

(2009) 03 GAU CK 0018

In the Gauhati High Court

Case No : Writ Petition (C) No. 422 (AP) of 2007

Prasanta Das

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 20-03-2009

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2009) 5 GLT 486

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : P.K. Tiwari, J. Purkayastha, A. Singh, A.K. Singh and S. Tapin, for the Appellant; R.H. Nabam, for the Respondent

Judgement

P.K. Musahary, J.—Heard Mr. P.K. Tiwari, learned Counsel for the Petitioner and Mr. R.H. Nabam, learned Senior Govt. Advocate for the Respondent authorities 1-3.

2. Briefly stated, the material facts of the present case are that the Petitioner, a matriculate, was initially appointed as a Radio Mechanic and joined in the said post on 30.10.1987, in the revised pay-scale of Rs. 4500-7000/- p.m. The Government of Arunachal Pradesh, under provision of Article 309 of the Constitution of India, framed the Information & Public Relations Technical Establishment Rules, 1973, for recruitment to Class-III, Non-Gazetted Technical Post in the Directorate of Information & Public Relations, Arunachal Pradesh Administration. Under the said Rules, the post of Technician, Class-III, Non-Gazetted, is to be filled-up by promotion on the basis of seniority-cum-merit from amongst the Radio Mechanics in the said Department having minimum educational qualification of matriculate and having passed the Radio Mechanism Course/Radio Engineering Course from recognized Institution plus 10 years experience as Radio Mechanic. The private Respondent No. 4, a non-matriculate, entered in service as Projector Operator w.e.f. 28.07.1981 in the Department of IPR & Printing, in the revised pay-scale of Rs. 3050-4590/- p.m. and he was

subsequently appointed on promotion to the post of Technician-cum-Lightman on 25.11.1988 in the revised pay-scale of Rs. 4500-7000/- p.m. in the Songs & Drama Unit of the said Department. The post of Technician-cum-Lightman is an isolated post and does not belong to the cadre of Technician. A seniority list of Radio Mechanics, as on 19.02.1991, was circulated wherein the name of the Petitioner was shown at serial No. 15 and during the period from 1987 to 2004, all the Radio Mechanics placed at serial Nos. 1-14 in the said seniority list were appointed/promoted to the post of Technician in conformity with the provisions of the aforesaid Rules of 1973. A vacancy in the post of Technician arose during the period 2004-05 and the Petitioner was expecting appointment/promotion to the said post. In the meantime, the Department of IPR was bifurcated and a new Directorate namely the Department of Art & Culture came into existence. By a notification dated 17.01.2006, as many as 22 Staff viz., Producer, Instructor and Staff Artist were transferred from the Department of IPR to the newly created Department of Art & Culture alongwith their posts. By another notification dated 30.03.2006, the Chief Secretary to the Government of Arunachal Pradesh, transferred the post of Technician-cum-Lightman from the Department of IPR to the Directorate of Art & Culture along with the post in the pay-scale of Rs. 4500-7000/- p.m. w.e.f. 01.04.2006 to be filled-up by the Directorate of Art & Culture. But before the transfer of the said post to the Directorate of Art & Culture, the Respondent No. 4 was transferred from the Songs & Drama Unit to the Department of IPR against the vacant post of Technician in the pay-scale of Rs. 4500-7000/- p.m. vide impugned order dated 30.03.2006 (Annexure-P/5) by invoking the provision of FR-15 with all consequential benefits.

The Petitioner came to know about the same sometime in the month of October 2006 and being aggrieved by the said order, he submitted a representation dated 30.10.2006, through proper channel, to the Respondent Director followed by several reminders in that regard. The Petitioner received a reply from the Deputy Director of IPR only on 19.03.2007 wherein it was informed that consequent upon the decision of the State Government for transfer of Songs & Drama Unit from the Directorate of IPR & Printing to the Department of Art & Culture, the services of private Respondent No. 4 who was working as Technician-cum-lightman in the Songs & Drama Unit was transferred in the identical scale of pay of Technician by invoking the provision of FR-15 to utilize his service in the Directorate of IPR & Printing. In the aforesaid letter dated 19.03.2007, it was mentioned that the Respondent No. 4 was absorbed against the post of Technician and was brought on promotion. Even after transfer of Respondent No. 4 to the Directorate of IPR & Printing, the Petitioner was placed at serial No. 1 in the provisional gradation list of Radio Mechanics as on 09.05.2007 circulated by the Respondent authorities. Being the seniormost Radio Mechanic, the Petitioner has a better claim than Respondent No. 4 for being appointed/promoted to the post of Technician. His case not being considered by the Respondent authorities, the Petitioner has approached this Court for quashing/setting aside the impugned Memorandum dated 30.03.2006 (Annexure-P/5) and letter dated 19.03.2007

(Annexure-P/9) and also for issuing a mandamus directing the Respondent authorities to transfer Respondent No. 4 to the Directorate of Art & Culture and to adjust the said Respondent against the erstwhile post of Technician-cum-Lightman.

3. Mr. Tiwari, learned Counsel for the Petitioner, submits that the Respondent No. 4, being a non-matriculate, lacks in minimum educational qualification to hold the post of Technician and the Respondent authorities have acted in a discriminatory and arbitrary manner in accommodating the Respondent No. 4 against the interest of the Petitioner, who being the seniormost Radio Mechanic, a matriculate and having the requisite experience, is eligible for holding the post of Technician on promotion. The appointment of Respondent No. 4 to the post of Technician is in blatant violation of Rules of 1973 which provides method for recruitment to the aforesaid post. The said Rules specifically provides that the post of Technician should be filled-up by promotion on the basis of seniority-cum-merit from amongst the Radio Mechanics having qualification of matriculate/HSLC examination pass from recognized University/Board of Education plus passing the Radio Mechanism Course/Radio Engineering Course from a recognized Institution and also having served as Radio Mechanic for a period of 10 years under the Directorate of IPR & Printing. The Respondent authorities, according to Mr. Tiwari, learned Counsel, misunderstood and misinterpreted the provisions of the aforesaid Rules of 1973 and brought the Respondent No. 4 from outside the cadre on transfer to the post of Technician so as to block the Petitioner's chance of appointment to the post of Technician which is arbitrary, unreasonable and discriminatory. The further submission of Mr. Tiwari, learned Counsel, is that FR-15 does not provide for absorption. It provides only for transfer from one post to another having identical pay-scale for a temporary period. The impugned order dated 30.03.2006 is absolutely silent about the absorption of Respondent No. 4 in the post of Technician in the Directorate of IPR & Printing.

4. Mr. R.H. Nabam, learned Senior Govt. Advocate contradicts the submissions made by the learned Counsel for the Petitioner. Based on the averments made in the affidavit-in-opposition filed on behalf of the Respondent authorities 1-3, Mr. Nabam, learned Senior Govt. Advocate, submits that prior to appointment as Technician-cum-Lightman, the Respondent No. 4 was working as Projector Operator in the Directorate of IPR and thereafter, he was appointed in the post of Technician-cum-Lightman carrying identical pay-scale of Radio Mechanic which is Rs. 4500-7000/- p.m., that too, after duly attending the entry level interview viz., practical examination followed by viva-voce test. The post of Technician-cum-Lightman, was, no doubt, transferred to the Directorate of Art & Culture alongwith the post & pay-scale of Rs. 4500-7000/- p.m. w.e.f. 01.04.2006, but it was, however, retained in the Directorate of IPR & Printing, by invoking provision of FR-15 in the identical scale of pay of Radio Mechanic. This was done to utilize the services of Respondent No. 4 in the said Directorate of IPR & Printing. The learned Senior Government Advocate, however, clarifies that the Respondent No.

4 was not promoted to the said post of Technician. He was rather adjusted and the typographical error in the communication dated 19.03.2007 should be read as "adjustment" instead of absorption. The learned Senior Government advocate further submits that Respondent No. 4 was adjusted in the post of Technician in the interest of public service and should not be read as absorption.

Mr. R.H. Nabam, learned Senior Govt. Advocate, further submits that the Petitioner has been provided with the benefit of Assured Career Progression (ACP) Scheme and has been given the first benefit in the time scale of pay of Rs. 5500-9000/- p.m. which is identical with the scale of pay of Technical Supervisor i.e. the next higher post for both Radio Mechanic as well as Technician whose pay scales are Rs. 4500-7000/- p.m.. He further contends that both are getting the identical pay-scale and the scales of pay of these posts have been clubbed together at Rs. 4500-7000/- p.m. This being the position, according to Mr. Nabam, learned Senior Govt. Advocate, the Petitioner has not been denied the benefit of financial upgradation as both the post of Radio Mechanic and Technician are one and same with identical pay-scale and as such, the adjustment of Respondent No. 4 cannot be treated as promotion to the post of Technician and therefore, the Petitioner's position for promotion to the next higher post i.e. Technical Supervisor will not be affected due to such adjustment of Respondent No. 4 in the aforesaid post of Technician. It is also submitted that there is no ground for entertaining apprehension by the Petitioner that his future promotion to the next higher post i.e. Technical Supervisor, has been blocked and his case would not be considered for promotion to the said post. The petition is devoid of merit and as such, according to Mr. R.H. Nabam, learned Senior Govt. Advocate, the same is liable to be dismissed with cost.

5. From the averments made in the affidavit-in-opposition filed by the State Respondents 1-3, it is discernible that the Government of Arunachal Pradesh took a decision to transfer the services of 22 staff of Songs & Drama Unit to the Directorate of Art & Culture but on the other hand, the service of Respondent No. 4 has been adjusted and placed under the Directorate of IPR & Printing in the post of Technician-cum-Lightman, the post which was withdrawn from the Songs & Drama Unit and retained in the Directorate of IPR & Printing which is also a part of the decision of the Government after bifurcation of the Directorate of IPR. The said decision, in my considered view, is a policy decision of the Government, which cannot be questioned in a writ proceeding. Moreover, the State Respondents in their affidavit-in-opposition have clarified that the Respondent No. 4 has been adjusted and not absorbed in the post of Technician-cum-Lightman. Such adjustment, according to the Respondent authorities, was done to utilize the service of Respondent No. 4 inasmuch as the scale of pay of Radio Mechanic and Technician-cum-Lightman are identical as both these posts carry the pay-scale of Rs. 4500-7000/- p.m. The adjustment of Respondent No. 4 in the post of Technician-cum-Lightman would not affect the status and position of the Petitioner as the Respondent authorities have already provided him with the benefit of Assured Career Progression (ACP) scheme and allowed him to draw

salary in the higher scale of pay of Rs. 5500-9000/- p.m. which is identical with the pay-scale of the next higher post namely Technical Supervisor. On the other hand, the Respondent No. 4 has been retained/adjusted in the post of Technician in the scale of pay of Rs. 4500-7000/- p.m. and he is enjoying lesser scale of pay than what the Petitioner is presently enjoying.

6. The adjustment of Respondent No. 4 in the post of Technician has been seriously objected to by the Petitioner on the ground of educational qualification inasmuch as he is not a matriculate. It is to be examined now whether a less qualified person can be promoted/accommodated/adjusted to a post for which certain qualifications have been prescribed under the Recruitment Rules. It is an admitted position that the post of Technician-cum-Lightman in the Songs & Drama Unit is/was an isolated post and does not belong to the cadre of Technician but it carries identical pay-scale with the post of Radio Mechanic. If it is to be accepted that as a matter of policy decision, the service of Respondent No. 4 has been adjusted and placed under the establishment of Directorate of IPR & Printing after bifurcation, the requirement of minimum educational qualification of passing the matriculation stood waived and his appointment/adjustment to the post of Technician cannot be questioned for not having passed the matriculation.

7. It is easily appreciable that the Petitioner is entertaining an apprehension that he may again be deprived of promotion to the next higher post of Technical Supervisor, for, both the posts of Radio Mechanic and Technician are the feeder posts for promotion to Technical Supervisor. It is to take note that for any promotion to higher post, there should be a selection by duly constituted Departmental Promotion Committee (DPC) or Public Service Commission (PSC) as per the provision of relevant Recruitment Rules. The basis of promotion may be either on seniority-cum-merit or merit-cum-seniority taking into account the service record of all the candidates concerned. The consideration for promotion to such next higher post would be made by the appropriate authority at the relevant time. That stage is yet to come and as such, no relief can be granted to the Petitioner at this stage on the basis of his apprehension.

8. Having considered the aforesaid facts and circumstances and also the rationale behind the adjustment of Respondent No. 4. in the post of Technician and also the admitted position that the Petitioner has been provided with the financial benefits by way of granting the first benefit of Assured Career Progression (ACP) scheme, as discussed earlier, I find no reason for quashing the impugned memorandum dated 30.03.2006 (Annexure-P/5) and letter dated 19.03.2007 (Annexure-P/9) and to transfer the Respondent No. 4 back to the Directorate of Art & Culture against his erstwhile post of Technician-cum-Lightman, for any order passed to that effect would be beyond the scope of judicial review and the established principle of law that the writ court should not interfere with the policy decision of the Government.

9. In view of the above position, I am disinclined to issue any certiorari/

mandamus as demanded by the Petitioner. However, as regards the prayer for issuing a mandamus directing the Respondent authorities to consider the Petitioner's case for promotion to the next higher post i.e. Technical Supervisor, the Respondent authorities are directed to consider his case for promotion, as per the existing Rules and procedure whenever a vacancy arises, to the said post, although he is yet to be promoted to the feeder post namely the post of Technician as he has already been provided with the pay-scale of Technical Supervisor under the Assured Career Progression (ACP) scheme. In other words, the Petitioner should be deemed to have been holding the feeder post of Technician.

10. With the aforesaid observations and directions, this writ petition stands allowed in part, as indicated above. There shall be no order as to cost.