
(2006) 08 GAU CK 0063
In the Gauhati High Court
Case No : WP (C) No. 187 of 2003

Loukrakpam Rupnarain Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 30-08-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2006) GLT 379 Supp

Hon'ble Judges : T.N.K. Singh, J

Bench : Single Bench

Advocate : Ng. Kumar, for the Appellant; R.S. Reisang and Kh. Mani, for the Respondent

Final Decision : Dismissed

Judgement

T.N.K. Singh, J.—It is fairly well settled that in the absence of proper relief sought for in the writ petition, the court cannot grant the relief and also that the court cannot grant the relief which is not sought for in the writ petition. It is also the settled principles of law that writ petition, by no stretch of imagination, cannot be equated with the declaratory suit in which declaratory decree could be granted. It is too late for the day to pray a relief in the writ petition which would adversely affect other officers without impleading them parties in the writ petition inasmuch as a party cannot be suffered adversely either indirectly or directly by reason of an order passed by any court of law which is not binding to him. Over and above, the order of the court in a proceeding/suit/writ petition in which a person is not party is not binding to him. In the instant writ petition, the writ Petitioner not only sought for a declaratory relief but also for a direction/writ to the Respondents for putting the name of the Petitioner above the Assistant Agriculture Officers/equivalent whose names appear at S1. Nos. 28 to 70 of the final seniority list dated 18.11.1998 without making them parties in the writ petition. Because of such inherent defects this writ petition deserves to be dismissed with cost. But cost is not imposed taking into consideration of the

bonafide lack of knowledge of the Petitioner in putting up the writ petition in proper form.

2. Heard Mr. Ng. Kumar, learned Counsel for the Petitioner as well as Mr. R. S. Reisang, learned GA for Respondent No. 1 and Mr. Kh. Mani, learned Counsel for Respondent Nos. 2 and 3.

3. The writ Petitioner filed the present writ petition for the relief which reads as follows:

1. To issue Rule nisi calling upon the Respondents to show cause as to why the relief sought for herein shall not be granted as prayed for;

2. To declare that the manner of compliance of the Hon''ble Court's order dated 22.1.01 passed in WP (C) No. 786/2000 (Annexure-C/3 herein) by the Respondents as spelt out in the Counter Affidavit of Director of Agriculture, Manipur in Cont. Case No. 135/2002 (Annexure-C/11 herein) is erroneous as the same was done by the Respondents by misconstruing or misreading the Hon''ble Court's order;

3. To issue writ/direction to the Respondents for complying with the said order of the Hon''ble Court dated 22.1.2001 in the right/correct manner by putting the names of persons senior in age above those who are juniors in respect of those appearing from S1. No. 28 to 70 of the final seniority list dt. 18.11.98 (Annexure-C/2 herein) within a time frame;

4. To pass any order/direction as the Hon''ble court deems just, fit and proper in the facts & circumstances of the case.

4. The succinct fact of the Petitioner's case is that by office memorandum dated 31.5.1986 issued by the State Government of Manipur, decision was taken to regularize ad hoc services of the employees who were appointed up to 31.12.1984 and continued to hold their respective posts on ad hoc basis up to 24.5.1986 w.e.f. 24.5.1986. In the office memorandum itself, dated 31.5.1986 it is mentioned that the seniority of such ad hoc appointees will be counted w.e.f. 24.5.1986. Under the said office memorandum dated 31.5.1986 ad hoc service of the Petitioner and other employees were regularized in the posts of Assistant Agriculture Officer (for short AAO)/equivalent in the Agriculture Department, Government of Manipur w.e.f. 24.5.1986. Under the order of the Director of Agriculture, Manipur being AGM-1151611 Vol-III dated 18.11.1998 a final seniority list of the Assistant Agriculture Officers/equivalent of the Agriculture Department was proposed. In that final seniority list dated 18.11.1998 name of the Petitioner appear at S1. No. 52 by showing his date of birth incorrectly as 1.3.1957 instead of 1.11.1954.

5. The Petitioner assailed the said final seniority list of the Assistant Agriculture Officers/equivalent of the Department of Agriculture dated 18.11.1998 by alleging that the name of the Petitioner should appear above the AAOS/ equivalent whose names appear at S1. Nos. 28 to 70 by filing a writ petition

being WP (C) No. 786 of 2000 on the ground that the Petitioner is senior in age to those Assistant Agriculture Officers. This Court (learned Single Judge) had disposed of the said writ petition No. 786 of 2000 by passing final judgment and order dated 22.1.2001, operative portion of which reads as follows:

2. By this application the Petitioner has challenged the seniority list of Assistant Agriculture officer in the Department of Agriculture dated 18.11.1998 (Annexure-A/7 to the writ petition). The only grievance of the Petitioner is that while fixing the seniority of the Officers placed from serial number 28 to 70 in the seniority list dated 18.11.1998, Respondents ought to have taken into account all the respective date of births of the Officers as per their Matriculation Certificate. In support of such contention, Mr. Ng. Kumar Singh, learned Counsel for the Petitioner has relied upon a decision of the Apex Court in Sudama Singh Vs. Nath Saran Singh and Others, In the said case the Apex Court held that when the appointments are made on the same date, the ages of the incumbents shall be taken into consideration and accordingly persons order will be senior.

3. Considering the facts and circumstances of the case and also upon hearing the learned Counsel for the Petitioner as well as the counsel for the Respondents, Mr. R. K. Jayanta, I am of the view that the ratio of the above mentioned decision of the Apex Court is applicable in the case in hand. Accordingly, I am inclined to direct the Respondents to review the case of the Petitioner in the light of the above decision of the Apex Court within a period of two months from the date of receipt of this order. This disposes the writ petition. No costs.

6. It is said that as the State Respondents did not implement/comply with the direction of this Court in the judgment and order dated 22.1.2001 passed in WP (C) No. 786 of 2000 promptly, writ Petitioner filed the Contempt (C) Case No. 135 of 2002 against the Director of Agriculture, Government of Manipur. While the said Contempt case No. 135 of 2002 was pending it is said that in compliance with the direction of this Court made in the judgment and order of this Court dated 22.1.2001 passed WP (C) No. 786 of 2000, the case of the Petitioner was considered and prepared a final seniority list of the Assistant Agriculture Officers/ equivalent of the department of Agriculture as on 2.4.2000 vide order of the Director, Agriculture, Government of Manipur being No. AGM-I/5/67/Vol-IV dated 2.4.2002, according to the Affidavit-in-opposition of the Director, Agriculture Manipur (Dr. S. Amu Singh), filed in the said contempt (C) Case No. 135 of 2002. This Court by passing the judgment and order dated 20.1.2003 closed the said contempt case No. 135 of 2002 as the Respondents had complied with the direction of this Court in the judgment and order dated 22.1.2001 passed in WP (C) No. 786 of 2000. While passing the order dated 20.1.2003 in the contempt case No. 135 of 2002 for closing the said contempt case made an observation that "if the Petitioner is aggrieved by the aforesaid computation of seniority, it will be open for him to take such legal steps as may be open to him in law." For easy reference, the relevant portion of the judgment and order of this Court dated 20.1.2003 passed in the Contempt (C) Case No. 135 of 2002 is quoted

hereunder:

This contempt Application has been filed for the alleged willful disobedience of this Court's order dated 22.1.2001 passed in WP (C) No. 786/2000. By the aforesaid order dated 22.1.2001, this Court had directed for review of the case of the Petitioner and for recasting his seniority in accordance with the judgment of the Apex Court in the case of Sudama Singh Vs. Nath Saran Singh and Others,

The Respondent in the present proceeding has filed an affidavit stating that seniority as required to be recast in terms of the order of this Court has been refixed and a seniority list dated 2.4.2002 has been refixed and a seniority list dated 2.4.2002 has been published by the Authority in compliance with the order of this Court. A perusal of the averments made in the affidavit filed by the Respondent would go to show that the order in respect of which disobedience has been alleged in the present proceeding has been complied with by the Authority.

Mr. Ng. Kumar Singh, learned Counsel for the Petitioner submits that the recast seniority is not in accordance with the directions issued by this Court and the said directions have been misconstrued and misread in recasting the seniority of the Petitioner. The aforesaid question cannot be gone into in the exercise of summary jurisdiction of this Court under the provision of Contempt of courts Act. If the Petitioner is aggrieved by the aforesaid computation of seniority, it will be open for him to take such legal steps as may be open to him in law.

7. From bare perusal of the judgment and order of this Court dated 20.1.2003 passed in Contempt (C) Case No. 135 of 2002 it appears that it clear indication had been made to the Petitioner that if the Petitioner is not satisfied with the final seniority list of the Assistant Agriculture Officer/equivalent of the Department of Agriculture as on 2.4.2002 said to have been prepared in compliance with the direction of this Court in the judgment and order dated 22.1.2001 passed in WP (C) No. 786 of 2000 he could take necessary steps for challenging the said final seniority list dated 2.4.2002. It appears that the Petitioner is aggrieved by the said final seniority list dated 2.4.2002 on the ground that his name is placed below the Assistant Agriculture Officers who are junior to the writ Petitioner in personal age. In the present writ petition the Assistant Agriculture Officers who are junior to him according to the Petitioner and his name (Writ Petitioner) should be placed above them in the final seniority are not made parties. In other words the Petitioner wants those Assistant Agriculture Officers who are said to be junior to the Petitioner in personal age to be condemned unheard which is again forbidden by law inasmuch as no one can be condemned unheard.

8. The third relief sought for in the present writ petition which has been quoted above in entirety cannot be granted for the simple basic law that without quashing the final seniority list of the Assistant Agriculture Officers/ equivalent of the Department as on 2.4.2004 and also without making the Assistant Agriculture Officer/equivalent who are junior to the writ Petitioner, according to

him, parties in the present writ petition, inasmuch as the new final seniority list of the Assistant Agriculture Officer/equivalent in the Department of Agriculture cannot be prepared by making the writ Petitioner senior of many of the Assistant Agriculture Officers/equivalent without quashing the existing final seniority list dated 2.4.2002 and also without hearing them.

9. We may recall the decision of the Apex Court in *Dwarka Prasad Agarwal (D) by LRs. and Another Vs. B.D. Agarwal and Others*, that "a party cannot be made to suffer adversely either directly or indirectly by reason of an order passed by any court of law which is not binding to him. The very basic point which a judicial process can be resorted to is reasonableness and fairness in a trial. Under our constitution; as also the international treaties and conventions, "right to get a fair trial is a basic fundamental human rights. Any procedure which comes in the way of a party in getting a fair trial would be violative of Article 14 of the Constitution of India." This Court is of the considered view that the party cannot be made to suffer adversely either directly or indirectly by the order of this Court in a writ proceeding in which he is not party inasmuch as there would not be fair trial without hearing a person who is to be adversely affected. This Court is not required to burden ourselves by referring to a number of decisions made by the Apex Court in this regard. It is no more *res integra* that in a writ proceeding challenging seniority positions of the officers in the impugned seniority list, they should be made parties in the writ petition.

10. Again the relief No. 2 which is a declaratory relief or a relief for a declaratory decree which has been quoted above cannot be granted in the present writ petition by equating the present writ petition with a declaratory suit in the factual context of the present writ petition.

11. In the absence of proper relief this Court cannot grant the relief to the Petitioner in the present writ petition that the writ Petitioner is senior to the Assistant Agriculture Officer/ equivalent whose particulars are not spelt out and also without disclosing their respective positions in the existing final seniority list of the Assistant Agriculture Officer/equivalent of the Department of Agriculture dated 2.4.2002 in the pleading of the present writ petition by interpreting the judgment and order of this Court dated 22.1.2001 passed in WP (c) No. 786 of 2000 in the manner writ petitions had interpreted. The Apex Court in *Krishna Priya Ganguly and Others Vs. University of Lucknow and Others*, held that a relief should be confined to those specifically prayed for in the writ petition. In that case, i.e. *Krishna Priya Ganguly and Ors. v. University of Lucknow and Ors.* (supra) writ Petitioner merely prayed for a writ directing the State and medical College to consider his case for admission but without any proper relief the High Court issued a writ of mandamus directing the College to admit him (writ Petitioner) to the Post Graduate College. The Apex Court held that such direction to the college to admit him to the Post Graduate College would amount to granting a relief which the Plaintiff never prayed for inasmuch as the prayer of the writ Petitioner in the writ petition is only for a direction to consider his case

for admission. The Apex Court in *State of Mysore v. G.N. Lingappa and Ors.* 1969 SLR 709 (SC) held that the court cannot grant the relief in the writ petition in the absence of proper plea and any prayer to that effect. The Apex Court, further, in *Hindustan Petroleum Corpn. Ltd. v. Sunita Mehta and Ors.*, (2001) 9 SCC 344 held that the order not even challenged in the writ petitions cannot be quashed by the High Court in writ jurisdiction. The Apex Court in *Habbalappa Dundappa Katti and Others Vs. State of Karnataka*, held that any person who was likely to be adversely affected by the order should have been given opportunity of being heard. This Court is also of the considered view that it is not for the court to correct the defect leading to the writ petition not maintainable but it is for the party to correct the defect. Reference may be made to *Ramchandra Sundaram and Anr. v. Union of India and Ors.* (1999) 3 SCC 105

Having regard to the above discussions, the present writ petition is devoid of merit and not maintainable. Accordingly, it is hereby dismissed. Parties are to bear their own costs.