
(1997) 09 GAU CK 0055
In the Gauhati High Court
Case No : Civil Rule No. 363 of 1995

S. Shantekumar Singh and Others	Vs	APPELLANT
State of Manipur and Others		RESPONDENT

Date of Decision : 29-09-1997

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1998) 1 GLT 267

Hon'ble Judges : N.S. Singh, J

Bench : Single Bench

Advocate : H. Raghumani Singh, for the Appellant; L. Shyamkishore Singh, for the Respondent

Judgement

N.S. Singh, J.—Upon hearing the learned Counsel on both sides, it appears to me that the writ Petitioners have made a prayer in this writ petition inter-alia, for a writ of mandamus to the Respondents to include the posts held by them in the Manipur Veterinary & Animal Husbandry Service Rules, 1994, alongwith promotional avenues within a stipulated period or in the alternative, to create a separate cadre and a separate department or separate service for Dairy Officers.

2. According to the writ Petitioners, they are all graduates and/or Diploma Holders in Dairy Science inasmuch as the Petitioner No. 1 is a Diploma Holder in Electrical Engineering (four years course) and also Diploma in Dairy Engineering (four years course) and he was appointed as Dairy Engineer on 3.2.1979 initially on ad-hoc basis and thereafter his services have been regularised in the said post and he has been serving as Dairy Engineer in the Directorate of Veterinary & Animal Husbandry, Govt. of Manipur. Likewise, the Petitioner No. 2 is also a graduate in Dairy Technology (B.Sc. Dairy Technology) and also obtained the qualification of IDD (DJ) and R. Dairy Training (FAO) and joined services in the Veterinary & Animal Husbandry Department, Govt. of Manipur on 24.11.1973 as Extension Officer (Animal Husbandry) in the Central Dairy Farm Porompat. Similarly, the Petitioner No. 3 is a graduate in Science and a Holder of Indian

Dairy Diploma and joined service on 11.2.1981 as Distribution Officer (Dairy) in the Veterinary & Animal Husbandry Department, Govt. of Manipur.

3. Petitioner No. 4 is also a B.Sc. (Honours) and B.Sc. (Dairy Technology) and joined service on 11.2.1981 as Procurement Officer (Dairy) in the Veterinary & Animal Husbandry Department, Govt. of Manipur and he has been serving in the said Department till date. Petitioner No. 5 is also a B.Sc. (Dairy Technology) Degree Holder and joined service as Dairy Development Officer on 22.4.1988 and since then he has been serving in the said Department till today.

4. It is also the case of the writ Petitioners that Dairy Science is altogether a separate Science quite different from Veterinary Science and the Dairy Science graduates are/or more or less equivalent to the Veterinary Science Graduates; in respect of their course of studies. However, this Dairy Science has not been given much importance in the State of Manipur and as a result of which there are only 5 (five) posts of Dairy and these posts are kept attached to the Directorate of Veterinary & Animal Husbandry Services, Govt. of Manipur and the particulars of these 5(five) posts are as follows:

S1. No. Name of Post Classification Scale of pay -----
----- 1. Dairy Engineer Class-I 2000 to 3500/- Gazetted

2. Assistant Dairy Class-II 1640 to 2900/- Development Gazetted Officer

3. Distribution Class-II 1640 to 2900/- Officer (Dairy) Gazetted

4. Procurement Class-II 1640 to 2900/- Officer (Dairy) Gazetted

5. Dairy Develop- Class-II 2000 to 3500/- ment Officer Gazetted.

5. There is another post under the name and style of Deputy Director (Dairy) in the Veterinary & Animal Husbandry Department, Govt. of Manipur and the said post carries administrative duties and the same has been held and can be held only by non-Dairy Officer and, as such, the post has been manned by the Veterinary Officers on promotion to the prejudice of the present Petitioners who are all Dairy Officers.

6. In the State of Manipur, there is a Central Dairy Farm at Porompat and the same has been manned by 5 (five) officers and they are administratively controlled by the Director of Veterinary & Animal Husbandry, through the Deputy Director manned by the Veterinary personnel and not by Dairy technologists, thus depriving the legitimate rights of the Petitioners to get their appointment on promotion to the post of Deputy Director (Dairy) as there is/was no avenue for promotion for the writ Petitioners in the post of Deputy Director (Dairy) under the relevant Manipur Veterinary & Animal Husbandry Service Rules, 1994. On the other hand, in the Veterinary & Animal Husbandry Branch of the same Department, there are 5 (five) categories of posts/officers which are as follows:

a) Category No. 1 - Director (1 post)

- b) Category No. 2 - Joint Director (3 Posts)
- c) Category No. 3 - Deputy Director/Equivalent (15 Posts)
- d) Category No. 4 - District Veterinary Officer/Junior Specialist/Equivalent (45 Posts)
- e) Category No. 5 - Veterinary Assistant Surgeon/Equivalent (about 120 Posts)

7. After prolonged processes and demand made by the entire Veterinary Doctors and Dairy Officers serving in the Directorate of Veterinary & Animal Husbandry Services, Govt. of Manipur, the service rule namely; "the Manipur Veterinary & Animal Husbandry Service Rules, 1994" has been framed and the same was notified in the Manipur Gazette on 17.10.94, as seen in the document marked as Annexure-A/1 to the writ petition, thus excluding the service condition of the Officers of the Dairy Section.

8. It is also the case of the writ Petitioner, that the service condition of the officers of the Dairy Section of the same Department, has been left out by the Respondents while framing the aforementioned service Rules of 1994 as in Annexure A/1 to the writ petition. Under the said Rule of 1994, there are four categories of services enunciated as Grade-I, Grade-II, Grade-III and Grade-IV respectively and detail of which is given below : Grade -I Director (1 Post) Grade - II Jt. Director (10 Posts) Grade - III Dy. Director/Equivalent (41 Posts) Grade - IV Vety. Officer (111 Posts)

9. According to the writ Petitioners, there are elaborate avenues for promotion of each and every officer of every Grade to higher posts of Veterinary Doctors, but, no avenue for promotion of the officers of the Dairy Section has been made by the State/Respondents without any justification. There is no post created or sanctioned by the State-Respondents for even a single officer of Dairy Section for promotion from these normal 5 (five) posts in Dairy Section/Cell and, as a result of which the writ Petitioners had to serve under the Veterinary & Animal Husbandry Department to their respective posts as usual without promotional benefits till they attained their respective age of superannuation, which is very much unjust and unfair, the writ Petitioners contended.

10. The writ Petitioners went on to contend that, in other States, like Assam, as early as in the year 1982, a separate Directorate for the Dairy Development was created vide Govt. Order dated 16.1.1982, as in Annexure A/2 to the writ petition and a Rule under the name and style of Assam Animal Husbandry Veterinary and Dairying Service Rules, 1988 has been framed under a related notification dated 30.11.1988 as in Annexure A/3 to the writ petition. Although an exhaustive Service Rule has been framed for Veterinary Doctors by the State-Respondents, the service conditions and the case of the writ Petitioners has been left out by the State-Respondents and no promotional benefits have yet been afforded to the writ Petitioners who had been rendering their respective services for long years ranging from 10 to 25 years.

Having no alternative, the writ Petitioners filed this writ petition.

11. The case of the writ Petitioners was resisted by the Respondents-State by filing affidavit-in-opposition and by contending inter-alia, that the Veterinary & Animal Husbandry Department, being a major Department, having number of Veterinary Doctors, for administrative convenience and efficiency, the State Govt. after thorough examination of the service conditions, the Service Rules of 1994 for the Veterinary Doctors Degree Holders has been framed and notified as in Annexure-A/1 to the writ petition and, it is not possible to formulate a Rule which cover the entire officers/employees of the Department inasmuch as the other officers who do not have the recognised qualification by the Indian Veterinary Council cannot be included in the Manipur Veterinary & Animal Husbandry Service Rules, 1994, as the said Rule is meant only for Veterinary Doctors who are Degree Holders and recognised by the Indian Veterinary Council and, the Petitioners being not the Veterinary Doctors and not recognised by the Indian Veterinary Council, they cannot be included in the said Service Rules.

12. So far the contention of the writ Petitioners with regard to the separate Service Rules for Dairy Officers in the State of Assam, the State/Respondents contended that Dairy Branch in Manipur is still very small and it would take long years to reach the stage of development in Assam and that, Dairy Development activities are well developed in the State of Assam, the creation of new posts in higher status will be considered and the framing of a separate Service Rules may arise and for the present, the Dairy Branch is at the infant stage in Manipur and, as such, it is not necessary to have a separate Service Rule for Dairy Branch.

13. Supporting the case of the writ Petitioners, Shri H. Raghumani Singh, learned Counsel, argued mat the State/Respondents ought to have afforded promotion avenue to the writ Petitioners by framing the separate Service Rules for Dairy Cell/Section or by including the services of the writ Petitioners in the related Service Rules of 1994, as in Annexure A/1 to the writ petition. The writ Petitioners shall remain stagnant without any promotional avenue which is against the very concept of Govt. Service in a welfare State like India, Shri Raghumani Singh contended. At least, a promotional avenue should be provided for the writ Petitioners so that it will generate efficiency in service and foster appropriate attitude to grow for achieving excellence in service and, in absence of such promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly, Shri Raghumani argued.

The learned Counsel further sought for a direction from this Court to the Respondent/State to provide promotional avenue, thereby causing the inclusion of the service of the writ Petitioners in the related Service Rules of 1994, as in Annexure A/1 or, in the alternative, to direct the Respondents to create a separate cadre and a separate department or a separate service for Dairy Officers.

14. At the hearing, Shri L. Shyamkishore Singh, learned Senior Govt. Advocate

for the State/Respondents submitted that the writ Petitioners, as of right are not entitled to claim a separate service or include them in the Manipur Veterinary & Animal Husbandry Service Rules, 1994, and as such, the writ petition is devoid of merit and the same is liable to be dismissed in limini according to law.

15. It is well settled that although the writ Petitioners have a strong case for their promotional avenue by framing the relevant recruitment rules for higher posts in the Directorate of Veterinary & Animal Husbandry, Govt. of Manipur, or by creating a separate cadre and a separate department or a separate service for Dairy Officers, it is beyond the competence of the High Court to direct the State Govt. to revise the said recruitment rules of 1994 as in Annexure A/1 to the Writ petition, by issuing certain direction to the State/Respondents, however, the Court may require the State Govt./Respondents to apply its mind to this aspect of the matter and, so too, to make available the promotional benefits to the writ Petitioners considering their grievances and their continuous and uninterrupted long services ranging from 8 years -15 years, 18 years - 25 years, as discussed above.

16. In order to appreciate the correct and exact propositions of law in this matter, a reference can be made to two decisions of the Apex Court, rendered in Swapan Kumar Choudhary and others Vs. Tapas Chakravorty and others, and in another case between AIR 1988 1033 (SC)

In Swapan Kumar Choudhury and Ors. Appellants v. Tapas Chakravorty and Ors. Respondents (supra), the Apex Court held thus:

Thus, there is much force in the contention of Shri Satish Chandra that as in the main wing of Inspectors of Factories there are electrical experts, mechanical experts and civil experts, in the chemical wing there are chemical experts. According to us, the learned Single Judge of the High Court was right in stating that if electrical, mechanical and civil engineers could form part of one cadre, so could, chemical engineers. Even so, we would agree with the learned Solicitor General that by giving the directions, in question, the High Court almost revised the recruitment rules which was not within its competence. We also agree that by directing the State to make available the higher post to Deputy Chief Inspector of Factories (Chemical), a legal error was committed, as the same amounted to laying down conditions of service of Government employees, which either the State Legislature in exercise of its powers under Article 309 of the Constitution, or the State Government in exercise of the power under the proviso to that article can do. However, on being satisfied that a strong case for forming a common cadre for all exists, we require the State Government to apply its mind to this aspect of the matter, and, so too, to make available the same pay scale to all types of Inspectors of Factories. The distinction which has been repeatedly highlighted by the learned Solicitor General in the working of different wings is, according to us, a distinction without a difference. This submission of the learned State Counsel has, therefore, not impressed us.

Before closing, we may deal with the additional submission advanced by the counsel of the Appellants in the appeal arising out of SLP (C) No. 14894/94. The same is that if higher posts are made available to the Deputy Chief Inspector of Factories (Chemical), the promotional chances of the main wing of Inspector of Factories would be jeopardized. This submission is misconceived inasmuch as if a common cadre is formed, instead of nine posts of Deputy Chief Inspector which were earlier available to the Inspector of Factories in the main wing, ten posts would become available. This apart, those Deputy Chief Inspectors of Factories (Chemical), would remain senior and would have higher claim to the promotional post of Joint Chief Inspector, and, as such, no harm would really be caused to them because of the formation of a common cadre.

In *Raghunath Prasad Singh, Appellant v. Secretary, Home (Police) Department, Government of Bihar and Ors. Respondents (supra)*, the Apex Court held thus:

Before we part with the appeal, we would like to take notice of another aspect. In course of hearing of the appeal, to a query made by us, learned Counsel for the Appellant indicated the reason as to why the Appellant was anxious to switch over to the general cadre. He relied upon two or three communications which are a part of the record where it has been indicated that there is no promotional opportunity available in the wireless organisation. Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would, therefore, direct the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the wireless organisation within six months from today by appropriate amendments of Rules. In case the State of Bihar fails to comply, with this direction, it should, within two months therefore, give a fresh opportunity to personnel in the Police wireless organisation to exercise option to revert to the general cadre and that benefit should be extended to everyone in the wireless organisation.

17. Upon hearing the learned Counsel on both sides and also on perusal of the available materials on record, I am of the view that the writ Petitioners have a genuine and strong case for consideration of their promotional avenues by the State/Respondents in the higher posts and it is the wisdom and competence of the Respondents in the matter.

18. Applying all the above mentioned established principles of law as well as my reasoning and discussions made above, this Court requires the State Govt./ Respondents to apply its mind to this aspect of the matter and, so too, to consider the case of the writ Petitioners in the light of the aforementioned established principles of law as well as the genuine claim of the writ Petitioners. This Court, hope and trust that the Respondents shall ventilate the grievances of the writ Petitioners thus providing promotional avenues to them considering their long and continuous services rendered in the Department.

For the aforesaid reasons and observations, this writ petition is disposed of. No costs.