
(2006) 01 GAU CK 0006
In the Gauhati High Court
Case No : W.A. No. 5 of 2004

S.D. Majumdar

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 27-01-2006

Acts Referred:

Citation : (2006) GLT 466 Supp

Hon'ble Judges : B.P. Katakey, J;B.K. Sharma, J

Bench : Division Bench

Advocate : C. Lalramzauva, A.R. Malhotra and Lalduhawmi, for the Appellant; N. Sailo, K.V. Tlangmawia and G. Raju, for the Respondent

Judgement

B.K. Sharma, J.—The unsuccessful writ Petitioner has preferred this appeal in respect of his grievance relating to the recommendation made in favour of the Respondent No. 6 for promotion to Engineering Grade-IV (Mechanical). In fact, consequent upon the recommendation so made, the Respondent No. 6 has been promoted and he has joined the promotional post.

2. The only issue, which falls for our consideration is to the interpretation in respect of the office memorandum dated 10.10.2002 issued by the Government of Mizoram in the Department of Personnel and Administrative Reforms (General Service Wing) laying down the criteria for promotion, which include the period for which the Annual Confidential Rolls (ACR) are required to be taken into account by the DPC towards consideration of the promotions of the eligible incumbents. In the instant case, the Respondent No. 6, who is junior to the Appellant/writ Petitioner has been recommended for promotion to Engineering Grade-IV in the Mechanical Wing of the department and pursuant to such recommendation the notification dated 6.12.2004 promoting him to the said Grade has also been issued and the Respondent No. 6 has joined the post by submitting his joining report on 7.12.2004.

3. The relevant clauses in the aforesaid OM dated 10.10.2002 are quoted below:

3.4 Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory, Hence,

(a) The DPC should consider CRs for equal number of years in respect of all officers considered for promotion subject to (c) below.

(b) The DPC should assess the suitability of the candidates for promotion on the basis of their service records and with particular reference to the CR for five preceding years, irrespective of the qualifying service prescribed in the Service Rules/Recruitment Rules. (If more than one CR has been written in a particular year all the CRs for the relevant years shall be considered together as the CR for one year).

(c)....

....

(g) ACRs of officers which became available during the year immediately preceding the vacancy/panel year should be considered by the DPCs even if DPCs are held later than the year of vacancy. In other words, for the vacancy/panel year, 2001-2002, ACRs upto the year ending 31st March, 2000 are required to be considered irrespective of the date of convening the DPC. However, ACRs upto the year ending 31st March, 2001 will be considered by the DPC if it sits after September of that year even if the vacancy falls within 2001-2002.

(Emphasis added)

4. The aforesaid OM has further been clarified in respect of Clause 3.4(g) by another OM dated 13.9.2004, which reads as follows:

NO. A. 32012/1/2003-P&AR (OSW) Pt

GOVERNMENT OF MIZORAM DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS (GENERAL SERVICE WING)

....

OFFICE MEMORANDUM

Dated Aizawl, the 13th Sept., 2004 Sub: Procedure to be observed by Departmental promotion Committee.

In inviting a reference to this Department's O.M. No. A. 32012/1/81-APT(B)/ Loose dated 10.10.2002 on the above subject, this is to clarify para 3.4(g) of the said O.M. that--if the DPC sits after September of the year 2002, ACRs upto the year ending 31.3.2001 would be taken into consideration by the DPC while considering the vacancies that arose for the vacancy year 2001-2002.

Sd/- Lalmalsawma Secretary to the Govt. of Mizoram

Memo No. A. 32012/1/2003-P & AR

(SCW)/Pt: Dated Aizawl, the 13th Sept., 04

5. In the instant case, the controversy is as to whether the ACR for the year 2002-2003 could have been taken into consideration by the DPC. While it is the case of the Appellant that the ACR for the said year could not have been taken into consideration in terms of the aforesaid OM, it is the case of the Respondent No. 6 that the ACR for the year was rightly taken into consideration by the DPC while considering the case of the incumbents for promotion to the aforesaid Grade. The learned Single Judge has held that the ACR for the year ending 31.3.2003 i.e. 2002-2003 was rightly taken into consideration by the DPC.

6. We have heard Mr. C. Lalramzauva, learned Counsel for the Appellant. We have also heard Mr. N. Sailo, learned State Counsel appearing for the State Respondents, Mr. K.V. Tlangmawia, learned Standing Counsel, MPSC argued on behalf of the Commission, while Mr. George Raju, learned Counsel for the Respondent No. 6 made his submissions.

7. We have considered the submissions made by the learned Counsel for the parties and the materials on record. We have also gone through the impugned judgment and order dated 29.11.2004 passed in the writ petition being WP (C) No. 44/2004 filed by the Appellant, which has been dismissed by the said judgment. According to the learned Counsel for the Appellant, the ACR for the year 2002-2003 could not have been taken into consideration by the DPC, in view of the clear mandate in the aforesaid OM in terms of which the ACRs only upto March, 2002 i.e. 2001-2002 could have been taken into consideration. However, it is the stand of the learned Counsel for the Respondent No. 6 that on a correct interpretation of Clause 3.4(g) of the OM dated 10.10.2002, the learned Single Judge has rightly held that the ACRs upto 31.3.2003 was rightly taken into consideration.

8. On perusal of the relevant Clause 3.4(g) and if the example furnished therein is taken into consideration and we transpose the year 2001-2002 to the year 2003-2004, it gives little difficulty to hold that in the instant case, the vacancy/penal year being 2003-2004, the ACR upto 31.3.2002 i.e. 2001-2002 could only be taken into consideration irrespective of the date of convening of the DPC. The learned Single Judge, however, has held that since the DPC was convened and held on 16.3.2004 for the vacancy/penal year 2003-2004 i.e. after September, 2003, on an interpretation of the said OM dated 10.10.2002, the ACR upto 31.3.2003 i.e. for the year 2002-2003 was rightly taken into consideration.

9. We are unable to persuade ourselves to adopt the aforesaid interpretation of the learned Single Judge. On a total reading of the relevant clause of the aforesaid OM dated 10.10.2002 coupled with the clarification issued by OM dated 13.9.2004, there is no manner of doubt that for the vacancy/penal year of 2003-2004, ACRs upto 31.3.2002 could only be taken into consideration. The emphasized portion of Clause 3.4(g) quoted above make the position clear. It is only those ACRs, which became available during the year immediately preceding

the vacancy/penal year should only be considered by the DPC. The vacancy/penal year being 2003-2004, the preceding year of the same is naturally 2002-2003, during which year the ACRs of earlier five years became available. The panel/vacancy year having started with effect from 1.4.2003 and ending on 31.3.2004, in the preceding year 2002-2003, the ACRs of five years upto 31.3.2002 i.e. 2001-2002 became available in that year. If that be so, irrespective of the date on which the DPC was held, the ACR upto 31.3.2002 could have been taken into consideration and not beyond that.

10. The exception which has been provided in the aforesaid clause under which the ACRs upto 31.3.2003 could have been taken into consideration, would have been applicable had it been a case of holding the DPC after September, 2004. Such an exception has been made so that the delay in convening the DPC does not frustrate the cause of justice by not taking into account the latest ACR. In the instant case, there was no delay in holding the DPC and the same was held during the currency of the vacancy/penal year and thus there was no question of taking into account the ACRs upto 31.3.2003. The question of consideration of ACR of 2002-2003 would have arisen, had it been a case of convening the DPC after September, 2004. There is no manner of doubt that the five years ACRs became available in the preceding year i.e 2002-2003 for the penal/vacancy year 2003-2004 and thus, it is only the ACRs upto 31.3.2002 which could have been taken into consideration by the DPC.

11. The above aspect of the matter was duly clarified by the subsequent OM dated 13.9.2004, according to which also the ACRs only upto 31.3.2002 could have been taken into consideration by the DPC. The clarification having been issued in respect of the parent OM dated 10.10.2002, the OM dated 13.9.2004, by which the clarification was issued forms part of the OM dated 10.10.2002 and there being no challenge to the same will hold the field. Irrespective of such clarification, even otherwise also on a plain reading of Clause 3.4(g), we are of the opinion that the ACR of 2002-2003 for the vacancy/penal year upto 31.3.2004 i.e. 2003-2004 could not have been taken into consideration. This also finds support from Clause 3.8. of the OM, which has also been quoted above.

12. Learned Single Judge while interpreting the OM dated 10.10.2002 has held that the DPC having been convened after September, 2003, the ACR upto 31.3.2003 was rightly taken into consideration. Such a finding arrived at is contrary to the position of the case in as much as the vacancy/penal year being 2003-2004 i.e. from 1.4.2003 to 31.3.2004, the DPC could not have been held in 2003, even after September, 2003. The vacancy/penal year being 2003-2004 i.e. upto 31.3.2004, the DPC was to be held within March, 2004 or atleast within September, 2004 and in the instant case, the DPC having been held on 16.3.2004 and not beyond September, 2004, there was no question of taking into account the ACR upto 31.3.2003 and for that matter the ACR of 2002-2003.

13. The above view of ours also finds support from the office memorandum dated 16.6.2000 issued by the Government of India in the Department of

Personnel and Training. It was submitted at the Bar that the Government of Mizoram issued the OM dated 10.10.2002 following the Government of India's instruction. The OM dated 16.6.2002 reads as follows:

G.I. Dept. of Per. & Trg., O.M. No. 22011/9/98-Estt. (D) Dated the 16th June, 2000 Relevant year upto which ACRs are to be considered.

1. *****

2. In regard to operation if the Model Calendar for DPCs, a doubt has been raised by certain quarters as the question of the relevant year upto which ACRs are required to be considered by the DPCs. In this connection, it is once again clarified that only such ACRs should be considered which became available during the year immediately preceding the vacancy/panel years even if DPCs are held later than the schedule prescribed in the Model Calendar. In other words, for the vacancy/panel year 2000-2001, ACRs upto the year 1998-99 are required to be considered irrespective of the date of convening DPC.

3. Ministers/Departments are requested to give wide circulation to these clarifications for general guidance in the matter and also to ensure strict adherence to the time-schedule prescribed as per the Model Calendar for DPCs.

14. The learned Single Judge has interpreted the OM dated 10.10.2002 in the manner indicated in the impugned judgment and order holding that the ACR upto 31.3.2003 was rightly taken into consideration. While holding so, it has been observed that when the DPC was held on 16.3.2004, it is difficult to appreciate why the latest of the ACRs i.e. ACR for the year ending 31.3.2003 should be excluded and that the OM dated 10.10.2002 must always receive such interpretation at the hands of the Court, which would advance cause of public service. We are afraid, such an interpretation is not tenable. It is a well settled principle in law that the Court cannot read anything into a statutory provision, which is plain and unambiguous. The question is not what may the supposed and has been intended, but what has been said. The OM dated 10.10.2002 and the relevant clause thereof i.e. 34(g) on its plain reading does not lead to any other interpretation than the one we have indicated above and it will not be the role of the Court to give another meaning to the said clause on the ground of giving an interpretation which would advance cause of public service. The Apex Court in the case of Prakash Nath Khanna and Another Vs. Commissioner of Income Tax and Another, stated thus:

13. It is a well settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid". Judge Learned said, "but words must be construed with some imagination of the purposes which

lie behind them."

14. In D.R. Venkatachalam v. Dy Transport Commn. It was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

15. For the foregoing discussions, reasons and findings arrived at, we have no hesitation to set aside the impugned judgment and order dated 29.11.2004 passed by the learned Single Judge in WP (C) No. 44/2004 and we hold that the ACRs only upto 31.3.2002 ought to have been taken into consideration by the DPC held on 16.3.2004 for consideration of the case for promotion to the Engineering Grade-IV under Mechanical Wing of the Department.

16. In view of our finding and interference with the judgment and order passed by the learned Single Judge, the Respondents are directed to convene review DPC to consider the case of the incumbents including that of the Petitioner and the Respondent No. 6 taking into account the ACRs only upto 31.3.2002 and excluding the one for the year 2002-2003. Consequently, the recommendation made by the DPC in favour of the Respondent No. 6 and his consequent promotion vide order dated 29.11.2004 stand set aside and quashed. The Respondents shall convene the review DPC at the earliest opportunity.

17. Writ appeal stands allowed in the manner. There shall be no order as to costs.