
(1997) 01 GAU CK 0012
In the Gauhati High Court
Case No : Civil Rule No. 591 of 1996

R.K. Tamphasana Devi (Smt.)	Vs	APPELLANT
State of Manipur and Others		RESPONDENT

Date of Decision : 22-01-1997

Acts Referred:

Citation : (1999) 1 GLT 442

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

Bench : Single Bench

Advocate : I. Lalitkumar Singh, for the Appellant; Ashok Potsangbam, A.G. and N. Ibotombi Singh, for the Respondent

Judgement

P.K. Sarkar, J.—The present writ application has been filed by Smt. R.K. Tamphasana Devi against the State of Manipur and 4 (four) others seeking a direction to quash the DPC proceedings dated 24.6.1996 and consequential promotion order dated 25.6.96, and also for a direction to consider case of the Petitioner for promotion to the post of Inspector (Handloom). The Petitioner joined service in the Manipur Development Society (MDS) a Government of Manipur undertaking as Social Mobiliser on 24.11.87. A seniority list was published by the Manipur Development Society on 31.10.1991 in respect of Social Mobilisers wherein the name of the Petitioner was shown in Sl. No. 38 and name of the Respondents-4 and 5 were shown at Sl. Nos. 40 and 42 respectively. Thereafter, the Petitioner was promoted to the post of Supervisor (Handloom) on 2.2.1993. Along with the Petitioner five other persons were also promoted to the post of Supervisor (Handloom). According to merit the Petitioner has been shown at SL. No. 3 of the promotion order. The Manipur Development Society prepared a seniority list on 31.1.96 in respect of the Supervisors (Handloom) and the Petitioner was shown at Sl. No. 3 and Respondents - 4 and 5 were shown at Sl. Nos. 4 and 5. The next higher post for Supervisors (Handloom) is the post of Inspector (Handloom) and Recruitment Rules for the post of Inspector (Handloom) provide that the said post is to be filled up by promotion from

amongst the Supervisors (Handloom) with three years service on the basis of seniority-cum-merit or by selection from amongst the social mobiliser with three years regular service on the basis of seniority cum-merit failing which by direct recruitment. The Respondent No. 2. Manipur Development Society hold a DPC on 24.6.96 for recommending eligible Supervisor (Handloom) for promotion to the four posts of Inspector (Handloom) on regular basis. It is, further, stated since the Petitioner is in serial No. 3 of the seniority list published by the Respondent No. 2, her name should have been recommended for one of the four posts of Inspectors (Handloom). It is further, alleged that the DPC has committed an illegality by not recommending the name of the Petitioner. It is also alleged that the Respondents-4 and 5 who were junior to the Petitioner in service have been illegally recommended and appointed in the post of Inspector (Handloom). The Petitioner having felt aggrieved by the recommendation of the DPC and consequential promotion order of her juniors (Respondents-4 and 5) in the post of Inspector (Handloom), the Petitioner submitted a representation to Respondent No. 2 for staying the promotion order of Respondents-4 and 5 and also to consider her case for promotion to the post of Inspector (Handloom). The representation of the Petitioner has not been favourably considered by the Respondent No. 2. It is, further, stated in the petition that the post of Inspector (Handloom) is to be filled up by promotion from amongst the Supervisors (Handloom) on the basis of seniority-cum-merit. The Petitioner being senior to Respondents-4 and 5 should have been promoted to the post of Inspector (Handloom). The Petitioner during her service career has not received any communication in respect of any adverse entry in her ACRs and therefore there is no reason for Respondent No. 2 to supersede the Petitioner by her juniors (Respondent Nos. -4 and 5). Since the Petitioner has been illegally superseded by her juniors she has filed the present application.

2. The Respondent Nos. 1, 2 and 3 have filed a joint counter affidavit wherein they have not denied the seniority position of the Petitioner at Sl. No. 3 of the seniority list of Supervisors (Handloom). In the counter affidavit it has been stated that the case of the Petitioner along with other eligible candidates who are within the zone of consideration were considered by the DPC in accordance with the provisions of the Recruitment Rules and after assessment of ACRs, the DPC did not recommend the name of the Petitioner for promotion to the post of Inspector (Handloom). The. representation filed by the Petitioner has been disposed of by the Chairman, Manipur Development Society on 6.7.96 observing that there is no merit in the application of the Petitioner. It is also admitted in the counter affidavit that there is no adverse entry against the Petitioner in her ACR, but the DPC considered the grading in the ACR of the eligible candidates, and after considering the gradings of the eligible candidates the DPC recommended the suitable candidates for promotion. Since the DPC did not find the Petitioner suitable for promotion her juniors (Respondents-4 and 5) were recommended for promotion to the post of Inspector (Handloom). Therefore, the Petitioner should not have any grievance against the recommendation of the DPC and

consequential promotion order. The Respondent Nos. -4 and 5 also filed separate counter affidavit. Main contention of the Respondents-4 and 5, namely W. Shusila Devi and Y. Lokendro Singh respectively, is that the Petitioner was not found fit for promotion to the post of Inspector (Handloom) and therefore she has been superseded by Respondents-4 and 5. These Respondents however, did not challenge the seniority position of the Petitioner at serial No. 3 or the seniority of the Petitioner over Respondent Nos. -4 and 5.

3. Mr. Ashok Potsangbam, the learned Advocate General, Manipur submitted that in the recruitment rules for the post of Inspector (Handloom) it has not been mentioned whether the post is selection post or non-selection post. The learned Advocate General, further, submitted that in the absence of such entry in the Recruitment Rules, the matter will be regulated in respect of corresponding post in the Government. It has been pointed out that in the Govt. under Industries Department there are posts of Inspectors (Handloom) and it has been mentioned in the Recruitment Rules that the post is a selection post. The learned Advocate General, consequently, submitted that the post of Inspector (Handloom) in the Manipur Development Society is also a selection post. The learned A.G. argued that the Govt. of Manipur in the Department of Personnel and Administrative Reforms (Personnel Division) by notification dated 16.5.91 adopted the Office Memorandum of the Govt. of India, Ministry of Home Affairs (Department of Personnel and A.R.) No. 22011/3/76-Estt(I) dated 24.12.1980 regarding the principle for promotion to selection post. The learned Advocate General submitted that according to the aforesaid Memo, a Select List is required to be prepared as per grading in the ACR of the eligible candidates. The learned Advocate General, further, submitted that among the eligible candidates for consideration for the post of Inspector (Handloom) the gradings of Respondent Nos. -4 and 5 were "Outstanding" whereas the grading of the Petitioner was "Good" only in the ACR. The learned Advocate General consequently submitted that since the Petitioner, though senior to the Respondents 4 and 5, is less meritorious than the Respondents-4 and 5, her name has not been recommended by the DPC for promotion to the post of Inspector (Handloom). On a plain reading of the aforesaid memo regarding principle for promotion of selection post, it appears that the candidates having the gradings of "Outstanding" in the ACRs are placed above the candidates having the grading of "Very Good" and "Good". It further appears that candidates whose grading is "not fit for promotion" is omitted from the list of eligible candidates for consideration for the promotional post. It further appears that the candidates having the gradings of "Very Good" get priority over the candidates having the grade of "Good". In the instant case DPC considered promotion of four posts of Inspectors (Handloom). According to the aforesaid memo of the Govt. 12 (twelve) candidates according to seniority are to be considered for promotion in four promotional posts. According to the grading in the ACR the DPC prepared a select list as per aforesaid Memo of the Central Govt. as adopted by the State of Manipur. The learned Advocate General, argued that the Respondents 4 and 5

who are junior to the Petitioner were graded as "Very Good" and the Petitioner has been graded as "Good" only for consecutive three years and therefore the DPC did not recommend her name for promotion to the post of Inspector (Handloom). I cannot agree with the submission of the learned Advocate General in view of the fact that it cannot be said with definite certainty that the post is a selection post because in the Recruitment Rules it has been clearly stated that promotion will be made on the basis of seniority-cum-merit. In case of selection posts, the promotions are made on the basis of merit-cum-seniority and in that event the procedure laid down in Memo of the Central Govt. as adopted by State of Manipur shall apply for preparing the select list on the basis of gradings in the ACR of the candidates who are in the zone of consideration. Therefore, it appears that the DPC has committed a confusion in interpreting the phraseology of "promotion on the basis of seniority-cum-merit" and "promotion on the basis merit-cum-seniority." Learned Advocate General, however, submitted that the Petitioner was not found fit by the DPC and therefore, DPC did not recommend her case. Consequently, the Respondent No. 2 did not appoint the Petitioner in the promotional post of Inspector (Handloom). The learned Advocate General further submitted that since the Petitioner has not been found fit for promotion she has been superseded by her juniors (Respondents-4 and 5) who were found fit for promotion to the post of Inspector (Handloom).

4. Mr. I. Lalitkumar Singh, the learned Counsel appearing on behalf of the Petitioner submitted that according to the provisions of the Recruitment Rules promotion are to be made on the basis of seniority-cum-merit, and not on the basis of merit-cum-seniority. The learned Counsel, therefore, submitted that the DPC has committed an error in following the procedure while recommending the names of the candidates on the principle of "seniority-cum-merit" and "merit-cum-seniority" Mr. I. Lalitkumar, further, argued that in case of promotion made on the basis of seniority-cum-merit, the senior even if found less meritorious shall have priority over the meritorious juniors. The 1d. counsel, consequently, submitted that the DPC made an illegality in not recommending the name of the Petitioner for the promotional post of Inspector (Handloom). It is further argued by Mr. Lalitkumar that the Petitioner has not been found in her ACR as unsuitable or unfit for promotion to the post of Inspector (Handloom) and there is no reason why she would be superseded by her juniors, Respondents-4 and 5. Consequently, the learned Counsel for the Petitioner submitted that the appointment of the Respondents-4 and 5 should be cancelled and the Petitioner should be promoted from the date on which her juniors were promoted in the post of Inspector (Handloom). The learned Counsel in support of his argument referred to a case law reported in 1995 (2) GLJ 1 in which it has been held that the important thing which has to be noted down is that the list which has to be prepared of the eligible candidates has to be on the basis of seniority-cum-merit. In the aforesaid case the learned Judges discussed the case law reported in AIR 1976 SC 493 (State of Kerala v. N.M. Thomas) the Supreme Court had laid down that, "with regard to promotion and normal principle is either merit-cum-

seniority or seniority-cum-merit. Seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration the senior, though the less meritorious shall have priority." Thus, it is clear that where the merit is for selection on the basis of seniority-cum-merit, the procedure has to be followed is not to judge the inter se merit, but the merit of the senior most person has to be judged first. In case the senior most person is not found suitable for job then in that case his name would not be recommended and this very procedure will be followed in accordance with the seniority of other officers in the gradation list. On a perusal of the aforesaid case law it is clear that the select list is to be prepared according to the seniority. In the case of promotion of seniority-cum-merit, and in the gradation list for seniority-cum-merit promotion the persons having better gradings in the ACR should not supersede the persons having less gradings. However, in case any candidate is found unfit or unsuitable for promotion his/her name should not be considered by DPC. The learned Advocate General has placed the DPC minutes for perusal of the Court. From the DPC minutes it appears that Respondents-4 and 5 has been graded as "Very Good" and in combination of Very good and "Good" for three years preceding the date of DPC. and the Petitioner has been graded as "Good" for the last three years preceding the date of DPC. The gradings of "Very Good" and "Good" are both positive gradings. Further, there is no observation in the DPC minute that the Petitioner was found not fit or unsuitable for the promotional post of Inspector (Handloom). In such a position I do not think the DPC was correct in not recommending the name of the Petitioner for the promotional post of Inspector (Handloom). While the submission of the learned Advocate General may be true in respect of preparation of select list when the promotion is on the basis of merit-cum-seniority, but such procedure for preparing the select list cannot apply in the case of promotion when it is on the basis of seniority-cum-merit, in view of the decision of the Hon'ble Supreme Court reported in AIR 1976 SC 493.

5. After hearing the learned Counsel of both the parties and after considering the facts and circumstances stated above and also having regard to the legal position explained by the Division Bench of this High Court and the Hon'ble Supreme Court, I am of the clear view that the DPC has made an error in not recommending the name of the Petitioner on the basis of the select list prepared by them in pursuance of the Office memorandum No. 2201 I/3/76-Estt(I) dated 24.12.1980 of the Ministry of Home Affairs (Department of Personnel and A.R.) as adopted by the State Government by its notification dated 16.5.81, and the Respondent No. 2 has done an injustice to the Petitioner in acting on the recommendation of the DPC by giving promotion to two juniors of the Petitioner in the post of Inspector (Handloom) superseding the Petitioner.

6. In the present case, the Petitioner has claimed that the entire recommendation of the DPC and consequential promotion of the four candidates should be quashed. I do not find any ground to quash the entire DPC proceedings or the appointment order issued by the Respondent No. 2. because

it is an admitted fact and there is no controversy in respect of the promotion of the two candidates who are admittedly senior to the Petitioner. The grievance of the Petitioner is only in respect of the Respondents-4 and 5 who are junior to the Petitioner. In such a situation, I am of the view that the Respondents should refer the case of the Petitioner to a review DPC to consider her case for promotion to the post of Inspector (Handloom) and to appoint her in the promotional post at least with effect from the date her juniors were appointed in the promotional post, if she is not found unsuitable or unfit for promotion by the review DPC for the post of Inspector (Handloom). Accordingly, the Respondent No. 2 and 3 are directed to refer the case of the Petitioner to a review DPC for considering the case of the Petitioner for promotion to the post of Inspector (Handloom) and if the Petitioner is found fit for promotion to the post of Inspector (Handloom) then she may be appointed to the promotional post at least from the date on which her juniors were promoted in the post of Inspector (Handloom). While reconsidering the case of the Petitioner for promotion to the post of Inspector (Handloom), the review DPC shall keep in mind the principle that is to be followed in case of promotion on the basis of seniority-cum-merit and not on the principle of merit-cum-seniority which has already been discussed in this case.

7. It is, further, directed that if the Petitioner is found fit for promotion to the post of Inspector (Handloom) by the Review DPC and in the event of non-availability of post the junior-most officer promoted to the post of Inspector (Handloom) may be reverted to the lower post so as to accommodate the Petitioner in the post of Inspector (Handloom).

8. The Respondents 2 and 3 are further directed to complete the entire process of reconsideration of the case of the Petitioner by review DPC within a period of three months from the date of receipt of this order.

9. Petitioner may file a certified copy of this judgment and order to Respondent No. 2 as early as possible.

10. With the aforesaid direction the writ petition is allowed, but having regard to the facts and circumstances stated above I make no order as to costs.