
(2005) 06 GAU CK 0063
In the Gauhati High Court
Case No : Writ Petition (C) No. 77 of 2004

T. Thangchhuana

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 27-06-2005

Acts Referred:

Citation : (2008) GLT 756 Supp

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : George Raju and Ricky Gurung, for the Appellant; Helen Dawngliani, K.V. Tlangmawia, C. Lalramzauva, A.R. Malhotra and R. Lalduhawmi, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—By this writ petition, the Petitioner has challenged the notification dated 15.10.04 issued by the Secretary to the Government of Mizoram, Public Health Engineering Department (PHE) promoting the private Respondents No. 5-9 from the post of Junior Engineer to the post of Assistant Engineer/Sub-Divisional Officer (SDO)(Engineering Grade-V of Public Health Engineering Cadre) and also praying for holding the review Departmental Promotion Committee (DPC) to reconsider the case of the Petitioner and to give promotion to the said promotional post of Assistant Engineer/Sub-Divisional Officer (SDO).

2. The facts leading to the filing of the writ petition, in short is that the writ Petitioner was initially appointed as Overseer Grade-II in Public Health Engineering Department on 12.12.1984 and thereafter, as Junior Engineer on 08.11.1985. The services of the Petitioner was confirmed as Junior Engineer vide order dated 07.04.1997 w.e.f. 01.04.1997. The Respondents No.5 and 6 joined their services as Junior Engineer in Public Health Department on 26.12.86 and 13.09.86 respectively and the Respondents No. 7, 8 & 9 joined in the said capacity on 20.03.87. All the private Respondents therefore joined their services

as Junior Engineer after the Petitioner. A final seniority list of Junior Engineer was published on 23.06.95, placing the Petitioner above the private Respondents. The Government of Mizoram, vide notification dated 14.09.01 and 05.07.04 promoted four Junior Engineers, junior to the Petitioner to the said promotional post of Assistant Engineer/Sub-Divisional Officer. However, the said orders of promotion are not challenged in the present writ petition. The Government of Mizoram, vide another notification dated 15.10.04 promoted the present private Respondents No. 5-9 to the said promotional post of Assistant Engineer/Sub-Divisional Officer which has been challenged by the Petitioner in the present writ petition.

3. I have heard Mr. George Raju, learned Counsel for the Petitioner, Mr. K.V. Tlangmawia as learned Standing Counsel for the Mizoram Public Service Commission (MPSC), Respondent No. 4, Mrs. Helen Dawngliani, learned Assistant Government Advocate for Respondents No. 1, 2 & 3 and Mr. C. Lalramzauva, appearing on behalf of Respondents No. 5-9.

4. Mr. George Raju, learned Counsel for the Petitioner has submitted that the Petitioner has challenged the notification dated 15.10.04 issued by the Government of Mizoram, promoting the private Respondent No. 5-9 to the post of Assistant Engineer/Sub-Divisional Officer, PHE Department on the ground of violation of Clause 3.4(g) of the Office Memorandum dated 10.10.02 issued by the Government of Mizoram, Department of Personnel & Administrative Reforms, laying down the procedure to be observed by D.P.C. According to the learned Counsel, under Clause 3.4(g) of the said Office Memorandum, the Annual Confidential Reports (ACRs) of the officers, who came within the zone of consideration, year ending 31st March, 2001 is required to be taken into consideration for the D.P.C. in making selection for promotion against the vacancy falls within the vacancy year of 2001-2002, so also for the vacancy year of 2002-2003, and 2003-2004, the ACRs of the officers up to the year ending 2002 and 2003, respectively, are to be taken into consideration by the D.P.C, as the D.P.C. held its meeting after September of the year of vacancy and precisely on 06.10.04. According to the learned Counsel for the Petitioner, the D.P.C. has considered the ACRs up to the period of 1999-2000, 2000-2001 and 2001-2002, against the years of vacancies 2001-2002, 2002-2003 and 2003-2004 respectively, although, the D.P.C. held its meeting after September, 2004. Hence, according to the learned Counsel, the guideline contained in Clause 3.4(g) of the Office Memorandum dated 10.10.02 has been violated and as such, the promotion of the private Respondents, pursuant to the selection made by the D.P.C. without considering the relevant ACRs is bad in law and liable to be set aside and also a review DPC is required to be held for consideration of the names of all the officers, who came within the zone of consideration on the basis of the ACRs in terms of the provision contained in Clause 3.4(g) of the Office Memorandum dated 10.10.02.

5. Mr. K.V. Tlangmawia, learned Counsel for the Respondent No. 4, Mizoram Public Service Commission, relying on the records of the D.P.C. proceeding

pertaining to the vacancy year of 2001-2002,2002-2003 and 2003-2004 has submitted that as the D.P.C. held its meeting after September, 2004, the ACRs up to the period ending 31.03.01, 31.03.02 and 31.03.03 were taken into consideration in respect of the vacancy year 2001-2002,2002-2003 and 2003-2004 and therefore, there is absolutely no violation of the guideline contained in Clause 3.4(g) of the Office Memorandum dated 10.10.02. According to the learned Counsel, though, the private Respondents were junior to the writ Petitioner, the D.P.C. having considered the ACRs of the Petitioner, private Respondents and other persons who came within the zone of consideration, found the Respondents No. 5-9 fit for promotion and accordingly their names were recommended for promotion. According to the learned Counsel, the MPSC has therefore, not violated any guideline issued by the Government regarding the procedure to be observed by the D.P.C.

6. Mrs. Helen Dawngliani, learned State Counsel appearing on behalf of Respondents No. 1, 2 & 3 has submitted that it is evident from the minutes of the D.P.C. proceedings that the relevant ACRs in terms of the Office Memorandum dated 10.10.02 were taken into consideration for the D.P.C. while making selection. The D.P.C, after taking into consideration such ACRs recommended the names of the private Respondents and the Government having accepted such recommendation promoted the private Respondents to the post of Assistant Engineer/Sub-Divisional Officer vide notification dated 15.10.04. Therefore, no illegality has been committed by the Government in promoting the private Respondents to the next promotional post of Assistant Engineer/Sub-Divisional Officer.

7. Mr. C. Lalramzauva, learned Counsel for the private Respondents No.5-9 has submitted that as the D.P.C. was held after September of the vacancy year, it has taken into consideration the ACRs as required under paragraph 3.4(g) of the Office Memorandum dated 10.10.02. According to the learned Counsel, since the D.P.C. upon consideration of the relevant ACRs, in terms of the said Office Memorandum has selected the private Respondents for promotion to the post of Assistant Engineer/Sub-Divisional Officer, such selection cannot be questioned by the writ Petitioner, unless it is malafide or contrary to the statutory provision. According to the learned Counsel, the only ground of challenge to the selection of the private Respondents, as well as the notification dated 15.10.04 promoting them to the post of Assistant Engineer/Sub-Divisional Officer, is that the guideline contained in paragraph 3.4(g) of the Office Memorandum dated 10.10.02 has been violated by the D.P.C. and since it is evident from the records produced by the" M.P.S.C. that all the relevant ACRs in terms of paragraph 3.4(g) of the Office Memorandum dated 10.10.02 were taken into consideration while selecting the candidates, the writ Petitioner is not entitle to any relief, as the ground of challenge to the selection vis-a-vis the order of promotion is no nest.

8. I have heard the learned Counsel for the parties and also perused the

pleadings, as well as the records of the D.P.C. proceeding produced by Mr. K.V. Tlangmawia, learned Counsel appearing on behalf of the M.P.S.C.

9. The only ground of challenge to the selection of the private Respondents No. 5-9 and the order of promotion dated 15.10.04 is that, all the relevant ACRs, as required under Clause 3.4(g) of the Office Memorandum dated 10.10.02 has not been taken into consideration by the D.P.C. while selecting and recommending the names of the private Respondents for promotion. Upon perusal of the records of selection produced by the M.P.S.C, it is evident that during the year 2001-2002 and 2002-2003, one vacancy each and for the year 2003-2004, three vacancies in the rank of Assistant Engineer/Sub-Divisional Officer fell vacant and against which the selection was made by the D.P.C. It also appears from the records that the D.P.C. meeting was held on 06.10.04 and for the vacancy year 2001-2002, the ACRs up to the period ending 31.03.01, for the vacancy year of 2002-2003, the ACRs up to the period ending 31.03.02 and for the vacancy year 2003-2004, the ACRs up to the period ending 31.03.03 were taken into consideration by the D.P.C, while making selection.

10. Clause 3.4(g) of the Office Memorandum dated 10.10.02 stipulates that for the vacancy year of 2001-2002, if the D.P.C. is held after September of the year, the ACRs up to the year ending 31.03.01 is required to be taken into consideration for the purpose of selection. For better appreciation Clause 3.4(g) is quoted below:

ACRs of Officers which became available during the year immediately proceeding the vacancy/panel year should be considered by the DPCs even if DPCs are held letter 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 of D.P.C. however, ACRs upto the year ending 31st March, 2001 will be considered by the D.P.C. if it sits after September of the year even if the vacancy falls within 2001-2002.

11. From the reading of the said Clause 3.4(g) of the Office Memorandum dated 10.10.02, it is, therefore, evident that when the D.P.C. held its meeting after September of the year of vacancy, the ACRs up to the year ending 31st March of the year is required to be taken into consideration, i.e., for the vacancy year 2001-2002, 2002-2003 and 2003-2004, the ACRs up to the year ending 31.03.01, 31.03.02 and 31.03.03 respectively, are required to be taken into consideration by the D.P.C. while making the selection. As discussed above, the D.P.C. held its meeting on 06.10.04 and the ACRs up to 31.03.01, 31.03.02 and 31.03.03, for the vacancy years of 2001-02, 2002-03 and 2003-04, respectively, were taken into consideration and hence there is no violation of the stipulation in Clause 3.4(g) of the Office Memorandum dated 10.10.02. The D.P.C. after considering all the relevant ACRs of the Officers, who came within the zone of consideration, recommended the names of the private Respondents for promotion to the post of Assistant Engineer/Sub-Divisional Officer and the Government having accepted such recommendation has issued the notification

dated 15.10.04 promoting them to the said promotional post. The Petitioner has not challenged the recommendation of the private Respondents and their promotion on the ground of malafide exercise of power or violation of any statutory provision.

12. In view of the above, I do not find any merit in the writ petition. Hence, the same is dismissed. No costs.