
(2001) 02 GAU CK 0013
In the Gauhati High Court
Case No : WP (C) No. 25 of 1998

Sh. K. Thanvela and Others	Vs	APPELLANT
State of Mizoram and Others		RESPONDENT

Date of Decision : 02-02-2001

Acts Referred:

Assam Police Manual — Regulation 39, 39
Constitution of India, 1950 — Article 162, 226

Citation : (2001) 1 GLT 337

Hon'ble Judges : B.B. Deb, J

Bench : Single Bench

Advocate : Mr. G. Raju, for the Appellant; Mr. T. Vaiphei, AAG, for the Respondent

Final Decision : Dismissed

Judgement

1. By this writ petition under Article 226 of the Constitution of India, the petitioners (seven in number) challenged the order of promotion of private respondent Nos. 6 to 11 to the post of Inspector, Armed Branch (AB) dated 24.10.1995 and also challenged the impugned seniority list of the petitioners vis-a-vis the private respondents dated 1.5.1997.

2. The fact of the petitioners' case, in gist, is as follows:-

The petitioners and the private respondent Nos. 6 to 11 had been holding the posts of Sub-Inspector, Armed Branch (AB) prior to their promotion to the posts of Inspector (AB) but in the said feeder posts of Sub-Inspector (AB) the petitioners were seniors to the private respondents. In the seniority list published on 16.7.1990 (Annexure-P-1) of the Sub-Inspector (AB) the petitioners' position had been shown at serial Nos. 17, 20, 24, 27, 28, 29 and 32 while the seniority position of the private respondents had been shown at serial Nos. 19, 36, 42, 44, 48 and 59 and according to the petitioners, only the private respondent No. 6 is senior to the petitioner Nos. 2 to 7, but that private respondent No. 6 is also junior to petitioner No. 1.

For the purpose of promotion to the post of Inspector (AB), all the petitioners as well as the private respondents holding the post of Sub-Inspector (AB) were in the feeder posts and the promotions were to be made on the basis of Regulation No. 39 of the Assam Police Manual Vol.1 but having violated the aforesaid provision of Assam Police Manual, the private respondent Nos. 6 to 11 had been promoted superseding the petitioners vide order dated 24.10.1995 to the post of Inspector (AB) on the basis of the recommendation made by the Mizoram Public Service Commissioner (hereinafter referred to as "MPSC")³ communicated vide letter No. 60/A/95-MPSC/20 dated 31.8.1995, while the petitioner had also been promoted to the post of Inspector (AB) subsequently vide order dated 3.11.1995 pursuant to the recommendation made by the MPSC vide letter No. 60/A/95-MPSC/ 241 dated 31.10.1995 and since the petitioners had been promoted subsequent to the promotion to their juniors (private respondent Nos. 6 to 11), in the seniority list published for the posts of Inspector (AB), the petitioners were shown juniors to the private respondents.

3. The State Government and the MPSC submitted respective counters separately the stand taken by the respondent Government in their counter is that the Regulation 39 of the Assam Police Manual stood amended by subsequent Office Memo issued by the Government bearing No. A.32012/1/81-APT(B) dated 24.8.1994. By this office Memorandum, the Government decided to obtain the recommendation of the MPSC so far selection of candidature for the purpose of appointment or promotion to any post under Group A or B category under the Government of Mizoram and by this office Memorandum, the Government of Mizoram directed all the authorities concerned to place the relevant papers to the MPSC for its consultation so far filling up of the posts under Group A and B are concerned instead of selection procedure followed earlier. The further contention of the State Government is that the names and related papers of all the petitioners, private respondents and other eligible Sub-Inspector (AB) had been placed before the MPSC and on assessment the MPSC made their recommendations. Since in the first phase the private respondents had been recommended by the MPSC, they had been promoted to the post of Inspector (AB), but on subsequent phase the name's of the petitioners and others had been recommended" by the MPSC and they had been promoted accordingly, of course, subsequent to the promotion of the private respondents and as such in doing so neither the MPSC nor the State Government committed any wrong nor violated any provision of law.

4. The MPSC also had taken the same plea. Referring the Office Memorandum No. A. 32012/1/81-APT(B) dated 24.8.1994, the MPSC also averred in their counter-affidavit that in view of the aforesaid Office Memorandum, all cases for appointment/promotion to Group A and B categories posts require to be placed before the MPSC for its recommendation, consequent upon the establishment of MPSC instead of previously constituted Departmental Selection Committee.

5. Mr. G. Raju, learned counsel for the petitioners having referred to Rule 39 of

the Assam Police Manual (as extended to the State of Mizoram) submits that only the Inspector General of Police is to make promotions to the posts of Inspector (AB) from the list to be prepared by the State Selection Committee constituted by the Inspector General of Police. The extract of rule 39 of the Assam Police Manual has been annexed as Annexure-P-4 with the writ petition, which runs as follows:-

"Promotion to the rank of Inspectors will be made by the Inspector General of Police from the list to be prepared by a State Selection Board constituted by the Inspector General of Police from time to time for the purpose."

Having relied upon the aforesaid provision, the learned counsel for the petitioners submits that in the present case having violated the aforesaid provision, the Inspector General of Police referred the case of eligible candidates to the MPSC instead of constituting a Selection Committee as required under the aforesaid Rule 39 of the Assam Police Manual and as such the promotions given consequent upon the recommendation of the MPSC are bad in law and the promotions/ appointments so made on the basis of the recommendations of the MPSC warrant to be quashed.

6. The learned counsel for the State respondents having relied upon the subsequent Office Memorandum issued by the Government of Mizoram dated 24.8.1994 (Annexure-I of the counter-affidavit) contends that earlier to the aforesaid Memorandum, the procedure embodied under Rule 39 of the Assam Police Manual was followed, but since the Mizoram attained the state-hood, constituted its own Public Service Commission. The Government by the aforesaid Memorandum issued directives for placing alt cases before the MPSC for its recommendation for the purpose of appointment/promotion to Group A & B posts instead of referring the matters to the Departmental Selection Board and as such in placing the cases of the eligible Sub-Inspector (AB) to the MPSC for its recommendation, the State/Inspector General of Police committed no illegality. In short, the learned counsel for the State respondents submits that rule 39 of the Assasm Police Manual became obsolete so far the appointment/promotion to the posts under Group A & B are concerned and so far the appointment/promotion to Group C & D posts are concerned, the Departmental Selection Board/Committee would function as before.

7. The learned counsel for the petitioners submits that a rule 39 of the Assasm Police Manual is a statutory Rule while the Office Memorandum dated 24.8.1994 is mere an executive/administrative instruction.

8. From a perusal of Assam Police Manual, it appears that the said Manual has never been passed by way of legislation, but it is also a subordinate legislation made by the authority in exercise of Executive power and the same is akin to the Office Memorandum dated 24.8.1994. From the language used and the intention ascertained from the aforesaid Office Memorandum dated 24.8.1994, it appears to me that the said Office Memorandum had also been issued in exercise of

Executive Power under Article 162 of the Constitution of India, this being the position, both the provisions of Rule 39 of Assam Police Manual and the Office Memorandum dated 24.8.1994 are the outcome of Executive instruction and as such the subsequent Executive instruction dated 24.8.1994 would prevail over the earlier one so far the appointment/ promotion to Group A & B posts are concerned. This being the position, I find no fault with the authority concerned in placing the cases of eligible candidates before the MPSC for its recommendation.

9. From the available record, it appears that the cases of the petitioners along with private respondents and others had been placed by the authority before the MPSC for its recommendation and the MPSC in the first phase recommended the names of the private respondents and others for promotion to the post of Inspector (AB) and at a subsequent phase the MPSC recommended the cases of the petitioners and others and acting upon such recommendation, the authority issued the impugned promotion order.

10. The learned counsel for the petitioners submits that though there are numerous vacancies, but the Director General of Police requested the MPSC for processing the matter of recommendation for filling up as many as seven vacant posts of Inspector (AB) vide correspondence No. E/PHQ/IRP/Pt/221-A dated 9.8.1995 and in that communication the Director General of Police reduced the qualifying service required from ten years to five years on the ground that no Sub-Inspector (AB) had completed ten years of service in the Grade and since urgency required the relaxation was made.

11. The learned Govt. Advocate submits that consequent upon the relaxation so made in their length of qualifying service, the petitioners as well as the private respondents became eligible for consideration otherwise neither the petitioners nor the private respondents would have been eligible even for consideration or lack of qualifying service period and as such after availing the benefit of the aforesaid Office Memorandum they ceased of any right to challenge the same. The learned Govt. Advocate also submits that under Rule 39 of the Assam Police Manual, the Inspector General of Police was given the power to make appointment/promotion to the posts of Inspector (AB), but in the instant case having referred to the promotion order of the private respondents dated 24.10.1995 (Annexure-P-5 to the writ petition) as well as the promotion order of the petitioners dated 3.11.1995 (Annexure-P-5 to the writ petition) the learned Govt. Advocate submits that both the aforesaid promotion orders promoting the private respondents as well as the petitioners had been done by the Director General of Police and not by the Inspector General of Police.

12. It is correct that after the statehood, the Government of Mizoram created a post of Director General of Police being the Chief of Police organisation putting the Inspector General of Police under him and thus from the aforesaid situation also it could be easily presumed that Rule 39 of the Assam Police Manual became obsolete so far it relates to appointment/promotion to the posts under Group A & B are concerned. This being the position, I am of the considered opinion that

Office Memorandum dated. 24.8.1994 would prevail over Rule 39 of the Assam Police Manual so far appointment/ promotion to Group "A" and Group "B" posts are concerned.

13. The learned counsel for the petitioners submits that at the first instance the authority only informed the MPSC that seven posts of Inspector (AB) were lying vacant and for that purpose the recommendation of the MPSC was sought for vide letter dated 9.8.1995, but subsequently vide letter dated 27.10.1995, the authority informed the MPSC that more eight vacancies in the Grade of Inspector (AB) were lying and sought for further recommendation. The learned counsel for the petitioners further submits that had the authority asked the MPSC for recommendation for filling up as many as 15 posts of Inspector (AB), the fate of the petitioners would be otherwise. But it is on record that while the authority sought for recommendation of MPSC for filling up of seven vacant posts of Inspector (AB), the names of the petitioners as well as the names of the private respondents had been placed/referred and as such all the eligible Sub-Inspector (AB), including the petitioners got the consideration by the MPSC and as such requisition by two phases, firstly for seven posts and secondly for eight posts placed by the authority before the MPSC would not alter the situation in any way.

14. The learned Govt. Advocate submits that pursuant to the recommendation dated 31.8.1995 made by the MPSC, the private respondents had been promoted to the post of Inspector (AB) on 24.10.1995 and in the like manner consequent upon the recommendation made by the MPSC on 31.10.1995, the petitioners had been promoted to the posts of Inspector (AB) vide order dated 3.11.1995 and the petitioners accepted the said promotion and joined in the respective place of posting in the Grade of Inspector (AB) and thus the present writ petition having been filed on 10.6.1998 suffers from delay and laches beside the petitioners are estopped from challenging the same.

15. The learned counsel for the petitioners submits that unless final seniority list for the posts of Inspector (AB) was published, the petitioners' right had not been infringed of and since the final seniority list of Inspector (AB) was published on 1.5.1997 vide Annexure-P-10 to the writ petition, the cause of action arose for the petitioners to seek appropriate remedy before the court of law.

16. I cannot share with the submission made by the learned counsel for the petitioners because the petitioners know that they had been promoted by a separate promotion order after ten days of the promotion of the private respondents. On the date when the private respondents had been promoted to the posts of Inspector (AB), the petitioners held the post of Sub-Inspector (AB) and thus the cause of action to vindicate the grievance arose on 3.11.1995 when the petitioners found that they had been promoted subsequent to the promotion of the private respondents and as such the explanation made by the petitioners justifying the delay and laches caused in filing the writ petition appears to be not sound and convincing.

17. Having regard to the aforesaid factual and legal position. I am of the firm opinion that the promotion of the private respondents to the post of Inspector (AB) and subsequent publication of impugned seniority list dated 01.5.1997 suffer from no illegality and irregularity nor violated any provision of law and as such this writ petition fails and accordingly stands dismissed with no order as to costs.