

(1999) 07 GAU CK 0010

In the Gauhati High Court

Case No : Writ Appeal No's. 2 and 223 of 1994

Imtilepden Ao and Others

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 31-07-1999

Acts Referred:

Citation : (1999) 3 GLT 104

Hon'ble Judges : Brijesh Kumar, C.J;P.G. Agarwal, J

Bench : Division Bench

Advocate : P.K. Goswami, A.K. Das, S. Goswami, A.R. Barthakur and C.T. Zamir, for the Appellant; A.R. Barthakur, C. Jajo and P. Prasad, for the Respondent

Judgement

P.G. Agarwal, J.—The above two writ appeals have arisen out of a judgment and order passed on 13.12.93 by the learned Single Judge at Kohima Bench in Civil Rule No. 566/89.

2. Writ Appeal No. 2/1994 has been preferred by Shri Imtilepden Ao (Respondent No. 5) and the other Writ Appeal No. 223/1994 has been preferred by the State of Nagaland who were arrayed as Respondent Nos. 1 to 4. This common order shall dispose of both the writ appeals.

3. It may be mentioned here that this writ application (Civil Rule No. 566/89 (Kohima Bench)) was disposed of by a Division Bench vide order dated 6.11.91. Thereafter, a Review petition was filed under 1(K) 1991 by the Respondent and the said review petition was allowed and the Respondents were directed to file counter affidavit etc. After filing of the documents, the matter was heard again and the impugned judgment was passed by the learned Single Judge as provided under the High Court Rules. As no appeal was filed against the order allowing the review, the decision of the learned Single Judge in passing the impugned order can not be challenged at this stage. The preliminary objection raised by writ Petitioner regarding maintainability of the appeal stands rejected.

4. Shri V. Khazo the Respondent before us, hereinafter, referred as the writ

Petitioner for the purpose of convenience, joined the Director of Education, Government of Nagaland in the year 1971 as District Physical Instructor. In the year 1973 he was appointed as District Sports Officer in the said Department and while working as such he also obtained Degree of Bachelor of Physical Education. In the year 1981 Petitioner was appointed to officiate as Assistant Director of Physical Education.

5. The Appellant Shri Imtilepden Ao, hereinafter referred as the "Appellant", started his career in the Department of Education, Government of Nagaland, as lecturer in the month of May, 1970. Although the said post was initially a Class-II Gazetted post it was upgraded to Class-I Gazetted in the year 1976. The Appellant was on deputation to the Central Government since February, 1977 and while he was working as such on 10.6.82 he was appointed as Assistant Director of Physical Education on deputation. On 3.9.83 the Appellant was promoted as Deputy Director of Physical Education in which post he is working at present.

6. The grievance of the writ Petitioner was to fold. A seniority list for the post of Assistant Director in the Director of Physical Education was published by the Government of Nagaland wherein the writ Petitioner was shown at serial No. 1 and the Appellant was shown at serial No. 2. However, while making promotion to the post of Deputy Director, Physical Education, the case of the Petitioner was not considered and the Appellant was promoted superseding the Petitioner. The Appellant being a person belonging to Anr. cadre should not have been allowed to supersede the writ Petitioner as the Appellant has not been absorbed in the Department of Physical Education till date. The Appellant on the other hand contends that the post of lecturer (class-I) and the post of Assistant Director (Class-I) belonged to Education Department and as such there was no question of "deputation". The word "deputation" was inadvertently written in the earlier order of his posting and transfer but subsequently the word was deleted as the Appellant was senior at the time of initial appointment and also as Class-I Officer. He has been rightly promoted as Deputy Director as he is senior to the writ Petitioner.

7. Before we proceed further, let us consider whether the Appellant and the writ Petitioner belonged to the same cadre of service or of the same Department. Admittedly when the Appellant and the writ Petitioner joined the services in their respective posts both the posts were under the Department of Education. As stated above the Appellant joined as a lecturer in college whereas the writ Petitioner joined as Physical Instructor. These were admittedly not one cadre of service. This fact is apparent from the separate seniority list published by the State Government from time to time. The name of the Appellant finds place in the seniority list in respect of lecturer of various Government Colleges. The name of the writ Petitioner however does not find place in the said seniority list of lecturer. So far the seniority list of Assistant Director of Physical Education is concerned wherein the name of the Appellant and the writ Petitioner appear, we will revert the matter at the later stage. There is however no dispute at the Bar

that there were several Directorates working under the Education Department and vide Government notification issued from time to time which are Annexure-B to F. These Directorates were amalgamated and bifurcated from time to time. By 1983 Notification, Directorate of Higher and Technical Education and Directorate of School and Physical Education were bifurcated. Thereafter in the year 1986 the Directorate of School and Physical Education, was further bifurcated into (1) Directorate of School Education and Directorate of Sports and Youth Services. Directorate of Physical Education was allowed to remain under Directorate of School Education. Some time in the year 1988 vide Annexure-D the Directorate of Sports and Youth Services was renamed as Directorate of Physical Education, Sports and Youth Welfare and Physical Education was brought under this Directorate. The 1993 Notification (Annexure-E) reads as follows:

In the interest of Public Service, the Governor of Nagaland is pleased to create a new Department of Youth Resources with immediate effect.

The existing Department of Physical Education, Sports and Youth Welfare shall now be re-designated as the Department of Youth Resources and Sports.

This supersedes this Department's notification of even number dated 3.8.93.

8. Restructuring of organisation, creation of Directorate or Department are not of much relevance for the purpose of deciding this case as the fact remains that the Appellant and the writ Petitioner do not belong to the same service or cadre.

9. Learned Advocate General, Nagaland has submitted that there is no separate service rules governing the employees of the Director of Physical Education and the draft rules are of no consequence. The learned Counsel for the writ Petitioner has produced before us a copy of a Government Notification PES/GEN/2/89(B) dated 4.2.92 issued by the Director of Physical Education, Sports and Youth Welfare, Government of Nagaland whereby the writ Petitioner was allowed to officiate to the post of Deputy Director on completion of five years continuous service as provided under the draft service rules. It is therefore submitted that although the service rules have not been notified, these service rules are followed by the Government to make appointments etc. and if these are applicable in the case of writ Petitioner, the same will also be applicable to the Appellant. The writ Petitioner was promoted to the post of Assistant Director on 19.10.81 and as such as per requirement of draft rules after completion of five years continuous service in the respective lower grades the writ Petitioner was allowed to officiate as Deputy Director with effect from 19.10.86. On the other hand, the Appellant was appointed as Assistant Director of Physical Education on deputation basis vide order dated 8.6.82. However, in his case requirement of draft rules was waived and the Appellant was appointed to the post of Deputy Director vide Notification dated 3.9.83, that is, within less than one year of his working as Assistant Director.

10. Shri P.K. Goswami, the learned Counsel for the Appellant has submitted that the Appellant joined the Government service prior to the writ Petitioner as Class-

II Officer and he also became Class-I Gazetted Officer in 1974 whereas the writ Petitioner joined the Government service in Class-III in the year 1971 and he was promoted to Class-II in 1973 and he became a Class-I Gazetted Officer in the year 1981 only. And thus the Appellant should be deemed to be senior to the writ Petitioner. It is further submitted that in the initial Notification regarding appointment of the Appellant as Assistant Director of Physical Education and Deputy Director of Physical Education, the word "deputation" was used. Later on, the word "deputation" was deleted as there can not be deputation from one Directorate of Anr. Directorate in the same Department. The deputation can be from one Department to Anr. Department only. In the State of Punjab and Others Vs. Inder Singh and Others, the Apex Court in para-18 observed as follows:

The concept of "deputation" is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to Anr. department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quit settled as we have also seen in various judgments which we have referred to above. There is no escape for the Respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be.

11. The finding of the learned Single Judge that the Appellant and the writ Petitioner are members of separate cadre and service stands fully established from the materials on record and as such the posting and appointment of the Appellant as Assistant Director of Physical Education as well as Deputy Director of Physical Education must be held to be on deputation only and the Appellant can not be deemed to belong to the service of Physical Education Directorate unless and until he is absorbed in the same service. There is neither any averment to that effect nor any Government Notification whereby the Appellant was absorbed in the same service.

12. The Appellant was brought as Assistant Director of Physical Education in the year 1982 when the writ Petitioner was working as Assistant Director in the said cadre. The length of service of a deputationist can not make him a senior to a person of Anr. service. The draft seniority list issued by the Government for the post of Assistant Director of Physical Education shows the writ Petitioner at serial No. 1 and the Appellant at No. 2. The finding of the learned Single Judge that in

the Directorate of Physical Education the writ Petitioner shall continue to remain senior to the Appellant is just and proper and needs no interference.

13. As the Government has a right to bring an officer on deputation to man certain posts, the appointment/posting of the Appellant to the post of Assistant Director/Deputy Director of Physical Education cannot be found fault with. There is no scope of quashing such proceeding. Although the Appellant was allowed to officiate as Deputy Director prior to the writ Petitioner as held above, the Appellant shall be deemed to be senior to the writ Petitioner for all purposes. Whether an officer is to be reverted back or not is to be decided by the State Government and the Court will be hesitant to intervene or interfere with such matter. It is for the Government to utilise the service of the writ Appellant in any manner in any post as it deems fit and proper. The Appellant shall also have right to opt for reversion if he so desires.

14. The directions of the learned Single Judge quashing the appointment of Respondent No. 5 to the post of Assistant Director and Deputy Director is set aside. The appeal is partly allowed subject to the observations mentioned above. Costs easy.