
(2009) 06 GAU CK 0056
In the Gauhati High Court
Case No : Writ Appeal No. 112 of 2006

Rup Narayan Pradhan and Others

APPELLANT

Vs

Mrinal Kr. Roy and Others

RESPONDENT

Date of Decision : 18-06-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 309

Citation : (2009) 3 GLT 685

Hon'ble Judges : I.A. Ansari, J;B.D. Agarwal, J

Bench : Division Bench

Advocate : P.K. Tiwari, for the Appellant; G. Deka and K. Jini, for the Respondent

Final Decision : Allowed

Judgement

B.D. Agarwal, J.—Broadly speaking we have been called upon in this appeal to answer the question as to whether after merger of two cadres officers of a merged cadre would still hold their seniority qua the seniority of the officers in the original cadre or such officers of merged cadre would be placed below the officers in the original cadre in the seniority list.

2. We have heard Shri P.K. Tiwari, learned Counsel for the Appellants and Smti Geeta Deka, learned State Counsel appearing for the State Respondents. The private Respondent No. 1/writ Petitioner was represented by Sri K. Jini, learned Counsel. We have also perused the impugned judgment and the records of the writ petition.

3. The writ petition being No. 508 (AP) 2002 was filed by the Respondent No. 1 challenging the legality of inter se seniority of the Fishery Officers and Extension Officers (Fisheries) issued under office Memo No. Fish/E(G)39/98 dated 5.11.1998 by the Director of Fisheries, Arunachal Pradesh, whereby the Extension Officers (Fishery) have been given their due seniority in the merged cadre of Fishery Officers with retrospective effect. The writ petition was disposed of by order dated 21.4.2005. The relevant findings of the learned Single Judge

are reproduced below:

Be that as it may, in the instant case the Petitioner has not pleaded as to who are the persons were initially appointed as Extension Officer (Fishery) and who were place above the Petitioner in the seniority list, nor the relevant and sufficient particulars have been provided in the writ petition, nor those persons are impleaded in the proceeding. Accordingly, for lack of material particulars and having not impleaded the persons to be affected, effective relief cannot be provided to the Petitioner in this writ petition. However, it is made clear that the Extension Officer (Fisheries) would be entitled for their seniority with effect from the date of their enactment with that of Fishery Officer i.e. with effect from the date of passing of the aforesaid order dated 12.8.92 and the seniority of the Petitioner would not be counted from the date of his initial appointment in the lower cadre.

4. In view of the fact that the learned Single Judge has held that the seniority of the Extension Officers (Fisheries) would be counted from the date of their encadrement and not from the date of their initial appointment as Extension Officers (Fisheries), the Appellants contend that the aforesaid judgment, passed in the writ petition, has adversely affected the seniority of Extension Officers, whose cadre was merged with the cadre of Fishery Officers. Hence, the Appellants herein took leave of this Court to challenge the judgment passed in the writ petition. The leave was accordingly granted vide order dated 26.3.2007 passed in Misc. case No. 1282 of 2006. In this way, the appeal in hand is at the instance of a group of Extension Officers, who were not impleaded in the writ petition.

5. The admitted facts are that initially the Fishery Officers and Extension Officers (Fisheries) had separate cadres having different pay scales. Initially Fishery officers' pay was higher than that of Extension Officers. In due course, the Government raised pay scales of the Extension Officers vide order dated 3.11.1989 and brought it at par with the Fishery Officers. Under this order the pay scale of the Extension Officers (Fisheries) was revised, upgraded and given retrospective effect from the date of creation of the posts, albeit, the financial benefit was given prospectively. It was followed by creation of common cadre by way of merger of Extension Officers vide order No. Fish/E(G) 131/92 dated 12.8.1992. It may be mentioned here that before such merger Fishery Officers were in the establishment of Directorate of Fisheries, whereas Extension Officers (Fisheries) were under the Rural Development Department. After the merger of two cadres the impugned Gradation/Seniority List in respect to the merged cadre of Fishery Officers was published on 5.11.1998, that was challenged in the writ petition.

6. Sri Tiwari, the learned Counsel for the Appellants submitted that the learned Single Judge failed to take into consideration the fact that before the merger of the aforesaid two cadres the Extension Officers (Fisheries) were brought at par with the Fishery Officers from the date of creation of the cadre of Extension

Officers (Fisheries) vide order dated 3.11.1989 and as such the subsequent order dated 12.8.1992, merging both the cadres, ought to have been read harmoniously with the order dated 3.11.1989 for determining the implication thereof in the matter of fixation of inter-se-seniority. The learned Counsel for the Appellants also contended that the order dated 12.8.1992 (creation of common cadre) having not been challenged in the writ petition the learned Single Judge ought not to have declared that the merger would be prospective. In support of his submission learned Counsel for the Appellants has relied upon the judgment of the Hon'ble Supreme Court rendered in the case of Joginder Nath and Others Vs. Union of India (UOI) and Others, and Reserve Bank of India Vs. N.C. Paliwal and Others,

7. During the course of argument learned Counsel for the Respondent No. 1/writ Petitioner did not dispute the fact that long before the merger of cadres the pay scale of Extension Officers (Fisheries) was upwardly revised, so as to place them at par with the Fishery Officers and the revision of pay was made effective from the date of inception of the cadre. The said order dated 3.11.1989 was, rightly so, not challenged by the Fishery Officers since they had no locus standi to challenge the re-fixation of pay scale of the Extension Officers, who, at the relevant period of time were under a different department. However, noticeable and relevant fact is that the Fishery Officers also failed to challenge the order dated 12.8.1992 which led to re-fixation of inter-se-seniority after the creation of common cadre of Fishery Officers and Extension Officers (Fisheries).

8. In the case of Joginder Nath v. Union of India (supra) the Apex Court has laid down the law with regard to fixation of inter-se seniority in the matter of merger of cadres in the following words:

Para-15 Rule 11 of the Delhi Judicial Service Rules reads as follows:

11. The Selection Committee shall arrange the seniority of the candidates recommended by it in accordance with the length of service rendered by them in the cadre to which they belong at the time of their initial recruitment to the service.

Provided that the inter-se-seniority as already fixed in such cadre shall not be altered.

The question for determination is - was there any infirmity in Rule 11? Did it put unequals with equals and violated Article 14 of the Constitution? Was the rule arbitrary and discriminatory? Once the Selection Committee found persons belonging to Clause (a) of Rule 9 suitable for appointment to the service it was under a duty and obligation to arrange the list of suitable persons by placing them in proper places in the matter of seniority. They were all being initially appointed to the Delhi Judicial Service wherein there was no separate gradation of posts. The assignment of duties was to follow on the basis of seniority list. Arranging the seniority of the candidates recommended by the Selection Committee in accordance with the length of service rendered by them in the

judicial cadre to which they belonged at the time of their initial recruitment to the service was perfectly good.

The Petitioners could not have any grievance in that regard. On their initial recruitment to the Delhi Judicial Service they retained their original seniority inter-se as was assigned to them in their parent cadre. Was it possible to have a different yardstick, some other date or shorter period for fixation of the seniority of the law graduates judicial magistrates on their initial recruitment to the service? From which date their seniority ought to have been reckoned? Was it possible to treat them as the first and the new recruits to the Delhi Judicial Service. Even so what would have been the basis of determining their seniority inter se? The questions posed are suggestive of the answers. Taking the length of service rendered by the candidates in their respective cadres for the purpose of fixation of seniority under Rule 11 of the Delhi Judicial Service Rules was justified, legal and valid. Had it been otherwise it would have been discriminatory. It was not equating unequals with equals. It was merely placing two classes at par for the purpose of seniority when it became a single class in the integrated judicial service of Delhi. For the purpose of fixation of seniority it would have been highly unjust and unreasonable to take the date of their initial recruitment to the service as their first appointment. Now was it possible to take any other date in between the period of their service in their parent cadre. It would have been wholly arbitrary. It would have been wholly arbitrary. In our judgment, therefore, there was no escape from the position that the entire length of service of the two classes of officers had got to be counted for the purpose of determination of their seniority on their initial recruitment to the Delhi Judicial Service. It was not possible or practical to measure their respective merits for the purpose of seniority with mathematical precision by a barometer. Some formula doing largest good to the largest number had to be evolved. The only reasonable and workable formula which could be evolved was the one engrafted in Rule 11 of the Delhi Judicial Service Rules.

9. Similarly the Apex Court was confronted with a combined seniority arising out of integration of services in the case of Reserve Bank of India v. N.C. Paliwal (supra) and has held as follows:

16. Then we come to the question of the rule of seniority adopted by the combined seniority scheme. Now there can be no doubt that it is open to the State to lay down any rule which it thinks appropriate for determining seniority in service and it is not competent to the court to strike down such rule on the ground that in its opinion Anr. rule would have been better or more appropriate. The only enquiry which the court can make is whether the rule laid down by the State is arbitrary and irrational so that it results in inequality of opportunity amongst employees belonging to the same class....

10. On perusal of the impugned judgment it is apparent that the learned Single Judge failed to ascertain the intention behind the merger of the cadre. The learned Single Judge, also did not give any attention to the order dated

3.11.1989 whereby the Government had revised the pay scale of Extension Officers from the date of creation of the cadre and brought them at par with Fishery Officers. In our opinion, this order was the first step to amalgamate the posts of Fishery Officers and Extension Officers in view of their identical nature of duties and functions. Hence, the merger order dated 12.8.1992 ought to have been read together with the order dated 3.11.1989 and not in isolation. Be that as it may, we have no hesitation to hold that if the length of services rendered by the officers of the merged cadre is not taken into consideration for fixation of seniority in the common cadre it would amount to ignoring their past service period altogether. In our opinion, if the view taken by the learned Single Judge is approved, it would run counter to the theory of treating equals equally. To say it differently if the Extension Officers' seniority and their length of services are not counted or recognised for fixing seniority, it would amount to treating them unequally with the Fishery Officers which would be contrary to the idea and concept of merger and would also be against the spirit of the merger order dated 12.8.1992.

11. For the foregoing reasons, we find sufficient force in the writ appeal. As corollary, the appeal stands allowed. The gradation list issued under O.M. dated 5.11.1998 assailed in the writ petition is accepted and held valid on principle.

12. There shall be no order as to costs.

I.A. Ansari, J.

13. I have the benefit of reading the lucid and reasoned judgment of my esteemed brother. I wholly agree with the conclusions reached and the reasons assigned by my learned brother. However, I would like to add a few lines in order to make the reasons for my agreement a little explicit. The facts, which are material for the purpose of disposal of this appeal, have already been narrated by my learned brother. I, therefore, proceed in the light of the facts, which have been set out in the preceding paragraphs of this judgment.

14. While considering this appeal, it is imperative to bear in mind that a decision to merge two or more cadres together is, essentially, a matter of policy and the court will not, ordinarily, interfere with policy decisions of the government. What the High Court can, at best, do, in such a case, in exercise of its power of judicial review, is that it may examine as to whether, while taking the policy decision, the government had taken into consideration all the factors, which were relevant, and kept excluded from its consideration all such factors, which were irrelevant. If, while taking the policy decision of merger, the government had taken into consideration all relevant factors and eschewed, from the purview of its consideration, all factors, which were irrelevant, the policy decision to integrate two or more services or cadres cannot be interfered with by the Court.

15. It is also important to bear in mind that Article 309 of the Constitution of India has empowered the legislature to regulate recruitment and conditions of service of the persons appointed to public services and posts connected with the

affairs of the Union of India or of States. The proviso to Article 309, however, empowers the President, in the case of services and posts connected with the affairs of the Union of India, and the Governor, in the case of services and posts, connected with the affairs of the State, to make rules regulating the recruitment and conditions of services of the persons appointed in connection with the affairs of the Union of India, or the State, as the case may be. However, when different cadres are merged, certain principles have to be borne in mind. These principles were enunciated in the State of Maharashtra and another Vs. Chandrakant Anant Kulkarni and others, The four broad principles, which shall govern the integration or merger of services of different states, as indicated in Chandrakant Anant (supra), were as under:

In the matter of equation of posts, (1) where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis but (2) where there were no such similar cadres, the following factors will be taken into consideration in determining the equation of posts:

- (a) Nature of duties of a post;
- (b) Powers exercised by the officers holding a post, the extent of territorial or other charge held or responsibilities discharged;
- (c) The minimum qualifications, if any, prescribed for recruitment to the post and;
- (d) The salary of the post.

16. The principles, laid down, in Chandrakant Anant (supra), have been consistently followed by the Apex Court in its subsequent decisions including Union of India and others Vs. S.L. Dutta and another,

17. Taking a cue from the case of Chandrakant Anant (supra), it has been pointed out, in S.P. Shivprasad Pipal Vs. Union of India and Others, that it is not open to a Court to consider as to whether the merger of the posts, made by government, is right or wrong inasmuch as such merger is a matter of policy, which is exclusively within the province of the government, and the only question, which, perhaps, the Court could enquire into, is as to whether the four principles, stated above, had been properly taken into account or not. If the principles, indicated above, were adhered to, the question of interfering with the decision making process of integration or merger of services does not arise. The Court further pointed out, in Shivprasad Pipal (supra), that it is so narrow and limited field that the supervisory jurisdiction of the Court cannot operate.

18. The Court has recognised, in Shivprasad Pipal (supra), that as a result of merger, the chance of promotion of some of the employees may get diminished and some may benefit in consequence of such merger; but this cannot, clarified the Apex Court, in Shivprasad Pipal (supra), be a ground for setting aside the merger, which, essentially, a policy decision. In fact, in Chandrakant Anant (supra), the Court had held, as indicated in Shivprasad Pipal (supra), that a mere

chance of promotion was not a condition of service and the fact that there was reduction in the chance of promotion would not amount to change of conditions of service.

19. From the principles of law governing merger or integration of two or more cadres, what becomes clear is that a decision to merger two or more cadres together is, if I may reiterate, a policy decision, and such policy decision cannot be interfered with unless the principles, governing such merger, have not been followed. If the government, while taking the decision, has taken into account all the relevant factors and eschewed, from consideration, all irrelevant factors, such merger is unassailable. If the merger is not interfered with, the consequence would be that the past services, rendered by the persons belonging to the merged cadre, would have to be counted unless, in a given special circumstance, the government finds that the entire past service cannot be counted. A case of this nature is the case of Reserve Bank of India Vs. N.C. Paliwal and Others, wherein a clerical cadre was merged with a non-clerical cadre. Since the clerical cadre and non-clerical cadre were distinct and different from each other and counting of the entire period of service of the non-clerical cadre towards fixation of their seniority would have adversely affected the members of the clerical cadre and, since, at the same time, ignoring the entire period of service, rendered by the members of the non-clerical cadre, would have been unjust to them, the Reserve Bank of India decided to count one-third of the service period of the members of the non-clerical cadre, while determining seniority position in the merged cadre. Such a principle, adopted by the Reserve Bank of India, was upheld by the Apex Court as legal, non-arbitrary and nondiscriminatory.

20. In the case at hand, the Petitioner had never contended, in the writ petition, that the nature of duties of the Extension Officer (Fishery), on the one hand, and the Fishery Officer, on the other hand, were distinct and different. It had also not been the case of the writ Petitioner that the merger was illegal. The only contention of the writ Petitioner was that since the Fishery Officers had been enjoying higher pay scale, their status was higher than that of the Extension Officer (Fishery).

21. We may need to point out that the pay scale of Extension Officer (Fishery) had been enhanced with retrospective effect. Such enhancement of pay scale, with retrospective effect, is not prohibited in law. Thus, the only perceptible difference, which had existed between the cadre of Fishery Officer and Extension Officer (Fishery), stood removed with retrospective enhancement of pay scale. In such circumstances, when the merger was not under challenge, past services of the Extension Officers (Fishery) could not have been treated as washed off the record. Their past services have, therefore, been rightly taken into account from the date of their respective initial appointments in the cadre of Extension Officer (Fishery).

22. Situated thus, it becomes abundantly clear that the learned Single Judge fell

into error in holding that the seniority of the Extension Officer (Fishery) would be counted from the date of merger and not from their respective dates of initial appointments. Past services could have been ignored partially, though not fully, if the nature of duties of the cadres was different, as in the case of Reserve Bank of India Vs. N.C. Paliwal and Others, wherein the nature of the duty of the clerical cadre was definitely different from the non-clerical cadre and, consequently, 1/3rd of their past services rendered in the non-clerical cadre was taken into account.

23. What crystalizes from the above discussion is that in the present case, since the nature of duties are not contended to be different, the pay scales were, at the time of merger, same in both the cadres, in question, the minimum qualifications required for holding both the posts were same, and the powers and responsibilities of the officers of both the cadres are not contended to be distinct and different from each other, the Government's decision to count the seniority of the Extension Officers (Fishery) and the Fishery Officers, from the date of their respective initial appointments, cannot be said to be bad in law. Viewed thus, it is clear that the learned Single Judge's direction to count the seniority of the Extension Officers (Fishery), upon merger with the cadre of Fishery Officers, from the date of encadrement and not from the date of their respective initial appointments, was contrary to the settled principles of law and has been rightly concluded by my learned brother as not maintainable. This appeal must, therefore, succeed and shall be allowed as has been directed above.