
(2016) 03 GAU CK 0001
In the Gauhati High Court
Case No : W.P(C) No. 140 of 2015

Mrs. Lalthlamuani

APPELLANT

Vs

State of Mizoram and Ors.

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 GauLJ 603 : (2016) 6 GauLR 33 : (2016) 3 GauLT 54

Hon'ble Judges : Michael Zothankhuma, J.

Bench : Single Bench

Advocate : Mr. Vanlalnghaka, Advocate, for the Appellant; Mr. Samuel Vanlalhriata Chhangte, Govt. Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Michael Zothankhuma, J. (Oral) - Heard Mr. Vanlalnghaka, counsel for the petitioner. Also heard Mr. Samuel Vanlalhriata Chhangte, learned Govt. Advocate for the respondent Nos.1 to 4. As no one represents respondent Nos. 5 to 7, who have been deemed to be served notice, the matter is being heard against them ex-parte.

2. The petitioner's counsel submits that the petitioner was appointed as Junior Craft Instructress vide Office Order No. 559 of 1983 dated 18.4.1983. The petitioner's counsel submits that the petitioner was appointed as per the Mizoram Industries Department (Class III post) Recruitment Rules, 1975 after being recommended by the Departmental Promotion Committee (Non-Gazette) of Industries Department held on 18.2.1983.

3. The petitioner's counsel submits that the respondent Nos. 5 to 7 were appointed in different posts other than Junior Craft Instructress on different dates, which was after the petitioner's appointment on 18.04.1983. However, the service of the respondent Nos. 5 to 7 in those other posts was allowed to be counted as service in the post of Junior Craft Instructress w.e.f 18.2.1999,

6.12.1988 & 18.12.2007 respectively. The petitioner's counsel submits that even then, the petitioner is the senior most Junior Craft Instructress in the Department.

4. The Director of Industries issued the final inter-se-seniority of Junior Craft Instructress (K&T) under the Handloom & Handicraft Wing of the Department vide Office Order No. 129 of 2010 dated 19.1.2011 wherein only the respondent Nos. 5, 6 & 7 were shown at Sl. Nos. 2, 1 and 3 respectively. The petitioner being aggrieved by not being included in the final inter-se-seniority dated 19.1.2011 submitted a representation dated 23.6.2014 to the respondents regarding her illegal exclusion from the final inter-se-seniority list.

5. Thereafter, the Director, Industries Department issued Office Order dated 26.11.2014 wherein the respondent No.6 was promoted to the post of Senior Craft Instructress (K&T). The petitioner being aggrieved, in not being considered for promotion submitted another representation dated 23.1.2015 to the respondent Nos. 1 & 2. However, the respondents did not make any reply to the petitioner's representations and accordingly the present writ petition has been filed praying that the final inter-se-seniority list dated 19.1.2011 should be set aside and quashed and a new final inter-se-seniority should be published for Junior Craft Instructress showing the petitioner as the senior most Junior Craft Instructress. The petitioner has further prayed for setting aside and quashing the Order dated 27.11.2014, by which the respondent No.6 has been promoted to the post of Senior Craft Instructress (K&T).

6. Mr. Samuel Vanlalhriata Chhangte, learned counsel for the respondents submits that the final inter-se-seniority of Junior Craft Instructress was issued on 19.1.2011 and the petitioner submitted her representation against the same only on 23.6.2014. He therefore, prays that the settled position of seniority should not be disturbed at this stage. He, however admits to the fact that the petitioner was excluded and not considered at all during the time of publication of final inter-se-seniority dated 19.1.2011 or during the process of promotion of the respondent No.6 as Senior Craft Instructress.

7. I have heard the learned counsels for the parties and have perused the materials on record. The submission of the learned Govt. Advocate to the effect that the petitioner cannot be allowed to unsettle a settled position at this stage cannot be applied for the simple reason that the petitioner was excluded and not at all considered by the respondents at the time of making the final inter-se-seniority of Junior Craft Instructress dated 19.1.2011. No document has been produced by the respondents to show that the petitioner was made aware of the final inter-se-seniority list dated 19.1.2011 from 2011 to 2013, by which the petitioner was excluded. In the present case, the petitioner was to have been included in the seniority list but was excluded and, accordingly, the non consideration of the petitioner in the final inter-se-seniority list by the respondents is arbitrary.

8. The date of entry/appointment of the petitioner and the respondent Nos. 5 to 7 (which includes service in other posts) in the Grade of Junior Craft Instructress as can be seen from the materials on record, is reproduced below :-

- 1) Petitioner - 18.4.1983
- 2) Respondent No.5 - 18.2.1999
- 3) Respondent No.6 - 6.12.1988
- 4) Respondent No.7 - 18.12.2007

9. The dates of entry into the Grade clearly shows that the petitioner is the senior most amongst all the mentioned above Junior Craft Instructress and the petitioner should have found mention in the final inter-se-seniority of Junior Craft Instructress. Accordingly, any promotion made to the post of Senior Craft Instructress had to be done by considering the petitioner also. However, as the petitioner was not included in the final inter-se-seniority list dated 19.1.2011, the petitioner's case for promotion to the post of Senior Craft Instructress was not considered. It is settled position of law that the right to be considered for promotion is a fundamental right. In that view of the matter, the promotion of the respondent No.6 vide Office Order dated 26.11.2014 is bad in law and not sustainable.

10. A perusal of para 10 of the affidavit-in-opposition filed by the respondent Nos. 1 to 4 shows that the respondents had committed a lapse in not including the name of the petitioner in the final inter-se-seniority of Junior Craft Instructress.

Extract of para 6 and para 7 to 9 of the affidavit of opposition filed by the respondent Nos. 1 to 4 are reproduced below :-

"6. Omittance of her name was however, realised only when a representation was submitted by the petitioner on dated 23.6.2014. But there was no response from this office against her representation.

A copy of Office Order No. 59 of 2000 dated 22.3.2000 is annexed herewith and marked as Annexure-IV.

7. That with regard to the statements made in paragraph No.5 of the writ petition, I say that since, there was no response from this office against the representation submitted by the petitioner on 23.6.2014, the department processed the promotion of respondent No.6 as per the Final inter-se-seniority list and accordingly Pi Thankungi was promoted to the post of Senior Craft Instructress (K&T) on 26.11.2014.

A copy of Office order dated 26.11.2014. is annexed herewith and marked as Annexure-V.

8. That with regard to the statements made in paragraph No.6 of the writ petition, I say that on receiving the representation submitted by the petitioner on

23.1.2015, the General Manager, DIC, Aizawl was requested to clarify the status of Pi Lalthlamuani and a reply was received from the General Manager but there was no response from this office.

9. That with regard to the statements made in paragraph No.7 of the writ petition, I say that as indicated at para 4, the department had unintentionally excluded Pi Lalthlamuani and a lapse has been committed by the department in omitting Pi Lalthlamuani in the Seniority list."

11. In view of the fact that the respondents have categorically admitted that they have made a mistake in omitting the petitioner in the final inter-se-seniority and that the promotion of the respondent No.6 has been done without considering the case of the petitioner, the final inter-se-seniority list dated 19.1.2011 is hereby set aside. The Office Order dated 26.11.2014 promoting the respondent No.6 as Senior Craft Instructress is also set aside. The respondents are directed to publish a fresh seniority list of Junior Craft Instructress by including the petitioner and the respondent No.6 in the said list. Thereafter, the respondents shall consider the promotion of Junior Craft Instructress to the post of Senior Craft Instructress by considering all the persons who come within the zone of consideration.

12. The writ petition is accordingly disposed of. No cost.