

(2005) 02 GAU CK 0020
In the Gauhati High Court

Th.Saratchandra Singh and Ors.

APPELLANT

Vs

Ningthoujam Nabadwip Singh and Ors.

RESPONDENT

Date of Decision : 24-02-2005

Acts Referred:

Citation : (2005) 02 GAU CK 0020

Hon'ble Judges : A.Hazarika, J and B.Lamare, J

Bench : Division Bench

Advocate : R.K.Nokulsana Singh, N.Kotishwar Singh, N.Dhanabir Singh, Ashok Potsangbam, S.Suresh, Advocates appearing for Parties

Judgement

Lamare, J.—Heard Mr. N. Kotiswar Singh, learned counsel for the appellants. Also heard Mr RK Nokulsana, learned senior counsel assisted by Mr N Dhanabir, learned counsel for the respondent No.1 and also heard Mr Asok Potsangbam, learned Advocate General assisted by Mr S Suresh, learned counsel for the Staterespondents.

2. In this appeal, the appellants have assailed the order dated 27.1.2000 passed by the learned single Judge in WP(C) No.1432/1999. By the said order, the learned single Judge had directed that the respondent No.1 be given the regularization as Assistant Engineer with effect from 24.5.1986 as per the Office Memorandum dated 31.5.86 and not from 28.3.87.

3. In the writ petition, the present appellants were not made party as respondents and the order was passed in their absence. On coming to know of the impugned order, the appellants sought the permission of this Court to file the appeal and this Court granted the permission to file the appeal. Hence, the appeal was admitted.

4. At the outset, Mr RK Nokulsana, learned senior counsel has raised two preliminary points, namely, regarding maintainability of the appeal and also the locus standi of the appellants to file the appeal.

5. According to the learned counsel for the respondents, the appellants are in no way aggrieved by the impugned order passed by the learned single Judge as the order was passed on the basis of the office memorandum which is a policy decision of the Government. It is also contended, that the appeal by the appellants who were not parties to the writ petition, is not maintainable. In support of this contention, the learned counsel relied on the case of : Ram Janam Singh v. State of Uttar Pradesh and Another, reported in AIR 1994 SC 1722. In the said case, the Apex Court had granted the Special Leave to the appellant to file the appeal to challenge the judgment where he was not a party. By the said judgment, even before the Supreme Court, a Special Leave Petition was allowed to be filed by the person who is not a party to the case before the High Court. The learned counsel also relied on the case of : Pohla Singh Alias Pohla Ram(D) By Lrs. and Others v. State of Punjab and Others, reported in (2004) 6 SCC 126. In the case, the Apex Court has held that a person who is aggrieved by the judgment may approach the Court by filing fresh writ petition to challenge the order by which he is aggrieved. Therefore, according to the learned counsel, the appellants are at liberty to file fresh writ petition and not by way of this appeal.

6. The law with regard to the filing of an appeal is well settled by the Apex Court in the case of : State of Punjab (Now Haryana) and Others v. Amar Singh and Another, reported in AIR 1974 SC 994; and Ellora Borthakur (Dr.) v. State of Assam and Others, reported in 1999 (1) GLT 265 wherein, in paragraph 5 of the judgment it was held as follows :

? On behalf of the respondents, an objection has been raised about the maintainability of the appeal. It is submitted that the appellant not being a party to the; writ petition, would not be entitled to file the appeal without the leave of the Court and has placed reliance upon a decision reported in AIR 1985 Calcutta 96 (United Commercial Bank Vs. Hanuman Synthetics Ltd.). Our attention has been drawn to paragraph 7 and 8. It has been observed in the said paragraph that the appellant who is not a party can prefer an appeal only with the leave of the Court. It is admitted that the appellant was not a party to the writ petition. It is also submitted that no leave has been sought for filing appeal. The learned counsel appearing for the Respondents No.7 and 8 has also placed reliance upon a decision reported in AIR 1998 SC 1872 (Ganabandhu Biswal VS Krishna Chandra Mohanty). It has been held that the person who is not aggrieved by the judgment of the Tribunal and the persons who are not directly affected cannot challenge the judgment.?

In the case of : Nookala Setharamaiah v. Kotaiah Naidu and Others, reported in AIR 1970 SC 1354, the Apex Court held, that it is settled by a long course of authorities that a person who has not been made a party to a proceeding may still appeal with leave of the appellate Court, provided he might have properly been made a party to the proceeding. In the case of : Jespar I Slong v. State of Meghalaya and Others reported in 2004 AIR SCW 3399, a similar case was dealt by the Apex Court where a Division Bench of this Court had allowed the appeal to

be filed by the person who is not a party to the writ petition. In the said case, the appellant approached the Division Bench by way of an appeal after he came to know that after the order was passed by the learned single Judge, he was affected by the order and, therefore, he approached the appellate Court i.e. the Division Bench of this Court, as he was aggrieved by the judgment and order and the Apex Court had held, that since the appellate Bench of the High Court had thought it fit to entertain the appeal of the appellant by rejecting the objection raised by the respondent No.4 and the State, we find no reason to interfere with this finding as to the maintainability of this appeal.

7. In the instant case also, it is an admitted position that this Court had granted permission for filing the appeal and that the Division Bench of this Court had admitted the appeal for hearing. There is, therefore, no reason to question the maintainability of the appeal as the permission was already granted by this Court.

8. With regard to the next contention of the learned counsel for the respondent regarding locus standi of the appellants to file the appeal, records show that, by the order passed by the learned single Judge the writ petitioner/respondent No.1 was allowed retrospective regularization with effect from 24.5.86 as per the office memorandum dated 31.5.86 and not from 28.3.87.

9. In order to appreciate the facts regarding passing of the impugned order by the learned single Judge, serial 2 A and B of the Office Memorandum dated 31.5.86 are reproduced below :

? 2. The matter has been reviewed by the Government and decided as under :

A. All those adhoc appointees,

(a) who were appointed upto 31st December, 1984, against vacancies in the direct recruitment quota under Class I and II posts, and

(b) who continue to hold their respective posts on ad hoc basis on 24th May, 1986, and

(c) who fulfil all the requirements excepting age limit laid down under the relevant recruitment rules for appointment to such posts.

May, on the analogy of the decisions taken by the Government of West Bengal and Bihar in regularising such adhoc cases, be regularized with effect from 24th May, 1986 without requisitions in such cases being made to Manipur Public Service Commission as those cases are pending since long and, wherever such requisitions have already been made by the Manipur Public Service Commission the same may be withdrawn.

B. Seniority of such adhoc appointees who are regularized in pursuance to the above decisions will be counted with effect from the date of their regularization, i.e. with effect from 24th May, 1986. They will however be entitled to pay protection. ?

10. A perusal of the records show that the respondent No.1 who was a regular Section Officer was appointed as Assistant Engineer by order dated 3.8.82. Thereafter, a requisition was made by the Department to the Manipur Public Service Commission (MPSC) on 23.11.85 for filling up the post of Assistant Engineer on regular basis. In the said requisition, the names of the appellants and the respondent No.1 were also sent for consideration. In the list of Degree Holders, the names of the appellants appeared at serial No.91, 93, 98 and 102 whereas the name of the respondent No.1 appeared at serial No.124. On the basis of this requisition from the Department, the DPC was held on 26th and 28th March, 1987. According to the DPC proceedings, the MPSC was advised to recommend 19 (nineteen) officers from amongst the Diploma Holders, 24 (twenty four) from the Degree Holders and 4(four) from nonDegree Holders for regular appointment to the post of Assistant Engineer. On the basis of this DPC proceedings, the appellants were selected and their names appeared at serial No.33, 34, 43 and 46 of the Merit List. Subsequently, the order dated 26.9.87 was issued appointing the appellants as Assistant Engineers. The seniority of the appellants were also published in the Official Gazette vide Notification dated 26.9.87 and their seniority as Assistant Engineers was counted with effect from 28th March, 1987.

11. The respondent No.1 was not selected by the DPC and, therefore, he was not promoted. However, by the order dated 29.9.87 the respondent No.1 was also promoted alongwith 14(fourteen) others to the post of Assistant Engineer from the Direct Recruitment quota with effect from 28.3.87. The appellants are not aggrieved by this promotion of the private respondent with effect from 28.3.87. Their grievance is against the retrospective regularization of the respondent No.1 with effect from 24.5.86 as per the office memorandum.

12. Now, the question to be seen is after the respondent No.1 has failed in the selection, whether he can avail the onetime policy made by the Government for regularization of the adhoc Assistant Engineers by resorting to the office memorandum. A perusal of the office memorandum as quoted above shows that the object of regularization is for those adhoc appointments as Direct Recruits. Clause 2A(a) specifies that all those adhoc appointees who were appointed upto 31.12.84 against the vacancies in the Direct Recruitment quota under clause 1 and 2, are entitled to the benefit of this regularisation. The respondent No.1 (writ petition) was not a direct recruit appointee. His appointment as Assistant Engineer by order dated 3.8.82 shows that he was originally appointed as Section Officer on regular basis. His name was also forwarded to the DPC alongwith the appellants for consideration by the DPC for appointment to the post of Assistant Engineer. The DPC was meant only for filling up the post of the Promotion quota and not of Direct Recruit quota. The respondent No.1 did not dispute that he was appointed as Section Officer and his name was forwarded to the DPC for consideration. On the basis of the DPC, the Promotion quota was made by the DPC and, accordingly, the appellants were promoted on recommendation of the DPC. Their seniority were also fixed thereafter. The

respondent No.1 could not succeed in the DPC. However, with the vacancy for Direct Recruit quota, the respondent No.1 was promoted by order dated 29.9.87 alongwith 14 (fourteen) others. Therefore, the respondent No.1 cannot claim the benefit of the office memorandum to regularize his services from the Direct Recruit adhoc appointments.

13. In a similar case, the Division Bench of this Court in Civil Rule No.131/1989 (698/89), dealt with the same office memorandum dated 24.5.86 which relates to the adhoc appointees against the Direct Recruitment quota and held that the promotees cannot be treated as Direct Recruits where the recruitment is from two sources to a service. There is no dispute in this case that there are two sources of recruitment to the post of Assistant Engineer namely by Direct Recruit and Promotion. It is also held, that the policy of the Government of Manipur for regularization with effect from 24.5.86 relates to adhoc appointees against the Direct Recruit quota. This being the position held by the Division Bench of this Court, we are also of the same opinion that the respondent No.1 who belongs to the Promotion cadre and not a Direct Recruit cannot claim the benefit under the said office memorandum dated 24.5.86.

14. In the case of : UP Secretariat UDA Association Through Its Joint Secretary, GC Srivastava and Others v. State of UP and Others reported in (1999) 1 SCC 278, the Apex Court held, the though appointment is temporary, if it was made in accordance with rules and to a substantive vacancy, seniority will be counted from the date of temporary promotion. Necessarily, the quota and rota require to be maintained so as to give effect to the object envisaged under the rules. Mere inaction cannot be made the ground to contend that the quota rule was broken down. In this case also, where there is a quota Rule and the respondent No.1 belongs to the Promotion quota but he failed in the selection, he cannot resort to the office memorandum which is meant only for Direct Recruit.

15. For the reasons aforesaid, we allow this appeal and set aside the impugned order dated 27.1.2000 passed by the learned single Judge in WPC No.1432/1999. The seniority of the appellants shall be counted with effect from 28.3.87 as per Notification dated 26.9.87 and the regularization of the respondent No.1 shall also be counted with effect from 28.3.87 as per order dated 29.9.87.

16. The interim order dated 10.5.2000 is made absolute.

The appeal is allowed and disposed of. No costs.