(1998) 12 GAU CK 0004

In the Gauhati High Court

Case No : Writ Appeal No''s. 553 and 554 of 1995, 32 of 1996 and 369 of 1998

Nihio Kithan and Others — APPELLANT

Vs

State of Nagaland and Others — RESPONDENT

Date of Decision : 05-12-1998

Acts Referred:

Constitution of India, 1950 — Article 309

Nagaland Finance, Accounts and Audit Service Rules, 1982 — Rule 4, 4(1), 4(2), 5, 5(1)

Citation : (1998) 4 GLT 478

Hon'ble Judges : P.G. Agarwal, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : D.K. Mishra, H. Roy, K.C. Roy and N. Sinha, for the Appellant; A.K. Das and Toshibo Khro, for the Respondent

Judgement

1. These four appeals are against the judgment and order dated 16.6.95 of the learned single Judge passed in CR No 137(K) 94 of the Kohima Bench or this Court. Since common questions of fact and low arise in these appeals, they are being disposed of by this common judgment.

2. The relevant facts briefly are that the Appellants in WA No 553/95 and WA No 554/95 were appointed to the posts of Sub-Treasury Officer/Junior Accounts Officer (Class- II Gazetted) on deputation under the Directorate of Treasury and Accounts, Nagaland, in the year 1989. Similarly, the Appellant in WA(T) No 357/96 was appointed as Sub-Treasury Officer on deputation and posted under the Directorate of Treasury and Accounts, Nagaland, in the year 1991 and the Appellant in WA No 32/96 was appointed as Sub-Treasury Officer/Junior Accounts Officer on deputation and posted under the Directorate of Treasury and Accounts, Nagaland in the year 1993. Pursuant to the orders of appointment on deputation, they joined as Sub-Treasury Officer/Junior Accounts Officer and were continued on such deputation by orders of extension of deputation passed from time to time. Aggrieved by such extensions of deputation of the Appellants from time to time, the Accounts Service Association of Nagaland and the Association of

Subordinate Officers of Treasuries, Nagaland filed writ petition numbered as CR No 137(K)94 before the Kohima bench of this Court. The grievance of the said two writ Petitioners was that by such extension of deputation of the Appellants from time to time in different posts of Sub-Treasury Officers and Junior Accounts Officers in Class- II Gazetted cadre of the Nagaland Finance and Accounts Service, the promotions and other service prospects of the members of the Petitioner association were affected. The case of the writ Petitioners was that they did not have the necessary qualifications to be appointed to Class- II Gazetted cadre of the Nagaland Finance and Accounts Service and yet they have been continued on deputation in different posts belonging to the said cadre as a result of which service prospects of the members of the Petitioner association have been seriously jeopardised. The further grievance of the Petitioner association in the aforesaid Civil Rule was that although by a notification dated 8.3.90, the Governor of Nagaland constituted the Nagaland subordinate Finance, Accounts and Audit Services under the control of the Directorate of Treasury and Accounts, Finance Department, the service rules of the said service have not been framed under the proviso to Article 309 of the Constitution. By the impugned judgment and order dated 15.6.95 passed in CR No 137(K)94, the learned single Judge disposed of the said Civil Rule with the following directions.

(a) The Department shall frame and complete the Accounts Service Rules and Subordinate Officers of Treasuries (Since amalgamated) called the Nagaland Subordinate Finance, Accounts and Audit Service Rules within a period of 6(six) months from today.

(b) Till such time the Service Rules are framed, it is open to the Respondent Government to fill up the 50% Class-II post by direct recruitment but the same shall be done through competitive examination.

(c) Persons who are occupying the post of Class-II posts namely; STO/JAO on deputation shall be allowed to continue till the deputation periods are over. They shall not, however, be absorbed in the department without passing the part-I of the Sub-ordinate Accounts Service examination as enjoined under the rules.

(d) The service of the persons who are holding the post of STO/JAO) on deputation shall not be extended further after the deputation period are expired unless absorbed subject to the conditions laid down at(c).

3. Mr. D.K. Mishra, learned Counsel for the Appellants, submitted that the Appellants have no grievance whatsoever with regard to directions (a) and (b) given by the learned single Judge quoted above for framing service Rules for the Nagaland subordinate Finance, Accounts and Audit Services and filling 50% of the Class- II posts of the said service by direct recruits through competitive examination. But the Appellants are aggrieved by the directions (c) and (d) of the learned single Judge quoted above as by the said directions, the Appellants who were on deputation to the posts of Sub-Treasury Officer/Junior Accounts Officers of Class-II of the Nagaland Finance, Accounts and Audit Service Rules,

1982 will have to be reverted to the parent department after the deputation periods are over if they do not pass part-I of the Subordinate Accounts Examination as prescribed by the rules. Mr. Mishra referred to the provisions of the Nagaland Finance and Accounts Service Rules, 1982 and in particular Rules 5 and 8 thereof to show that the Appellants who had completed about 5 years experience in the Accounts/Treasury were entitled to be recruited to Class- II of the aforesaid service by a limited departmental examination. He stated by referring to paragraph-17 of the Appeal Memo in WA No 554/95 that as a matter of fact a limited departmental examination as envisaged by the aforesaid Rule 8 for recruitment to Class-II of the cadre was held in the year 1992 and results of the said examination were awaited, but before the results could be announced, the impugned judgement and order dated 15.6.95 of the learned single Judge was delivered holding that the deputationists who had not passed Subordinate Accounts Service examination could not be absorbed in Class- II of service. Mr. Mishra, therefore, prayed that the directions (c) and (d) of the learned single Judge in the impugned judgment and order be set aside so that the Appellants can be recruited to Class-II of the aforesaid service through departmental examinations as provided in Rules 5 and 8 of the aforesaid rules.

4. Mr. A.K. Das, learned Counsel for the private Respondents, in reply contended that the Appellants have not passed the part-I of the Subordinate Accounts Service examination and, therefore, they could not be absorbed in Class- II cadre of the aforesaid service as held by the learned single Judge in the impugned judgment and order. He further contended that the Appellants being deputationists cannot continue for indefinite period in Class-II of the aforesaid service blocking the service prospects of the members of the Petitioner association. Ms. Tashibo Khro, learned Counsel for the Respondents, on the other hand, relied on the provisions of the Nagaland Finance, Accounts and Audit Service Rules, 1982.

5. Rules 4, 5 and 8 of the Nagaland Finance, Accounts and Audit Service Rules, 1982 which are relevant for the purpose of disposal of these appeals are quoted herein below:

4. Strength of the Service.

(1) The number of posts, permanent and temporary, under each grade be such as may be determined by Governor from time to time.

(2) On the commencement of these rules; the strength of the service, permanent and temporary shall be as shown in schedule-I.

(3) An additional strength of 10% of posts from time to time in each grade or group of grades shall constitute the leave-cum training reserve and deputation reserve.

5. Method of recruitment.

(1) Recruitment to the class-II of the service shall be made by the following

methods, viz.

(a) by promotion of Treasury Accountants.

(b) by limited departmental examination, open to the ministerial officers as envisaged in Sub-rule (1) of Rule 8.

(c) by direct recruitment.

(2) The quota allotted to each source of recruitment under (a), (b) and (c) of Sub-rule (1) and the minimum educational standards and conditions shall be as mentioned in schedule- II

(3) Notwithstanding anything contained in Sub-rule (1) if, in the opinion of the Government the exigencies of the services so require, the Government may by order after consulting the commission, if necessary, adopt any method of recruitment to the service other than those specified in the said Sub-rule.

(4) If sufficient number of candidates for the post pertaining to any source of recruitment in Sub-rule (1) above, in a year are not available in course of recruitment in a calender year, the quota pertaining to that source shall lapse.

(i) Provided that the initial constitution of the service be made by absorbing those officers who are holding the posts encadered in the service vide schedule I (Rule 4) and schedule II (Rules 5(2).

(ii) Provided further that the State Government nominees who have undergone the course of subordinate Accounts service training conducted by the Indian Audit and Accounts Department shall be eligible for absolution in the service in appropriate grades in the following manner:

(a) Those who have passed both parts I and II of subordinate Accounts service examination shall be absorbed in the class -I (Junior Grade) of the service. Provided that all officers already holding Class-I post at the time of initial constitution and included in the Class-I of the service be exempted from appearing at the subordinate Accounts service examinations for retention of their grade only.

(b) Those who passed only part-I of the subordinate Accounts service examination shall be absorbed in the Class-II of the service.

(c) Those who have not passed either of the two parts shall be eligible for appointment to the class-II of the service on completion of 2 years of satisfactory service in Non-Gazetted posts under the Government, upto the time of initial constitution.

After the initial constitution of the Service, recruitment to the class-I of the service shall be done by the Departmental Promotion only.

8. Procedure for recruitment by limited Departmental Examination.

(1) A limited departmental examination for recruitment to the service shall be held at such interval as the appointing authority may, from time to time, decide in consultation with the commission for those with 5 years of continuous service/ experience in the accounts/Treasury and who are not more than 45 years of age on the first day of the year in which the examination is conducted and also subject to the other provisions embodied in Col. 6 of Schedule-II.

(2) The examination shall be conducted by the commission in accordance with the Rules and syllabus to be specified by the appointing authority in consultation with Nagaland Public Service Commission.

(3) The commission shall prepare a list of all candidates who have qualified in the examination in order of merit. The commission shall forward the name (s) in order of merit upto the number of vacancy/vacancies reported to them for recruitment from the list to the appointing authority for appointment. The list shall ordinarily remain valid for a period of one year from the date of commissioner''s letter of recommendations provided that every fifth vacancy in class-II grade of the service to be filled up by departmental candidate shall be filled in by promotion of suitable permanent Treasury Accountant (s) with not less than 5 years of service on the first day of the year of selection, as Treasury Accountant.

6. A reading of Sub-rule (2) of Rule 4 quoted above could show that on the commencement of the Rules, the strength of the service, permanent and temporary, was to be as shown in schedule- I to the Rules. Schedule- I to the Rules indicated that the strength of class-II officers (sub-Treasury officers and Junior Accounts officers) at the time of commencement of the Rules was to be 18 and proviso (i) to Rule 5 of the Rules quoted above indicated that the said 18 posts of class-II of the service at the time of initial constitution of the service were to be filled up by absorbing those officers who were holding the posts encadered in the service. But proviso (ii) to Rule 5 clarified that only the State Government nominees who had undergone the course of Subordinate Accounts service training conducted by the Indian Audit and Accounts Department were eligible for such absorption in the class-II of the service it they had passed only part-I of the Subordinate Accounts service examination and those who had not passed either of the two parts of the said examination were eligible for appointment to class-II service on completion of two years of satisfactory service in non-Gazetted posts under the Government up to the time of initial constitution. It is thus clear that the requirements of undergoing course of subordinate Accounts service training conducted by the Indian Audit and Accounts Department and the further requirement of passing only part -I of the subordinate Accounts service examination by an officer was for the purpose of absorbing him in class- II post of the service at the time of initial constitution of the service immediately after the commencement of the rules in the year 1982. The said provisions in proviso (ii) of Rule 5 apply to the absorption of the officers at the time of initial constitution of service under proviso (i) of Rule 5 soon after

the commencement of the Rules and has no application to the Appellants who were appointed on deputation to different posts of class- II service in the years 1989, 1991 and 1993.

7. After the initial constitution of the service by way of absorption of different officers in accordance with proviso (i) and proviso (ii) to Rule 5 of the rules, the State Government was to determine the number of posts, permanent and temporary, under each grade under sub- rule (1) of rule 4 of the Rules and the recruitment to such posts was to be made by the following three methods mentioned in Sub-rule (1) of Rule 5: (a) by promotion of Treasury Accountants (b) by limited departmental examination under Sub-rule (1) of Rule 8 and (c) by direct recruitment. Sub-rule (2) of Rule 5 further provided that the minimum educational standards and conditions for each of the aforesaid three sources of recruitment would be as mentioned in Schedule II of the rules. In Schedule II of the Rules, the quota for departmental examination had been fixed initially at 30% and the minimum educational qualification that was fixed was graduate of a recognised university. The said educational qualification, however, was not to apply to Treasury Accountants who were found suitable for promotion to the post of Class-II of the service. Rule 8(1) of the Rules further provided that a limited departmental examination for recruitment to the service was to be held at such intervals as the appointing authority in consultation with the Nagaland Public Service Commission decided for those with five years of continuous service/ experience in the accounts/treasury and who were not more than 45 years of age on the first day of the year on which the examination conducted. It is thus clear that those officers who were graduates of a recognised university and who had put in more than five years of service/experience in the accounts/treasury and who were not more than 45 years of age on the first day of the year on which the departmental examination was held could be recruited to Class-II of the service in accordance with the procedure for recruitment as provided in Rule 8 of the Rules.

8. Thus, if the Appellants were graduates of a recognised university and had put in more than five years of service/experience in the accounts/treasury and were not more than 45 years of age on the first day of the year on which the departmental examination was conducted, they could be recruited to the quota of posts in Class-II of the service for recruitment by limited departmental examination as fixed in Schedule II of the Rules. But such officers could not be recruited to Class-II of the service by limited departmental examination beyond the said quota fixed in Schedule-II of the Rules and their continuance in the posts of Class-II of the service in excess of said quota fixed in Schedule-II of the Rules will obviously affect the rights of Treasury Accountants to be considered for promotion to Class-II posts of the service and the rights of the persons seeking direct recruitment to Class-II posts of the service in the respective quotas for recruitment by promotion and direct recruitment fixed in Schedule II of the Rules. It appears, however, that the authorities have not followed the provisions of the aforesaid Rules 4, 5 and 8 of the Nagaland Finance, Accounts and Audit

Service Rules, 1982 and instead have continued various officers including the Appellants on deputation in different Class-II posts of the service as a result of which the writ Petitioners were aggrieved and they filed Civil Rule No 137(K)94 and the learned single Judge passed the impugned Judgment and order dated 15.6.95 directing the reversion of all the deputationists on expiry of their respective periods of deputation if they had not passed part-I of the subordinate Accounts Service examination. But as we have held above, proviso (ii) Rule 5 of the Rules requiring officers to pass part-I of the Subordinate Accounts Service Examination applies to only the officers who were holding the Class-II posts at the time of initial constitution of the service in the year 1982 and who were to be absorbed in Class II of the service in accordance with proviso (i) to Rule 5 of the Rules and did not apply to the Appellants who were appointed on deputation to different Class-II posts after initial constitution of the service and who could be recruited to the quota of the Class-II of the service by limited departmental examination in accordance with rule 5 and 8 of the Rules. It further appears that after the impugned judgment was delivered by the learned single Judge, the recruitment by limited departmental examination started in the year 1992 has been held up. The recruitment by way of limited departmental examination will now have to be completed in accordance with rules 5 and 8 of the Rules within a period of six months from the date of receipt of a certified copy of this judgment and till then the Appellants will not be reverted to their parents cadres.

9. Directions (c) and (d) of the impugned judgment and order dated 15.6.95 of the learned single Judge in CR No 137(K)94 are accordingly set aside and these appeals are disposed of with the direction that within six months from the date of receipt of a certified copy of this judgment either from the Appellants or from the private Respondents, the State Respondents will complete the recruitment by way of limited departmental examination in accordance with Rules 5 and 8 of the Nagaland Finance, Accounts and Audit Rules, 1982 to the quota fixed for such recruitment in Schedule I to the said Rules. We further direct that during the aforesaid period of six months the Appellants will not be reverted to their parent cadres from Class-II service of the Nagaland Finance, Accounts and Audit Service and after completion of the said period of six months, those among the Appellants are not recruited to the aforesaid Class-II service will be reverted to their respective parent cadres.

Considering, however, the fact and circumstances of the case, the parties shall fear their own costs.

