

(2003) 09 GAU CK 0018
In the Gauhati High Court
Case No : Writ Petition (C) No. 33 of 2002

Zohrangvunga and Others

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 GLT 380

Hon'ble Judges : S.K. Kar, J

Bench : Single Bench

Advocate : C. Lalramzauva and A.R. Malhotra, for the Appellant; N. Sailo and H. Lalrinthanga, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Kar, J.—The Petitioners here claimed to have been recruited as Economic Investigators/extension Officers (in short E.Is/E.O.s) in the Industries Department, Government of Mizoram as per Mizoram Industries Department, Government of Mizoram as per Mizoram Industries Department (Class-III Post) Recruitment Rules, 1975 starting from the year 1988 till 1997 (Vide Annexure 1 series).

2. The Ministry of Rural Development, Govt. of India, it is stated, vide letter No. 11012/7/80-IRD-III dated 16/4/1982 communicated to the Development Commissioner and Secretary, Planning, Government of Mizoram, approval of the Govt. of India for the creation of 10 posts of Extension Officers (Inds) and in turn, the Under Secretary, Community Development Department, Government of Mizoram by letter No. 11016/19/82-CD, dated 5.11.1982 communicated the fact to the Director, Community Development (Renamed Rural Development Department).

3. That there was no recruitment Rules available for appointment of Extension Officers in the Rural Development Department the recruitment process was done

by the D.P.C. constituted under the industries Department and the names of the private Respondents were recommended for the posts of Extension Officers (Inds) under the District Rural Development Agency (in short, DRDA).

4. That the following their appointments to the posts aforesaid the private Respondents Started agitating their grievances of having no promotion scope under the DRDA and making representations to the Industries Department for "encadrement of the posts of Extension Officers (Inds) so held by them. Following repeated correspondences ultimately all the posts of Extension Officers along with the incumbents under the DRDA were encadred into the Industries Department "from the date of the joining the posts" vide Notification No. A. 45014/4/81-IND dated 27.9.94. The Petitioners were, however, under the impression that such encadrement will not prejudice the Petitioners and it will be given effect from the date of enactment only. But to their dismay and surprise the encadrement was effected from the date of their initial appointments as EOs/EIs in the DRDA and they were given the seniority accordingly showing their names above the names of the writ Petitioners in the inter-se-seniority list prepared by the Industries Department. Being aggrieved by such Notification of inter se-seniority issued under Memo No. A. 23011/2/96-DTE-IND dated 31.3.2000, the Petitioners submitted their representations, but no favourable order was passed till date of the petition. That in the meantime the Govt. of Mizoram upgraded 10 posts of Extension officers and proposed to promote the Economic Investigators/Extension Officers in the upgraded posts. That notwithstanding, the fact that the some of the Petitioners were posted against the posts of private Respondents under the Rural Development Department, the encadrement vide Order dated 27.9.94 being against service jurisprudence and illegal too, in fact, had no bearing and liable to be set aside and the appointments of the private Respondents, for all practical purpose, are to be treated as till continued under the DRDA, the posts of Extension Officers (Inds) being not formally transferred to the Industries Department. That the private Respondents who have been illegally retained and accommodated against the posts of EOs and EIs in the Industries Department would have no right to be included "in the inter-se-seniority list of the E.Os and E.Is of the Industries Department in spite of their names being shown in the inter-se-seniority list as seniors to the Petitioners.

5. From the Petitioners it was contended and submitted that the order dated 27.9.94 regarding encadrement and the inter-se seniority list dated 31.3.2000 cannot be acted upon and are to be treated as illegal on the ground that the E.Os/E.Is under the DRDA and E.Os/E.Is in the Industries Department are two different-cadres and there cannot be any common inter-se-seniority clubbing them together.

6. State Respondents (Respondent No. 1 to 5) in their affidavit-in-opposition submitted that both private Respondents and the Petitioners were appointed under the Mizoram Industries Department (Class-III) Recruitment Rules, 1975 on

recommendation of DPC and were appointed by the same authority. That, in fact, that private Respondents were appointed as Extension Officers (Inds) under the Industries Department and were sent on deputation to the Community Development Department, Govt. of Mizoram (re-designated as Rural Development Department) against the 10 posts created by the Government of India in the Rural Development Department. That there were inter-transfers between the private Respondents and the Petitioners and the private Respondents were appointed in the already existing pay scale of Rs. 425/- Rs. 700/- p.m., although the 10 posts of Extension Officers (Inds) in question under the DRDA were sanctioned with pay scale of Rs. 550/- Rs. 900/- p.m., to keep the Petitioners and the private Respondents at par in so far the pay scale and the status. That by this time the private Respondents Nos. 6-8, 10-13 have already been confirmed by order dated 23.7.98 and the Respondent No. 7 was already promoted to the higher posts of Industries Promotion Officer (IPO) in the year 1998. That as the private Respondents belonged to Industries Department and were deputed to the Rural Development Department vide order under Memo No. B. 11016/27/82-83/CD, dated 21.03.1983 of the Community Development Department, Government of Mizoram, there was no question of encadrement of the private Respondents and any steps to that effect was taken due to the misconception and ignorance. That order dated 27.9.94 regarding encadrement was void ab-initio as it was passed overlooking order dated 21.3.1983. That the final inter-se-seniority was prepared initially in the year 1995 vide office Memo No. A.23013/2/96-DTE-IND dated 24.8.1995 and the private Respondents were put in serial No. 8 to 12, 14 to 16 and above the Petitioners, but Petitioners purposefully omitted to mention it. Under the facts and circumstances, taking the matter in its totality, the private Respondents will be shown as belonging to the Industries Department and not under the Rural Development Department. That it will be pertinent to note that no complaint was registered against the seniority list dated 24.8.1995 as quoted above and the inter-se-seniority list dated 31.3.2000, which has been impugned in the writ petition, is nothing but continuation of the same seniority list dated 24.8.95. That the Petitioners slept over their right, even if any, and approached the Court at a belated stage to unsettle the already settled position". That some of the private Respondents who were in deputation have been repatriated to the Industries Department. That the order of encadrement dated 27.9.94 was not only illegal but incompetent and inoperative, in law in view of the existence of the previous order dated 21.3.83. That the Petitioners herein are guilty of laches and overt act of suppression materials facts and in fact, they have acquiesced the order dated 21.3.83 which treated the private Respondents as under deputation to the DRDA and the seniority list prepared on 24.8.1995 remained un-challenged and hence the Petitioners are not entitled to any relief in exercise of the discretionary power of High Court under Article 226 of the Constitution of India.

7. In their affidavit-in-opposition, the private Respondents Nos. 6 to 13 contended similarly by stating that they were appointed under the Mizoram

Industries Department (Class-III Post) Recruitment Rules, 1975 on recommendation of the same Departmental Promotion Committee (DPC) as that of Petitioners and appointment was made by the same authority. That the Petitioners Nos. 8, 9 and 10 were not appointed on the basis of any D.P.C. That although Govt. of India sanctioned 10 posts of Extension Officers (Inds) carrying the pay scale of Rs. 550/- - Rs. 900/- p.m. the Govt. of Mizoram, so as to bring the posts under the Industries Department (Class III Posts), created the said posts with pay scale of Rs. 425/- Rs. 700/- p.m. That the posts of Extension Officers (Inds) are created for the Industries Department at the very initial stage and Community Development Department conveyed its sanction by administrator of Mizoram and the posts were filled up by the Industries Department. That in this context it is to be noted that the posts of Block Development Officer in Rural Development Department are also filled up by civil service officers who are never treated as under lien. That posts of Extension Officers (Agriculture) and Extension Officers (A.H. and Vety.) and Extension Officers (Cooperation) were created under aforesaid order dated 5.11.82 of Govt. of India are filled up by personnels from Department of Agriculture, A.H. and Vety and Department of cooperation and as such there cannot be a differential treatment amongst persons "similarly situated". That some of the Extension Officers (Inds) appointed in the aforesaid manner have already been promoted to Industrial Promotion Officer (IPO) under office order No. 305/98 w.e.f. 15.7.98 which fact have been concealed by the Petitioners.

8. That DRDA is not a Govt. department and posts of Extension Officers (Inds) were created by the Government of Mizoram and the creation was conveyed to the Rural Development Department who acted as nodal department for implementing the Central Govt. Scheme. That there was clear direction in the order of appointment by the State Govt. that on joining their respective posts created under letter dated 5.11.82 the persons appointed will be treated as on deputation and will be entitled to benefits and facilities of deputationist. That the encadrement of the private Respondents is a "policy decision" of the Govt. and it cannot change the factual position. That the Extension Officers (Inds) and other officers of Agricultural, A.H. and Vety. etc. are to be treated in similar manner without discrimination and, as the personnels from the other departments are treated to be automatically borne in their parent department, there cannot be any separate attitude towards the answering private Respondents. That there was no objection by the Petitioners during the process of encadrement and fixation of inter-se-seniority vide office order dated 24.8.1995 and to subsequent promotions of some of the private Respondents to higher posts of IPOs on 15.7.95. That the services of the private Respondents had been confirmed by the Govt. of Mizoram under the industries Department along with others by Notification dated 23.7.98 and the same have never been challenged at any point of time for which the Petitioners are estopped from raising now any objection either to encadrement or to fixation of inter-se-seniority at this belated stage. That there was no representation against the transfer of the Petitioners to the

Rural Development Department and vice-versa for which the claim of the Petitioners is also barred by principles of waiver and acquiescence.

9. The Petitioner filed an affidavit-in-reply to the affidavit-in-opposition submitted by the State-Respondents to state that the writ Petitioners were appointed against the substantive post of Extension Officers/Economic Investigators under the Industries Department whereas the private-Respondents have been appointed against the post of Extension Officers (Inds) created under the Community Development Department (re-designated as Rural Development Department) and as such private Respondents cannot be treated to have been appointed under the Industries Department. That private-Respondents are to be treated as on deputation from the community Department. That the private Respondents are to be treated as on deputation from the Community Development Department for the establishment of State level, District level, Block level administration for implementation of IRD programme of Mizoram and not as on deputation from the Industries Department as contended by the State-Respondent. That services of the private-Respondents were not utilized by the Industries Department even for a single day next before the date of confirmation on 23.7.98. That the private-Respondents cannot reckon their seniority in the Industries Department in absence of any specific appointment against posts under the Industries Department and in case of absence of valid encadrement. That the seniority list dated 24.8.95 was objected by the Petitioners etc.

10. I have heard learned Counsel appearing for the Petitioners as well as for the private Respondents and learned Govt. advocate appearing for the State-Respondents.

11. Considering the submissions made and on the perusal of the annexures enclosed to the affidavit and counter affidavits, I record my decision with reasons as hereinafter.

12. Following case laws were cited before me-

- (a) Satya Narain and Another Vs. Satish Kumar and Others,
- (b) Ran Singh Malik Vs. State of Haryana and Others,
- (c) State of Haryana and Others Vs. Miss Ajay Walia,

It is the contention of the writ Petitioners, vide para-5 of the writ petition, that DRDA is not a Govt. Department but it is a society constituted for the purpose of implementing different Development and anti-poverty programmes under Central Govt. Sponsored Schemes to be carried out by the State Govt. and its officials in different districts as per the Guidelines issued by the Government of India, Ministry of Rural Development Department in the year 1999.

13. The writ Petitioners have enclosed copies, of the Memorandum of Association of DRDA, Aizawl District and the guidelines of DRDA administration which are Annexure-V and VI. If we refer to the relevant part of the contents of this

Annexure-III there is hardly any provision for appointment of personnel by the DRDA itself. The DRDA is to be headed by a project Director of the rank of the Additional District Magistrate and he will be assisted by APOs (Assistant Project Officers). Article 4.2, 4.3 and 4.6 of Chapter IV of Annexure-VI for the purpose of this writ petition may be quoted as hereunder:

4.2 As a matter of policy, the DRDA should not have any permanent staff. Taking employees on deputation to the DRDA for specific periods has the advantage of better choice of staff, flexibility in staffing pattern and of motivating the staff. The objective of strengthening of DRDA is to provide them with certain professional capacity and have a flexible staffing pattern. To start with, DRDAs shall no longer be allowed to make any direct recruitment. In respect of the staff that is currently borne on the DRDA, the State Rural Development Department should immediately draw up a 3-5 year plan for absorption of the staff into the line departments.

4.3 The project Directors, project officers, APOs and all technical posts are to be manned by officer with proven capability and motivation and are selected in an objective manner by specific Selection Committees. The Project Directors should be selected by a Committee headed by the Chief Secretary/Development Commissioner/Addl. Chief Secretary of the State and with the Secretary (RD) being the member convener. Similarly for officers at the level of APOs and other technical officers, there should be a selection Committee headed by Secretary (RD). For other staff too other than ministerial and lower rank the selection should be by an appropriate selection committee.

4.6 The Secretary, Rural Development of the State should be in overall charge of the Project Directors of DRDAs. To start with, after selection the posting orders of Project Directors (the Project Officers, APOs) should be issued by the Secretary, Rural Development and not by any other department. The cadre controlling authority of the Project Directors/other officers may place the services of the concerned officers (after selection) at the disposal of the Rural Development Department for appointment to the concerned posts. The Secretary, Rural Development should also be responsible for making incharge arrangements when Project Directors go on long leave. The Secretary, Rural Development should actively associate himself/herself in the training requirements of project Directors and other DRDA staff. (Under lining is mine).

Therefore, there is no specific provision in the guidelines of the DRDA administration that it should have its own staff pattern appointed by the DRDA or the Rural Development Department. There is not a scarp of paper to show that any of the Petitioners were appointed by the Rural Development Department or the DRDA. Both the private Respondents and the Petitioners were appointed by similar orders passed by Directors of Industries, Mizoram as per records and it is also the contention of the Respondents (both State and private) with the only exception that in the appointment letters of the private Respondents there is a mention that they are appointed "under the District Rural Development Agency".

But the facts remain, that the appointing authority in case of the Petitioners and the private Respondents is the same, i.e. Director of Industries, Mizoram and not the Rural Development Department of the Govt. of Mizoram.

14. The Petitioners have contended in this context that the sanction of the posts were communicated to the Director Community Development Department (re-named as Rural Development Department) but it cannot be disputed that there was no appointment made by the Director, Community Development Department or the Rural Development Department Agency (DRDA), as the case may be. In their affidavit-in-opposition the State-Respondents has clearly stated that the private Respondents were appointed as Extension Officers (Inds) under the Industries Department and were sent on deputation to the Community Development Department, Government of Mizoram, (redesignated as DRDA) and I find there is no materials to controvert this proposition of facts advanced by the State-Respondents and corroborated by the private-Respondents also in their counter-affidavit.

15. The submission of the Respondents (both State and private) that the similar posts of Extension Officers (Agriculture), Extension Officer (A.H. and Vety) and Extension Officer (Cooperation) were created for the purpose of Community Development Blocks by the Govt. of India (Annexure-3) under the same notification dated 5.11.82 (Annexure-III) were filled up by personnels borne in the respective parent departments has remained unassailed in the reply-affidavit presented by the Petitioners to the counter affidavit. In this context the private Respondents have contended that there cannot be any discrimination between the "persons similarly situated". There is nothing in the records of this case to say that Extension Officers (Inds) and other Extension officers aforesaid are not "similarly situated persons".

16. The creation of the posts by the Community Development Department, though under the guidelines of the Government of India, with a pay scale lower than that which was sanctioned by the Government of India would also suggest, as contended by the Respondents, that this was done with the sole purpose of creating the posts in the Industries Department to be at par with other personnels in the Industries Department only with rider that the personnels so recruited to the newly sanctioned 10 posts will be sent for deputation to the Rural Development Department. It has been rightly contended by the Respondents that the matter of seniority was agitated by the Petitioners for the first time only on 22.5.2001. Annexure-13 is the representation dated 22.5.2001 submitted to the Secretary, Govt. of Mizoram, Industries Department claiming the seniority over the private Respondents.

17. It has been mentioned in Annexure-13 that no objection was registered by the Petitioners believing that the "encadrement" of the private-Respondents will be effective from the date of their encadrement and not from the date of their initial appointments. They filed the representation with a prayer vide para-10 of the representation asking for condonation of delay on the ground that they were

not aware of the detailed position earlier. It will be significant to note contents of para 3 of such representation. I quote -

3 That during 1984, 10 (ten) posts of Extension Officers (Industries) existed under DRDA. In absence of recruitment rules etc. for appointment of the 10 (ten) Extension Officer (Industries) posts under DRDA, the Director of Industries assisted and appointed the 10 (ten) Extension Officers (Industries) solely for the DRDA vide office Order No. 793 of 1984 issued under Memo No. A.12032/23/83/7-DTE-IND dated 22.2.1984 copy enclosed as AnneXure-1). Thus these Extension Officer (Industries) being appointed against the posts owned by DRDA are full fledged incumbents of DRDA and not employees of the Govt. of Mizoram in the industries Department irrespective of who makes the appointment. Therefore, they may not be confused with those Extension Officers/Economic Investigators who are regular incumbents of the Govt. of Mizoram, Industries Department. Those Extension Officers (Industries) who are appointed to the post owned by DRDA/Rural Development Department and posted in the autonomous body cannot be regarded as having gone on deputation from the Industries Department, Govt. of Mizoram for the mere fact that they were assisted by the Director of Industries, Govt. of Mizoram in the matter of recruitment.

(emphasis supplied)

So it will be seen that there is an admission that there was no appointment of the private-Respondents made by the Rural Development Department and accordingly the Appointing Authority, irrespective of in-consistencies of the stand taken at different stages, has remained the Director of Industries. It will be thus immaterial under the facts and circumstances of the case, whether the posts created under the DRDA were merged with the Industries Department or not by passing any appropriate orders to that effect.

18. It will be seen that the question of encadrement taken up subsequently was superfluous and result of mis-conception of facts, there being nothing to say that the private Respondents were ever appointed into any different cadre other than the cadre of Extension Officers (Inds) in the industries Department concerned. The facts admitted/given on counter affidavit will show that there is no agitation against the order passed by the Industries Department and the Govt. of Mizoram till the filing of the representation in the year 2001. It cannot be disputed that the final seniority list was prepared by the Industries Department in the year 1995 and some of the private Respondents along with the others were confirmed on 23.7.98. Therefore, it has rightly been submitted that there was a case of estoppel and bar on waiver and acquiescence. It is the established position of law that "repeated representation does not furnish any cause of action if there is a case of delay or laches" on the part of the persons in approaching the Court. Here there cannot be any dispute that the process of encadrement was done in 1994 and final seniority list was prepared in the year 1995 followed which there is an order of confirmation of some of the private Respondents in the year 1998,

and the Petitioners approached the Court only in the year 2001. In this context the case law cited, i.e. State of Haryana and Others Vs. Miss Ajay Walia, will come in assistance of the Respondents.

19. Learned Counsel appearing for the writ Petitioners has relied upon the case of Ran Singh Malik Vs. State of Haryana and Others, which deals with ex-cadre posts. The Petitioner therein was appointed as Deputy Director (feed and fodder) on ad-hoc basis on his own pay scale. While he was so continuing an advertisement was issued for recruitment to temporary post of Deputy Director (feed and fodder) in Haryana Veterinary Service Class-I in the Animal Husbandary Department. The Petitioners applied for the post and was appointed on selection. On facts, the Court found that appointment of the Petitioner's was not in the cadre of Haryana Veterinary Service Class I but was appointed to an ex-cadre post carrying a lesser pay scale than that of the cadre post in the service. Accordingly, he was refused seniority over the persons who were recruited in the cadre post even after his appointment. This is not the position here as there is nothing to show that the private- Respondents were holding any ex-cadre posts in DRDA. The other case law cited, i.e. Satya Narain and Another Vs. Satish Kumar and Others, states that persons recruited initially as Clerk under DRDA Scheme when absorbed in the Forest Department w.e.f. a date posterior to the date of appointment of the private Respondents as Clerks in the Forest Department cannot get seniority over the clerks in the Forest Department. This has no application vis-a-vis facts of the present case.

20. In this context we may take note of the law given by the Hon"ble Apex Court in the context of seniority as reported in Bimlesh Tanwar Vs. State of Haryana and Others, The relevant excerpts are as below:

47 It is also well settled that in the absence of rules governing seniority an executive order may be issued to fill up the gap. Only in the absence of a rule or executive instructions, the Court may have to evolve a fair and just principle which could be applied in the facts and circumstances of the case.

49. Seniority is not a fundamental right. It is merely a civil right. Inter-seniority of the candidates who are appointed on the same day would be dependent on the rules governing the same. Only in absence of any statutory rules, the, general principles may be held to be applicable.

It may further be observed that, in any case, if and when a person is not appointed in a regular cadre he will have to lose his job as and when the particulars scheme is abolished. It will be relevant to quote here observations of the Apex Court in this context made, vide para 4, in Surendra Kumar Sharma Vs. Vikas Adhikari and Another, quoting from another judgment of the same Court:

4 Recently dealing with such scheme or project employees in S.M. Nilajkar v. Telecom District Manager, Karnataka this Court observed: (SCCp-36, para 11)

11. It is common knowledge that the Government as a welfare State floats

several schemes and projects generating employment opportunities, though they are short-lived. The objective is to meet the need of the moment. The benefit of such schemes and projects is that for the duration they exist, they provide employment and livelihood to such persons as would not have been able to secure the same but for such schemes or projects. If the workmen employed for fulfilling the need of such passing-phase projects or schemes were to become a liability on the employer State by too liberally interpreting the labour laws in favour of the workmen, then the same may well act as a disincentive to the State for floating such schemes and the State may opt to keep away from initiating such schemes and projects even in times of dire need because it may feel that by opening the gates of welfare it would be letting in onerous obligations entailed upon it by extended application of the labour laws.

So it is likely that in order to avoid any such future trouble Govt. might have decided to recruit Extension Officers (Inds) in regular cadre and to send them on deputation to DRDA.

21. Then again, it will be most significant to observe that the private Respondents were treated by the Govt. as incumbents of Industry Department since their appointment in the year 1984 and made internal transfers and posting along with the Petitioners who admittedly were recruited from the year 1988 onwards. Thus the private Respondents may be treated for all practical purpose as senior to the Petitioners in view of their continuous services under the department and subsequent promotion to next higher grade by this time in the year 1988, i.e., before presentation of the writ petition.

22. I find no good ground in favour of the Petitioners to grant relief. They are much junior (by about 4 years) to the private Respondents with respect to the date of appointment and the inter-se-seniority was finally settled in 1995 and continued unaltered till date of the petition which cannot be unsettled now to create only complications which will invite endless litigations without serving any practical purpose. In this context I may quote Hon'ble Apex Court again, refer (2003) 5 CC 604 (supra) again.

54 Furthermore, it is now well settled that a settled seniority position should not be unsettled. The Respondents had already been posted to the post of Additional District Judge. As would appear from the report of the Sub-Committee that the seniority list was published in the year 1992. Representations were, however, made only in the year 1997 which was rejected by the High Court on 22.8.1997. The writ petition was filed in March 1998 which was dismissed by reason of the impugned judgment dated 18.8.1999.

(emphasis supplied)

23. The writ petition is thus without any merit. Petition is dismissed. No. costs.