
(2003) 07 GAU CK 0018
In the Gauhati High Court
Case No : WP (C) No. 40 of 2002

Lalhmingthanga

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226, 227

Citation : (2004) 3 GLR 419

Hon'ble Judges : S.K. Kar, J

Bench : Single Bench

Advocate : Michael Zothankhuma, for the Appellant; N. Saila, for the Respondent

Judgement

S.K. Kar, J.—This is a petition under Article 226/227 of the Constitution of India intended to challenge order dated 18.03.2002 passed by respondent No. 3, the Commissioner of Excise, Govt. of Mizoram, placing the petitioner below the private respondent Nos. 4, 5 and 6 in the inter se seniority list of the Inspectors of Excise in the concerned department. It is submitted that the impugned order has been violative of the rights of the petitioner and is against the spirit and principle of Articles 14, 16, 21 and 309 of the Constitution of India etc.

2. I have heard both sides. The brief facts are as follows :

The petitioner, Lalhmingthanga, initially appointed as Sub-Inspector of Excise on the recommendation of the duly constituted D.P.C. (Departmental Promotion Committee) vide letter of the D.P.C. dated 17.10.1984 on which date he joined the service. In the meantime the Mizoram Revenue, Excise and Taxation Department (Group C) Recruitment Rules, 1979 underwent several changes coming into effect from 21.04.1980 where by provisions for recruitment in the post of Sub-Inspector of Excise was made on the basis of promotion and direct recruitment in the ratio of 50 : 50 basis initially, changed to 25 : 75 in a 1985 Rules and thereafter again 50:50 in 1995 rules. That in the year 1994 there was four vacancies in the cadre of Inspector of Excise and on recommendation of

M.P.S.C. (Mizoram Public Service Commission) which acting as D.P.C. recommended, vide order dated 06.03.1995, the private respondents who were appointed as Inspector of Excise. But the promotion quota of one posts remained vacant. That being aggrieved for non-consideration of his promotion to the above mentioned vacant post, the petitioner being eligible in all respects as per rules submitted his representation from 17.07.1997. The State respondents thereafter constituted a review D.P.C. and by its decision on 16.12.1997 the said D.P.C. recommended the petitioner for promotion to the vacant post retrospectively from the year 1994 but without financial benefits excepting notional increments of the pay and he joined the post of Excise Inspector on 15.01.93 (to be counted as effective from 09.11.94). But the impugned order dated 18.03.2002 placed the petitioner at serial No. 9 below the private respondents in the inter-se-seniority list in spite of the fact that the seniority of the petitioner is to be counted with effect from 9.11.04, notwithstanding the fact that the private respondents joined as Inspectors of Excise on 06.03.95 on direct recruitment. Accordingly, the petitioner prayed for quashing the aforesaid order dated 18.03.2002 and for issuing a writ of mandamus or any other appropriate writ or order/direction to respondents to place the petitioner above the private respondents in the inter se seniority list etc.

3. The petition was contested only by State Respondents by submitting affidavit-in-opposition. It was submitted that the requisite permission for filling up the vacant posts of Inspectors of Excise was granted only on 02.02.95 vide letter No. A. 32011/1/92-EXC dated 02.03.1995 and consequently three of the vacant posts were filled up during 1994-95 leaving aside one vacancy for promotion quota. Later on the Review D.P.C. was constituted and the petitioner was appointed. That consulting with DP&AR (GSW) (Department of Personnel and Administration Reforms) the petitioner was placed in serial No. 9 below the private respondents. It was contended that since the petitioner was appointed later than the private respondents, he cannot claim seniority over the private respondents. That it is the settled law that in absence of any rule governing seniority, it is to be determined on the basis of length of service and private respondent being appointed and started working as Inspectors of Excise w.e.f. 06.03.95 whereas the petitioner being appointed later started functioning as Inspector of Excise only from 15.01.98 and as the recruitment Rules, before 1995 rules came into force, the ratio of quota was to 25:75. That there is nothing to impugne the order of the respondents and no interference from the court is called for.

4. I have given my considerations to the submissions made before me. The relevant part of the appointment letter of the petitioner goes as follows:

"On the recommendation of the meeting of the, review DPC held in the office chamber of Chief Secretary to the Govt. of Mizoram and in the interest of public service Pu Lalhmingthanga, Sub-Inspector of Excise is hereby promoted to the post of Inspector of Excise in the scale of pay of Rs. 2000-60-2300-EB-75-3200/-

P. M. with effect from 9.11.1994. He will not, however, be entitled to claim payment of arrears of pay during the period from 9.11.94 to till the date of his actual joining of the post. He is further posted to the office of the Supdt. of Excise, Champhai.

The promotion is made against the vacant post of Inspector of Excise created vide Govt. of Mizoram, Excise & Taxation Order No. A. 11013/1/ 92-EXC Dt. 16/9/93."

Therefore, his appointment letter has not permitted him to any other benefits of service save and except the length of service. In this connection it was held in *Kuttiyappan v. UOI* 1997 (1) SLR 579 which goes as follows:

"The process of selection bears no relevance - In the case of promotees the seniority starts from the date on which they joined the working post after completion of the process while in the case of direct recruits their Inter se seniority would start from the date their entry into the grade."

There is no dispute that in the relevant rules there is no provision for fixing the seniority and accordingly principles of equity, justice and good conscience will prevail. In *State of Haryana and Others Vs. O.P. Gupta, etc.*, it was held as follows :

"Persons who get notional promotion from back date without having actually worked on that post are not entitled to claim arrears of pay from the date of notional promotion."

It was also held in *State of Haryana and Others Vs. Balwant Singh and Others*, that,

"The seniority has to be reckoned from the date on which they joined the service and started discharging the duties of the posts to which they came to be appointed."

In AIR 1997 3127 (SC) it was held that,

"There is no vested right in favour of Government servant to be placed in a particular position in the seniority list within a cadre."

It was similarly held in another occasion that the date of occurrence of vacancy has no relevancy for the purpose fixation of seniority *Union of India Vs. S.S. Uppal and another*,

5. A good number of case laws were referred to me by learned counsel appearing for the petitioner but after going through those case laws I find that the ratio of those case are not applicable in the instant case. The facts narrate therein are not similar. In *K. Madhavan and Another Vs. Union of India (UOI) and Others*, it was held as follows :

"The retrospective appointment or promotion to a post should be given most sparingly and on sound reasoning and foundation. But if the meeting of the DPC

scheduled to be held is arbitrarily or mala fide cancelled without any reasonable justification therefore to the prejudice of an employee and, he is not considered for promotion to a higher post, the Government in a suitable case can do justice to such an employee by granting him promotion or appointing him to the higher post for which the DPC was to be held, with retrospective effect so that he is not subjected to a lower position in the seniority list. An employee may become eligible for a certain post, but he cannot claim appointment to such post as a matter of right."

In the instant case there is no allegation that there was mala fide on the part of DPC in differing a decision on the question of promotion of the petitioner. Rather on his own admission in his pleadings he presented his representation only on 17.7.97, i.e., after much elapse of time from the date of appointment of the private respondents which was on 6.3.1995. It is true that the post in which the petitioner was appointed was stated to be created on 16.09.93, but it is already mentioned in this judgment that creation of post by itself do not create a vested interest/ right in favour of any person to get promoted to that post *Union of India Vs. S.S. Uppal and another*, and *Chhotu Ram v. State of Haryana*, (2000) 10 SCC 399 stand on different footing where it was stated that in case of retrospective promotion the person who would be affected thereby will have to be notified before making consideration of such retrospective promotion. Here there is no contention from the other side that respondent Nos. 4, 5 and 6 were given any notice before considering retrospective promotion of the present petitioner. In *N. Nagaraja Vs. Vasant K. Gudodagi and others*, the case was between the person promoted later on and the person who was already promoted to officiate in the post. Person promoted to officiate in the post was given seniority over the person who was promoted later on regular basis. This will also not attract the present case. The other case-laws I have perused and I am of the opinion that ratio of those are also not applicable in the back ground of facts of the present case.

6. Therefore, there is hardly any law to help the petitioner to claim seniority over the private respondents who have, admittedly, been working as Inspectors of Excise w.e.f. 06.03.95 long before the petitioner, who joined about three years later on 15.01.98.

7. Accordingly, I find no merit in the petition. Petition is rejected. No costs.