
(2005) 04 GAU CK 0023
In the Gauhati High Court
Case No : WP (C) No. 723 of 2002

Thongbam Brajamani Singh	Vs	APPELLANT
State of Manipur and Others		RESPONDENT

Date of Decision : 26-04-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 309

Citation : (2006) GLT 384 Supp

Hon'ble Judges : T.N.K. Singh, J

Bench : Single Bench

Advocate : Dayananda Singh, for the Appellant; R.S. Reisang, for the Respondent

Final Decision : Allowed

Judgement

T.N.K. Singh, J.—Heard Mr. Dayananda Singh, learned Counsel for the writ Petitioner as well as Mr. R. S. Reisang, learned G.A. appearing on behalf of the Respondents.

2. The simple case of the writ Petitioner is that the Petitioner was initially appointed as Store Keeper in the Directorate of Sports and Youth Affairs, Govt. of Manipur on ad hoc basis on 15.12.1980 and his ad hoc service as Store Keeper was regularized in the year 1985. He served in the said capacity till he was promoted to the higher post of Store Officer on ad hoc basis vide order dated 11.10.1991. On the recommendation of the Manipur Public Service Commission (for short "MPSC"), his ad hoc promotion to the post of Store Officer was regularized and regularly appointed to the post of Store Officer vide order of the Governor of Manipur being No. 3/13/90-YAS/S, Imphal, the 17th March, 1992 (Annexure-A/1 to the writ petition). In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Manipur made the rules called "the Manipur Services (Revised Pay) (First Amendment) Rules, 1999" vide notification No. 1/115/98-PIC, Imphal, the 10th March, 1999. Under the said pay revised rules, the post of Store Officer has been enjoying pay scale

of Rs. 5500-9000/- per month till date in the Directorate of Youth Affairs and Sports, Govt. of Manipur. There are 6(six) different type of posts enjoying the same scale of pay of Rs. 5500-9000/- p.m. Those posts are mentioned below:

1. Special Officer,
2. Assistant Director (PLG);
3. Assistant Director (Coaching);
4. Store Officer;
5. Senior Youth Officer and
6. Accounts Officer.

3. There are as many as 5 posts of Deputy Directors in the Directorate of Youth Affairs and Sports, Govt. of Manipur. The Department of Personnel, Govt. of Manipur sought recommendation from the Manipur Public Service Commission for framing Recruitment Rules for the posts of Deputy Director (Administration/Establishment/Planning/Monitoring/Evaluation) in the Directorate of Youth Affairs and Sports, Govt. of Manipur vide letter dated 14.6.2000. The MPSC under the letter of the Joint Secretary, MPSC dated 1.9.2001 sent the approval of the Commission to the draft Recruitment Rules (for short "RRs") for the post of (1) Dy. Director of Sports and (2) Dy. Director (Planning/Administration). In the said letter of the Commission dated 1.9.2001 it had been clearly mentioned that for giving equal opportunity for promotion to all concerned, i.e. (1) Asstt. Director (Coaching), (2) Sr. Youth Officer and (3) Store Officer, to the higher posts, the Manipur Public Service Commission was of the view that 4 (four) Dy. Directors including the newly created one should have common RRs by putting (1) D YASO-3 posts with 3 years regular service, (2) Asstt. Director (Coaching)-1 post with 5 years regular service and (3) Sr. Youth Officer-1 post with 5 years regular service on the feeder lines, and Special Officer-1 post, Assistant Director (Planning)-1 post and Store Officer-1 post with 5 years regular service in the respective grades should be considered for promotion to the remaining newly created one post of Dy. Director. For better appreciation, the said letter of the Joint Secretary (MPSC) dated 1.9.2001 is hereunder:

No. 5/24/2000-MPSC/RR

MANIPUR PUBLIC SERVICE COMMISSION

Dt. 1st Sept. 2001

To,

The Commission (DP) Govt. of Manipur, Imphal.

Sub: Framing of RRs for the post of 1 (one) Dy Director (Pig/Monitoring & Evaluation), (2) Dy. Director (Admn/and Estt.) in the Directorate of Youth Affairs and Sports.

Sir,

In inviting a reference to the DP's letter No. 1 /89/2000-RR/DP dated 14th June, 2000 on the above subject, I am directed to say that from the organization chart of the various posts in the Directorate furnished by the Deptt., it is found that (1) Asstt. Director (Coaching) in the scale of Rs. 5500-9000/- (2) Sr. youth officer in the scale of Rs. 5500-9000/- and (3) Store Officer in the scale of Rs. 5000-9000/- have no line of promotion at present. For giving equal opportunity for promotion to all concerned to the higher posts, the Commission is of the view that 4(four) Dy. Directors including newly created one shall have common RRs by putting 1) DYASO (Rs. 6500-10,000), 3 posts with 3 years regular service (2) Asstt. Director (Coaching)- 1 post in the scale of Rs. 5500-9000/- with 5 years regular service and (3) Sr. Youth Officer (Rs. 5500-9000)--1 post with 5 years regular service on the feeder line. Special Officer-1 post, Asstt. Director (Planning)-1 post and Store Officer-I post with 5 years regular service in their respective grades may be considered for promotion to the remaining one post of Dy. Director newly created. In other words, 4 posts of Dy. Director there will be 11 post on the feeder line and for one post of Dy. Director there will be 3 posts on feeder line in the ratio of 1:3. Hence, the Govt., is requested to redesignate one post of Dy. Director as Dy. Director (Admn. & Planning) for the purpose.

2. The draft RRs for the post of (1) Dy. Director of Sports and (2) Dy. Director (Planning & Admn.) as approved) by the Commission is enclosed for early notification in the Manipur Gazette. 10 spare copies of the same may please be sent to the Commission for our office record/ use.

Yours faithfully, Sd/- (K. Rabi Singh) Jt. Secretary, Manipur Public Service Commission.

4. The Government of Manipur, in contrary to the approved RRs for the post of Dy. Director (Sports) and Dy. Director (Planning/ Monitoring/Evaluation) in the Directorate of Youth Affairs and Sports as approved by the MPSC under the said letter of the MPSC mentioned above, i.e. letter dated 1.9.2001, issued notifications for framing RRs vide (1) notification No. 1/89/2000-RR/DP, Imphal, the 10th May, 2002 for framing RRs for the post of Dy. Director (Planning/ Monitoring/ Evaluation) in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and (2) notification No. 1/89/2000-RR/DP (A), Imphal, the 10th May, 2002 for framing RRs for the post of Dy. Director (Administrator/Establishment) in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. The said RRs dated 10.5.2002 for the post of Dy. Director (Planning/Monitoring/ Evaluation) and the RRs dated 10.5.2002 for the post of Dy. Director (Admn./Estt.) are annexed as Annexure-A/4 and A/5 respectively to the writ petition). In both the Recruitment Rules for the posts of Dy. Director, the post of Store Officer is not the feeder post and as such the Store Officer has not promotional avenue to the higher post of Dy. Directors.

5. Being aggrieved by the said RRs dated 10.5.2002 for the post of Dy. Directors (Annexure-A/4 and A/5 to the writ petition), the Petitioner filed this writ petition for quashing the same.

6. The Respondents 1, 2 and 3. i.e. (1) the State of Manipur (2) the Commissioner/Secretary (D.P.), Govt. of Manipur and (3) the Director of Youth Affairs and Sports, Govt., of Manipur filed their affidavit in opposition stating that the Govt. of Manipur had considered the said RRs for the post of Dy. Directors approved by the Manipur Public Service Commission (MPSC) under its letter dated 1.9.2001 and it was considered that it would not be proper to redesignate one of the newly created post of Dy. Director of Sports for the following reasons:

i) The post of Dy. Director (Admn./Estt.) and Dy. Director (Planning/Monitory/Coaching & Physical Education) are distinct from each other with different job charts and assignments. Hence it is not desirable to club the two posts of Dy. Director (Admn./Estt.) and Dy. Director(Plg./Monitoring/Evaluation) together as suggested by the MPSC.

ii) The two posts of Dy. Directors were specifically created one for planning and the other for Administration. As such, the Deptt. Had proposed special officers and Asstt. Director (Planning) with 4 (four) years regular service in the Grade in the feeder post of promotion to the post of Dy. Director (Admn./Estt.) and Dy. Director (Plg./ Monitoring/Evaluation) respectively considering their duties and responsibilities.

iii) The post of Store Officer is not suitable for the feeder post either for Dy, Director (Admn./Estt) and Dy. Director (Plg. Monitoring and Evaluation) considering the job responsibilities of these two posts.

7. From the admitted facts, it is clear that the Store Officer, i.e. the present writ Petitioner, has no promotional avenue and his promotional avenue had been denied by the Respondents by not giving promotional avenue to the next higher post of Dy. Directors 5 (five) in number in the Department of Youth Affairs and Sports, Govt. of Manipur. The Apex Court in Raghunath Prasad v. Secretary (Home), Police Deptt., Govt. of Bihar reported in 1988 SCC 1033 held that:

Reasonable promotional avenues should be available in every wing of public service-That general efficiency in service and faster the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospect, the service is bound to degenerate and stagnation kills the desire to serve properly.

In the case of Dr. Ms. O.Z. Hussain Vs. Union of India and others, the Group "A" Scientists of the Ministry of Health and Family Welfare who were the members of the Counsel, were being discriminately treated as they have not been given any promotional benefits, but their counterparts were given promotional avenue. The Apex Court in Dr. Ms. O. Z. Hussan (Supra) held that:

Group "A" Scientists in non-medical wing in Directorate of Health Services are

entitled to benefit of promotion which are available to similarly placed Scientists in other Ministries.

Paras-7 and 8 of AIR in Dr. O. Z. Hussain (Supra) are quoted hereunder:

7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidents of service. There too is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical "A" Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the "A" category scientists in the non-medical wing of the Directorate.

8. This Writ Petition is allowed and the following directions are issued:

1. Within four months from today, the Ministry of Health and Family Welfare of the Ministry of Health and Family Welfare of the Union of India shall frame a set of appropriate rules, inter alia, providing suitable promotional avenue for the "A" Group scientists in the non-medical wing of the establishment of Director general of Health Services;

2. These "A" Group scientists shall be entitled to book allowance, higher degree allowance, risk allowance and conveyance allowance at the same rate as is admissible to doctors in the medical wing in the Directorate w.e.f. 1.4.1989.

The Apex Court in Samurailatpam Brojen Sharma; Phumailatpam Deveswar Sharma v. State of Manipur and Ors. reported in (1995) 2 GLR 4 held that:

Admittedly although there exists a post of computer which is to be held by an officer who has certain requisite academic qualification, there is no channel of promotion to any higher post. This means that once appointed as computer one will have to remain in the same post till retirement. This does not appear to be reasonable. In any employment, there must be at least one channel promotion if not more. In this view of the matter, it is necessary that relevant Recruitment Rules are suitably amended to include some avenue of promotion of a computer to the next higher post.

In the Case of Delhi High Court and Another Vs. Atul Kumar Sharma, challenged the validity of the amendments made to the Delhi High Court Establishment (Appointment and Condition and Services) Rules, 1972 to the extent as amended to rules excluding the Junior Translator from the feeder post for promotion to - the post of Asstt. of Care Taker and Junior Reader. A Division Bench of the High

Court, i.e. the Delhi High Court, allowed the writ petition holding that the High Court should follow the rules which provided the promotional avenue to the Jr. Translator also to the post of Asstt. Care Taker and Jr. Reader, and the promotions were to be effected on the direction of the High Court though voluntary benefits are excluded in order to adjust the " equity in the matter. On appeal, the Apex Court did not interfere the decision of the Division Bench of the Delhi High Court in AIR of Delhi High Court (Supra).

8. The Apex Court in Delhi Jal Board Vs. Mahinder Singh, held that right to be considered by the DPC for promotion is a fundamental right guaranteed under Article 16 of the Constitution of India provided the person is eligible . and within the zone of consideration. The Apex Court also in Badrinath Vs. Government of Tamil Nadu and Others, that the right to be considered for promotional is a fundamental right but such consideration must be fair consideration according to the established principle of service jurisprudence. In a case from this Court, i.e. State of Tripura and Others Vs. K.K. Roy, the Apex Court held that:

The employer being a state within the meaning of Article 12 of the Constitution should have created promotional avenues for all the employees having regard to its constitutional obligation adumbrated in Article 14 and 16 of the Constitution.

Promotion being a condition of service having regard to the requirement thereof as had been pointed out by this Court in Dr. O.Z. Hussain (Supra), it was expected that the Appellant, the State of Tripura and Ors. should have followed the said principles and that the Respondent, i.e. the writ Petitioner, is at least entitled to grant two higher grades-one upon expiry of 12 years from the date of his joining service and other upon expiry of 24 years thereof. Paras 6 & 7 of the AIR in State of Tripura and Ors. v. K.K. Roy are quoted hereunder:

6. It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The Appellant being a State within the meaning of Article 12 of the Constitution should have crated promotional avenues for the Respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the Respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue of promotion, he cannot restile therefrom. It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that the other States in India. Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and Anr. upon completion of 24 years if in the meanwhile he had not been avenues. When questioned, the learned Counsel appearing on behalf of the Appellant, even could not point out that the State of Tripura has introduced such a scheme. We wonder as to why such a scheme was not

introduced by the Appellant like the other States in India and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to hereinbefore, it was expected that the Appellant should have followed the said principle.

7. We are, thus, of the opinion that the Respondent herein is at least entitled to grant of two higher grades, one upon expiry of the period of 12 years from the date of his joining of the service and the other upon expiry of 24 years thereof.

9. The power conferred by the proviso to Article 309 of the Constitution of India is of a legislative character is to be distinct from ordinary rule making power and the power to legislate is of plenary nature within the field demarcated by the Constitution of India. The pointing words of Article 309 of the Constitution, further, make it clear that such power of the legislature to regulate recruitment and condition of services of persons appointed to public services and position in connection with the affairs of the state is only subject to the provision of the Constitution. Such power of the Governor to make rules under the proviso to Article 309 of the Constitution of India subject to the provision of the constitution, a rule made under the said proviso to Article 309 of the Constitution can be struck down if it violates any provision of the Constitution. Therefore, such rules made by the Governor under the proviso to Article 309 of the Constitution cannot be, struck down on the ground of the Apex Court in (1) B.S. Vadera Vs. Union of India (UOI) and Others, and (2) R.L. Bansal and others Vs. Union of India and others, .

10. In the light of the above settled principles of law, this Court is not quashing the impugned Recruitment Rules dated 10.5.2002 for the one post of Dy. Director (Planning/Monitoring/Evaluation) (Annexure-A/4 to the writ petition) and the impugned Recruitment Rules dated 10.5.2002 for the one post of Dy. Director (Admn./Estt. (Annexure-A/5 to the writ petition.

However, it has been well settled by the Apex Court that reasonable promotional opportunities should be available in other wings of public service and in the absence of promotional aspect, the service is bound to degenerate and stagnation kills the desire to serve properly. The employer/state should have created the promotional avenues for the employees having regard to its constitutional obligation adumbrated in Articles 14 and 16 of the Constitution of India. Such being the well settled of law, the Respondents are directed to make suitable amendment to the relevant Recruitment Rules for one or more post (s) of Deputy Directors out of the 5 (five) posts of Dy. Directors in the Directorate of Youth Affairs and Sports, Govt. of Manipur for creating promotional avenues to the Store Officer (the writ Petitioner) or in the manner the Apex Court directed in State of Tripura and Ors. v. K.K. Roy (Supra) the State Govt. should grant 2 (two) higher grades in the pay scale of the Petitioner as Store Officer-one upon expiry of 12 years from the date of his joining service as Store Officer and other upon expiry of 24 years thereof.

11. To the extent above, this writ petition is allowed. The above direction should be carried out as expeditiously as possible preferably within a period of 4 (four) months from the date of receipt of his judgment and order. No order as to costs.