

(2016) 04 GAU CK 0053

In the Gauhati High Court

Case No : W.A No.4 (AP) of 2016, 411 of 2015 WP (C) 71 (AP) of 2016

Tokmen Pertin

APPELLANT

Vs

State of Arunachal Pradesh & Others

RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 GauLT 1223

Hon'ble Judges : Ajit Singh, C. J. and Suman Shyam, J.

Bench : Division Bench

Advocate : S.S. Dey, Sr. Advocate and M. Nath Advocate, for the Appellant; G Deka, Sr. GA, P.K. Tiwari, Sr. Advocate, K. Eshi, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Suman Shyam, J.—This writ appeal is directed against the judgement and order dated 08.12.2015 passed by the learned Single Judge in WP(C) 491 (AP)/2015, whereby a direction was issued to the State Respondents to implement the recommendation of the Departmental Promotion Committee (hereinafter referred to as DPC) held on 28.01.2015 within a period of 30 (thirty) days from the date of the order.

2. The brief facts of the case is that the writ appellant and the respondent no. 3 are serving as Joint Director in the ICDS project in the State of Arunachal Pradesh and their conditions of service are governed by the Joint Director (ICDS) Recruitment Rules, 1992.

3. Being aggrieved by the DPC recommendation dated 15.09.2008 whereby, officiating promotion given to the respondent no. 3 was regularised with retrospective effect, the appellant as petitioner had earlier approached this Court by filling WP(C) 447(AP)/2009, which was disposed of by the learned Single Judge by the judgment and order dated 23.05.2012 setting aside the DPC recommendation dated 15.09.2008 as well as the consequential order dated

01.10.2008, by means of which the officiating promotion of the respondent no. 3 to the post of Joint Director, ICDS, was regularised. By the order dated 23.05.2012 the learned Single Judge had also directed the State respondents to hold review DPC for filling up the post of Joint Director, ICDS, by taking into account not only the cases of the appellant and the respondent no. 3 but also all such eligible candidates who come within the zone of consideration.

4. The judgement and order dated 23.05.2012 was carried in an appeal filed by the respondent no. 3 in WA 03(AP)/2013, which was also disposed of by the Division Bench by order dated 01.10.2013 affirming the order passed by the learned Single Judge. By the order dated 01.10.2013, the Division Bench had observed that the promotion to the post of Joint Director, ICDS, should be considered on merit basis and seniority will pay a secondary role in the exercise.

5. It appears that in terms of the judgement and order dated 23.05.2012 a review DPC was constituted for considering the case of eligible officers for promotion to the post of Joint Director, ICDS on 28.01.2015. In 1 lie said DPC, the candidature of as many as 5 (five) candidates had been considered whereby, the case of the respondent no. 3 was recommended for promotion to the post of Joint Director, ICDS. Being emboldened by the DPC recommendation dated 28.01.2015, the respondent no. 3 had once again approached this Court by filing WP(C) 491 (AP)/2015, inter-alia, praying for a writ of mandamus directing the respondents to act upon the recommendation of the review DPC dated 28.01.2015 contending that despite the recommendations of the review DPC standing in her favour, the authorities are not taking any action to promote her to the post of Joint Director. It would be relevant to mention herein that the writ appellant was not made party in the WP(C) 491 (AP)/2015.

6. The learned Single Judge had allowed the said writ petition by the impugned judgement and order dated 08.12.2015, which is under challenge in the instant appeal.

7. In the meantime, being aggrieved by the DPC recommendation dated 28.01.2015, the writ appellant as petitioner has filed WP(C) 71(AP)/2016 praying for setting aside the DPC recommendations dated 28.01.2015 standing in favour of the respondent no. 4.

8. We have heard Mr. S.S. Dey, learned senior counsel assisted by Mr. M. Nath, learned counsel appearing for the appellant/writ petitioner. Also heard Ms. G. Deka, learned senior Government Advocate, Arunachal Pradesh appearing for the official respondents as well as Mr. P.K. Tiwari, learned senior counsel assisted by Mr. K. Eshi, learned counsel appearing on behalf of the private respondent.

9. Mr. Dey, learned senior counsel appearing on behalf of the writ appellant/petitioner in WP(C) 71(AP)/2016 has drawn our attention to the ACR grading of the 5 (five) candidates considered by the DPC in its meeting dated 28.01.2015 to contend that while the writ appellant /Petitioner had secured "Very Good" in her ACR in all the 6 (six) successive years beginning from the year 2002-03 up to

2007-08, the private respondent had secured "Very Good" only on 3 (three) occasions with her ACR grading being "Good" in respect of the remaining 3 (three) years. Notwithstanding the fact that the writ appellant was better in terms of merit, the case of the private respondent has been recommended by the DPC for promotion to the post of Joint Director through the minutes dated 28.01.2015 by ignoring the case of the appellant, in a most arbitrary and illegal manner. Since the proceedings of the review DPC dated 28.01.2015 is not sustainable in the eye of law, hence, submits Mr. Dey, the learned Single Judge was not justified in issuing a mandamus to implement the decision of the DPC dated 28.01.2015 by the impugned order dated 08.12.2015.

10. Mr. Tiwari, learned senior counsel appearing for the respondent no. 3 on the other hand contends that although his client was initially given "Very Good" only in respect of 3 (three) years and her ACR grading was "Good" in the remaining 3 (three) years, yet, the DPC had considered the remarks of the Reviewing Officer and thereafter, treated the grading of "Good" given to the respondent no. 3 for the year 2007-08 as "Very Good". The learned senior counsel submits that the DPC was competent to review such ACR grading on the basis of materials available before it and the writ Court would not sit in appeal over such discretion exercised by the DPC on the basis of objective materials. In support of his aforesaid arguments, Mr. Tiwari has placed reliance on the following decisions :-

- i. AIR 1988 SC 1069 (Union Public Service Commission v. Hiranyalal Dev & Ors.).
- ii. (2008) 2 SCC 119 (M. V. Thimmaiah & Ors. v. Union Public Service Commission & Ors.)
- iii. (2005) 10 SCC 15 (UPSC v. K. Rajaiah & Ors.)
- iv. (2007) 11 SCC 10 (Union of India & Anr. v. A.K. Narula).

11. We have considered the submissions made by and on behalf of the rival parties and also perused the materials available on records.

12. It is not in dispute that the post of Joint Director, ICDS is a selection grade post and the criteria for filling up the said post is merit with due regard to seniority, which means the basic criteria for selection of the candidate would be merit and the seniority will come into play only if the candidates are found equal on merit.

13. In view of the law laid down by the Apex Court in the case of Ajit Singh(2) v. State of Punjab reported in (1999) 7 SCC 209, it is no more res-Integra that right to be considered for promotion is a fundamental right. Therefore, while considering the cases of eligible candidates for promotion to a higher post, the DPC is required to not only take note of all relevant criteria as per the requirement of the Rules but also conduct the proceedings in a fair and transparent manner lest it should violate the principles of equality enshrined in Articles 14 and 16 of the Constitution. From a perusal of the DPC minutes dated 28.01.2015, what is apparent is that the writ appellant had ACR grading of "Very

Good" for all the 6 (six) years under consideration whereas the private respondent had ACR grading of "Very Good" only in respect of 3 (three) years with a grading of "Good" for the remaining 3 (three) years. Even assuming that the DPC acted within its competence to upgrade the ACR grading of the private respondent for the year 2007-08 to "Very Good" from "Good", even in that case the appellant having scored very good in the ACR of all the six years had a better standing on merit. The minutes of the review DPC dated 28.01.2015 does not explain as to on what consideration the private respondent was recommended for promotion on the basis of merit criteria by ignoring the case of the writ appellant despite appellant having the better score on the ACR grading.

14. It would be pertinent to mention herein that by the order dated 23.05.2012, the learned Single Judge had issued a categorical direction requiring the authorities to consider the candidature of all such candidates who come within the zone of consideration. However, the DPC minute does not disclose as to in what manner the candidature of one Smt. P.E. Angu, another candidate having an ACR grading of "Very Good" for all the 6 (six) consecutive years commencing from 2002-03 was considered by the review DPC before arriving at a conclusion regarding the suitability of the candidates for promotion to the post of Joint Director. As such, we are of the considered opinion that the minutes of the review DPC dated 28.01.2015 is vitiated by complete arbitrariness and non-application of mind and hence, the same is liable to be interfered with. Although Mr Tiwari has tried to convince us that the DPC has made the recommendation in favour of his client upon due consideration of all the relevant factors and that such findings of the DPC would not be amenable to judicial review by this court, in view of the law laid down the Apex Court, we do not find force in such argument made by the learned senior counsel. Since the minutes of the DPC dated 28.01.2015 has been held to be unsustainable in the eye of law, hence, no mandamus would lie for enforcing the rights flowing from the said DPC proceeding. Consequently, the order dated 08.12.2015 passed by the learned Single Judge is also held to be unsustainable in the eye of law.

15. For the foregoing reasons, the writ petition being WP(C) 71 (AP)/2016 stands allowed by setting aside the minutes of the review DPC dated 28.01.2015. Consequently, the Writ Appeal No. 4(AP)/2016 (WA 411/2015) also stands allowed by setting aside the order dated 08.12.2015.

16. During the course of hearing, our attention has been drawn to the observation made by the learned Single Judge in the order dated 08.12.2015 reflecting the stand of the Government Advocate indicating a decision on the part of the State respondents to go for a fresh DPC to consider the cases of the eligible candidates for promotion to the post of Joint Director, ICDS. Ms. G Deka, learned Senior Government Advocate submits that due to pendency of these proceedings before this Court, the Government has refrained from taking any decision in the matter.

17. In view of the determination made by this Court, the respondent Nos. 1 and

2 would now initiate steps, as expeditiously as possible, for convening a fresh DPC for considering the cases of all the eligible candidates for promotion to the post of Joint Director, ICDS by bearing in mind the observations made in the judgment and order dated 23.05.2012 as well as the provisions of the relevant Rules.

18. There would be no order as to cost.