

(2000) 01 GAU CK 0011

Gauhati High Court

Case No: Writ Appeal No's. 103 and 104 of 1994

C.C. Rangad and Others

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision: Jan. 4, 2000

Acts Referred:

- Assam Forest Service (Class-I) Rules, 1942 - Rule 4(c)
- Constitution of India, 1950 - Article 16, 226
- Meghalaya Forest Service Rules, 1985 - Rule 4, 6

Citation: (2000) 1 GLT 320

Hon'ble Judges: Brijesh Kumar, C.J; D. Biswas, J

Bench: Division Bench

Advocate: J.P. Bhattacharjee, A. Dutta, B.K. Sharma and P.K. Tiwari, for the Appellant; A. Sharma, A.M. Bhattacharyya and K. Agarwal, for the Respondent

Judgement

D. Biswas, J.

By this common judgment we propose to dispose of the Writ Appeals Nos. 103/94 and 104/94 arising out of a common judgment passed by the learned Single Judge on 24.3.94 in Civil Rule No. 376/90 and Civil Rule No. 1482/90.

2. We have heard the learned Counsels of both the parties at length.

3. In Civil Rule No. 376/90, the Petitioners challenged the appointment of 27 officers to the posts of Assistant Conservator of Forest and their subsequent promotion to the higher ranks. The Petitioners also prayed for issue of a writ of mandamus calling upon the Respondent-State to promote the Petitioners to the rank of Assistant Conservator of Forests in accordance with the rules with effect from the dates when their promotion became due under the rules. Likewise, in Civil Rule No. 1482/90, the appointment of Respondents Nos. 4 to 13 to the post of Assistant Conservator of Forest and their subsequent promotion to higher ranks have been challenged. The Petitioners in this petition also prayed for appropriate direction for regularisation of

their promotion in the rank of Assistant Conservator of Forest from the date when they became entitled to promotion as per rules.

4. The case of the Petitioners in Civil Rule No. 376/90 is that on completion of training at Rangers College, Dehradun, they were appointed as Rangers vide order dated 7.5.75 and 18.10.76. The State of Meghalaya was created in the year 1971. At that point of time, Assam Forest Service (Class-I) Rule, 1942, hereinafter referred to as "Assam Rules", were in force. The Circular (Annexure-3) issued on 15.2.61 prescribed that the vacancies in the cadre of Assistant Conservator of Forest would be filled up at the ratio of 75% for direct recruits and 25% for appointment on promotion. The Meghalaya Forest Service Rules, 1985, hereinafter referred to as "Meghalaya Rules" came into force with effect from 6.5.85. The ratio between direct recruits and promotees, as per Meghalaya Rules, was specified to be 2:1.

5. Till the institution of both the Civil Rules in 1990, as many as 32 persons were appointed directly to the posts of Assistant Conservator of Forest on different dates without considering the case of the serving Rangers for promotion inspite of their eligibility under the Rules. According to the Petitioners, only 3 (three) Rangers were promoted in 1985 and 2 (two) in 1987. This, according to them, falls short of the quota prescribed for the promotees. That apart, ignoring the right of the Petitioners for consideration of their promotion to the posts of Assistant Conservator of Forest as per rules, an advertisement was issued on 8.2.92 for filling up the posts of Assistant Conservator of Forest directly. The representations submitted by the Petitioners to resist the move were not given due consideration.

6. During the pendency of the writ petition, the Govt. of Meghalaya by notification dated 8.3.91 confirmed the services of 6th and 8th to 15th Respondents w.e.f. 7.5.85. Sri W.G. Momin, one of the writ Petitioners of Civil Rule No. 1482/90 was also confirmed w.e.f. 18.1.87. Sri Momin challenged his belated promotion and confirmation praying for his promotion with effect from the date when it became due under the rules. According to the writ Petitioners, the appointment of Respondent Nos. 3(a) to 29 are violative of the provisions of the rules in as much as they are entitled to 3 (three) more posts of Assistant Conservator of Forest as per Rule 4(c) of the "Assam Rules".

7. In the counter affidavit filed by Respondent Nos. 1, 2 and 3, it is submitted that during the period when Assam Rules were in force, one Forest Ranger was promoted on 18.1.85. Thereafter, under Meghalaya Rules, 4 (four) Rangers have been promoted in the year 1985-86. It is made clear that Government is now contemplating promotion of more Rangers as per ratio i.e. 2 : 1 as per Meghalaya Rules. According to answering Respondents, from 7.5.85, 14 (fourteen) direct recruits have been appointed to the posts of Assistant Conservator of Forest and as against that only 2 (two) posts are required to be filled up directly.

8. Respondent Nos. 3(a) to 29 in their affidavit-in-opposition reiterated the averments made by the State Government. They, however, disputed the particulars of incumbents in the posts of Assistant Conservator of Forest as mentioned in paragraph 8.

9. Civil Rule No. 1482 of 1990 was filed by Sri W.G. Momin and Sri A.R. Shanpru. In this writ petition, they prayed for fixation of inter-se-seniority in the cadre of Assistant Conservator of Forest with effect from the date when they became eligible for promotion. Sri Momin was promoted to the post of Assistant Conservator of Forest on 8.11.84 while Sri Shanpru was promoted on 28.9.87. As per Circular dated 15.2.61 (Annexure-5), the ratio for filling up the post of Assistant Conservator of Forest was 75% for direct recruits and 25% for the promotees. According to them, they were eligible for promotion with effect from 1.10.59.

10. The Respondent Nos. 1, 2 and 3 reiterated the averments made in their affidavit-in-opposition filed in the other writ petition. Respondent Nos. 4 to 13 in their counter submitted that they were recruited directly in between 1972-1987 and the Petitioners were promoted much later and as such their seniority over the writ Petitioners can not be disturbed.

11. After careful consideration of the pleadings reproduced above, we are of the opinion that the State Government have made direct recruitment to the posts of Assistant Conservator of Forest in violation of the provisions of both Assam and Meghalaya Rules and the circular issued in 1961. There is no denial that the ratio prescribed in the Circular of 1961 and the provisions of Meghalaya Rules were not taken into consideration and the case of the writ Petitioners for consideration for promotion to the posts of Assistant Conservator of Forest has been totally ignored. The ratio prescribed under the Assam Rules and Circular issued in 1961 was 3 : 1 and under the Meghalaya Rules is 2 : 1. The ratio under both the Rules has not been followed.

12. The learned Counsel for the writ Petitioners pointed out that the Circular issued in 1961 prescribing the ratio of 3 : 1 was declared invalid by this Court and as such workable ratio under the Assam Rules should be 1 : 1.

13. Sri A. Sharma, learned Counsel for the State of Meghalaya submitted that Petitioners are not entitled to the benefits of the Circular dated 15.12.61 (Annexure-3) as it was struck down by this Court. According to him, promotion can not be claimed as a matter of right and it has to be on consideration of merit and efficiency. The learned Counsel further submitted that the case of the Petitioners for promotion is presently under consideration of the State Government as per existing rules.

14. Sri A.K. Bhattacharjee, learned Senior Counsel appearing for the private Respondents submitted that the writ petitions should be dismissed for laches and inordinate delay. According to him, private Respondents appointed long ago and

promoted to higher ranks cannot be disturbed at this belated stage as this would otherwise unsettle the settled position.

15. It would appear that the Assam Rules were in force till 6.5.85, the day when the Meghalaya Rules came into force. The Assam Rules provided for direct recruitment as well as appointment on promotion to the posts of Assistant Conservator of Forest. Rule 4 lays down the above provision along with eligibility condition. In this Rule, no ratio was prescribed for direct appointment and promotion. This vacuum was sought to be filled up by the 1961 Circular prescribing the ratio of 3 : 1. The admitted position is that this Circular was set aside by this Court and it became non-existent. However, the position became clear on and from 6.5.85 when the Meghalaya Rules came into force. Rule 6 of the Meghalaya Rules provides that promotion vacancies are to be filled up in any year shall be in the ratio of 2 : 1.

16. The question naturally arises whether the said ratio has been maintained by the State of Meghalaya. From the pleadings and the submission of learned State Counsel it is apparent that the said ratio was not maintained and direct recruitments were made in flagrant violation of rules. Figures given in the writ petitions as well as the implied admission made by the State of Meghalaya to this effect are indicative of the fact that the writ Petitioners were not considered for promotion at the appropriate time in accordance with the rules.

17. So far the backlog under the Assam Rules is concerned the learned Single Judge held that it can not be allowed to be filled up now as it will upset the entire situation. The learned Single Judge also held that the writ Petitioners were sleeping over their right for years together without any effective step to vindicate their cause. Here we may consider the view of the Supreme Court in this regard. In the [State of Haryana and Others Vs. Miss Ajay Walia](#), the Supreme Court rejected the writ petition on the ground of delay of 3 years. Similarly in the [State of Maharashtra Vs. Digambar](#), the Supreme Court held that when the writ Petitioner was guilty of laches or undue delay in approaching the High Court, they would be dis-entitled to get relief in exercise of discretionary powers under Article 226. In the instant case, we find that the writ Petitioners appointed long back have come with the writ petitions to enforce their right with regard to promotion and seniority. In our opinion, it would be impermissible at this stage to grant the relief sought for.

18. It is apparent that even after the Meghalaya Rules came into force in 1985, direct appointments were made in excess of the ratio. By the time the writ petitions were filed in 1990, many of the direct appointees were promoted to the posts of Divisional Forest Officers. Sri Bhattacharjee, learned Senior Counsel submitted that as on today many of them have even been promoted to the rank of Dy. Conservator of Forest. That being so, the delay and laches on the part of the writ Petitioners would definitely stand on their way. We are also of the opinion that the position of direct recruits who have already been promoted to higher ranks cannot be disturbed.

19. The learned Single Judge in paragraph-31 of the impugned judgment dealt with the claim of the writ Petitioners under the Meghalaya Rules and came to the findings that the relief sought can not be granted due to laches and delay. It would appear that in 1985, one person was promoted to the post of Assistant Conservator of Forest. Again in 1987, three persons were promoted to the said post. Thereafter, in 1993 and 1994 as many as five officers in the grade of Rangers were promoted. This figure is available in the seniority list as on 1st January, 1995. Neither of the parties could place before this Court up-to-date position with regard to the number of Assistant Conservator of Forest appointed directly and on promotion. However, if we consider the position as on 1st January, 1995, it would appear that out of 34 Assistant Conservator of Forest, 11 number of such officers have been appointed on promotion. Since the list does not give a clear position in this regard, it would not be proper and just to come to any conclusion on the basis of it. But in our opinion the backlog of the posts are to be filled up by promotion. This should be the normal course. But whether it would be permissible at this belated stage to allow all benefits from the date when the writ Petitioners became eligible for promotion requires consideration. At this stage, we would like to refer the certain decisions of the Supreme Court placed on behalf of the Appellants.

20. Our attention has been drawn to a decision of Supreme Court in the Moon Mills Ltd., Appellant v. M.R. Meher President, Industrial Court, Bombay and Ors. Respondents AIR 1967 SC 1450 . In this case, the Supreme Court was dealing with a notification under Bombay Industrial Regulations Act, 1947 on facts and circumstances completely alien to the service jurisprudence. On consideration of the facts peculiar to that particular case, the Supreme Court condoned the delay. The ratio available in that case, in our opinion, can not be applied in this case where things have settled to a greater extent in higher grades of the service. In [P.B. Roy Vs. Union of India \(UOI\)](#), the Supreme Court relying on the majority of the Full Bench decision of the Punjab and Haryana High Court in S. Gurmej Singh v. Election Tribunal Gurdaspur AIR 1964 P&H 337 observed that after admission of a writ petition and hearing of arguments, delay may be relaxed if the case of the Petitioners is positively good. The ratio of this decision can be applied to a case where the situation permits grant of reliefs without disturbing the settled position.

21. In [Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others](#), the delay was ignored considering that it was a matter of enforcement of the fundamental right of equal opportunity under Article 16 and that the enforcement of such right was not in any manner detrimental to the interest of the officers holding the posts of Deputy Collector or officiating Deputy Collector. This shows that the persons who were treated seniors on erroneous consideration and already promoted was not allowed to be adversely affected. Considering the background and circumstances of the instant case in the light of the decision above, we are of the opinion that the Petitioners would be entitled to the benefits under the Meghalaya Service Rules to the extent such benefits do not clash with the

interests of the officers directly recruited and, by this time, promoted to higher posts.

22. In [Kuldip Chand Vs. Union of India and others](#), the dispute was with regard to seniority amongst the Clerks in a common cadre. The erroneous publication of the seniority list was set aside and the claim of the Petitioner of that case was allowed for promotion to the next higher grade.

But in the instant case, the conflict of interest is amongst the officers appointed directly and the officers appointed on promotion. The persons who have been recruited directly after interview through Meghalaya Public Service Commission can not made to suffer for no fault of their own and they will be entitled to seniority with effect from the date of their appointment. But if it transpires that the promotees or the Range Officers expecting promotion are eligible for promotion with effect from earlier dates and their promotion with retrospective effect will not result in reversion of any of the direct appointees, such promotion from earlier dates may be given subject to their selection by the competent authority.

23. At this page we may refer to the decision in [Vinod Kumar Sangal Vs. Union of India \(UOI\) and Others](#), . The Supreme Court required the Departmental Promotion Committee to consider the case of the Appellant for selection in the vacancies for each of three years i.e. 1980, 1982, and 1983. In (1997) 3 SCC 287, the same ratio was laid down observing that Departmental Promotion Committee is required to sit every year for filling up the vacancies likely to arise in the year for being filled up.

There is no dispute to this requirement of law. However, the learned State Counsel pointed out that such an exercise may create hardship to the officers already promoted to the next higher grade and any order passed to fill up the vacancies on re-calculation year-wise will have to be circumvent to the above contingency. We have no reason to differ and conclude otherwise specially when the Supreme Court in [P.S. Sadasivaswamy Vs. State of Tamil Nadu](#), held that so far as service matters specially relating to promotion are concerned, the persons aggrieved should approach the High Court at best within 6 months or at the most one year of the promotion.

24. After careful consideration of the respective submissions and the decisions of the Supreme Court, we are in full agreement with the Learned Single Judge that an enquiry is necessary to remove the prevailing inconsistency. We, therefore, propose an exercise in the following manner which, in our opinion, would be conducive to resolve the dispute at hand to the extent permissible under the law:

(1) An exercise be undertaken by the State of Meghalaya to ascertain in the number of vacancies to be filled up by promotion as on today at the ratio of 2:1 as per the Meghalaya Rules;

(2) The vacancies thus found shall be filled up by promotion subject to suitability as per provisions of the Meghalaya Rules;

(3) No direct recruitment be made till the back-log is cleared in accordance with the Rules; and

(4) The inter-se-seniority after such promotion shall be redefined without adversely affecting the present position of direct recruits who by now hold any post higher to the post of Assistant Conservator of Forest that is to say that the promotion and seniority of the promotees shall be with effect from the day when the last promotion of the direct recruits was given effect to.

25. We have no doubt in our mind that if the above exercise is completed, the grievances of the writ Petitioners will stand mitigated to the extent permissible under the law. We are nor inclined to grant any relief beyond what is given above.

26. Both the appeals according stand disposed of. The State of Meghalaya is directed to undertake and complete the exercise as above without loss of time.

We make no orders as to costs.