
(2003) 07 GAU CK 0039
In the Gauhati High Court
Case No : W.A. No. 382 of 2001

Pu. Zothansanga and Another	Vs	APPELLANT
Vanladika and Others		RESPONDENT

Date of Decision : 21-07-2003

Acts Referred:

Mizoram Engineering Service Rules, 1995 — Rule 18(7), 2

Citation : (2003) 3 GLR 652

Hon'ble Judges : P.P. Naolekar, C.J.; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : K.P. Pathak and S.K. Sarma, for the Appellant; A. Dasgupta, for the Respondent

Final Decision : Allowed

Judgement

P.P. Naolekar, C.J.—The writ petitioners, who are Respondent Nos. 1 to 5 in the present appeal, have filed the writ petition challenging the recommendation made by the Mizoram Public Service Commission, whereby the Respondent Nos. 5 and 6 in the writ petition, herein the appellants, have been shown at Serial Nos. 1 and 2 for posting and promotion on the post of Executive Engineer in Grade IV of the Mizoram Engineering Service under Public Works Department.

2. The facts of the case, in brief, are that admittedly the appellants and the respondents herein were holding the post of Sub Divisional Officer/Assistant Engineer in Mizoram Public Works Department. Their service conditions are governed by the Mizoram Engineering Service Rules, 1995. Under the relevant rules, the promotion to the post of Grade IV of Executive Engineer is to be effected from Grade V of Assistant Engineer/Sub Divisional Officer on the recommendation of the Mizoram Public Service Commission. The Commission has taken up the matter of promotion to the post of Executive Engineer (Civil) and recommended the writ petitioner Nos. 1, 2 and 3, namely, Vanlaldika, R. Lalhlira and Lalthanzuala Ralte and the Respondent Nos. 5 and 6, namely, Zothansanga and Zoramliana for promotion and accordingly by order dated 17.12.1999 they

were promoted. The Commission has recommended Respondent Nos. 5 and 6, i.e., present appellants at Serial Nos, 1 and 2, they being holders of postgraduate degree and all things being equal between the writ petitioner Nos. 1, 2 and 3 and the Respondent Nos. 5 and 6. Later on, the Commission again took up the matter of promotion to the post of Executive Engineer (Civil) in the department and recommended writ petitioner Nos. 4 and 5, namely, R. K. Vanlalrema and Zothansanga Intoatea for promotion and accordingly by order dated 7.2.2002 they were also promoted. While promoting the Respondent Nos. 5 and 6 and the writ petitioner Nos. 1 to 5, respondent Nos. 5 and 6 were shown senior to the writ petitioner Nos. 1 to 5. That has given cause for filing a writ petition.

3. The learned Single Judge while interpreting Rule 18(7) of the Mizoram Engineering Service Rules, 1995 has held in paragraph 6 as under:

"6. Rule 18(7) of the Rules is clear and unambiguous in its content and meaning. The said rule has been further clarified by the State Government in its communication to the Public Service Commission indicating the manner in which the aforesaid Rule 18(7) is to be applied by the Commission at the time of making its recommendation. In the absence of any materials before this Court to indicate that the Government had performed the exercise of declaring that the Post-Graduate degree possessed by the Respondent Nos. 5 and 6 are relevant to the works involved in the promotional posts and also in the absence of any Government order indicating that the promotional posts for which the selection was held have been specified and identified for conferring any additional advantages on account the Post-Graduate qualifications, I am unable to hold that the recommendations made by the Public Service Commission in favour of the Respondent Nos. 5 and 6 in preference to the writ petitioners and the consequential promotional orders passed in favour of the Respondent Nos. 5 and 6 have the sanctity of law which can merit approval of the Court. In view of the above, this court is of the considered view that the petitioners have been wrongly overlooked and by possessed by the authority in the matter of promotion to Grade-IV of the service on the basis of the selection held on 22nd June, 1999. As in the meantime, all the petitioners as well as the Respondent Nos. 5 and 6 have been promoted, the authority will now pass necessary orders ante dating the promotion of the petitioners and/or placing them above the Respondent Nos. 5 and 6 in the merit list prepared as well as in the promotion order dated 17th December, 1999 and on that basis, determine their seniority in the higher post."

4. Thus, according to the learned Single Judge in the absence of the Government order indicating that the promotional posts for which the selections were held have been specified and identified for conferring any additional advantage on account of post-graduate qualifications, the Respondent Nos. 5 and 6 could not have gained any advantage over the writ petitioners and they being juniors in the feeder post to the writ petitioners, they should be placed below the writ petitioners in the order of promotion and consequently the writ petition was

allowed.

5. Aggrieved by the said order, the present appeal is filed. It is contended by Mr. K.P. Pathak, learned counsel for the appellants that the learned Single Judge has not taken into consideration the fact that the Mizoram Engineering Service Rules, 1995 are applicable to the Public Works Department, Public Health Engineering Department, Power and Electricity Department and any other department as the Government may consider appropriate from time to time and, thus, Rule 18(7) of the Rules, 1995 has a reference to the different departments to which promotional exercise has been made by the Commission. Rule 18(7) is to be read in that perspective. It is further argued by Mr. Pathak, learned counsel for appellants that in any case, the writ petitioner Nos. 4 and 5, who have been promoted on a later date cannot be equated with Respondent Nos. 5 and 6, i.e., present appellants, there being two different selection process and the writ petitioner Nos. 4 and 5 have been promoted in a selection process undertaken on a later date, they cannot be shown senior to the Respondent Nos. 5 and 6.

6. Before considering the submissions made by the learned counsel for the appellants, it may be noted herein that although the State has represented no counsel has appeared for the respondents-writ petitioner Nos. 1 to 5. Learned counsel for the State has supported the argument advanced by the learned counsel for the appellants.

7. Before we consider the question raised by the learned counsel for the appellants, it would be appropriate to quote the relevant Rules of Mizoram Engineering Service Rules, 1995.

"Rule 2 : These rules shall be applicable to all persons appointed in the service either before or after promulgation of these rules in -

(1) The Public Works Department,

(2) The Public Health Engineering Department,

(3) The Power and Electricity Department, and

(4) Any other Department as the Government may consider appropriate from time to time.

Rule 18. (1) All vacancies in Engineering Grade IV and above shall be filled by promotion by selection as prescribed in Schedule "B".

(2)

(3)

(4)

(5)

(6)

(7) "Other things having been equal preference may be given to postgraduate holders for promotion to higher graders at various levels, provided that such a degree is relevant to the works concerned."

8. It is apparent from these rules that Mizoram Engineering Service Rules, 1995 has an application to the Public Works Department, Public Health Engineering Department, Power and Electricity Department on the date the promotion exercise was undertaken by the Public Service Commission. Sub-rule (7) of Rule 18 of the Rules 1995 gives an advantage in a post-graduate degree holder in promotion to the higher grade having all things being equal if he holds a degree which is relevant to the works concerned, that is department concerned that would be the relevant department for which the promotion exercise is undertaken. Under Sub-rule (7) of Rule 18 of the Rules, 1995, if the other things are equal, the post-graduate degree holder will have a march over the other candidates in the matter of promotion, if his post-graduate degree has relevant with the work, which are required to be performed by the incumbent in that department. In the present case, it is an admitted fact that the promotion was made in the Public Works Department and respondent Nos. 5 and 6, the appellants herein, are the holders of postgraduate degree in Civil Engineering which is a subject relevant and connected with the work carried in Public Works Department.

9. Sub-rule(7) of the Rule 18 has to be read with Rule 2 of the Mizoram Engineering Service Rules, 1995 and the reference "such a degree is relevant to the works concerned" would necessarily be in regard to the department to which the promotion process is undertaken. If the postgraduate degree is in the Civil engineering, it will be a qualification under Sub-rule (7) of Rule 18 for the Public Works Department, if the post-graduate degree is in the electrical engineering, it will be a qualification under the Rules for the Power and Electricity Department. The rule is specific and clear that post graduate degree should have relevance to work concerned. It has a relevancy to the department in which the promotion is to be made. Rules of 1995 have prescribed postgraduate qualification department-wise and, thus, the Government is not required to issue any specific order or notification in that regard. On consideration of the Rule 2 and Sub-rule (7) of Rule 18, we do not find any infirmity in the process of selection in which the respondents 5 and 6 were given preference and they were shown senior to the writ petitioner Nos. 1 to 5. Since they are holders of post-graduate degree, which has been taken into consideration by the Public Service Commission, while promotion exercise was made, the candidates otherwise being equal.

10. In view of our aforesaid findings and decision, we need not consider the other questions raised by the learned counsel, namely, the selection for promotion being given in different meetings, cannot be equated for assigning inter-se seniority amongst the respondent Nos. 5 and 6 and writ petitioner Nos. 4 and 5.

11. For the aforesaid reasons, the appeal is allowed. The judgment passed by the

learned Single Judge is set aside. However, under the circumstances of the case, there shall be no order as to cost.