
(2005) 06 GAU CK 0046

In the Gauhati High Court

Case No : Writ Petition (C) No. 136 (AP) of 2004

Phukan Tech and Others

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 15-06-2005

Acts Referred:

Arunachal Pradesh Industries Officer Service Rules, 1999 — Rule 10, 33, 9
Constitution of India, 1950 — Article 309

Citation : (2005) 4 GLT 39

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : P.K. Tiwari, T. Pertin, J. Tali, J. Purkayastha and B. Loya, for the Appellant; B.L. Singh, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—Heard Mr. T. Pertin, learned Counsel for the Petitioners and also heard Mr. B.L. Singh, learned Senior Govt. Advocate, appearing on behalf of the Respondents.

2. The case of the Petitioners inter alia is that they are at present serving as Assistant Director of Industries under the department of Industries in the State of Arunachal Pradesh. The Petitioner No. 1 was appointed as Extension Officer in the department of Industries on 27.11.1980 by way of direct recruitment. Thereafter he was promoted to the rank of Assistant Director of Industries in the year 1991. Petitioner No. 2 was also appointed as Extension Officer in the department of Industries on 21.4.1981 by way of direct recruitment and subsequently, he was promoted to the rank of Assistant Director of Industries on 29.8.1981. Similarly, the Petitioner No. 3, who having the qualification of Pre-University Science with ITI certificate of Motor Vehicle mechanic was initially appointed as Motor mechanic Instructor at ITI under the Department of Industries and subsequently, he was appointed as Extension Officer in the department of Industries on 29.10.1983 on promotion. Thereafter, he was

promoted to the rank of Assistant Director of Industries on 24.8.1995. All the three Petitioners are under graduate and are continuing in the aforesaid capacities as Assistant Director of Industries.

3. The next course of promotion of the Petitioners from the post of Assistant Director of Industries to the Deputy Director of Industries, during the relevant time, was regulated and guided by a set of rules called the Deputy Director of Industries (Group "A" General Central Services Gazetted) Recruitment Rules, 1985 framed by the State Govt, vide notification No. IND/ESTT/72/81 dated 29.1.1995. In terms of the said rules, the post of Deputy Director of Industries was a selection post wherein 50% of the post was to be filled up by way of promotion from the feeder cadre of Assistant Director of Industries. There is no specific mention in the said rules about the educational qualifications to hold the promotional post of Deputy Director of Industries. However, the educational qualifications are mentioned/prescribed for the post of Deputy Director of Industries to be filled up by way of transfer/deputation/direct recruitment was fixed as minimum 50% marks in Degree in Engineering/P.G. Diploma in the disciplines mentioned for Assistant Director of Industries or M.A./M.SC. in Mathematics/Economics/Commerce/Statistics with at least 5 years experience in any Govt, private Engineering/Industrial concerned.

4. Thereafter by repealing the earlier rules, State Government published a new set of rules vide Notification No. IND/ESTT/72/81 (Vol-I) 1353 dated 22.7.1999. In terms of the Rules 9 and 10 of the said 1999 Rules, the educational qualifications for promotion to the post of Deputy Director of Industries is Master Degree in Economic/Statistics/Physics/ Chemistry/Mathematics or Bachelor Degree with honours in Economic/Statistics/Physics/ Chemistry/Mathematics of 10+2+3 years Diploma with 50% marks in Electrical/Mechanical/Electronic Engineering or Degree in Business Administration/for ST candidates were also prescribed.

5. As per Rule 33 of the said 1999 Rules, all recruitment rules for the post/grades included in the service, as in force prior to commencement of these rules, in the department are repealed. The aforesaid 1999 Rules is known as "The Arunachal Pradesh Industries Officer Service Rules, 1999". Being aggrieved by prescribing the educational qualifications for promotion to the rank of Deputy Director of Industries, the Petitioners have challenged the aforesaid 1999 Rules in this writ petition.

6. An affidavit-in-opposition has also been filed on behalf of the Respondents wherein at para 7, it is stated inter alia that the qualification for direct recruitment to the post of Assistant Director of Industries as mentioned in the Arunachal Pradesh Industries Officers Service Rule 1999 has been amended as graduate in any discipline from a recognised university vide notification dated 28.2.2003 and this is the minimum qualification prescribed for appointment as Assistant Director of Industries, a Group "B" Gazetted post as well as for promotion to the post of Deputy Director of Industries Joint Director of Industries

which are group "A" Gazetted posts in conformity with the dignity and status of the posts and also to keep uniformity with other Departments. Similar submission has also been made at para 9 of the affidavit and stated that it is the policy matter of the Govt, and the Court should not interfere with it.

7. Mr. Pertin, learned Counsel for the Petitioners has submitted that in the Textile and Handicrafts Department which was with the Department of Industries before bifurcation as a separate department, under graduates are enjoying such promotion and no enhancement of educational qualification so far it relates to the promotion of such higher rank, has been incorporated and accordingly, the impugned 1999 Rules is arbitrary and discriminatory as higher educational qualifications have been prescribed so far the Petitioners department. It is further stated that the ground stated at para 7 of the affidavit-in-opposition filed by the Respondents is not sufficient to counter the allegation made by the Petitioners.

8. I have considered the rival submissions made by the parties. Framing of recruitment Rules is within the domain of the employer. Prescription of qualification is the prerogative of the State Govt, in respect of promotion/recruitment to the post or next higher grade. It is open for the appointing authority to lay down the requisite qualification to recruit a person to the govt, service as this pertains to the domain of the policy decision of the State. References for such proposition can be made to the decision of the Apex Court in the case of the The Commissioner, Corporation of Madras Vs. Madras Corporation Teachers" Mandram and others, Similar view was also been expressed by the Apex Court in the case of All India Judges" Association and others Vs. Union of India and other, ; V.K. Sood Vs. Secretary, Civil Aviation and others, Hon" Hari Shankar Vs. State of Rajasthan, as follows:

Though the Court, it is stated, is the expert of experts, it is proper to take note of its limitations. Realization of this situation has led to a series of pronouncements where this Court has reiterated the position that matters involving expertise should be left to be handled by expert bodies.

What should be the qualification for a post is a matter for administration to decide and it is the prerogative of the employer.

9. Thus it is the rule making authority or for the Legislature to regulate the method of recruitment, prescribe qualification etc. for a particular post. It is open to the President or the authorized person to under take such exercise and it not the province of the Court to trench into and prescribe qualifications in particular when the matters are of the technical nature. Reference is made in the case of V.K. Sood Vs. Secretary, Civil Aviation and others, That apart the post of Deputy Director of Industries is a higher post in the hierarchy. It is of gazetted status. Such post entails higher responsibility with the duty of framing and formulating various decisions in the Department on such consideration, attaching higher educational qualifications as prescribed by 1999 Rules cannot be said to be

arbitrary or illegal.

10. Situated with the aforesaid proposition of law vis-a-vis the facts and circumstance of the present case, I do not find any infirmity or illegality in the impugned 1999 Rules known as "The Arunachal Pradesh Industries Officer Service Rules, 1999 Preliminary" published vide notification No. HMD/ESTT/72/81 (Vol-I) 1353 dated 22.7.1999. None of the provision of the said Rule is violative of any of the provision of the Constitution. It was found under Article 309 of the Constitution by the competent authority and is not ultravires to the Constitution.

11. Accordingly, in view of the aforesaid discussions, this writ petition stands dismissed. No order as to costs.