

(2001) 08 GAU CK 0039

In the Gauhati High Court

Case No : Writ Petition (C) No. 162 (K) of 2000

Kelhoupiele

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Nagaland (Administrative) Education Service Rules, 1977 — Rule 4

Citation : (2001) 3 GLT 14

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : C.T. Jamir, for the Appellant; L.S. Jamir, A. Zhimomi, Yangerwati and Z. Zhimomi, for the Respondent

Judgement

P.C. Phukan, J.—By this petition under Article 226 of the Constitution, the Petitioner prays for issuance of an appropriate writ for setting aside the promotion of the Respondent No. 3 to the post of District Education Officer (DEO)/Deputy Director, School Education vide Government Notification dated 20.5.2000 (Annexure-K) and also for directing the State Respondents to consider his case for promotion to the said post.

2. I have heard Mr C.T. Jamir, learned Counsel for the Petitioner, Mr L.S. Jamir, learned Government advocate, Nagaland for the State Respondent Nos. 1 and 2, and Mr A. Zhimomi, learned Counsel for the Respondent No. 3.

3. The facts in brief, shorn of details and necessary for the disposal of this case, may be stated as follows. The Petitioner and the Respondent No. 3 were temporarily appointed as Asstt. Teachers by the Director of Education, Nagaland vide order dated 16.3.72 (Annexure-A) and order dated 23.9.79 (Annexure-G) respectively.

4. After serving for more than five years as Asstt. Teacher, the Petitioner was appointed as Sub-Inspector of Schools, Adult Education vide order dated 15.7.77

(Annexure-B). He was then promoted to the Class-II Gazetted post of Asstt. Project Officer (APO), Adult Education vide order dated 27.3.79 (Annexure-C). The post of APO was later encadred by amending the Schedule-I to the Nagaland (Administrative) Education Service Rules, 1977 vide Notification dated 6.10.80 (Annexure-N). Thereafter, the Petitioner was transferred and posted as Headmaster, T.M. Government High School at Kohima, vide order dated 26.3.96 (Annexure-D). The Petitioner was then promoted to the Grade-D Class-I gazetted post of Asstt. Director of School Education vide order dated 7.3.97 (Annexure-F).

5. On the other hand, after serving for less than three years as Asstt. Teacher, the Respondent No. 3 was appointed as Programme-cum-Script Writer (Class-II gazetted) under the Educational Technology (E.T) cell in the Directorate of Education "on adhoc basis for a period of 4 (four) months" vide notification dated 19.6.82 (Annexure-I). This notification was superseded by Anr. notification dated 14.7.82 (Annexure-I to the affidavit-in-opposition of the Respondent No. 3), whereby the words "on adhoc basis for a period of 4 (four) months" appearing in the earlier notification were substituted by the words "on deputation for a period of one year." The said post of Programme-cum-Script Writer for E.T. Cell was earlier created by sanctioning letter dated 1.4.82 (Annexure-H) for a period upto 28.3.83 under the Plan head. Thereafter the Respondent No. 3 was promoted to the Class-I gazetted post of Officer-in-Charge, E.T. cell on condition that such promotion will not confer on him "any right to claim seniority over his seniors, i.e., Deputy Inspector of Schools/Headmaster cadre" vide Notification dated 5.10.90 (Annexure-J). Ultimately, the Respondent No. 3 was promoted to the grade-C, Class-I gazetted post of District Education Officer (DEO)/Deputy Director vide order dated 20.5.2000 (Annexure-K) while the Petitioner remained in the lower grade-D, Class-I post of Asstt. Director.

6. Being aggrieved by the Notification dated 20.5.2000 (Annexure-K). the Petitioner has come up before this Court in the instant writ petition.

7. I have perused the writ petition, the affidavit-in-opposition filed on behalf of the State Respondent Nos. 1 and 2, affidavit-in-reply thereto filed by the Petitioner as well as the affidavit-in-opposition filed by the Respondent No. 3 and affidavit-in-reply thereto filed by the Petitioner. I have also heard learned Counsel for the parties at length.

8. It is submitted on behalf of the Petitioner that in the year 1980, a new cell called "Education Technology Cell" was created in the Education Department under the Centrally sponsored scheme with the object to develop educational technology through proper mass media; and a post of Programme-cum-Script Writer (Class-II gazetted) was created in that cell for a specific purpose and period, and this is an ex-cadre post, and so is the post of Officer-in-Charge E.T. Cell (Class-I Gazetted) to which the Respondent No. 3 was subsequently promoted from the post of Programme-cum-Script Writer. Mr C.T. Jamir, learned Counsel submits that the Petitioner is not aggrieved by the Respondent No. 3's appointment as Programme-cum-Script Writer, and his subsequent promotion to

be Officer-in-Charge, E.T. Cell for the simple reason that such appointment and promotion to these ex-cadre posts do not adversely affect his seniority in his own cadre (in fact the Respondent No. 3 was promoted to the post of Officer-in-Charge, E.T. Cell on condition that such promotion will not confer on him any right to claim seniority over his seniors in the Deputy Inspector/Headmaster cadre, and at the time of Respondent No. 3's promotion to the post of Officer-in-Charge, E.T. Cell, the Petitioner was still in the Headmaster cadre) and do not adversely affect his promotional avenue, and for the same reason the Petitioner shall not be aggrieved by the Respondent No. 3's further promotion from the post of Officer-in-Charge, E.T. Cell to a still higher ex-cadre post. But by the impugned order dated 20.5.2000 (Annexure-K), the Respondent No. 3 has been promoted from the post of Officer-in-Charge, E.T. Cell to the post of DEO/Deputy Director, a cadre post, adversely affecting the seniority and promotional avenue of the Petitioner. Mr C.T. Jamir, learned Counsel contends that the Respondent No. 3's promotion to the cadre post of DEO/Deputy Director from the ex-cadre post of Officer-in-Charge, E.T. Cell was in contravention of the Nagaland (Administrative) Education Services Rules, 1977, (Annexure-M), read with Annexure-N) framed under Article 309 of the Constitution inasmuch as, as per Schedule-II thereto the post of DEO/Deputy Director is required to be filled up by promotion from among the Officers mentioned under Rule 4(1)(i) Grade-D, Viz.,

Asstt. Director of Education

Asstt. Director of Adult Education

Asstt. Director of Education (Agri-biased)

Special Officer, Education

Inspector of Schools Co-ordinator, State Institute of Adult Education

Programme Adviser, Educational Technology Cell.

The post of Officer-in-Charge, E.T. Cell is not mentioned under Rule 4(1)(i) Grade-D. While arguing the case, learned Govt. Advocate appearing for the State Respondent No. 1 and 2, makes oral submission that the post of Programme Adviser, E.T. Cell mentioned under Rule 4(1)(i) Grade-D was redesignated as Officer-in-Charge, E.T. Cell. Learned Govt. Advocate, however, could not show me any Government order or anything in this regard. There is no whisper about such redesignation in the affidavit-in-opposition filed on behalf of the State Respondents. If the post of Officer-in-Charge, E.T. Cell before redesignation was Programme Adviser, E.T. Cell, as per Schedule-II, the said post could have been filled up by promotion from amongst the Officers mentioned under Rule 4(1)(ii). But the post of Programme-cum-Script Writer, E.T. Cell from which the Respondent No. 3 was promoted to the post of Officer-in-Charge, E.T. Cell is not mentioned under Rule 4(1)(ii). The Respondent No. 3 could be so promoted because the Officer-in-Charge, E.T. Cell is a separate post.

9. Mr A. Zhimomi, learned Counsel for the Respondent No. 3, submits that the

post of Asstt. Director is mentioned under Rule 4(1)(i) and the post of Officer-in-Charge, E.T. Cell is actually the post of Asstt. Director which has been restored to Directorate of School Education from the Directorate of Higher & Technical Education, and in this regard refers to the letter dated 1.9.90 (Annexure-3 to the affidavit-in-opposition of the Respondent No. 3). By this letter the Director, School Education, proposes the name of the Respondent No. 3 for appointment to the said post of Asstt. Director to the Government. But the Government did not appoint the Respondent No. 3 as Asstt. Director. If the post of Officer-in-Charge, E.T. Cell is actually the post of Asstt. Director restored to the Directorate of School Education, as per Schedule-II the said post could have been filled up by promotion from amongst the Officers mentioned under Rule 4(1)(ii). But the post of Programme-cum-Script Writer, E.T. Cell from which the Respondent No. 3 was promoted to the post of Officer-in-Charge, E.T. Cell is not mentioned under Rule 4(1)(ii). The Respondent No. 3 could be so promoted because the Officer-in-Charge, E.T. Cell is a separate post.

10. It is thus absolutely clear that the Respondent No. 3's promotion to the cadre post of DEO/Deputy Director from the post of Officer-in-Charge, E.T. Cell was in contravention of the Nagaland (Administrative) Education Service Rules, 1977 and Schedule-II thereto, and hence such promotion is quashed and set aside.

11. In paragraph 22 of the affidavit-in-opposition filed by the Respondent No. 3, it is claimed that his predecessor in the E.T. Cell was promoted to be Deputy Director and then to be Joint Director. But a mistake cannot be a precedent. In this respect, Mr. C.T. Jamir, learned Counsel for the Petitioner, refers to the decision in State of Madhya Pradesh and others Vs. Ramesh Kumar Sharma, wherein it has been held:

Learned counsel for the Respondent has attempted to defend his case by citing the illustration of Anr. applicant Rajiv Dwivedi - who, according to him, was appointed in similar circumstances as APP-Grade-II. The facts relating to Rajiv Dwivedi are not on record and it is the mere assertion of the Respondent that the circumstances are identical. Even assuming that Rajiv Dwivedi's case was similar to that of the Respondent, the applicant has no right to any particular post of his choice, he can only claim to be considered for that post. It would ultimately be for the authority to decide if some common principle was involved in the two cases. If a mistake was committed in an earlier case, that cannot be a ground for directing the State to perpetuate the error for all times to come.

12. Before I part with this matter, I would like to refer to two letters dated 15.5.97 and dated 9.12.98 (Annexure-P&Q) and to the affidavit-in-reply by the Petitioner against the affidavit-in-opposition of the Respondent Nos. 1 and 2) from the Addl. Director, School Education to the Commissioner & Secretary, Education Department for approving two seniority lists of Officers outside general cadre under the School Education Directorate as on 1.4.97 and 1.1.98 respectively and the name of the Respondent No. 3 figures in both the lists.

Admittedly, the State Government have not disapproved those lists, though the lists were sent more than two years ago. Mr C.T. Jamir, learned Counsel for the Petitioner, has shown at the time of hearing of this case in presence of learned Government Advocate and learned Counsel for the Respondent No. 3, Anr. letter No. ED/CON/HC-15/2000 dated 20.10.2000 from the Addl. Director, School Education addressed to the Principal Secretary, Education Department wherein it is stated that the Respondent No. 3 is an ex-cadre Officer.

13. Now, as per the prayer portion of this writ petition, the Petitioner prays for setting aside and quashing the impugned notification dated 20.5.2000 (Annexure-K) promoting the Respondent No. 3 to the post of DEO/Deputy Director, School Education and also for directing the State Respondents to consider his case for promotion to such a post. During the pendency of writ petition, the Petitioner has been promoted to such post by a Govt. order dated 28.3.2001 vide para 1 of the affidavit-in-reply by the Petitioner against the affidavit-in-opposition of the Respondent No. 3. As regards the other prayer, the impugned notification dated 20.5.2000 promoting the Respondent No. 3 to the post of DEO/Deputy Director, School Education, is set aside and quashed for the reasons stated hereinbefore. The Respondent No. 3 shall, however, not be called upon to refund any amount he had drawn during the period he served as DEO/Deputy Director in excess of his pay and allowances as Officer-in-Charge, ET Cell from which post he was promoted to the post of DEO/Deputy Director.

The writ petition is allowed as indicated above. No costs.