
(2010) 02 GAU CK 0022
In the Gauhati High Court
Case No : WA No. 641 of 2005

Khehoto Sema and Others

APPELLANT

Vs

Imtijungshi Jamir and Others

RESPONDENT

Date of Decision : 24-02-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 1 GLR 775

Hon'ble Judges : H.N. Sharma, J;B.D. Agarwal, J

Bench : Division Bench

Advocate : Imti Longjen, for the Appellant; Longkumar and Taka Masa, for the Respondent

Final Decision : Allowed

Judgement

H.N. Sarma, J.—The subject-matter of the present appeal is the judgment and order dated 1.9.2005 passed in WP(C) No. 243(K) of 2002 by the learned Single Judge, wherein, the present Appellants were not impleaded as party Respondents. The Appellants feeling adversely affected by the decision rendered in the impugned judgment as well as the resultant action of the Respondent-authorities pursuant to the impugned judgment, have assailed the judgment, by filing has this appeal.

2. The appeal was admitted for hearing on 20.11.2006 and on that day the operation of the impugned was also suspended.

3. We have heard Mr. Imti Longjen, learned Counsel for the Appellants and Ms. Longkumar, learned Government Advocate, appearing for the State Respondents as well as Mr. Taka Masa, learned Counsel appearing for the private Respondent. None appears on behalf of Nagaland Public Service, Commission in-spite of service of notice.

4. In the writ petition No. WP(C) No. 243(K)/2002 the action of the State Respondents in not regularizing him in his promoted post with effect from

21.6.1985 on which date he was promoted on officiating basis to the rank of Child Development Project Officer ("CDPO") which is categorized as class-II Gazatted rank under the relevant Service Rule. The grievance of the Petitioner was that he was appointed as Supervisor on regular basis under the Department of Social Security of Welfare, Nagaland vide order dated 16.3.1981 and was confirmed in the said post way back on 22.10.1985. Thereafter the Petitioner was promoted on officiating basis as CDPO on 21.6.1985. During the course of continuance of his service in the promoted post, a DPC was held on 22.6.1992 for consideration of the regularization of his promotion along with other similarly situated officers, however, the service of the Petitioner was not regularized from the date of his officiating promotion but w.e.f. 13.6.1986. Accepting the recommendation of the DPC a Notification dated 25.8.1992 where the name of the Petitioner appears at serial No. 10.

5. The Petitioner having failed to get necessary relief from the Department to get regularized as CDPO w.e.f. 21.6.1985 approached this Court by filing WP(G) No. 53(K) of 2001, which was disposed of on 29.8.2002 issuing direction to the authorities to hold review DPC to consider the case of the Petitioners afresh. In terms of the aforesaid direction, a review DPC meeting was held on 25.9.2002 wherein also the service of the Petitioner was regularized with effect from 13.3.1986. From the minutes of the aforesaid DPC it is noticed that the authorities duly considered the date of the officiating promotion of the Petitioner, i.e., 21.6.1985 but was regularized on 13.6.1986.

The Petitioner again challenged the said order in WP(C) No. 243(K) of 2002 and vide impugned judgment and order the learned Single Judge having held that the Petitioner has been discriminated by not regularizing his service from the date of his officiating promotion and remanded the matter back again directing the authorities to regularize him from the date of his officiating promotion, i.e., w.e.f. 24.6.1985 without treating the same as precedent.

6. Feeling aggrieved by the directions contained in the impugned judgment and order dated 1.9.2005 and the Appellants have approached this Court challenging the impugned judgment inasmuch as the directions contained therein to regularize the Petitioner w.e.f. 21.6.1985 would adversely affect their seniority position and they would be made junior to him.

7. Mr. Imti Longjen, learned Counsel for the Appellants submits that writ Petitioner was promoted to the class-II cadre in spite of his not possessing the required experience and qualifications of five years regular service in the cadre and he has been favoured with the officiating promotion to the next higher Grade, i.e., CDPO in violation of the service rule and accordingly in the earlier two DPC meeting the Petitioner was regularized w.e.f. 13.6.1986, i.e., from the date when he completed five years of service as required under the relevant service rules. It is contended that directions contained in the impugned judgment amounts to direction to violate of provisions of the statutory service rules, which cannot be permitted by the court of law and accordingly, the impugned judgment

is liable be interfered with.

8. Mr. Taka Masa, learned Counsel for the Petitioner/Respondent No. 1, however, submitted that it was the practice of the department that even if any officer has not earned experience for five years, such officer was promoted to the higher post of CDPO on officiating basis and in all those cases such date of officiating promotion has been accepted as date of regularization and that has not been done in the case of the Petitioner and the learned Single Judge has rightly held that the Petitioner was discriminated to that affect attracting violation of Article 14 of the Constitution of India. Learned Counsel also pointed out that in the instant case, relief granted to the Petitioner has been directed not to be treated as a precedent by the department in future and, thus, the instant case is an exceptional one and on that count the impugned judgment need to be interfered with.

9. Learned State counsel, has, however, supported the case of the Appellants and submitted that two DPC in its meeting and decided to regularize the service of the Petitioner w.e.f. 13.6.1986, i.e., from the date on which he would complete five years of service as per statutory rules and accordingly, no fault can be found with the decision of the Respondent-authorities to regularize the service of the Petitioner with effect from that date which is done in compliance of the service rules.

10. The submissions of the learned State counsels received due attention of the court. The conditions of service and incidents thereof are regulated and guided by a set of statutory rules known as Nagaland Social security and welfare services (Class I and Class-II Gazetted) Rules, 1982 which was found repealing the Nagaland Social Security and Welfare Service Rules, 1967. The present case is regulated and guided by the 1982 Rule ("Rules"). Under the Rules the posts of CDPO/District Welfare Officer and Research Officer falls under the category of Class-II Officer. As per schedule-II of the Rules, the promotion and appointment to class-II officers is made 50% by way of promotion and 50% by way of direct recruitment. So far the promotional category is concerned such 50% of the total post would be filled up on the basis of the recommendation of the Departmental Promotion Committee from among the confirmed supervisor or member holding equivalent permanent post in the same department, who have completed not less than 5 years of continuous service in the same post or grade. Thus, completion of continuous service in the feeder cadre of supervisor for coming into the zone of consideration for promotion to class-II category of officers is a statutory requirement.

It is not disputed at the bar relating to the date of appointment of the on 16.3.1981 and his officiating promotion to the rank of class-II officer as CDPO on 26.1.1986. Thus, the promotion to the higher post was given to the Petitioner before completion of his five years of service in the feeder cadre. The DPC which is required to dispose of the promotion matter in accordance with the requirement of statutory rules while regularizing the officiating promotion having

found that the Petitioner did not earn the necessary experience, qualification of continuous five years service did not recommend his case for regularization w.e.f. the date, i.e., 21.6.1985 and recommended for his regularisation with effect from 13.6.1986, i.e., for the date when would complete five years of service. The decision taken by the DPC is clearly in consonance with the provisions contained in the service rules. The ground of discrimination has been projected by the writ Petitioner to the effect that the department in some other cases departing from the relevant statutory rules have promoted on officiating basis to the cadre of class-II before completion of five years of continuous service in the feeder post and there cases have been regularized from such date whereas Petitioner has been denied such benefit. It is needless to say that if any administrative department provides certain benefit to an employee in violation of the statutory rules that cannot be treated as a precedent in other cases on the ground of discrimination. In fact Article 14 has no application in negative way. In this connection a decision referred to by the learned Counsel for the Appellant Chandigarh Administration and Anr. v. Jagit Singh and Anr., supports the view. In paragraph 8 of the aforesaid case their Lordships held as under:

We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the Respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the Petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of Petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, if is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the Respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose....

11. Again in the case of Union of India and Others Vs. Rakesh Kumar etc., the Apex Court held inter alia that by an erroneous interpretation of the Rules, if some one is granted some benefit, it would not mean that such mistake should be perpetuated by direction of court and it would be unjustifiable that the court should direct something that is contrary to Rules and in such cases there is no question of application of Article 14 of the Constitution of India. It is no person can claim any right on the basis of decision which is dehors the statutory rules.

In the case of A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, the Apex Court has ruled that courts should not by its order direct to disobey law, else it will be destructive of Rules of Law.

12. Although it is observed in the impugned judgment that the direction

contained therein would not be treated as a precedent, in our considered view, such a course is impermissible when a third party's right is adversely affected. In the instant case, in the event of allowing the Petitioner to be regularized w.e.f. 21.6.1985 that would adversely affect the right of the Appellants in the matter of fixation of their seniority inasmuch as the Appellants were appointed as CDPO on regular basis w.e.f. 13.11.1985 and admittedly they are senior to that of the writ Petitioner.

13. It has been pointed out by the learned Counsel for the Appellants that in spite of interim stay of the impugned order passed by this Court on 20.11.2006 which has been passed after hearing the learned Counsel for the Respondents as well as the learned State counsel the authority in its DPC meeting held on 18.8.2006, regularized the service the writ Petitioner w.e.f. 24.6.1985 in spite of his not being completed the required qualifications of service as Supervisor on 24.6.1985 and in terms of the said recommendation of the DPC a Notification dated 22.11.2006 incorporating the date of regularization of the Petitioner w.e.f. 24.6.1985 was issued. On being pointed out the fact, the learned Government Advocate has fairly submitted that in view of the interim suspension of the order, such meeting of the DPG and Notification should not have been held and issued by the authority.

14. In view of what have been discussed above, we are of the view that the impugned judgment is liable to be interfered with and it is also done and the impugned judgment and order dated 1.9.2005 stands set aside and quashed.

15. Consequently, the subsequent decision of the DPC dated 18.8.2006 meeting regularizing the writ Petitioner w.e.f. 24.6.85 and the Notification dated 22.11.2006 incorporating the said dates as date of regularization of the Petitioner as CDPO also stands quashed. The writ Petitioner would be deemed to be regularized with effect from 13.6.1986 in the cadre of class-II officer for all intents and purposes.

16. Writ appeal stands allowed to the extent indicated above.

17. No costs.