

(2000) 06 GAU CK 0018

Gauhati High Court (Imphal Bench)

Case No: Writ Petition (C) No. 400 of 1999

Kapangsing Raleng

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision: June 13, 2000

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2000) 2 GLT 495

Hon'ble Judges: H.K. Sema, J

Bench: Single Bench

Advocate: R. Daniel and Aleng Vashung, for the Appellant; R.S. Reisang, A.G.A., for the Respondent

Final Decision: Allowed

Judgement

H.K. Sema, J.

I have heard Mr. Aleng Vashung, learned Counsel for the Petitioner as well as Mr. Reisang, learned Govt. Advocate for the Respondents.

2. The case in hand illustrates a classic example as to how the Petitioner has suffered discriminating treatment in the hands of the Respondents. The facts reciting hereinafter will substantiate this view.

3. Pursuant to the advertisement dated 1.2.1997, requisitioning candidates for recruitment to the posts of LDC/Receptionist/Driver/Sweeper/Peon/Room bearer in Manipur Bhavan, Calcutta and Delhi, the Petitioner applied for the post of Receptionist. After receiving all the applications and after scrutinising educational qualification and other eligible criteria laid down in the advertisement, the Departmental Promotion Committee was duly constituted for the post of Receptionist and held its sittings on 29.9.1997 and 2.10.1997 at Imphal for appointment to the advertised post for Manipur Bhavan at Delhi.

4. Departmental Promotion Committee also held its sittings on 13.6.1997 and 23.6.1997 at Imphal for appointment to the posts advertised for Calcutta Manipur Bhavan. Thereafter, the DPC recommended the case of the Petitioner for appointment to the post of Receptionist at Manipur Bhavan, New Delhi for which he applied. However, on the recommendation, appointment of the Petitioner was processed through various levels, but the Minister incharge (GAD) by its note dated 4.11.1998 stalled the appointment of the Petitioner to the post of Receptionist on the ground that the advertisement was contrary to the recruitment rule. According to the Respondents, the post of Receptionist is a promotion post from the post of LDC.

5. Respondents have filed counter, in paras 2 and 3 of the Respondents' counter, it is stated that the advertisement was issued against the recruitment rule. It is also stated that the post of Receptionist is a promotional post as per the recruitment rules, 1993. Respondents admitted that the Class-III DPC had recommended the case of the writ Petitioner for appointment to the post of Receptionist, but the State Government did not accept the " recommendation of the said DPC on the ground that the post of Receptionist is promotional post from LDC with 5 (five) years regular service in accordance with 1993 rule.

6. At the time of hearing of this writ petition, Mr. Reisang fairly submits that the recruitment rule of 1993 quoted in paras 2 and 3 is only a draft recruitment rule and the same has not been finalised. It is because of this reason, the advertisement has been issued for direct recruitment, and the candidates possessing requisite qualifications are recommended and appointed so far Manipur Bhavan in Calcutta is concerned.

7. As already said, in the same advertisement, the post of Receptionist and Ors. for Manipur Bhavan at Calcutta has also requisitioned. The DPC for Calcutta Bhavan for the post of Receptionist was held on 13.6.1997 and 23.6.1997 at Imphal. Petitioner has annexed the appointment order appointing the candidate as Receptionist for Calcutta Bhavan, pursuant to the recommendation of Class-III UDC held on 13.6.1997 at Calcutta and 23.6.1997 at Imphal by an order dated 3rd July, 1997 marked as Annexure-C/1 in the rejoinder application. The order is important for the purpose of making out hostile discrimination against the Petitioner. It reads:

No. 7/2/97-GAD: On the recommendation of a Class-III DPC held on 13.6.97 at Calcutta and on 23.6.97 at Imphal, the following persons are hereby appointed as Receptionist in the office of the Deputy Resident Commissioner, Manipur Bhavan, 26 Rowland Road, Calcutta in order of merit in the scale of pay of Rs. 950-20-1150-EB-20-1500/- with all other allowances as admissible under the rules against the existing 3 (three) vacant post of Receptionist with effect from the date of their joining duty and until further orders.

1. Shri K. Biren Singh,
S/O K. Kulachandra Singh,
Moirangkhom Saugaijam Leirak,
Imphal.

2. Shri R.S. Yireichan,
S/O R.S. Kulchungam,
Wunghom village.

3. Shri Raja Sen Sharma,
S/O A.B. Sen Sharma,
Bahupara, Imphal.

2. They shall be on probation for a period of 2 (two) years.

3. The expenditure to be involved shall be debited to the appropriate Head of Account of the Manipur Bhavan, Calcutta.

By order etc.,

(S. Kulachandra Singh)

Under Secretary to the Govt. of Manipur

8. From the order as quoted above, it would clearly appear that for the Calcutta Bhavan, as many as 3 (three) candidates have been appointed to the post of Receptionist against direct recruitment quota, whereas, hostile discrimination has been meted out to the Petitioner on the ground that the post of Receptionist is a promotional post. The alleged recruitment rule of 1993, as admitted by Mr. Reisang at the time of hearing is only a draft proposal, and it has not been finalised at the time the post was advertised and the DPC was held. First of all, the draft recruitment rules will have no implication against the post for which advertisement has already been made. Secondly, for the Receptionist at Calcutta, the candidates who were recommended) by Class-III DPC have been appointed, but the Petitioner whose case has been recommended by DPC for appointment to the post of Receptionist at Manipur Bhavan, New Delhi has been refused. The draft Recruitment rules for the posts of Receptionist produced at the time of hearing of this petition is both for Manipur Bhavan, Calcutta and New Delhi. The question arises, even if assuming the authority acted upon the draft rules can it be said to be applied only in the case of Manipur Bhavan in Delhi and not Calcutta Bhavan when the draft rules was framed for both. It is not a case of cancellation of the DPC proceeding simpliciter supported by cogent reasons for which the appropriate authority is permissible under the law. Alternately, let us assume that 1993 rules in fact exists, still it cannot be applied discriminatorily. This is a clear case of unequal treatment in equal circumstances without any intelligible differentia. It is an invasion of equality clause enshrined under Article 14 of the Constitution. It is also an abuse of process of power.

9. This Court, while issuing notice of motion on 22.7.1999, granted interim order, and it is admitted by counsel of both sides that the post of Receptionist in Manipur Bhavan at Delhi has not been filled up till today.

10. In the result, this petition is allowed with a direction to the Respondent No. 2, Secretary (GAD), Government of Manipur and the Respondent No. 3, the Dy. Resident Commissioner, New Delhi to appoint the Petitioner to the post of Receptionist pursuant to the recommendation of Class-Hi DPC immediately after the ban is lifted.

With the aforesaid direction, this writ petition is allowed. ,