
(1997) 06 GAU CK 0020
In the Gauhati High Court
Case No : Civil Rule No. 53 of 1985

L. Ibobi Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 11-06-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 225

Manipur Town and Country Planning Rules, 1978 — Rule 11, 15, 9(21)

Citation : (1998) 4 GLT 347

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : T. Nanda Kumar Singh, for the Appellant; Ch. Nodiachand and L. Shyam Kishore Singh, for the Respondent

Final Decision : Allowed

Judgement

D.N. Chowdhury, J.—The controversy centres round the posting and status of the Petitioner who was holding substantive post of UDC in the Directorate of Local Self Government and Urban Development, Manipur. By an order dated 1.12.78 (Annexure-A/2) the Petitioner was appointed as Head Clerk on deputation for a period of three (3) years in the office of the Planning and Development Authority, Manipur, on the recommendation of a DPC held on 29.11.78 in the scale of pay of Rs. 405-15-495-EB-18-675/- p.m. The Respondent No. 3, Director of Local Self Government and Urban Development, Imphal, by his order dated 6.12.78 placed the service of the Petitioner at the disposal of the Chairman, Planning and Development Authority, Manipur (for short "PDA"), for a period of one year for his appointment as Head Clerk on deputation on foreign service terms under FR-110. The Planning and Development Authority by its resolution dated 13.11.81 redesignated the post of Head Clerk as Superintendent in the scale of pay of Rs. 525-1040/- p.m., and the Petitioner was appointed to the said post as Superintendent in the office of the PDA by order dated 13.11.81.

2. The Petitioner while working on deputation in the PDA made an application

before the authority for permanent absorption of his service in the PDA. By Office Memorandum dated 16.2.82 (Annexure-A/7) the Chairman, PDA requested the Respondent No. 3, Director of Local Self Government and Urban Development, about the intention of the PDA to absorb the service of the Petitioner permanently in the PDA under Rule 11(b) of the Manipur Town and Country Planning Rules, 1978, and accordingly, sought no objection certificate from his parent department. By an order dated 27.5.82 (Annexure-A/9) the Petitioner was appointed to officiate in the post of Under Secretary (PDA) on the scale of pay of Rs. 500-1350/- p.m. in pursuance of Resolution No. 85 adopted by the PDA, Manipur in its meeting held on 15.5.82. By a communication dated 15.9.82, the Respondent No. 3, Director, Local Self Government and Urban Development wrote to the Respondent No. 2, Secretary, PDA, in continuation of its letter dated 27.7.82 that he could not proceed further in the matter of no objection certificate in absence of resignation letter from the incumbent and also requested the Respondent No. 2 to inform the incumbent to tender resignation letter within one month from the date of issue of the letter. In the event the resignation is not submitted within the specified period, it would be presumed that the incumbent had resigned from the post of UDC from the Directorate of Local Self Government and Urban Development, Manipur without any scope of reversion to the Directorate. By an order dated 4.8.83 (Annexure-A/11) the Secretary, PDA, accorded its order of appointment for the Petitioner with effect from 7.12.81 until further orders.

3. The Respondent No. 2 by his communication dated 12.2.85 intimated the Respondent No. 3, Director, Local Self Government and Urban Development, Manipur that the service of the Petitioner as Superintendent in the office of the PDA was no longer required and, accordingly, the Petitioner was reverted to his parent department on 15.2.95 who was attending the office of the PDA after expiry of his 120 days' Earned Leave. By the said letter, the Director of Local Self Government and Urban Development was advised to make necessary arrangement to accommodate the Petitioner in the department against his lien post.

4. By letter dated 16.2.85, the Respondent No. 3, Director of Local Self Government and Urban Development, Manipur, forwarded his views refusing his inability to make any arrangement for reversion of the service of the Petitioner in the Directorate. Full text of the letter is cited below:

I am to refer to your letter No. 2/44/78- PDA(Pt-B)/551 dated 12.2.85 on the above subject and to say that Sri L. Ibobi Singh, UDC, has been on deputation to PDA with effect from 7.12.78 for one year in the 1st instance. His term of deputation have been extended for the 2nd year and 3rd year w.e.f. 7.12.79 and 7.12.80 respectively after that no further extension was issued by the Directorate beyond 6.12.81. However, a letter was issued to the Chairman, PDA under this Directorate letter No. 1/75/URB/DEV/78 dated 15.12.81 (copy enclosed) in this regard for taking further necessary action as admissible under

the Rules.

Further, I am to say that this Directorate was (sic) issued a "no objection certificate" to the proposed absorption vide this Directorate letter of even number dated 27.7.82 (copy enclosed). But as per rules the incumbent Sri L. Ibobi Singh would have to resign from the post of UDC of this Directorate but the same has not been done. However, another letter was issued to the Secretary, PDA, statmg that if the incumbent has not resigned within the specified period, it will be presumed that he has resigned from the post of UDC and he will have no opportunity for reversion to this Directorate thereafter vide this Directorate letter of even number dated 15.9.82 (copy enclosed).

In view of the points stated above, the arrangement for reversion of Sri Singh to the Directorate of LSG and UD will not be feasible since the term of deputation is beyond the normal procedures.

5. By an order dated 15.2.85, the Petitioner was repatriated to his parent department after expiry of his period of leave on 14.2.85. Incidentally, Ch, Ibohal Singh was at the relevant time holding both the posts of Secretary, PDA and also the Director of Local Self Government and Urban Development. Hence, this writ petition.

6. The Respondents 1 and 2, State of Manipur and the Secretary, PDA, filed their counter-affidavit. The said Respondents stated that the reversion of the Petitioner was approved by the State Government with a communication dated 23.2.85 issued by the Under Secretary to the Government of Manipur, addressed to the Secretary, PDA. The Respondents in their affidavit did not address themselves to all the issues raised in the petition. According to the said Respondents, since the Petitioner was reverted to the parent department, the PDA has had no connection with the service of the Petitioner. The affidavit did not disclose any reason as to why no objection certificate was not issued by the Local Self Government and Urban Development Department when the said Respondent was himself the Director of the Local Self Government and Urban Development. The said official also did not clarify in his affidavit as to the reasons that impelled the PDA to revert the Petitioner to the Local Self Government and Urban Development Department in spite of the existence of the post.

7. The Director also submitted his affidavit and stated in the affidavit that the ground for not granting no objection certificate was due to the inability of the Petitioner to submit his resignation. In the absence of the resignation letter from the incumbent, the Local Self Government and Urban Development Department could not issue its no objection certificate. The Respondent, at the same time, stated that in view of the decision the Petitioner is to get his service in the PDA since the Petitioner has lost his lien in the Directorate of Local Self Government and Urban Development. It was, however, added in supersession of the letter dated 16.2.85 (Annexure-A/14) that the Petitioner was asked to join the duty in the Directorate purely on humanitarian ground with letter dated 25.4.85. Since

the Petitioner did not join as instructed, the Petitioner was not entitled to any relief

8. Before dealing with the merits of the petition, it would be appropriate to ascertain the relevant law regarding the position of a deputationist under the F.R. The provisions of F.R.22, which are relevant for the determination of the issues involved are cited below:

F.R. 22 (I). The initial pay of a Government servant who is appointed to a post on a time- scale of pay is regulated as follows:

(a)(i) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more.

Save in cases of appointment on deputation to an ex cadre post, or to a post on ad hoc, the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment.

Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or rupees twenty five, whichever is more.

(2) When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis:

Provided that where the minimum pay of the time-scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as the initial pay;

Provided further that in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time-scale of the old post, in cases where pay is fixed at the higher stage, he shall get his next increment on completion of the period when an increment is earned in the time-scale of the new post.

On appointment on regular basis to such a new post, other than to an ex cadre post on deputation, the Government servant shall have the option, to be exercised within one month from the date of such appointment, for fixation of his pay in the new post with effect from the date of appointment to the new post or with effect from the date of increment in the old post.

(3) When appointment to the new post is made on his own request under Sub-rule (a) of Rule 15 of the said rules, and the maximum pay in the time-scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay.

(b) If the conditions prescribed in Clause (a) are not fulfilled, he shall draw as initial pay on the minimum of the time scale ;

Provided that both in cases covered by Clause (a) and in cases other than the cases of re-employment after resignation or removal or dismissal from the public service, covered by Clause (b), if he -

(1) has previously held substantively or officiated in

(i) the same post; or

(ii) a permanent or temporary post on the same time-scale, or

(iii) a permanent post or a temporary post (including) a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time scale ; or

(2) is appointed subject to the fulfilment of the eligibility conditions as prescribed in the relevant recruitment rules to a tenure post on a time-scale identical with that of another tenure post which he has previously held on regular basis;

then the initial pay shall not, except in cases of reversion to parent cadre, governed by proviso (1)(iii) be less than the pay, other than special pay, personal pay or any other emoluments which may be classed as pay by the President under Rule 9(21)(a)(iii) which he drew on the last occasion, and he shall count the period during which he drew that pay on a regular basis on such last and any previous occasions for increment in the stage of the time-scale equivalent to that pay. If, however, the pay last drawn by the Government servant in a temporary post had been inflated by the grant of pre-mature increments, the pay which he

would have drawn but for the grant of these increments shall, unless otherwise ordered by the authority competent to create the new post, be taken for the purposes of this proviso to be the pay which he last drew in the temporary post which he had held on a regular basis. The service rendered in a post referred to in proviso (1)(iii) shall, on reversion to the parent cadre count towards initial fixation of pay, to the extent and subject to the conditions indicated below:

(a) The Government servant should have been improved for appointment to the particular grade or post in which the previous service is to be counted;

(b) all his seniors, except those regarded as unfit for such appointment, were serving in posts carrying the scale of pay in which benefit is to be allowed or in higher posts, whether in the Department itself or elsewhere and at least one junior was holding a post in that Department carrying the scale of pay in which the benefit is to be allowed; and

(c) the service will count from the date his junior is promoted on a regular basis and the benefit will be limited to the period the Government servant would have held the post in his parent cadre had he not been appointed to the ex-cadre post.

(II) The President may specify posts outside the ordinary line of service the holder of which may, notwithstanding the provisions of this rule and subject to such conditions as the President may prescribe, be given officiating promotion in the cadre of the service and the authority competent to order promotion may decide, and may be granted the same pay with or without any special pay attached to such posts as they would have received if still in the ordinary line.

(III) For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance if the post to which it is made is one the same scale of pay as the post, other than a tenure post, which the Government servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith.

(IV) Notwithstanding anything contained in this rule, where a Government servant holding an ex-cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for his holding any ex cadre post outside the ordinary line of service by virtue of which he becomes eligible for such promotion or appointment.

9. The only issue, therefore, involves in the present case is as to whether the Respondent No. 3, Director, Local Self Government and Urban Development, was justified in refusing the Petitioner to render his service in the substantive post in his parent department.

10. In this context, the decision of the Supreme Court in the case of State of Mysore Vs. M.H. Bellary, can be aptly referred to. In the aforesaid case, the Respondent M.H. Bellary, was working in one of the departments of the Bombay

Government. He was sent to another department on deputation and after serving there for a long period and on getting of number of promotions Bellary was reverted back to his parent department and ordered to be posted in a lower grade post while another Government servant who was below his rank had been promoted as Assistant Secretary. Bellari moved the Mysore High Court under Article 226 of the Constitution challenging his order of posting. Rule 50(b) of the Bombay Civil Service Rules was extracted in the said decision which read as follows:

50(b): Service in another post, other than a post carrying less pay referred to in Clause (a) of the Rule 22 whether in a substantive or officiating capacity, service on deputation and leave other than extraordinary leave count for increments in the time scale applicable to the post on which the Government servant holds a lien as well as in time-scale applicable to the post or posts, if any, on which he would hold a lien had his lien not been suspended.

Provided that Government may, in any case in which they are satisfied that the leave was taken on account of illness or for any other cause beyond the Government servant's control, direct that extraordinary leave shall be counted for increment under this clause.

The Rule mentioned above relate to the right of the Government servant who goes on deputation for increments in the time scale applicable to the post on which he held a lien on his return to the parent department from the department to which he had been deputed. One of the questions which arose for consideration in that case also was whether the Respondent who had gone on deputation was entitled to claim promotion which he would have got in his parent department had he not been sent on deputation, the High Court accepted the claim of the Respondent and granted him the reliefs sought by him. The State of Mysore moved the Supreme Court, and the Supreme Court made the following observations:

The other submission of learned Counsel was that a Government servant though he had a right to increments in a time-scale applicable to the post that he held on the date of his transfer on deputation and on which he had a lien, he had no legal right to be promoted to a higher post and that the construction adopted by the High Court virtually conceded or guaranteed to officers on deputation a right to an automatic promotion which they would not have had if they had not been posted on deputation. We see no force in this contention either. Learned Counsel is right only in so far as the promotion involved relates to a selection post. But where it is based on seniority-cum-merit, these considerations are not relevant. The service of an officer on deputation in another department is treated by the rule as equivalent to service in the parent department and it is this equation between the services in the two departments that forms the basis of Rule 50(b). So long therefore as the service of the employee in the new department is satisfactory and he is obtaining the increments and promotion in that department, it stands to reason that satisfactory service, and the manner of its

discharge in the post he actually fills, should be deemed to be rendered in the parent department also s.o as to entitle him to promotions which are open on seniority-cum-merit basis. What is indicated here is precisely what is termed in official language the "next below rule" under which an officer on deputation is given a paper-promotion and shown as holding a higher post in the parent department if the officer next below him there is being promoted. If there are adverse remarks against him in the new department or punishments inflicted on him there, different considerations would arise and these adverse remarks etc. would and could certainly be taken into account in the parent department also, but that is not the position here. In view of the facts of the case it is not necessary to discuss this aspect in any detail or any further.

11. The aforesaid decision was followed by the Supreme Court in the case of *State of Mysore v. P.N. Nanjundiah*, (1969) 3 SCC 633 In the said case, the Supreme Court observed as follows:

So long as the service of the employee in the new department is satisfactory and he is obtaining the increments and promotions in that department, it stands to reason that the satisfactory service and the manner of its discharge in the post he actually fills, should be deemed to be rendered in the parent department also so as to entitle him to promotions which are open on seniority-cum-merit basis.

12. In the case of *R.L. Gupta and Anr Vs. Union of India (UOI) and Ors*, the Supreme Court while dealing with the deputation period relating to service of an officer serving in Delhi Higher Judicial Service, held that -

.... It is well-known that many officers have to be sent on deputation in the public interest to other departments in order to met the exigencies of public service and that before sending them on deputation their consent is invariably taken. Merely because they have given their consent to go on deputation they should not be allowed to suffer unless there is a specific rule to the contrary or other good reason for it. That is the ratio of the decision in *State of Mysore Vs. M.H. Bellary*, and of the decision in *State of Mysore v. P.N. Nanjundiah* (1969 SLR 346) (supra). These decisions declare that an officer on deputation is entitled to get increments in the pay scale attached to the post in their parent department ana also to get promotion when it is based on seniority cum merit as and when his junior in the parent department is promoted by the application of the "next below rule". When increments and promotion can be earned, there is no reason why he should not be treated as being on probation also in the post held by him in tlie parent department even while he is on deputation.

13. The import of the rule is that an officer out of his regular lien is not to be put in pain by forfeiting promotions which he would have otherwise earned. As alluded earlier in the instant case, the Respondent No. 4 even asked for the option for his absorption in the Planning and Development Authority . The Petitioner in feci made his option clear for being absorbed in the PDA. Respondent No. 3 in a most arbitrary fashion refused its consent ii; his absoiption

in the PDA. Respondents 3 and 4 overlooked the fact that resignation is/was not a jurisprudential sine qua non for absorption in service. The deputationist like the Petitioner could not have been refused in this fashion for being absorbed in the PDA. It may be added that no innocent officer should be put risk to which the Petitioner was made to suffer. The action of the Respondents thus made mockery of the Rule of Law. The ground assigned by the Respondents about their inability to absorb the Petitioner on the face of the Rules does not hold any water. It is needless to state that the borrowing authorities no doubt have the right to revert an officer at any point of time on the expiry of the need to a particular office. The action of the borrowing and lending authorities is to be freed from arbitrariness and uncertainty. All actions of the Executive Authority are to be informed with reason and logic. The impugned actions are thus unjust and arbitrary and are also violative of Articles 14 and 16 of the Constitution of India.

14. On an overall consideration of the matter, it thus emerges that the Petitioner was on deputation at all relevant time and on his reversion to the parent department, he is entitled to get all the benefits of deputationist Services those are rendered by the Petitioner in the PDA are to be counted for determining the seniority and promotion and other service benefits in the parent department. The Petitioner cannot be deprived of the benefits those are conferred on a deputationist.

15. For the reasons stated above, the impugned order bearing No. 1/75/URB/DEV/78 dated 16.2.85 issued by the Respondent No. 3, Director, Local Self Government and Urban Development, Manipur, is set aside and the said Director shall now absorb the Petitioner to a suitable post which is presently held by Kh. Kumar Singh, an officer junior to the Petitioner from the date of repatriation vide order dated, 15.2.85. The Petitioner will maintain his seniority above Kh. Kumar Singh and shall be given all the benefit those are admissible to the Petitioner under the Rules.

16. In the result, the writ petition is allowed. However, considering the entire facts and circumstances of the case, the parties shall bear their own cost.