
(2000) 06 GAU CK 0047
In the Gauhati High Court
Case No : Writ Petition (C) No. 6 of 1998

Lalrammawii (Smti.)

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 09-06-2000

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 11(14)
Constitution of India, 1950 — Article 14, 16, 226

Citation : (2000) 2 GLT 434

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

Bench : Single Bench

Advocate : C. Lalramzauva, A.R. Malhotra and Helen Dawngliani, for the Appellant; T. Vaiphei, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

P.C. Phukan, J.—By this application undo Article 226 of the Constitution, the Petitioner seeks for issuance of an appropriate Writ for setting aside the impugned Notification dated 3.2.1997 (Annexure-13) and Office Order No. 742/92 (Annexure-7).

2. I have heard Mr. C. Lalramzauva, learned Counsel for the Petitioner as well as Mr. T. Vaiphei, learned Asst. Advocate General, Mizoram appearing for the State Respondents. Notice was served on the private Respondent No. 4 Smt. Rualthankhumi; no counsel has entered appearance on her behalf Today also when the case is called on for hearing, none appears for her.

3. The Petitioner, Miss Lalrammawii was appointed as Lower Division Clerk (LDC) by the Respondent No.3 w.e.f. 1.7.1982 (Annexure-I). The relevant portion of Annexure-I reads as under:

Shri K. Lalzarliana, LDC, Office of Assistant Registrar, Cooperative Societies, Luanglei is hereby temporarily appointed as officiating U.D.C....

In the resultant vacancy as stated above, Smt. Lalrammawii d/o Thangthansiam Lungmual is temporarily appointed as officiating LDC in the scale of pay Rs. 60-6-290 (EB)-6-326-8-336 (EB)-8-390-10-400/- p.m. plus all other allowances is admissible under the rules with effect from 1.7.1982. She is also allowed to join in the office of the undersigned due to exigency of works in the Department.

The appointments as stated are made as a stopgap arrangement for a short period. As soon as the post of UDC is filled up on regular basis the present adhoc arrangement will stand terminated.

Sd/- L.C.THANGA Registrar, Cooperative Societies, Mizoram, Aizawl

(Emphasis supplied)

4. She was given regular appointment as per the recommendation of the Departmental Promotion Committee (DPC) vide Office Order dated 31.10.1983 (Annexure-2). Since then till date, she has been serving as LDC. The Respondent No. 4 Smt. Rualthankhumi, a Peon in the office of the Respondent No. 3 was appointed as officiating LDC by Respondent No. 3 vide Office Order dated 23.6.1983 (Annexure-3) which reads as under:

Smt. Rualthankhumi, Peon (d/o Laldawla (Late) Office of Asstt. Registrar Coop. Societies, Aizawl is hereby temporarily appointed as Officiating LDC in their office on compassionate ground vide Govt. letter No. ABG. 142/77/56 dt. 15.12.1978 from Secretary Appointment "B" Dept. in the scale of pay Rs. 260-6-290 (EB)-6-326-8-366 (EB)-8-390-10-400/- p.m. plus all other allowances as admissible under the rules with effect from the date of joining duty.

The term of appointment is only for two years with effect from the date of issue of this order, and the appointee is required to pass HSLC Examination or its equivalent to qualify herself for the post of LDC failing which her appointment shall be automatically terminated after two years.

Her pay and allowances may be drawn from the head of accounts

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(emphasis supplied).

5. After working as such from 23.6.1983 to 31.10.1983, she was reverted to her substantive post as Peon vide Office Order dated 31.10.1983 (Annexure-4) and then her service as LDC was terminated vide Office Order dated 23.11.1983 w.e.f. 1.11.1983 (Annexure-5). Subsequently, Respondent No. 4 was appointed as LDC by the Respondent No. 3 as per the recommendation of the DPC vide Office Order dated 26.8.1997 (Annexure-6). Respondent No. 3 vide Office Order dated 30.11.1992 (Annexure-7) cancelled the Office Order dated 31.10.1983 (Annexure-4) and revived Office Order dated. 23.6.1983 (Annexure-3). This Office Order reads as under:

Pursuance to this Office Order No. 301 of 1983 dated 31st Oct. 1983, which was contradictory to CCS (CCA) Rules 11(14) read with Fundamental Rules 28 & 29 and which should have followed the procedure as laid down under CCS (CCA) procedure Rules in case of pending the said order stays cancelled with effect from 31st Oct. 1983 and the previous Office Order No. 46 of 1983 of 23rd June, 1983 will stand affective from the above mentioned date.

Since Smt. Rualthankhumi had passed HSLC (the regd. Educational Qualification) in the year 1984, her service as LDC is regularised with effect from retrospective date. Provided that she forfeit arrears due to her due to shortage of funds. But, she will enjoy the benefits of pension, Seniority, Annual Increment, Leave and pay refixation as per CCS (CCA) Rules.

Sd/- L.R. LASKAR Registrar, Cooperative Societies, Mizoram, Aizawl.

6. Respondent No. 3 fixed the provisional inter-se-seniority list of the LDCs serving in the Office vide Notification dated 16.11.1992 (Annexure-8) wherein the Petitioner was placed at Sl. No. 6 and the Respondent No. 4 at Sl. No. 12 in order of seniority. Respondent No. 3 fixed final inter-se-seniority vide Notification dated 30.4.1984 (Annexure-II) placing the Petitioner at Sl. No. 6 and Respondent No. 4 at Sl. No. 12. Then modifying such final seniority list, more than once, ultimately Respondent No. 3 fixed the last seniority list vide Notification dated 3.2.1997 (Annexure-13) placing the Petitioner at Sl. No. 4 and Respondent No. 4 at Sl. No. 3.

7. Being aggrieved, the Petitioner pointed out the illegality of her supersession by Respondent No. 4 and prayed for refixation of seniority vide her representation dated 20.8.1997 (Annexure-14). Respondent No. 3 considered the representation submitted by the Petitioner and other representations submitted by other aggrieved LDCs and rejected the same. It is submitted on behalf of the Petitioner that the Respondent No. 3 committed error of law in placing Respondent No. 4 above the Petitioner ignoring to count the Petitioner's officiating service for the purpose of seniority even though, there was no break in her service from 1.7.1982 to 31.10.1983. It has further been submitted on behalf of the Petitioner that Another error of law committed by Respondent No. 3 in counting the officiating service of Respondent No. 4 for the purpose of her seniority, though, there was a long break in her service from 1.11.1983 to 26.8.1987 whereas the Petitioner's officiating service from 1.7.1982 to 31.10.1983 has been ignored for the purpose of her seniority. It has further been submitted that the impugned order was made without affording the Petitioner any opportunity of being heard and hence, the impugned order is bad in law.

8. An affidavit-in-opposition has been filed on behalf of the State Respondents Nos. 1, 2 and 3. It is stated therein that, Respondent No. 4 was appointed as LDC on compassionate ground by relaxing rules due to her father's death who was an employee of the same department. The said appointment Order gave the Respondent No. 4 a period of two years for passing Matriculation (H.S.L.C),

failing which her appointment would be treated as terminated. Before the expiry of the said period of two years for passing Matriculation Examination, the Respondent No. 4 was reverted back to her substantive post of Peon and also her service as LDC was terminated with effect from 1.11.1983. Later, after her appointment as LDC on regular basis on the recommendation of the Departmental promotion committee (DPC), Respondent No.4 submitted a complaint that since she has been earlier appointed as LDC on compassionate ground and that as per the condition laid down in the said appointment order, she passed Matriculation Examination during the said period of two years, her appointment as LDC w.e.f. 23.6.1983 should have been regularised. Therefore, a fresh order cancelling the reversion of Respondent No.4 from the post of LDC to the post of Peon was issued vide an Order dated 30.11.1992 (Annexure C/V to the affidavit in opposition). It has been submitted on behalf of the State Respondents that the existing final inter-se-seniority list of LDC has been fixed in accordance with the date of appointment as well as the related Departmental Promotion Committee Minutes.

9. It has further been submitted that the officiating period of the Petitioner can not be considered without approval from the Departmental Promotion Committee (D.P.C.). It is also contended that Respondent No.4 was appointed on compassionate ground and therefore, her case can not be equated with that of the Petitioner and hence, there had been no discrimination against the Petitioner.

10. The appointment letter (Annexure-3) itself says that the Respondent No. 4, a Peon in the office of Respondent No. 3, was appointed as LDC in the said Office on compassionate ground (that her father an employee in the same Office, died in harness). But the Respondent No.4 having already appointed as Peon, the question of appointing her on compassionate ground does not arise at all. She was not eligible for compassionate appointment as LDC. under the scheme providing for appointment on compassionate ground. However, any other member in the family would have been considered for such appointment where "the grant of concession is justified having regard to the number of Dependents, the assets and liabilities left by the deceased Government servant, the income of the earning member and also his liabilities "

...vide Clause (e) of the eligibility conditions in the Scheme providing for appointment on compassionate ground. Though as per Annexure-3, the appointment of Respondent No. 4 as LDC was to be terminated after two years, if she could not pass High School Leaving Certificate (HSLC) Examination in the meantime, her appointment as such was terminated and she was reverted to her substantive post of Peon shortly after her appointment as LDC and long before the expiry of the said period of two years vide Orders dated 23.11.1983 and 31.10.1983 (Annexures - 4 & 5). These orders put an end to her wrong appointment as LDC on compassionate, ground. But curiously enough, about a decade later, Respondent No. 3 vide the impugned order dated 30.11.1992 (Annexure-7) cancelled the order dated 31.10,1983 (Annexure-4) reverting her

to her substantive post of Peon and reviving the order dated 23.6.1983 (Annexure-3) wrongly appointing her as LDC on compassionate ground. The impugned order has adversely affected the seniority position of the Petitioner vis-a-vis the Respondent No.4.

11. The impugned order has revived the wrong order appointing the Respondent No. 4 on compassionate ground, and that too after about a decade and quoting wrong provisions. F.R. 28 and 29 referred to therein are not relevant in the instant case. There is no Sub-rule (14) in rule 11 of the Central Civil Service (Classification, Control and Appeal) Rules. Rule 11 has no application in the instant case, for, this Rule only prescribes penalties, and Respondent No. 4 was not reverted to her substantive post of Peon by way of punishment. In any view of the matter, the impugned order dated 30.11.1992 (Annexure-7) cannot be allowed to stand and is set aside. The seniority of Respondent No. 4 shall be counted from the date of her joining as LDC on her appointment as such vide order dated 26.8.1987 (Annexure-6) as per recommendation of the Departmental Promotion Committee (D.P.C.).

12. Besides her prayer for setting aside the impugned order dated 30.11.1992 (Annexure-7) the Petitioner prays for a direction to count her seniority from the date of her joining as LDC on her appointment as such vide order dated 29.6.1982 (Annexure-1). This cannot be allowed because this order dated 29.6.1982 (Annexure-7) itself says that her appointment was made "as a stop-gap arrangement for a short period". In *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, it has been held that:

The principle for deciding inter-se-seniority has to conform to the principles of equality spelt out by Article 14 and 16. The corollary of the above rule is that where the initial appointment is only adhoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

13. The seniority of the Petitioner has to be counted only from the date of her appointment as LDC vide order dated 31.10.1983 (Annexure-2) on the recommendation of the DPC.

14. In view of what has been stated above, the impugned order dated 30.11.1992 (Annexure-7) is set aside. The State Respondents are directed to refix the seniority of the Respondent No. 4 counting her seniority from the date of her joining as LDC on her appointment as such vide order dated 26.8.1987 (Annexure-6) as per recommendation of the DPC and not from the date of her joining on her appointment as such made as a stop-gap arrangement vide order dated 29.6.1982 (Annexure-1). The State Respondents are directed to prepare fresh seniority list accordingly.

The Writ Petition is allowed to the extent indicated above. No costs.