Challenge to such promotions was not made at appropriate time and is now made belatedly by filing this writ petition. In the aforesaid context, according to

the perception and understanding of the Court, it will not be equitable to upset the more or less settled position in the administrative hierarchy at this point of time and therefore, the promotions of the promotees, though made beyond the quota prescribed for them, are not interfered with. However, a writ of Mandamus is issued to the respondents to henceforth strictly follow the provision of the 2012 Rules and to give requisition to the Nagaland Public Service Commission for the quota earmarked for the direct recruits under the provision of the 2012 Rules.

8. Writ petition is allowed to the extent as indicated above. No cost.