
(1999) 09 GAU CK 0032
In the Gauhati High Court
Case No : Writ Petition (C) No. 840 of 1999

Mayanglambam Saratchandra Singh	Vs	APPELLANT
State of Mainipur and Others		RESPONDENT

Date of Decision : 08-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 2 GLT 425

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : L. Sharat Sharma and Rabei Singh, for the Appellant; R.S. Reisang and N. Kumarjit Singh, for the Respondent

Judgement

M.L. Singhal, J.—The Petitioner Shri Hayanglambam Saratchandra Singh and the Respondent No. 3 namely - Th. Sunila Devi have been working as Inspector in the Commerce and Industries Deptt., Govt. of Manipur. By an order dated 26th June, 1999, the Respondent Th. Sunila Devi has been promoted to the post of Superintendent (Handloom) on adhoc basis in the said Department for a period of 6 months. Though the Petitioner is senior to the Respondent No.3, Th. Sunila Devi, he has not been promoted to the said post. Aggrieved by the said order dated 26th June, 1999, the Petitioner Shri M. Saratchandra Singh has filed this petition under Article 226 of the Constitution of India for quashing the order of promotion of the Respondent No.3, Th. Sunila Devi and for his appointment to the said post.

2. I have heard Mr. K. Rabei Singh, learned Counsel for the Petitioner and Mr. R.S. Reisang learned Addl. Govt. Advocate for the State. Respondents as well as Mr. N. Kumarjit Singh, learned Counsel for the Respondent No.3.

3. Undisputedly, in the seniority list maintained in the Department, the Petitioner Sri Mayanglambam Saratchandra Singh is senior to the promotee, the Respondents No. 3. The contention of the Respondents is that the post of Superintendent is a selection post, as per the Office Memorandum dated 28th

October, 1998 issued by the Government of Manipur, the promotion to the post is to be made on the basis of seniority-cum-fitness. The case of the Petitioner was considered but he has not satisfied the said criteria and as such, the Petitioner has been denied promotion and the Respondents No. 3, Th. Sunila Devi has been allowed promotion.

4. By Office Memorandum dated 28th October, 1998 (Annexure-R/1), the Government of Manipur, Department of Personnel and Administrative Reforms issued guidelines for adhoc promotion. The relevant paras of the said Memorandum are extracted hereunder:

(i) Adhoc promotion are to be made from feeder cadre strictly on seniority-cum-fitness basis even for posts normally filled on selection basis.

(ii) While D.P.C. formalities may not necessarily be insisted, the appointing authority should ensure screening of the records of the Officer.

(iii) Only those who fulfil eligibility conditions for regular appointment should be considered for promotion on adhoc basis.

5. It is undisputed between the parties that the Petitioner, Shri Mayanglambam Saratchandra Singh fulfils the eligibility conditions for the regular appointment to the post of Superintendent (Handloom). The criteria, seniority-cum-merit, connotes that the employee who is the senior should be allowed promotion despite better merit of a junior, if he is not found otherwise unfit. Simply because the Respondent No.3, Th. Sunila Devi has earned "very good" entries during the years 1994-95, 1995-96, 1996-97 and 1997-99, though earlier in the year 1993-94 she had been given "good entry", the Petitioner Shri Mayamlambam Saratchandra Singh who has assessed "good" during all these relevant years cannot be denied promotion. On the criteria seniority-cum-merit, a person is to be promoted/appointed if he is senior in service and if he is not found otherwise unsuitable/unfit. In the present case, the Petitioner has not been found unfit otherwise on account of illigibility of adverse remarks during any of the years referred to above he has not earned any adverse remarks. The Respondents No. 1 and 2 are therefore not justified in denying the promotion to the Petitioner on the post of Superintendent (Handloom), Dept. of Commerce and Industries, Manipur. As observed by the Supreme Court in Government of A.P. and Anr. v. A.V. Venugopala Rao (1955) 1 SCC 179 even where promotions are made as interim in-charge arrangement, senior most eligible employee must be made in-charge so as to avoid heart burning among the rival claimants. The learned Counsel for the Respondent No.3 Th. Sunila Devi, Mr. Kumarjit Singh also argued that even in the year 1997 the Respondent No. 3 Th. Sunila Devi earlier has been made in charge Superintendent. The Petitioner did not challenge the said appointment, those very grounds on which the Petitioner is assailing the promotion, as such relief should not be granted to the Petitioner on the ground of delay and latches. As pointed out by the learned Counsel for the Petitioner, the said arrangement in the year 1997 was made only as in-charge and not by way

of regular appointment. The impugned promotion was made in the month of June 1999, the Petitioner without any delay has come to the Court and has challenged the promotion.

6. In the result, the Petitioner, Shri Mayanglambam Saratchandra Singh succeeds. The order dated 26th June, 1999 (Annexure-A/9) with regard to the promotion of the Respondent No.3. Th. Sunila Devi to die post of Superintendent (Handloom) in the Commerce and Industries Department is quashed and the Respondents No. 1 and 2 are hereby directed to appointment the Petitioner on adhoc basis to the said post of Superintendent (Handloom) on promotion.

However, the Respondents No. 1 and 2 are hereby directed to make regular selection to the post of Superintendent (Handloom) within a period of 3 (three) months from the date of receipt of this order from the Court. No order is passed as to costs.