(2006) 01 GAU CK 0096

In the Gauhati High Court

Case No : W.A. No. 156 of 1999

Y. Pusparani Devi — APPELLANT

Vs

K. Memthoibi Devi and Others — RESPONDENT

Date of Decision : 27-01-2006

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2006) GLT 710 Supp

Hon'ble Judges : M.B.K. Singh, J;Amitava Roy, J

Bench : Division Bench

Advocate : N. Kerani Singh, for the Appellant; Jallaluddin and H.S. Paonam, for the Respondent

Judgement

Amitava Roy, J.—The Appellant, impleaded as Respondent No. 3, in the writ proceeding, being aggrieved by the annulment of her appointment as Accounts Officer in the Directorate of Craftsman Training, Manipur, is in appeal before us, assailing the judgment and order of the learned Single Judge to the said effect.

2. We have heard Mr. N. Kerani Singh, Senior Advocate, learned Counsel for the Appellant, Mr. Jallaluddin, learned State counsel for the official Respondents and Mr. H.S. Paonam, learned Counsel appearing for Respondent No. 1/writ Petitioner.

3. It is necessary to record in brief the pleaded stand of the parties. The Respondent No. 1/writ Petitioner approached this Court, impugning the appointment of the Appellant/Respondent No. 3, as Accounts Officer in the Directorate of Craftsman Training, Manipur by the order dated 09.07.1996, issued by the Secretary (Labour) to the Govt. of Manipur. According to her, at the relevant time, she was serving as the Head Clerk at the Industrial Training Institute, Imphal. The post of Accounts Officer had fallen vacant with effect from 31.12.1995, following the retirement of its erstwhile incumbent, whereafter, she was made to function as in-charge of the said post in addition to her normal duties. In terms of the Departments/Offices under the Government of the Manipur (Accounts Officers/Assistant Financial Advisor or equivalent),

Recruitment Rules, 1991 (hereinafter referred to as the ''Rules''), Head Clerks and Office Superintendents were the feeder posts for promotion to the post of Accounts Officer. It is a selection post to be filled up only by promotion through a departmental promotion committee associated with the Manipur Public Service Commission (hereinafter referred to as the ''Commission''). The Secretariat of the Labour Department through its communication dated 15.01.96, forwarded the relevant documents including Annual Confidential Reports of the writ Petitioner/Respondent No. 1 and the Appellant for the years 1990-91, 1991-92, 1992-93, 1993-94 and 1994-95 to the Commission, with a request to recommend the candidate for promotion to the vacant post of Accounts Officer in the Directorate of Craftsman Training, Manipur (hereinafter referred to as the ''Directorate''). The Respondent No. 1/writ Petitioner expressed apprehension about manipulation of the Annual Confidential Report by R.R. Jhulan Singh (Respondent No. 6 in the writ petition), ex-Secretary of the Commission. According to her, on 27.01.96, a DPC was convened by the Commission for which it made its recommendations for the post of Accounts Officer in the Directorate, but the same was not acted upon, being in contravention of Government notification No. 17/2/90-DP, dated 01.06.1993. Thereafter, the Government by notification dated 09.02.1996, did away with the necessity of consultation with the Commission for promotion to Class-I and Class-II posts in cases, where requisition had been made to it, but not received on or before 25.01.1996 or where the vacancies were to be filled up by promotion during the next three months. By a separate order of the Governor dated 09.02.1996, departmental promotion committees for promotions in Class-I and Class-II posts were constituted. The post of Accounts Officer in the Directorate is a Class-II post. As the preparations for convening a fresh DPC was underway, the Respondent No. 1/ writ Petitioner, came to learn that the Annual Confidential Report of the candidates for the post of Accounts Officer in the Directorate, proposed to be placed before the DPC, did not tally with the Xerox copies of the originals thereof, retained by the office of the department at the time of the earlier DPC. She alleged that though, the said fact was brought to the knowledge of the DPC, which eventually met on 20.06.1996, for assessing the candidates for promotion to the post of Accounts Officer, the members thereof, decided to proceed in the matter on the basis of manipulated Annual Confidential Reports. Finally on the basis of the recommendations made by the DPC, the Appellant/Respondent No. 3, was promoted to the post of Accounts Officer. Apart from contending that the impugned promotion was based on a recommendation founded on manipulated ACRs, the Respondent No. 1/writ Petitioner asserted that at all relevant times her service career being superior to that of the Appellant/Respondent No. 3, she had been arbitrarily discriminated against and denied her legitimate right of promotion.

4. The official Respondents in their affidavit, while admitting that the relevant ACRs for the purpose of promotion were for the years 1990-91 to 1994-95, denied the allegation of any manipulation thereof. According to them, the post in

question, was a selection post, for which the writ Petitioner/Respondent No. 1 and the writ Appellant/Respondent No. 3, were the only eligible candidates to be considered in terms of the Rules. As on an examination of their Annual Confidential Reports, both of them were found at par in performance, the Appellant/Respondent No. 3, being senior in service, was recommended for promotion. The impugned order of promotion having been issued on the basis of the said recommendation, the same was valid.

5. The Appellant/Respondent No. 3, contended that her Annual Confidential Reports for the relevant years, being better than those of the Respondent No. 1/ writ Petitioner and she being senior to her, she was rightly recommended for promotion. As the promotion has been granted on the basis of the recommendations of a duly constituted DPC following a comparative assessment of suitability, the same cannot be faulted with in any manner. She categorically denied the allegation of manipulation of the Annual Confidential Reports.

6. The Respondent No. 7, who at the relevant time was serving as Section Officer in the Secretariat, Labour Department, in his counter admitted to have been associated with the process of preparation of the documents/records for forwarding the requisition, for filing up the post of Accounts Officer. He asserted that at the time of sending the requisition to the Commission some time in the second week of January, 1996, attested photostat copies of the original ACRs, were retained in the concerned department with the necessary approval of the Secretary thereof, as recorded in Note No. 284 of the Secretariat Labour Department File No. 76/05/80-ITI (Pt). Following the decision to reconvene the DPC, he was instructed to prepare the requisition afresh, which he did on the basis of attested photostat copies of the ACRs retained the department file, as at that time, the original ACRs were in the custody of the Secretary of the department. The answering Respondent clarified that the said copies of the ACRs of the writ Petitioner and the Respondent No. 3 had been taken from their original ACRs, as made available at the time of initial requisition to the Commission in January, 1996.

7. In her reply to the affidavit of Respondent No. 7, the Appellant/Respondent No. 3 alleged that the photostat copies of the ACRs said to be of the originals thereof, are manufactured documents and prepared in collusion between the writ Petitioner and the Respondent No. 7.

8. The learned Single Judge, on a perusal of the original file bearing No. 76/05/80-ITI (Pt), in the form produced in Court pursuant to the orders to the said effect and the photostat copies of the ACRs of the writ Petitioner and the Respondent No. 3, for the aforementioned years, was prima facie satisfied of some anomalies therein and in his wisdom directed an inquiry into the controversy by the CBI. Accordingly, the CBI conducted an investigation and after submitting its interim reports laid the final report dated 01.06.1998. Vide order dated 09.09.98, the learned Single Judge after taking the said report on record, on the prayer of the learned Counsel for the parties, directed that a copy

thereof, be furnished to them. Thereafter, on a consideration of the materials on record, including the report of the CBI, the learned Single Judge by the impugned judgment and order quashed the promotion of the Appellant/ Respondent No. 3 and directed the concerned Respondent authorities to hold a review DPC, for promotion to the post of Accounts Officer on the basis of original unmanipulated Annual Confidential Reports.

9. Mr. Kerani has assiduously urged that the DPC having recommended the Appellant for promotion to the post of Accounts Officer on a discreet consideration of all aspects, including the ACRs of the candidates, this Court in exercise of its power of judicial review would not interfere therewith, by substituting its''s opinion on a reevaluation of their performance in service. No illegality or irregularity in the appreciation of suitability of the candidates by the DPC having been alleged any interference therewith, on a reappraisal of the service records of the parties, is beyond the purview of the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. As no anomaly in the ACRs had been detected by the DPC in course of its deliberations, the report of the CBI cannot be acted upon to override the recommendations in favour of the Appellant. The Appellant/Respondent No. 3 not having been afforded any opportunity to participate in the investigation of the CBI, the learned Single Judge ought not to have acted on the report to set aside her promotion, he argued. He maintained that the fact of Appellant being recommended for promotion on both the occasions, is demonstrative of her suitability for promotion to the post of Accounts Officer and therefore, the impugned judgment and order is unsustainable in law and on facts. According to Mr. Kerani, an allegation of manipulation of the ACRs, while in the custody of the Commission having been levelled, the writ petition without impleading it, a necessary party, is liable to be rejected on that count alone. The learned Senior Counsel sought to draw sustenance from the decisions of the Apex Court in Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, , Smt. Nutan Arvind Vs. Union of India and another, , Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another,

10. Per contra Mr. Paonam, has argued that the Appellant/Respondent No. 3 not having questioned the order of the Single Judge, directing investigation by the CBI or filed any objection to the report submitted disputing the findings record therein, she is estopped from contending otherwise. According to him, this Court having directed such investigation on being satisfied about the necessity thereof, it was well within its jurisdiction to act thereon in resolving the controversy. While, asserting that the recommendations of the first DPC not having been acted upon was irrelevant for all practical purposes, Mr. Paonam, urged that as the very basis of the recommendation by the DPC was questionable, the impugned promotion consequent thereon, is patently illegal and thus has been rightly interfered with by this Court. He maintained that the challenge having been made against the actions of the State authorities with no relief claimed against the Commission, the latter was not a necessary party in the writ

proceeding. Having regard to the allegations made against the ex-Secretary of the Commission, he was only impleaded as Respondent No. 6. He relied on the decision of the Apex Court in Krishan Yadav v. State of Haryana (1994) 4 SCC 157 to buttress his arguments.

11. We have extended our thoughtful consideration to the rival assertions. On a careful perusal of the writ petition and the reliefs prayed for, the objection bearing on want of necessary party does not commend for acceptance. Apart from the fact that no relief has been prayed for against the Commission, there is no direct or categorical allegation of manipulation of the Annual Confidential Reports against it. The apprehension in this regard expressed against Shri R.K. Jhulan Singh, the already suspended Private Secretary to the Secretary of the Commission, did not in our view necessitate the impledment of the Commission as a Respondent in the writ proceeding. The recommendation, on which the impugned order of promotion was founded, is also not by a DPC of the Commission. The writ Petitioner has prayed for abrogation of the promotion of the Appellant/Respondent No. 3 and a direction for a review DPC. In the above state of materials on record, the objection to the maintainability of the writ petition on the ground of non joinder of necessary parties cannot be sustained. The decision of the Apex Court in Prabodh Verma (Supra), was rendered in a fact situation, where persons likely to be vitally affected by the judgment were not arrayed as parties. The reported decision, in the contextual facts, is of no assistance to the Appellant.

12. Admittedly, the order of this Court, directing an investigative probe into the anomalies noticed by it, in the relevant ACR''s of the parties, has remained unquestioned till date. On the other hand, the copies of the report had been prayed for and supplied to the parties on their prayer. No objection impeacing either the procedure of investigation or the conclusions has been raised or filed in the writ proceeding. In that view of the matter, the plea raised on behalf of the Appellant that the report ought not to have been acted upon by the learned Single Judge, does not appeal to us. On the same consideration, the argument bearing on the non-acceptability of the report for the lack of the Appellant''s participation in the related inquiry cannot be entertained. This Court in the exercise of it''s plenary powers, having directed the investigation being satisfied with the nature of the controversy and the relevance and significance of the outcome thereof, for the adjudication of the issues involved, it was open for the learned Single Judge to take note of the revelations therein, in deciding the writ petition. The arguments against the admissibility and acceptability of the CBI report therefore, cannot be sustained.

13. Having held so, a brief reference to the findings in the report of the CBI is indispensable. The final report, inter alia, discloses that in course of the investigation, 21 documents including the original ACRs of the parties for the aforementioned years were seized and seven witnesses were examined. The disputed writings were also got examined by the experts and their opinion was

obtained. The entries in the original ACRs and the Xerox copy said to be retained have been set out as lereinunder:

-- Original 1990-91 1991-92 1992-93 1993-94 1994-95 -- Writ very very very very Petitioner Good Good Good Good Good -- Respon- very very very very dent No. 3 Good Good Good Good Good Xerox -- Writ very very very very very Petitioner Good Good Good Good Good -- Respon- very very dent No. 3 Good Good Good Good Good --

The inconsistencies in the entries for the years 1992-1993 for the writ Petitioner/ Respondent No. 1 and for 1990-1991 and 1991-1992 for the Appellant are brazenly conspicuous. Whereas the writ Petitioner has been downgraded, the Appellant has been upgraded for the said years.

14. The report discloses that Shri S. Thoiba Singh, Respondent No. 7, confirmed to have retained the photo copy of the original ACRs referring to note No. 284 of the File No. 76/05/80-ITI (Pt). He stated that the ACRs were returned with the recommendation of the DPC, conducted by the Commission on 27.01.96 and were retained by the Secretary, Labour Department. At the time of forwarding the second requisition, he furnished attested copies of ACRs retained by him, as the original ACRs were still with the Secretary, Labour Department. The witness clarified that he did so, as he was aware that the original ACRs had been manipulated in between and therefore, he forwarded the photo copy of the ACRs for a proper decision by the DPC. Shri T. Babu Singh, Joint Director (Training), Directorate of Craftsman Training, Government of Manipur, also examined in course of the investigation, admitted his hand writing in the ACRs of the Appellant/Respondent No. 3 for the years 1990-1991 and 1991-92, awarding "Very Good" to her. The witness admitted to have graded the writ Petitioner as "Good" in her ACR for 1992-93. The witness also admitted to have altered the grading of the writ Petitioner from "Very Good" to "Good" in the year 1992-93. He however, could not explain as to why the grading of the Appellant/Respondent No. 3 was altered from "Good" to "Very Good" for the years 1990-91 and 1991-92 and of the writ Petitioner/Respondent No. 1, from "Very Good" to "Good" for the year, 1992-1993. The final conclusions recorded by the investigating agency and contained in the final report, are extracted hereinbelow for immediate reference:

From the above facts established during the enquiry, a conclusion can be drawn reasonably that the ACRs of Smt. Y. Pusparani Devi for the years 1990-91 and 1991-92 and that of Smt. K. Memthoibi Devi for the year 1992-93 had been manipulated and the manipulated ACRs were used in the promotion of DPC of the two candidates held on 27.01.1996 in the MPSC. Manipur. Imphal and second time DPC for the same promotion held on 20.06.1996 at the O/o. Chief Secy., Govt. of Manipur as the first DPC dtd. 27.01.1996 become void by Govt. of Manipur (DP) dtd. 9.2.96 making the MPSC non-functional w.e.f. 26.01.96, Smt. Y. Pusparani Devi was recommended for appointment to the post of Accounts Officer of the Directorate Craftsman Training. Manipur on the basis of the assessment based on manipulated ACRs....

From the facts and circumstances enumerated above, there are reasonable grounds of suspicion that the conspiracy among Smt. Y. Pusparani Devi, Shri T. Babu Singh and Shri R.K. Jhulon Singh above took place to manipulate the ACR of Smt. Y. Pusparani Devi in order to up-grade the ACR of Smt. Y. Pusparani Devi and at the same time of down-grade the ACR of Smt K. Memthoibi Devi for the year 1992-93 to ensure the promotion of Smt. Y. Pusparani Devi in the DPC.

15. A perusal of the investigation report prima facie inspires the confidence of this Court about the legality of the procedure adopted and the correctness of the conclusions recorded therein. Reading the report as a whole, we therefore, do not find any cogent or compelling reason to disbelieve the disclosures made in it. In that view of the matter, we are constrained to hold that the recommendation of the DPC on the basis of the ACRs of the parties before it, cannot be construed to be on a correct assessment of their comparative suitability. Consequently, the impugned promotion of the Appellant/Respondent No. 3 founded thereon, per se cannot be upheld.

16. In Krishan Yadav (supra), selection to the post of Taxation Inspector in the Excise and Taxation Department conducted by the Sub-ordinate selection Board, was assailed being vitiated by gross illegalities on various counts. The original records, including the answer books were also destroyed. The High Court of Punjab and Haryana having negatived the challenge, the matter was taken to the Apex Court, which in the facts and circumstances of the case, directed an investigation by the CBI. The report that was submitted by the said Investigation Agency revealed deep rooted fraud and forgery in the process. Accepting the report, the Apex Court, set aside the entire selection resulting in cancellation of appointments of the selected candidates. The plea that repudiation of their appointments would work serious prejudice to them, they being already in service, was not entertained.

17. The decision in Nutan Arvind (Smt. Supra) and Union of India and Ors. v. Lt. Gen. Rajendra Singh Adyan and Anr., (Supra), have been relied upon on behalf of the Appellant/Respondent No. 3 to under score the legal principle that when a high level committee, on an assessment of the gradings of the candidates considers their cases for promotion on respective merits, judicial review by setting over such assessment, is not permissible. While, we fully subscribe to the view expressed in the above decisions, we are of the firm opinion that the same has no application in the peculiar facts of the present case. The judicial opinion expressed in the reported decisions, do not comprehend any process based on

manipulated and tainted records vitiating the process to the core. If an exercise is found to be afflicted by invalidating illegalities, results whereof, are conceived in fraud and delivered in deceit, in our view, it is the solemn duty of a Court to undo the wrong sought to be perpetrated thereby.

18. The materials on record proclaim unerringly, that the selection process has been impaired by interpolation of the Annual Confidential Reports of the parties. We have therefore, no hesitation to conclude that the impugned promotion of the Appellant/Respondent No. 3 cannot be sustained.

19. We have perused the impugned judgment and order and are in full agreement with the view expressed therein. As it is, a writ appeal, is an appeal on principle signifying that the Appellate Bench is exercising a co-ordinate jurisdiction, as has been held by this Court, in State of State of Tripura and Others Vs. Ramendra Nath Dey and Others, It held therein that the judgment of the learned Single Judge in such an appeal, is liable to be set aside or quashed, only when there is a patent error on the face of the record or it is against the established/settled principle of law. If two views are possible and the one accepted by the learned Single Judge, is reasonable and logical, no interference is warranted. Applying the above dictum as well, we are firmly of the opinion that no interference with the impugned judgment and order is called for. In the result, we find no merit in the appeal, which is accordingly dismissed. No costs.

