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**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)
ITANAGAR BENCH
WA No.01 (AP)/2002**

1. Sri Takar Belo,
S/o Late Taki Belo,
F. Sector, Itanagar,
Arunachal Pradesh.
2. Arunachal Pradesh Secretariat
Employee's Association, Itanagar
Represented by its president Sri Takar Belo,
F. Sector, Itanagar,
Arunachal Pradesh.

..... Appellants Petitioners.

Vs.

1. The State of Arunachal Pradesh,
Represented by its Commissioner & Secretary,
Department of Personnel, Itanagar.
2. The Chief Secretary,
Government of Arunachal Pradesh,
Itanagar.
3. Arunachal Pradesh Civil Service Officers Association,
Itanagar, represented by Sri Repo Ranya,
General Secretary.

..... Respondents.

With WA No.13(AP)/2007

1. Arunachal Pradesh Secretariat
Employee's Association, Itanagar
Represented by its president Sri Takar Belo,
F. Sector, Itanagar,
Arunachal Pradesh.
2. Sri Takar Belo,
S/o Late Taki Belo,
F. Sector, Itanagar,
Arunachal Pradesh.

..... Appellants Petitioners.

Vs.

1. The State of Arunachal Pradesh,
represented by its Commissioner & Secretary,
Department of Personnel, Itanagar.
2. The Chief Secretary,
Government of Arunachal Pradesh,
Itanagar.
3. Arunachal Pradesh Civil Service Officers' Association,
Itanagar, represented by Sri Repo Ranya,
General Secretary.

..... Respondents.

BEFORE
THE HON'BLE MR. JUSTICE B. K. SHARMA
THE HON'BLE MR. JUSTICE C R SARMA

For the appellants : Mr. B L Singh, Advt.

For the respondents : Ms. G Deka, Govt. Advt.
Mr. Tony Pertin, Advt.

Date of hearing & Judgment : 06.05.2010.

JUDGEMENT AND ORDER (ORAL)

B. K. Sharma, J

These two appeals have arisen out of the common judgment and order dated 04.04.2002 passed by the learned single Judge in two writ petitions, namely WP(C) No.816(AP)/2001 and WP(C) No.916(AP)/2001. The appeals have been heard together and are being disposed of by this common judgment and order.

[2] The writ petition being WP(C) No.816(AP)/2001 was filed with the following prayer :

"In the premises aforesaid, it is therefore humbly prayed that your lordships may be pleased to admit this petition, call for the records and issue Rule upon the Respondents to show cause as to why a writ in the nature of certiorari should not be issued to quash and set aside the entire action of the Respondents in bringing the APCS officers to the post of Deputy Secretary and Under Secretary at the A.P. Secretariat and further quash and set aside the impugned APCS Rules, 1995 so far it relates to bring and appoint the APCS personnel at the Secretariat as Deputy Secretary and under Secretary is concerned being unconstitutional and ultra vires and quash and set aside the entire purported action taken thereto as being arbitrary and illegal and further to show cause as to why a writ in the nature of Mandamus should not be issued directing/commanding the Respondents to appoint the senior eligible Secretariat Service Officers to all the post of under Secretary and the Deputy Secretary at the A.P Secretariat following the Rules of 1977, 1990 and 1992 as described under Annexure A, B and C immediately by withdrawing the APCS officers from the Secretariat, cancel/revoke the Rules of 1995 being ultra vires and unconstitutional and after cause/causes being shown and hearing the parties make the Rules absolute and/or pass such order(s) as to your lordships deem fit and proper.

[3] On the other hand, WP(C) No.816 (AP)/2001 was filed with the following prayer :

"In the premises aforesaid, it is humbly prayed that your Lordships may be pleased to call for the records, issue a Rule calling upon the respondents to show cause as to why a writ in the nature of mandamus be not issued directing them to cancel, recall or otherwise forbear from giving effect to the impugned order No. Apptt.41/93 Pt. dated 22.05.2001 issued by the

Government of Arunachal Pradesh, Department of Personnel, Itanagar on 23.05.2001 (Annexure-IV) and/or why a writ in the nature of Certiorari be not issued setting aside and quashing the impugned order No. Apptt. 41/93 Pt. dated 25.05.2001 issued on 23.05.2001 by the Govt. of Arunachal Pradesh, Department of Personnel, Itanagar (Annexure-IV) and/or pass such further or other order or orders as to this Hon'ble Court may deem fit and proper".

[4] The writ petitioners appellants is the Arunachal Pradesh Secretariat Employee's Association represented by its President. Since as per the Recruitment Rules (in short RR) of 1977 and 1989 governing the service conditions of the Secretariat employees provided for 100 per cent promotion to the post of Under Secretary and Deputy Secretary from amongst the Stenographers and Superintendents, the writ petitioners appellants became aggrieved with the issuance of Arunachal Pradesh Civil Services Rules, 1995 which provided for recruitment of Arunachal Pradesh Civil Service Officers to the post of Deputy Secretary and Under Secretary. Be it stated here that the 1977 and 1989 rules are known as Arunachal Pradesh Secretariate Service (recruitment to the post of Under Secretaries) Rules, 1977 (in short 1977 Rules) and Recruitment Rules for the post of Deputy Secretary (Sectt. Service), 1989 respectively.

[5] As per the provisions of aforesaid 1977 Rules and the schedule thereto, at the initial constitution of the service

there were 7 nos. of posts in the cadre of Under Secretary and 4 nos. of posts in the cadre of Deputy Secretary. Subsequently, one more post of Under Secretary was added making the cadre strength 8 and 4 respectively.

[6] The petitioners became aggrieved with the issuance of the Arunachal Pradesh Civil Services Rules, 1985 when the same provided in the cadre strength, the post of Deputy Secretary and Under Secretary in the Arunachal Pradesh Civil Services. As per Schedule-1, the cadre strength was shown as 4 and 8 respectively. Rule 3 dealing with the constitution of service and its classification provided for 3 grades, namely (i) Grade-II, (ii) Grade-II (Selection Grade) and (iii) Administrative Grade. As per Rule-3(3), the posts in all the 3 Grades shall be General Civil Service "Group-A" (Gazetted). The position in the schedule so far as inclusion of post of Deputy Secretary and Under Secretary with the cadre strength of 4 and 8 respectively has been noted above.

[7] It is the case of the petitioners appellants that since as per the RR of 1977 and 1989 it was 100 per cent by promotion from amongst Secretariat staff i.e. Superintendents and Stenographers, the State Government could not have promulgated the aforesaid Rules of 1995, so as to effect the service conditions of the members of the Association. This contention having not found favour with the learned single

Judge and the writ petitions having been dismissed the aggrieved petitioners have approached this Court by filing these two appeals.

[8] We have heard Mr. B L Singh, learned counsel representing the appellants as well as Ms. G Deka, learned State Counsel. We have also heard Mr. Tony Pertin, learned counsel representing the private respondents.

[9] Mr. Singh, learned counsel upon reference to the provisions of aforesaid Rules as well as the provisions of the State of Arunachal Pradesh State Act, 1986 has contended that the 1995 Rules could not have been framed so as to provide the post of Deputy Secretary and Under Secretary to the Arunachal Pradesh Civil Service Officers. According to him, such provisions have diminished the chances of promotion of the Superintendents and Stenographers working in the Secretariat.

[10] Mr. Singh, learned counsel has also placed reliance on the Arunachal Pradesh Rules of Executive Business, 1987 and the Business of Government of Arunachal Pradesh (allocation) Rules, 1987 so as to contend that the procedure laid down in the Rules towards framing of Rules of 1995 having not been followed, the said Rules cannot be given effect to. According to Mr. Singh, learned counsel for

the appellants the Secretariat Cadre and Arunachal Pradesh Civil Service Cadre being distinct and different, the 1995 Rules could not have been so framed so as to diminish the chances of promotion of the Secretariat Staff to the post of Deputy Secretary and Under Secretary.

[11] Countering the above argument and defending the promulgation of aforesaid Rules 1985 and the impugned judgment and order Ms. G Deka, learned State Counsel submits that the Government having framed the Rules of 1995 within its competent and jurisdiction, no interference is called for to the said Rules. Mr. Pertin, learned counsel representing the private respondent submits that mere chances of promotion cannot be said to be a legal right. He further submits that since the promotion opportunity of the Secretariat staff has not been taken away, mere appointment of the Arunachal Pradesh Civil Services Officers to the post of Under Secretary and Deputy Secretary on its own cadre strength cannot be interfered with.

[12] 'We have considered the rivals submissions made by the learned counsel for the parties and have also gone through the materials on record. The learned single Judge having noticed the aforesaid provisions of the Rules and separate cadre strength in respect of Deputy Secretary and under Secretary enumerated in the rules has rejected the

claim of the petitioner for interference with 1995 Rules and/or to hold it illegal so far as it provides to the Arunachal Pradesh Civil Services Officers the post of Deputy Secretary and Under Secretary.

[13] As noticed above, the 1977 and 1989 Rules provided for 100 per cent promotion to the post of Under Secretary and Deputy Secretary to the Civil Secretariat staff in the cadre of Superintendent and Stenographer. In the Rule the cadre strength has been specified as 4 (Deputy Secretary) and 8 (Under Secretary). Needless to say that the Superintendent and Stenographer in the Civil Secretariat are independent cadres. The State Government framed the 1995 rules laying down the cadre strength in the category of Under Secretary and Deputy Secretary and making provision for appointment to the said posts from Arunachal Pradesh Civil Service Officers. Such a provision cannot be said to be intruding upon the right of promotion to the Civil Secretariat Staff. Both the cadres being independent, the State Government is within its jurisdiction and competence to frame Rules for each of the cadres. The framing of 1995 Rules has not in any manner affected the chances of promotion of Superintendent and Stenographers in the Civil Secretariat.

[14] As regards the submission relating to procedural violation of framing the Rules of 1995, no specific averments

have been made in the writ petition. In absence of any such assertion, we are not in a position to enter into that aspect of the matter on which Mr. B L Singh, the learned Counsel for the petitioner made submissions on the basis of the Arunachal Pradesh Rules of Executive Business 1987 and the Business of Arunachal Pradesh (Allocation) Rules, 1998.

[15] Mr. B L Singh, learned counsel for the appellants referring to the averments made in Para-15 of the writ petition (WPC No.916(AP)/2001) submits that the Rules of 1995 having been framed without following the rules and procedure and the same having not been discussed in the Cabinet, the entire action being in violation of the aforesaid Rules of Executive Business and the Rules of 1998, is liable to be interfered with. Suffice is to say that what we are concerned with, is the form of the Rules and not as to whether the procedure laid down was not followed. However, no detailed Statements giving the particulars regarding such procedural violation having been made, same is difficult to be appreciated. Further, even if there was some procedural violation, same by itself will not make the 1995 Rules non-existent. The said Rules having been notified in the Official Gazette, the clear intention of the rule making authority was conveyed and thus, even if there is any procedural irregularity, same cannot stand on the way so as to interfere with the said Rules.

[16] For what has been stated above, we do not find any infirmity in the impugned order dated 04.04.2002 and consequently, both the appeals are dismissed.

JUDGE

JUDGE

Sukhendu