

(2004) 04 GAU CK 0001
In the Gauhati High Court
Case No : W.R (C) No. 13 of 2003

Lalhmingliana Bawitlung and ORS.

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Gauhati High Court Services (Appointment, Conditions of Service and Conduct) Rules, 1967 — Chapter 5A Rule 2(d), Chapter 5A Rule 2(d)

Citation : (2005) 3 GLR 543 : (2004) 2 GLT 377

Hon'ble Judges : B.K.Sharma, J

Bench : Single Bench

Advocate : N.Sailo, C.Lalramzauva, Advocates appearing for Parties

Judgement

B. K. Sharma, J.—The basic facts leading to initiation of this writ proceeding are as follows:

2. The seven (7) petitioners who are presently working as Executive Engineer in the Public Works Department, Government of Mizoram were all seniors to the respondent Nos. 5 and 6 in the substantive grade of Assistant Engineer/Sub Divisional Officer. The respondent No. 5 was senior to the respondent No. 6 in the said grade.

3. A selection for promotion to the next higher grade of Executive Engineer was conducted by the Mizoram Public Service Commissioner (in short MPSC) as per the provisions of Mizoram Engineering Service Rules, 1995. Such selection was conducted by the MPSC as per the requisition placed by the State Government. As per ScheduledB of the said rules the post of Executive Engineer is in Engineering GradeIV Service and is a selection post. The selection was conducted by the MPSC and recommended nine (9) officers against five (5) existing vacancies and two future vacancies of Executive Engineer. In the recommendation, the names of respondent No. 6 and the petitioner Nos. 2 to 6 were included in that order. The recommendation in respect of the petitioner No. 1 was kept in sealed cover in view of ongoing departmental proceeding. One Shri

Zohmachhuana was at the top of the recommendation. While Shri Zohmachhuana and the respondent No. 6 included at serial No. 1 and 2 of the recommendations were graded as "very good". The petitioner Nos. 2 to 6 were graded as "Good".

4. Pursuant to such recommendation, the respondent No. 6 along with said Shri Zohmachhuana and the petitioner Nos. 2,3 and 4 were promoted as Executive Engineer (Civil) by a Notification dated 26.2.1996. By another Notification dated 8.5.1996, the petitioner No. 1 was promoted on conclusion of the departmental proceeding in his favour and opening of the sealed cover. By yet another Notification dated 20.6.1996, the petitioner Nos. 5 and 6 were promoted as Executive Engineer (Civil). Thus all the seven (7) posts were exhausted pursuant to the aforesaid recommendation of the MPSC and although the petitioner No. 7 was also recommended in the same selection, he could not be accommodated for want of vacancy. Be it stated here that the recommendation on appointments were made according to the merit position obtained by the incumbents.

5. Admittedly, the respondent No. 5 who was senior to respondent No. 6 was not considered by the MPSC in the aforesaid selection as his name was not sent by the State Government. Being aggrieved, he made representation which was duly considered and a decision was taken to refer his case to the MPSC for a review selection and disposal. Relevant documents including the relevant ACRs of the respondent No. 5 were forwarded to the MPSC for their consideration. The MPSC on the basis the ACRs of the respondent No. 5 did not consider him suitable for promotion so as to be included in the aforesaid recommendatidn. As against the grading of "Very good" of the respondent No. 6 and said Shri Zohmachhuana, the respondent No. 5 and the writ petitioners were graded as "Good". Thus naturally, on the basis of such selection, the respondent No. 6 although was junior to the respondent No. 5 and the petitioners could score a march over them. The petitioners do not have any grievance in such promotion of the respondent No. 6. As already noticed, the petitioners are seniors to the respondent No. 6 and respondent No. 5 and the respondent No. 5 is senior to the respondent No. 6.

6. The respondent No. 5 instituted a writ proceeding by filing a writ petition registered and numbered as W.P.(C) No. 31/2000. In the writ petition, the present petitioners who were admittedly senior to him were not made party respondents. However, respondent No. 6 was made a party. In the writ petition, the prayer was for setting aside and quashing of the promotion of the respondent No. 6 and alternatively to issue a direction for consideration of the case of the respondent No. 5 from the date of promotion of respondent No. 6. In paragraph 18 of the writ petition, the respondent No. 5 made a statement that he being senior to the respondent No. 6 the Staterespondents ought to have considered the case of the petitioner by constituting a review Selection Committee.

7. The aforesaid writ petition filed by the respondent No. 5 was allowed by the learned single Judge by judgment and order dated 29.1.2002 providing that the respondent No. 5, the writ petitioner therein should be deemed to have been

promoted from the date on which his junior i.e. respondent No. 6 was so promoted. It will be pertinent to mention here that in the meantime, the respondent No. 5 was also promoted as Executive Engineer (Civil) along with the petitioner No. 7 pursuant to a subsequent selection conducted by the MPSC and such promotion was notified by a Notification dated 30.7.1997.

8. Being aggrieved by the aforesaid judgment and order passed by the learned single Judge, the State of Mizoram preferred Writ Appeal No. 1 of 2002 which was dismissed by order dated 3.4.2002. In the Writ Appeal also the present petitioners were not party. As a consequence of the judgment and orders of the learned single Judge affirmed by the Division Bench, the legal position emerged was that the respondent No. 5 irrespective of his grading in the selection including the review selection conducted by the MPSC which was inferior than the respondent No. 6 and who was junior to the petitioners would rank senior not only to the respondent No. 6, but also to the petitioners although he was promoted at a later point of time pursuant to a later selection.

9. In the aforesaid facts situation and being aggrieved the present petitioners preferred a review application registered and numbered as R.P. No. 29/2003 in the aforesaid Writ Appeal. However, the same was dismissed by an order dated 13.12.2002 holding that the review was not applicable as the review applicants were not party to the proceeding in Writ Appeal No. 1 of 2002. While dismissing the review petition, the Division Bench granted liberty to the petitioners either to prefer an S.L.P. or to initiate separate writ proceeding.

10. It is in the aforesaid back drop, the present writ proceeding has been initiated by the writ petitioners praying for interference with the aforesaid judgment and orders of the learned single judge and the Division Bench paving the way for their rightful seniority in the Engineering Grade IV Service i.e. in the rank of Executive Engineer (Civil). Their case is that in the event of implementation of the aforesaid judgment and orders. They along with the respondent No. 6 would rank junior to the respondent No. 5 irrespective of the aforesaid recommendations made by the MPSC and their respective seniority on that basis.

11. I have heard Mr. C. Lalramzauva, learned counsel appearing for the petitioner. I have also heard the learned State counsel and Mr. K. V. Tlangmawia, learned counsel for the MPSC. Mr. H. Lalriathanga argued on behalf of the respondent No. 5.

12. Learned counsel for the petitioner strenuously argued that even if the respondent No. 5 was not considered along with the respondent No. 6 at best there could have been a direction for consideration of his case by a review selection instead of issuing a direction for his promotion with retrospective effect with consequential seniority over the respondent No. 6 which adversely effected the seniority of the petitioners. Reliance has been place on the decision of the Apex Court as reported in AIR 1988 SC 1069 in which case the Apex Court

substituted the directions of the Central Administrative Tribunal, Gauhati Bench to include the name of the appellant in the panel for promotion to IPS and on that basis to promote him from the date on which his immediate junior was promoted to IPS with the direction to the Selection Committee to reconsider the case of the applicant in reference to his junior on the basis of the categorization to which each of them was entitled having regard to the C.C. Roll. In that case the Apex Court observed that in making a selection, when some one was selected in preference to the other, it could not be said that it amounted to supersession of a senior by a junior.

13. However, in the instant case such a course of action was already adopted by the MPSC in respect of the respondent No. 5 but could not place him above respondent No. 6 in view of his over all grading as "Good" as against overall grading of the respondent No. 6 "Very Good".

14. Really speaking after the aforesaid judgment and order dated 29.1.2002 passed in W.P.(C) No. 31/2000 by the learned single Judge which has been affirmed by the Division Bench by order dated 3.4.2002 passed in Writ Appeal No. 1 of 2002, this Court cannot entertain the instant writ petition so as to set aside and quash the said judgment and orders as has been prayed for. On being pointed out to the same, learned counsel for the petitioner argued that the course of action towards filing of the instant writ petition has been adopted by the petitioners in terms of the order dated 13.12.2002 passed by the Division Bench in Review Petition No. 29/ 2002 by which it was provided that the petitioners would prefer either an SLP or a separate writ petition.

15. It is an admitted position that the present petitioners were not party to the proceedings before the learned single Judge and the Division Bench. Their review petition has also been dismissed making the aforesaid provision for them to prefer a separate writ petition. Learned counsel for the parties fairly submitted that the factual position as reflected above was not placed before the learned single Judge and the Division Bench. It was not known to the learned single Judge and the Division Bench that the case of the respondent No. 5 after having been omitted from the consideration one at the first instance was sent to the MPSC for a review. The MPSC on the basis of ACRs of the respondent No. 5 graded him "Good" as against the grading given to the respondent No. 6 as "Very good". The petitioners although were also graded as "Good", they being senior to the respondent No. 5 were promoted at earlier point of time. The respondent No. 6 who was considered along with the petitioners having been graded as "Very good", naturally he scored a march over the petitioners and the respondent No. 5 although was junior to them. The case of the respondent No. 5 was subsequently considered by the MPSC on a review and was not found fit to supersede the respondent No. 6 in view of his over all grading as "Good".

16. The aforesaid factual aspect of the matter having not been placed before any of the Court, the impugned direction for promotion of the respondent No. 5 with effect from the date of promotion of the respondent No. 6 with consequential

seniority over him came to be issued which was affirmed by the Division Bench. Consequently now a stage has come in which the respondent No. 5 will not only rank senior to the respondent No. 6 but will also rank senior to the present petitioners who were not party to the aforesaid proceedings. They were given liberty to file separate writ petition by the Division Bench. Thus, a situation has arisen for this Court in which it is bound by the earlier decision of the learned single Judge affirmed by the Division Bench and yet forced to take up the writ petition in view of the directions of the Division Bench in the review proceedings, to the petitioners to file a separate writ petition.

17. Thus on both counts i.e. the complexity of the case and having regard to the importance of the matter in which otherwise the writ petitioners would be condemned unheard, I deem it fit and proper to fall back to the provisions of Chapter VA of the Rules Governing Applications for Directions, Orders or Writs under Article 226 of the Constitution of India by a single Judge with the exceptions as enumerated under Rule 2 of the said Rule.

18. Rule 2 (d) provides that a single Judge may refer such an application before the Hon''ble Chief Justice for placing it before the Division Bench having regard to the importance or complexity of the case.

19. In view of the above, I hereby refer the writ petition to the Hon''ble Chief Justice for this Lordship's consideration and decision for placing the same before the appropriate Division Bench having regard to the complexity of the case.