

(2014) 04 MAN CK 0018
In the Manipur High Court
Case No : Writ Petition (C) No. 545 of 2011

Shri R.K. Chandrakumar Singh	Vs	APPELLANT
The State of Manipur and Others		RESPONDENT

Date of Decision : 09-04-2014

Acts Referred:

Citation : (2014) 04 MAN CK 0018

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : B.P. Sahu, Advocate for the Appellant; Sobhna, GA and Mr. H.S. Paonam, Sr. Advocate, Advocate for the Respondent

Final Decision : Dismissed

Judgement

N. Kotiswar Singh, J.—Heard Mr. B.P. Sahu, learned counsel for the petitioner, Ms. Sobhna, learned GA as well as Mr. H.S. Paonam, learned senior counsel for the respondents. The present writ petition has been filed challenging the promotion of respondent Nos. 4 and 5 to the posts of Research Assistant and Sub Inspector of Statistics respectively in the Directorate of Employment Exchange Complex, Lamphel.

2. The brief facts of the case as per the pleadings may be stated as follows.

The petitioner is presently serving as a Computer in the Directorate of Employment, Government of Manipur, having been appointed on 15.1.1987.

The post of Computer is a feeder post for the two higher posts of Sub Inspector of Statistics and Research Assistant under the same Directorate. As per the Recruitment Rules for the post of Sub Inspector of Statistics, 50% of the posts are to be filled up by direct recruitment and remaining 50% by promotion. As regards the promotion, (i) Graduate Lower Division Clerk with 5 years continuous service in the Department of Labour, Employment & Training on regular basis and (ii) Computer with 5 years continuous service in the Department of Labour Employment & Training on regular basis, are eligible.

Similarly, as regards the post of Research Assistant, the post is to be filled by promotion failing which by direct recruitment. In the Recruitment Rules for the said post of Research Assistant, it has been provided that a Graduate LDC/Computer/Sorter with a minimum of 5 years regular service in the grade, is eligible.

Thus as per the aforesaid Recruitment Rules for the said two posts of Sub Inspector of Statistics and Research Assistant, not only Computer but Graduate LDCs with 5 years of service are also eligible.

3. On accrual of two vacancies, one each for the posts of Sub Inspector of Statistics and Research Assistant, which were to be filled by promotion from amongst the eligible persons, a DPC was held on 27.6.2011. On the basis of the recommendation of the DPC held on 27.6.2011, the respondent Nos. 4 and 5 were appointed on promotion to the said two posts of Sub Inspector of Statistics and Research Assistant respectively.

4. Being aggrieved by the promotion of the said two respondents, petitioner has filed the writ petition challenging their promotion on the following grounds.

(i) It has been stated by the petitioner that before the DPC was held, no inter-se seniority list of employees holding feeder posts for the post of Inspector of Statistics and Research Assistant in the Directorate of Employment was prepared. The DPC was held on the basis of separate seniority lists for the posts of LDCs and Computers.

According to the petitioner, consideration for promotion without preparing a common seniority list of employees in the feeder posts is not permissible.

(ii) Secondly, it has been also submitted that in the said common inter-se seniority, employees who were enjoying higher pay scale ought to have been placed above.

According to the petitioner, the post of Computer carries the pay scale of Rs. 4000-6000/- (pre revised) and post of LDC carries the pay scale of Rs. 3050-4590/- (pre revised) and as such the post of Computer should be placed higher in the seniority list in view of the higher pay scale enjoyed by them.

(iii) Thirdly, it has been also stated that even though different feeder posts are included under the Recruitment Rules for promotion to the said two posts, no separate quotas for each of the feeder posts had been provided for promotion under the Recruitment Rules, thus giving the scope for filling up vacant posts only from one category of feeder post.

(iv) Lastly, the petitioner has contended that the authorities have discriminated against the employees who are serving as Computers on the last three occasions when promotions were made in 1996, 1997 and 1999 to the higher posts, no person/employees holding the post of Computer had been promoted.

5. The State respondents have filed their affidavit-opposition. It has been stated

that the respective seniority lists of Graduate LDCs and Computers were prepared on the basis of the dates of appointment in conformity with accepted norms and as no separate quotas have been prescribed for the feeder posts. However, at the time of consideration for promotion by the DPC, a combined seniority list of Graduate LDC/Computer was prepared based on seniority as per the respective dates of appointment. It is further contended that those Graduate LDCs who were appointed prior to the petitioner had been placed higher in position and those LDCs who were appointed subsequent to the petitioners had been placed below him. According to the respondents, the DPC took into consideration the combined seniority of the candidate in the feeder posts on the basis of the dates of appointment.

In the present case, respondent Nos. 4 and 5 were appointed as LDCs on 23.09.1986 whereas the petitioner was appointed as Computer on 15.1.1987 and as such being junior to the said respondent Nos. 4 and 5, the petitioner was placed below the said two respondents in the list considered by the DPC. It has been further stated that the case of the petitioner was also duly considered by the DPC as he was within the zone of consideration and the DPC made the recommendation on the basis of ACR and other criteria as per norms and the DPC made necessary recommendations on the basis of merit and as such, it has been stated that since the case of the petitioner was also considered by the DPC no grievance can be made by the petitioner.

The respondents also contended that as no separate sub quotas were provided in the Recruitment Rules for the post of Sub Inspector of Statistics and Research Assistant, there was no requirement to consider for promotion of the employees in the feeder grades separately. Neither there was any need to publish combined seniority list inasmuch as the DPC considered the seniority position of all eligible candidates on the basis of the dates of appointment.

The State respondents also denied that no Computers were given promotion on earlier occasions. It has been stated that, in fact, five Computers were promoted as Sub Inspectors of Statistics and Technical Assistants during 1982, 1986, 1986, 1988 and 1992 respectively and accordingly, it has been contended that there was no irregularity or illegality in the said recommendation.

6. The writ petitioner filed his reply affidavit. In the said reply affidavit, the petitioner contended that the private respondent No. 5 was not at all eligible for promotion to the post of Sub Inspector of Statistics for the reason that as per the Recruitment Rules for the said post, only Graduate LDCs and Computers are eligible. It is stated that at the time of initial appointment of respondent No. 5, she did not possess the qualification of graduation and she obtained her graduation lately in the year 1993 while in service from a local college without obtaining prior permission from the competent authority, though such prior permission is mandatory in view of the provisions of Rule 3 of the CCS (Conduct) Rules. Since respondent No. 5 did not take any prior permission from the competent authority, the qualification of degree obtained by respondent No. 5

cannot be taken into consideration for the purpose of promotion.

7. The private respondent Nos. 4 and 5 filed their respective affidavit in oppositions. The contentions of respondent Nos. 4 and 5 are in similar line as taken by the State respondents. The petitioner, has filed reply affidavit to the affidavit in opposition filed by respondent Nos. 4 and 5 reiterating the grounds already taken in the writ petition.

8. On hearing the learned counsel for the parties as well as on consideration of respective pleadings, this Court will now proceed to examine the grounds taken by the petitioner. As regards the first ground taken by the petitioner that no common inter-se seniority list of the employees holding feeder posts was prepared, it may be observed that normally when a post is to be filled up by considering claim of incumbents holding different categories of posts in the feeder grade, in absence of separate quotas, a common seniority list of the employees holding the different categories of feeder posts ought to be prepared. In the present case, even though no common seniority list of the incumbents holding different feeder posts had been published, a common interse seniority list was however prepared by the department which was considered by the DPC. In the said common seniority list of incumbents holding different feeder posts of LDCs and Computers it is seen that the seniority list was prepared on the basis of dates of appointment, thus, those who were appointed on earlier point of time were placed in higher position in the seniority list than those who were appointed at a later point of time. The private respondent Nos. 4 and 5 were placed above the petitioner in the said list considered by the DPC, at Sl. Nos. 1 and 2 respectively on the basis of their earlier date of appointment and there was another Computer namely Th. Brojen Singh who was placed above the petitioner at Sl. No. 4 who was appointed earlier to the petitioner. The petitioner has not taken any grievance against such a list of Graduate LDCs and Computer prepared on the basis of date of appointment which was considered by the DPC. The petitioner has not denied the earlier appointments of respondent Nos. 4 and 5 because of which they were placed above the petitioner in the list considered by the DPC.

The other related contention of the petitioner is that the post of Computer having higher pay scale than the LDC, the incumbent in Computer ought to have been placed above the LDCs at the time preparation of any seniority list. This however also cannot be accepted in the absence of any specific rule in that regard. As per the Recruitment Rules mentioned above, both the graduate LDCs and Computer who have completed five years of service are equally eligible and as such, if any combined seniority list has been considered by the DPC on the basis of the respective dates of appointment, it cannot be said that there was any irregularity or illegality in such a list.

Therefore, this Court is of the view that non publication of any combined interse seniority list of incumbents holding feeder posts does not vitiate the DPC proceedings.

9. As regards the second contention that there should be separate quotas reserved for the different feeder posts, the same cannot be accepted in the absence of such a specific provision under the Recruitment Rules providing for separate sub-quotas for different feeder posts.

In the present case, as per the DPC proceedings, copy of which has been annexed by the petitioner, it seems that as the petitioner was within the zone of consideration, his case was also considered by the DPC. Therefore, in the absence of any specific provision in the Recruitment Rules for considering separately the case of Computer, no grievance can be made for not doing so by the DPC.

10. As regards the third contention, whether any Computer has been appointed or not to the higher post, the same is not relevant. However, it has been stated by the State respondents that as many as five Computers had been earlier promoted to the higher post of Sub Inspector Statistics and as such, the said contention of the petitioner is without any basis.

11. Lastly, it is has been vehemently contended by the learned counsel for the petitioner that the promotion of respondent No. 5 is illegal inasmuch as she did not obtain graduation degree by obtaining prior permission of the competent authority, and has relied on the decision of the Gauhati High Court, Imphal Bench rendered in WP(C) No. 182 of 2012 on 14.11.2012, in which the High Court had taken the view that if a person obtains a certificate unauthorisedly or by committing misconduct, the same cannot be acted upon. In the said writ petition, the matter related to filling up the post of Administrative Officer in the Directorate of Fisheries, which was to be filled up from amongst the incumbents having degree qualification. In the said writ petition, consideration for promotion of respondent No. 4 therein was challenged on the ground that the said respondent No. 4 obtained graduation certificate unauthorisedly without obtaining permission from the authority. The High Court, after considering the materials on record was of the view that the act of respondent No. 4 in pursuing the said degree course as a regular candidate without obtaining permission from the competent authority amounts to misconduct and accordingly held that any officer who committed misconduct cannot be awarded by promotion to the higher post by obtaining graduation certification unauthorisedly. The Hon''ble Court held in para 19 and 23 of the judgment as follows:

19. From the above discussions, the only possible inference would be that the act of the respondent No. 4 for pursuing higher course of degree i.e. BA/TDC as a regular candidate by purportedly attending 75% of the classes, which were during office hours, shall certainly be misconduct. The officer who committed misconduct cannot be rewarded by promotion to the next higher post for his misconduct of obtaining Graduation Certificate unauthorisedly. However, it is up to the Manipur University to consider or take decision if the certificate of graduation obtained by the private respondent No. 4 calls for cancellation.

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23. For the reasons discussed above, the State respondents are directed not to consider the private respondent No. 4 for promotion to the post of Administrative Officer, Fisheries, basing on the graduation certificate obtained by him unauthorizedly or by committing misconduct.

The writ petition is accordingly allowed.

Learned counsel for the petitioner also placed reliance on the decision of the Gauhati High Court in *Rabindranath Barman vs. Gauhati High Court & Anr*: 2012 (2) GLT 111 in which the Gauhati High Court had held that admission in academic course by a government servant without prior permission of the competent authority constitutes misconduct. Accordingly, learned counsel for the petitioner has submitted that in the present case, the respondent No. 5 having obtained graduation while in service without obtaining prior permission of the competent authority has committed misconduct.

It may be noted that in the said writ petition, specific pleas were raised by the petitioner therein regarding the issue of obtaining graduation degree unauthorizedly and respondent No. 4 therein was given the opportunity to defend himself and the Hon"ble High Court, after consideration of the relevant facts and laws in that regard made the above observation and direction.

However, in the present case, the petitioner did not raise this issue in his writ petition but only mentioned about the unauthorized acquisition of graduation degree, in the reply affidavit filed in response to the affidavit in opposition filed by the State respondent Nos. 1, 2 and 3. Further, when the writ petitioner filed his reply affidavit to the affidavit in opposition of the respondent Nos. 4 and 5, the writ petitioner did not make any such allegation except for stating that respondent No. 5 had illegally acquired degree, without disclosing detail particulars for making such allegation. The said para-9 of the reply affidavit of the petitioner is reproduced herein below:

9. That, in reply to the contents of paragraph No. 8 of the affidavit in opposition under reply it is submitted that the Hon"ble Court passed the said interim order by considering the fact that the said DPC was conducted/held without publication of the final interse seniority list of employees holding the feeder posts though the same is a must etc. apart from illegally acquiring degree by respondent No. 5 and non-promotion of the incumbents holding the post of Computer was also one of the grounds in passing the said interim order.

Therefore, in the absence of specific pleadings as regards the allegation of acquisition of Degree illegally by respondent No. 5 and thus not affording adequate opportunity to respondent No. 5 to rebut such an allegation, it will not be appropriate for this Court to come to a definite conclusion that respondent No. 5 had indeed committed misconduct by way of acquiring graduation degree

illegally and thus incurred disqualification for consideration for promotion. Therefore, the contention of learned counsel for the respondent No. 5 that in absence of specific pleadings and material evidence in that regard against respondent No. 5 and in absence of adequate opportunity to respondent No. 5 to rebut the allegation, such a conclusion could not be arrived at by the Court in the present case and as such, the decisions of the Gauhati High Court in WP(C) No. 182 of 2012 and in Rabindranath Barman (supra) will not be applicable in the present case, deserves acceptance.

This Court is of the view that since respondent No. 5 had not been specifically confronted with the allegation of acquiring Degree illegally with material evidence, it would not be proper for this Court to make any specific finding in that regard. Moreover, it is also noted that respondent No. 5 had obtained the graduation degree long back in the year 1993 and DPC was held in the year 2011 after about eight years of the acquisition of the said Degree. Therefore, the fact that respondent No. 5 had been treated as Graduate LDC for such a long period which was never assailed by any one including the petitioner for such a long period would tilt the balance in favour of the respondent No. 5 as far as this issue is concerned.

Therefore, in the peculiar facts and circumstances of the case as mentioned above, this Court is of the view that the issue of misconduct levelled against respondent No. 5 not having been specifically raised, cannot be allowed to affect the promotion of respondent No. 5, which is, otherwise, found to be legally valid.

In the result, for the reasons stated above, this Court is of the view that there is no merit in the writ petition and accordingly, the same is dismissed. However no order as to costs.