

(2007) 05 GAU CK 0007
In the Gauhati High Court

Maibam Rasbihari Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 25-05-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2008) 1 GLT 278

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Judgement

B.D. Agarwal, J.—Drafting of legislation is not only an art but it is also a science. A perfect and a well crafted legislation is likely to achieve the objectives for which it is enacted, whereas a defective legislation not only defeats the intention and purpose for which it is legislated but defective rules and laws may also create confusion in the same field as well as injustice to the prospective beneficiaries of such law.

2. The case in hand is an instance of causing artificial discrimination due to defective amendment of Service Rules, thereby depriving the writ petitioner from service benefits, more particularly, in the field of promotion.

3. The writ petitioner is a well-qualified and talented police officer. The petitioner is possessing degrees in Mechanical Engineering and also in Master of Technology. In the year 1979, the Government of Manipur created a post of Deputy Superintendent of Police (Motor Transport), ostensibly due to increase in the fleet of vehicles of Police Department. After the creation of the post, one Inspector of Police was appointed as Deputy Superintendent of Police on promotion. On his retirement the post was advertised and on the recommendation of Manipur Public Service Commission, the petitioner was appointed in the said post of Deputy Superintendent of Police (MT) vide order dated 12.9.1986. It may be mentioned here that while advertising the said post, it was stipulated that the applications must possess either a degree in Automobile Engineering or in Mechanical Engineering.

4. In the year 1985, a scheme was prepared for the maintenance of transport section of the Police Department. With a view to augment supervision and maintenance of the Motor Transport Workshop of the Manipur Police Department, the Government created 3 (three) more posts, one each in the rank of Superintendent of Police (MT), Deputy Superintendent of Police (MT) and Inspector (MT) vide order dated 20.9.1986 (Annexure-A/7). Since this order is in supersession of the earlier order dated 7.9.1979 creating one post of Deputy Superintendent of Police (MT), it has to be presumed that after the order dated 20.9.1986, there became two posts of D.S. Ps (MT). It was followed by enactment of the Police Department, Manipur (Superintendent of Police (MT) Recruitment Rules, 1988 (in brief "1988 RR"). Under this 1988 RR, the post of Superintendent of Police (MT) was designated to be a promotional post from Deputy Superintendent of Police, possessing mechanical/automobile engineering degree with 8 years regular service in the grade. A copy of the 1988 RR has been annexed with the writ petition and marked as Annexure-A/8. Simultaneously, another Recruitment Rules in the name and style of Police Department, Manipur Deputy Superintendent of Police (MT) Recruitment Rules, 1988 was published and detailed guidelines to fill-up two posts of D.S.Ps was also published.

5. While the aforesaid Recruitment Rules for appointment of Superintendent of Police and Deputy Superintendent of Police (MT) were in vogue, the Governor of Manipur amended the Manipur Police Service Rules, 1965, applicable to general police force, in the year 1991. By virtue of this amendment, notified on 25.9.1991, the post of Superintendent of Police (MT) was en-cadred with the regular police force. However, neither the remaining two posts of D.S.P.(MT) and one post of Inspector (MT) were en-cadred in the general police force nor the said Manipur Police Service (1st Amendment) Rules, 1991 laid down any special criteria for promotion to the post of Superintendent of Police (CMT). I have already noted earlier that under 1998 RR special educational qualification has been prescribed for promoting Dy. S.P. in the rank of Superintendent of Police (MT). A copy of the Manipur Police Service (1st Amendment) Rules, 1991 has been annexed with the writ petition under Annexure-A/12 and one part of the same has been challenged in this writ petition, relating to en-cadring of the post of Superintendent of Police (MT).

6. This writ application under Article 226 of the Constitution of India has been filed praying for a writ in the nature of certiorari to quash the impugned notification dated 21.9.1991, amending MPS rules, so far it relates to en-cadrement of the post of Superintendent of Police (MT)/(CMT) in the cadre of MPS-Grade-I without en-cadring the feeder post of Deputy Superintendent of Police. A writ in the nature of mandamus to direct the respondents to create promotional avenues for the petitioner has also been made.

7. I have heard Shri A. Bimol, learned Counsel for the writ petitioner and Shri. S. Nepolean, learned Addl. Govt. Advocate for the respondents at length. It may be mentioned here that no counter-affidavit on behalf of the respondents has been

filed. On the date of argument, the learned Govt. Advocate only furnished a letter dated 14.5.2007 written by the Under Secretary (DP), Government of Manipur wherein an attempt has been made to clarify that after the amendment of the MPS Rules in the year 1991, the 1988 RR for the post of Superintendent of Police (MT) automatically ceased to exist.

8. Shri. A. Bimoi, learned Counsel for the petitioner has challenged the impugned amendment notification on the ground that by virtue of this 1991 amendment, the specialized post of Superintendent of Police (MT) created in the year 1988 cannot stand abolished. According to the learned counsel, in 1988 RR, it was provided that only those DSPs, holding special educational qualification in automobile/mechanical engineering, would be considered for promotion whereas the impugned amendment notification is totally silent about any such educational qualification for the appointment of Superintendent of Police(CMT) from MPS Grade-II officers. According to the learned counsel, the doctrine of deemed repeal cannot be invoked in absence of any hint in the amended rules and also in the absence of en-cadrement of the remaining posts created for Motor Transport in the years 1979 and 1986.

9. In the case of Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court has made the following thought provoking observations in the matter of interpretation of statute:

The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognized canons of construction is that the legislature speaks its mind by use of correct expression and unless there is an ambiguity in the language of the provision the Court should adopt literal construction if it does not lead to an absurdity.

10. In the case of Sushil Kumar Sharma Vs. Union of India (UOI) and Others, , the Apex Court has held that courts can only interpret a law and cannot legislate it. Similarly, in the case of Sangeeta Singh Vs. Union of India (UOI) and Others, , the Hon''ble Apex Court reiterated the legal principle of maintaining the language of the legislation without any supplement from the judiciary in the following words:

10. Two principle of construction-one relating to casus omissus and the other in regard to reading the statute as a whole, appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which would not have been intended by the

legislature.

11. The principle of law relating to implied repeal of an enactment can also be understood in the light of the pertinent opinion given by Maxwell in his treatise "Interpretation of Statutes" which is reproduced below:

A general later law does not abrogate an earlier special one by mere implication. *Generalia specialibus non derogant*, or, in other words, "where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the Special Act.

12. Once Lord Denning had also observed that while dealing with a question as to when the judiciary should supplement the law, said that "a judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in this texture of it, they would have straightened it out? He must then do so as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

13. It is an admitted position that in the impugned notification there is no express stipulation about the repeal of 1988 RR and abolition of posts of motor transport officers, created in the year 1979 and 1986. Now, the question is whether these posts stand abolished and their Recruitment Rules stand impliedly or by implication repealed by virtue of amendment of MPS Rules.

14. In the case before me, there is no indication in the impugned notification dated 21.9.1991 that while en-cadring the post of Superintendent of Police (CMT), the special post of S.P. (MT) created vide order dated 20.9.1986 and the guidelines laid down for filling up the said post shall also stand repealed. I have already said earlier that 1991 amendment of MPS Rules has also not en-cadred the remaining posts created for motor transport. Had all the posts created for motor transport workshop in the year 1979 and 1986 been en-cadred in a lot with MPS Grade-I and Grade-II posts, a view could have been taken that the legislature had the requisite intention to abolish all the posts specifically created for Motor Transport Workshop. The argument of the learned Govt. Advocate that because of en-cadrement of the post of Superintendent of Police (MT) in the regular MPS-Grade-I services it has to be presumed that the post of Superintendent of Police (MT) created in the year 1986 would stand merged with MPS Grade-I cannot be accepted by the court in absence of en-cadrement of the remaining posts of motor transport officers and in the absence of repealing of 1988 RR. Had it been a repairable ambiguity in the 1991 amendment notification, the court might have done so, but the court cannot venture into re-legislating the impugned notification. It would be too risky to draw an extreme

presumption like that of repealing of a rule, without there being any such clear indication of the legislature. I am also of the view that if an amendment is read on the subjective satisfaction of the court it would amount to transgressing the settled and well defined barriers of judicial review.

15. In the impugned notification, there is no mention of 1988 RR applicable to the post of Superintendent of Police and Deputy Superintendent of Police (MT). In absence of any reference of the previous recruitment rules, the doctrine of "deem repeal" cannot be invoked. Besides this, there is also difference in the nomenclature of the posts. In the order dated 20.9.1986, the post of Superintendent of Police, Deputy Superintendent of Police and Inspector have been suffixed with (MT), whereas in the 1991 amendment notification, the newly en-cadred post is known as Superintendent of Police (CMT). In view of this prominent distinguishing feature in the 1979 and 1986 orders as well as 1988 requirement rules vis-a-vis 1991 MPS amendment rules, it is difficult to hold that in view of 1991 amendment all the posts created for Motor Transport Workshop ceased to exist along with its recruitment rules. I further hold that piece-meal abolition of a post, created with particular recruitment and with special recruitment rules, is not permissible by virtue of amendment of recruitment rules of a different service. In my view a separate notification is necessary to do so. As a corollary, it has to be held that the post of Superintendent of Police (MT) is still vacant and required to be filled-up by way of promotion from Deputy Superintendent of Police (MT) or by way of deputation as per the 1988 RR.

16. The second prayer of the petitioner relates to issuance of mandamus for promotion of the petitioner. According to the learned Counsel for the petitioner, two batches of DSPs recruited in the year 1986 and 1988 had already been promoted to the rank of Grade -I officers in the year 1997 whereas the promotion of the writ petitioner remained stagnant in the same cadre since 1986, till the time of filing of the writ petition in the year 1998. It is true that the post of Deputy Superintendent of Police (MT) which was held by the petitioner has been up-graded to the post of Addl. Superintendent of Police (MT) vide order dated 31.01.2000. However, according to the learned Counsel for the writ petitioner, during this period, many junior officers in the regular MPS Grade-II have been given independent charge of Superintendent of Police and the petitioner has become the victim of irrational interpretation of 1991 amendment of MPS Rules. According to the learned counsel, if the stand of the Government is accepted that now the post of S.P. (MT) has been merged in the regular MPS Grade-I cadre, it would amount to scraping the promotional avenues of the writ petitioner.

17. To buttress his point that there should be adequate promotional avenues in the service jurisprudence, the learned Counsel for the petitioner cited the judgment of Hon"ble Supreme Court rendered in the case of Raghunath Prasad Singh v. Secretary, Home (Police) Department, Govt, of Bihar and Ors. reported in 1988 (Supp.) SCC 519, the judgment rendered in the case of Council of

Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another, and the judgment of the Hon''ble Apex Court given in the case of State of Tripura and Others Vs. K.K. Roy, . In all these cases, the Apex Court is of the view that there should be promotional avenues for Government employees/officers since promotion is ordinarily considered to be an incidence of service.

18. I have already noted at the outset of the judgment that no counter-affidavit was filed by the respondents in the last more than 9(nine) years, despite several orders from the court. In the case of Bir Singh Chauhan Vs. State of Haryana and Another, , the Hon''ble Supreme Court has held that if the respondents failed to file counter-affidavit and produce record, the court can draw to a presumption about the correctness of the averments made in the writ petition. Same view has also been taken by the Gauhati High Court in the case of D. Nath Kakati v. Union of India reported in 1997 (2) GUT 150. I do not deem it necessary to multiply authorities on this point. In view of the above settled principle of law, the statements of the writ petitioner that he has been subjected to discrimination and inequality in the matter of promotion has to be accepted. I find that many police officers of the same batch or junior to the writ petitioner have been promoted long back. The sole promotional post of Superintendent of Police (MT) was not filled-up from the feeder post of Deputy Superintendent of Police (MT) with a wrong notion that the said post has been en-cadred with regular MPS Grade-I. I have already rejected the theory of deemed en-cadrement.

19. Fairness, reasonableness and transparency are the edifice of executive and administrative functions. The principle of natural justice is also a necessary concomitant for administrative functioning. However, this last doctrine is mostly pressed into service if the administrative authority performs a particular duty as a quasi-judicial body or if its decision requires application of judicial mind.

20. The Indian Judiciary is consistently improving the theory of fair-play. Without multiplying authorities on this doctrine, I think the following few trend-setting observations from the Hon''ble Supreme Court would suffice to draw the point:

In the case of Netai Bag and Others Vs. The State of West Bengal and Others, the Hon''ble Supreme Court has re-affirmed fairness in executive actions in the following words:

17. It has been consistently held by this Court that in a democracy governed by the rule of law, the executive Government or any of its officers cannot be allowed to possess arbitrary powers over the interests of the individual. Every action of the executive Government must be in conformity with reason and should be free from arbitrariness. The Government cannot be equated with an individual in the matter of selection of the recipient for its largesse. Dealing with the limits on the exercise of executive authority in relation to rule of administrative justice, Mr. Justice Frankfurter in *Vitarelli v. Seaton* (359 US 535) said:

An executive agency must be rigorously held to the standards by which it professes its action to be judged.... Accordingly, if dismissal from employment is

based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.

21. In the case of Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc., the Apex Court reiterated about the concept of probity in governance in the following lucid words:

36. The role model for governance and decision taken thereof should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but must create an impression that the decision making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice equity and fair play and has taken into consideration other matters of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate.

22. Keeping in mind the factual background of this case, I hold that the respondents are totally oblivious of the theory of promotional avenues in the service jurisprudence. The respondents have also adopted indifferent attitude for the promotion of the petitioner. As a whole, I hold that it is a fit case in which it can be held that the petitioner has been subjected to discrimination and unfair treatment in the matter of promotion, which amounts to infringement of fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India.

23. For the foregoing reasons, I hold that the impugned notification dated 21.9.1991 does not require any interference by this court, as it operates in different field. In other words, this notification, amending the Manipur Police Service Rules, 1965, has neither abrogated the post of Superintendent of Police (MT) created vide order dated 20.9.1986 nor the 1988 Recruitment Rule for the said post can be said to have been repealed. Hence, the respondents are directed to consider the case of the petitioner for his appointment in the post of Superintendent of Police(MT) at an early date. With the aforesaid directions, the writ petition stands dispose of.