

(2010) 08 GAU CK 0138

In the Gauhati High Court

Case No : Writ Petition (C) No's. 97 and 98 of 2009

Sh. J. Sangthangpuia and Others

APPELLANT

Vs

Lai Autonomous District Council and Others

RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Lai, Mara and Chakma District Councils (Group A, B, C and D Posts) Recruitment Rules, 1992 — Rule 6

Citation : (2011) 2 GLT 210

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : C. Lalramzauva, A.R. Malhotra, J. Lalfakawma, T.J. Lalnuntluanga, K. Laldinliana and P. Vanlalchawii, for the Appellant; N. Sailo, Addl. A.G., for the Respondent

Judgement

H. Baruah, J.—Heard Mr. C. Lalramzauva, learned Counsel of the writ Petitioners and Mr. N. Sailo, learned Addl. Advocate General, Mizoram for the Respondent Nos. 1, 2 and 3.

2. Facts and circumstances and law involved in both the writ petitions being similar in nature, both the writ petitions are being disposed of by this judgment and order.

W.P. (C) No. 97 of 2009

3. Writ Petitioner, Sh. J. Sangthangpuia was initially appointed to the post of Circle Education Officer (Middle Section) a Group "B" post in the scale of pay of Rs. 2000-3500/- p.m. plus other allowances as admissible under the Rules, vide Office Order No. 195/4 dated 8th August, 1994 (Annexure-1) by the Chief Executive Member, Lai Autonomous District Council, Lawngtlai on temporary basis terminable at any time subject to regularization by the DPC in due course After 8 years, vide office order No. 102/2002 dated 10.04.2002 (Annexure-2) the Petitioner was promoted to the post of Assistant Education Officer (AEO), a

Group "A" post in the Lai Autonomous District Council, Lawngtlai. After 3 years of his promotion, one Smt. Hrangthanmawii, Circle Education Officer, senior to him (the writ Petitioner) challenged the promotion of the Petitioner by filing W.P. (C) No. 66 of 2004 which came to be decided by judgment and order dated 26.04.2005. This Court by judgment and order, as indicated above, set aside and quashed the promotion of the Petitioner to the post of AEO and the Petitioner was thereby reverted back to the post of CEO and Smt. Hrangthanmawii was given retrospective appointment w.e.f. 10.04.2002 vide Office Order No. 125/05 dated 29.07.2005 (Annexure-4).

4. The LAI, MARA AND CHAKMA District Councils (Group A, B, C & D Posts) Recruitment Rules, 1992 came into operation and the post of AEO is categorized as General District Council Service Group "A" in the scale of pay of Rs. 2200-4000/- p.m. (Pre-Revised) and is a Selection Post. The mode of recruitment to the said post is 100% by promotion from CEO having not less than 5 years service in the grade, failing which by transfer on deputation from official holding analogous post under the Central/State Government with variation with incumbents under Technical and Engineering Departments such as Forest, Soil and Water Conservation, Agriculture, PWD, PHE, etc. After reversion to the post of CEO per direction of this Court, the Petitioner has been posted as Information & Publicity Officer in the Information Department in the scale of pay of Rs. 8000-13,500/- p.m. It is contended that though the Petitioner has been discharging his duties with utmost sincerity and devotion, he has been illegally superseded by his juniors in service in the grade of Group "B" under LADC on different occasions by the Respondents No. 4 to 8 and now all the private Respondents are holding Group "A" posts under the Lai Autonomous District Council. It is contended that Respondent No. 4 was initially appointed as Translator by the Office Order No. 107/91 dated 24.07.1991 and was promoted to the post of Senior Translator (a Group "B" post Non-Gazetted) by the Office Order No. 29/2001 dated 4.07.2001 and thereafter again promoted to the post of Under Secretary w.e.f. 1.02.2005 vice Sh. Zaichhunga, Under Secretary retired. In the same way Respondent No. 5 who initially joined as District Council Circle Adult Education Officer, a Group "B" Non-Gazetted post was promoted without any recommendation of the DPC to the post of District Council Circle Adult Education Officer and subsequently, transferred and posted as Controller of Examinations. Respondent No. 6 was initially appointed as Statistical Inspector and promoted to the post of Superintendent, a Group "B" Gazetted post by Office Order No. 49/05 dated 18.03.2005. Thereafter, in the year 2007 the Respondent No. 6 was posted as Private Secretary to the Chief Executive Member equivalent to the post of Superintendent. Subsequently, the post of Private Secretary to the Chief Executive Member was upgraded to Group "A" post by the Office Order No. 41/2008 dated 22.02.2008 with immediate effect. Thereafter, Respondent No. 6 sat for departmental examination conducted on 22.02.2008 for promotion to group "A" post and accordingly he was promoted in the scale of pay of Rs. 8000-13,500/- p.m. vide Office Order No. 53/08 dated

20.03.2008. It is also contended by the writ Petitioner that though the Respondent No. 7 was initially appointed as Circle Adult Education Officer, a Group "B" Non-Gazetted post about 7 years after the Petitioner had joined his post of CEO was promoted to the post of CEO against the post vacated by him on account of his promotion to the post of AEO. Respondent No. 7 also sat in the departmental examination conducted by Respondent No. 1 on 22.02.2008 for promotion to the group "B" post and he was promoted along with Respondent No. 6. Respondent No. 8 was initially appointed as Computer Operator and was promoted to the post of Private Secretary to the Chairman. Respondent No. 1 upgraded the scale of pay of the Respondent No. 8 into the Group "A" Entry Grade with retrospective effect from 18.03.2008 thereby superseding the Petitioner who is much senior to her in the grade of Group "B" post.

5. The Recruitment Rules did not provide any provision for conducting departmental examination for promotion. However, Respondent Nos. 1 to 3 conducted the departmental examination on 22.02.2008. The Petitioner did not sit rather appear in the said departmental examination since no such provision is provided in the relevant Recruitment Rules.

6. The Petitioner having been superseded by the private Respondents who are junior to him, feeling aggrieved for not promoting him to Group "A" post has approached this Court by filing this instant writ petition challenging the impugned promotion of the Respondents No. 4 to 8 as well as the impugned Notification dated 19.02.2008 by which the departmental examination was directed to be conducted and prays for setting aside and quashment of the appointments of the private Respondents, with a prayer for a direction to the Respondent Nos. 1 to 3 to give him promotion to the Entry Grade of Group "A" post with retrospective effect from the date of promotion of the Respondent No. 4 or Respondent No. 5 with all service benefits.

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7. Petitioner is a graduate in Arts and being found fit and qualified by the DPC he was appointed as Group "B" Officer (Gazetted) in the Lai Autonomous District Council, Lawngtlai to fill up the vacant post on account of promotions under Lai Autonomous District Council, Lawngtlai by Office Order No. 162/95 dated 14.07.1995 (Annexure-I). After his appointment he was functioning as Assistant Revenue Officer in the Revenue Department, a Group "B" Gazetted Post. Subsequently, he was confirmed in the post along with 4 others. Recruitment Rules, 1992 is applicable to Group A, B, C & D posts under LAI, MARA and CHAKMA District Councils. The post of Assistant Revenue Officer is a feeder post of Revenue Officer, a Group "B" post and mode of recruitment to the said post is 100% by promotion from ARO having not less than 5 years service in the grade failing which by transfer on deputation from official holding analogous post under the Central/State Government. The posts in the District Councils pertaining to different departments are all classified as General District Council Service and inter transferable among the incumbents holding equivalent grade and status

except under the Technical & Engineering Departments. Though the Petitioner has been working with utmost sincerity and devotion in his service, has been illegally superseded by the private Respondents who were junior in service in the grade of Group "B" Gazetted post. Respondent No. 4 was initially appointed as Translator, a Group "C" post and was promoted to the post of Senior Translator, a Group "B" Non-Gazetted post by the Office Order No. 29/2001 dated 4.07.2001. He was thereafter, again promoted to the post of Under Secretary, a Group "A" post w.e.f. 1.02.2005. Respondent No. 5 who was initially appointed as Circle Adult Education Officer, a Group "B" post on 23.08.1996 was promoted without any recommendation of the DPC to the post of AEO, a group "A" post. Subsequently, he was transferred and posted as Controller of Examinations by the Office Order No. 125/2008 dated 10.06.2008. Respondent No. 6 and Respondent No. 7 though initially appointed subsequent to the writ Petitioner, they were given promotion to the next higher grade by various orders by Respondents as contended in paragraphs 8 and 9 of the writ petition. It is also contended that the Respondents for the purpose of promotion of some of the private Respondents conducted departmental examination on 22.02.2008 though such provision is not available in the Recruitment Rules, 1992. Taking note of the promotions of the private Respondents who are all junior to the writ Petitioner and on account of depriving him from being promoted to the next higher grade, being aggrieved, he has approached this Court by filing the instant writ petition under Article 226 of the Constitution of India challenging the promotion of the private Respondents No. 4 to 8 as well as the Notification dated 19.02.2008 by which departmental examination was directed to be conducted with a prayer to set aside and quash such appointment of the private Respondents and the Notification as indicated above with a direction to the Respondent authorities to promote him to the Entry Grade of Group "A" post with retrospective effect from the date of promotion of the Respondent No. 4 or Respondent No. 5 to the Entry Grade of Group "A" post with all service benefits.

8. From both the writ petitions, it appears that the prayer made by the writ Petitioners are similar in nature.

9. Both the writ petitions are contested by the Respondent Nos. 1, 2 and 3 by filing counter affidavit. Petitioner also filed reply to the counter affidavit filed by the Respondent Nos. 1, 2 and 3. From the scrutiny of the counter affidavit filed by the Respondent Nos. 1, 2 and 3 filed in both the writ petitions no averments appear to have been made as to why the Petitioners in both the writ petitions have been denied promotion. There is no indication in the counter affidavit filed by the Respondents Nos. 1, 2 and 3 that at any point of time their cases were considered by the DPC for promotion. No minutes of the DPC is also annexed to the counter affidavit to substantiate the reasons for non-consideration of the writ Petitioners for promotion to the next higher grade and also in respect of the promotion of the private Respondents who are admittedly junior to the writ Petitioners. In paragraph 8 of the counter affidavit it is contended that on account of financial constraintment the officers of the District Council could not

be sent for training on regular basis and therefore, in order to raise their efficiency as provided under Rule 6 of the Recruitment Rules as well as by Office Order No. F13012/1/06 LADC/GAD dated 11.09.2007, departmental examinations are conducted amongst the Group "B" officers and on the basis of their performance Respondent Nos. 6 and 7 were recommended for promotion to the grade of Group "A" post. As the Petitioners did not seat in the departmental examination they could not be in the zone of consideration to such promotion. In the counter, the Respondent Nos. 1, 2 and 3 also justified the promotion of the private Respondents to the next higher grade.

10. It is true that the services of Group A, B, C & D under the Lai Autonomous District Council are guided by the Recruitment Rules, 1992 for promotion to the next higher grade. Eligibility is 5 years continuance of service in the feeder grade. Therefore, if an employee/officer serves continuously for 5 years in a Group "B" post, he will be entitled for promotion to the next higher grade i.e., Group "A" post. Except this criteria no other criteria has been provided in the Rules for promotions. Therefore, what has not been provided in the Rules for promotion of a particular officer in the grade or the provision which is foreign to the Rules cannot be inducted or applied to. It is noticed that the Respondent Nos. 1, 2 and 3 for the purpose of promotion of the next higher grade, conducted a departmental examination that too within a very very short notice i.e. within 3 days of the publication of notice. The claim of the Respondent Nos. 1, 2 and 3 that notice is duly circulated cannot be accepted in view of the date indicated in Notification dated 19th February, 2003 (Annexure-20).

11. Further, the assistance sought for by the Respondent Nos. 1, 2 and 3 from Rule 6 of the Rules is also beyond the scope of consideration in view of the object and intention contained therein. Rule 6 to the Rules speaks of training and departmental examination which reads as under:

Every District Council Employees shall undergo such training or pass such Departmental Examination as may be prescribed from time to time.

By these Rules, it has been made incumbent on the employees to undergo training and pass departmental examinations. It nowhere says about the conduct of departmental examination for the purpose of promotion of employees from one grade to another grade. Therefore, apparently, Office Memorandum dated 11th September, 2007 could have no application in view of absence of any Rule in the Recruitment Rules, 1992 for holding departmental examinations for promotion. Recruitment Rules, 1992 also does not provide any saving clause for this purpose. Thus, the promotion made on the basis of this departmental examination of the private Respondents would be illegal since such a recourse is beyond the purview of the Recruitment Rules. Arguments advanced by Mr. N. Sailo, learned Counsel for the Respondents Nos. 1 to 3 would not be acceptable in view of non-incorporation of any provision in the Recruitment Rules, 1992 for holding departmental examination for promotion.

12. Mr. N. Sailo, learned Counsel in his usual fairness submits that the concerned departments under the Lai Autonomous District Council, AC Rs for the officers are not regularly maintained. If that is so the question arises under what basis promotion of the employees by the DPC is considered. As, already indicated herein before that holding of departmental examination is foreign to the Recruitment Rules, 1992. Adoption of such procedure and promotion made on the basis of such examination cannot stand in the eye of law. Since no minutes of the DPC is annexed to the counter affidavit filed by the Respondents Nos. 1, 2 and 3, the criteria for promotion of the employees by the DPC remains in darkness. Per Recruitment Rules an employee of Group "B" post is entitled promotion to the next higher grade if he is in the grade for 5 years continuously. There is no dispute that the writ Petitioners are not in the grade less than 5 years. They are more than 5 years in the grade and till date they are not considered for promotion by the DPC.

13. It is argued by Mr. N. Sailo, the learned Counsel appearing for and behalf of Respondents No. 1, 2 and 3 that the cases of the Petitioners must have been considered by the DPC for their promotion to the next higher grade but this argument is without any leg whatsoever and therefore, such argument fails to invite any attention to this Court. Private Respondents in both the writ petitions are admittedly juniors to the writ Petitioners but they are given promotion from one grade to another superseding the legitimate claim of the writ Petitioners. Nothing has been pleaded rather placed before this Court showing the Petitioners' unsuitability to get their promotion to the next higher grade. The Petitioners are in the grade for long years without promotion.

14. Mr. C. Lalramzauva, representing the writ Petitioners in both the writ petitions vehemently argues that the Petitioners have been discriminated by the Respondent Nos. 1 to 3 by not promoting them to the next higher grade though they are seniors to the private Respondents (in both the writ petitions). It is submitted by Mr. C. Lalramzauva, that both the writ Petitioners have fulfilled the criteria for promotion and therefore, there cannot be any ground to deny their promotion from Group "B" to Group "A" post. Nothing adverse is forthcoming as against the writ Petitioners so as to disentitle them to promotion to next higher grade. The Respondents Nos. 1, 2 and 3 willfully neglected rather did not consider their case for promotion to the next higher grade for this long period which has eroded their constitutional and legal right. It is also submitted by Mr. C. Lalramzauva, the learned Counsel for the writ Petitioners that the holding of departmental promotional examination is beyond the Rules and promotion made on the basis of such examination is illegal. The executive instruction of the Respondent Nos. 1 to 3 would not come into play when no provision is contained in the Recruitment Rules, 1992. The private Respondents appears to have been promoted to the next higher grade by the Respondent Nos. 1 to 3 by adopting pick and choose policy. No proper procedure has been adopted for promotion of the private Respondents by the DPC constituted for the purpose of promotion. Since nothing is forth-coming in the counter regarding disqualification of the writ

Petitioners for promoting them to the next higher grade their claim cannot be denied by the Respondents No, 1 to 3 for promotion since both have fulfilled the criteria for promotion as contained in the Recruitment Rules. Mr. C. Lalramzauva, therefore, in view of the facts and circumstances of the case and the provisions in the Recruitment Rules contends that the appointment of the private Respondents are illegally made by the Respondents No. 1. to 3 which deserves quashment. It is submitted by Mr. C. Lalramzauva, that the Notification dated 19.02.2008 (Annexure-20) being against the Recruitment Rules, 1992 also deserves setting aside of the same. Further, it has been contended by him that since both the Petitioners are serving in the grade for long years and attained requisite qualification for promotion both should be given promotion from the date on which the private Respondent No. 4 or private Respondent No. 5 was given promotion with all benefits.

15. Yesterday, when argument remained not concluded, Mr. N. Sailo, the learned Counsel for the Respondent Nos. 1, 2 and 3 was advised to obtain instruction from the Respondents Nos. 1, 2 and 3 whether there is any vacancy at present in the Group "A", today it has been appraised by Mr. N. Sailo that as informed by the Respondent Nos. 1, 2 and 3 there are vacant posts and if reasonable time is provided to the Respondents Nos. 1, 2 and 3, both the writ Petitioners could be accommodated in the post.

16. In view of the instruction so obtained by Mr. N. Sailo, learned Counsel for the Respondent Nos. 1, 2 and 3, Mr. N. Sailo submits that at least 3 (three) months" time may be provided to the Respondents to promote the writ Petitioners to the vacant posts. Mr. C. Lalramzauva, the learned Counsel for the Petitioners has not raised any objection in such a move subject to promotion of the Petitioners from the date on which their immediate junior(s) was promoted with all benefits. In view of his submissions this Court also does not see any good ground to set aside and quash the promotion of the private Respondents made vide Notifications as indicated in the writ petitions. If without disturbing their (private Respondents) promotion the writ Petitioners could be accommodated in the vacancies in the next higher grade within a period of 2 (two) months at least, this Court finds the suggestion acceptable.

17. Accordingly, both the writ petitions stand disposed of with the following directions:

(i) that the Respondents No. 1, 2 and 3 shall promote the writ Petitioners to the next higher grade within a period of 2 (two) months from the date of receipt of the copy of the judgment and order;

(ii) that both the writ Petitioners shall be given promotion on and from the date on which their immediate junior(s) was given promotion to the next higher grade; and

(iii) that such promotion shall be notional for the purpose of pension and other benefits except the back wages.

However, Petitioners would be at liberty to approach this Court again, if so advised. No Cost.