

**THE GAUHATI HIGH COURT**

(The High Court of Assam: Nagaland: Mizoram and Arunachal Pradesh)

ITANAGAR PERMANENT BENCH

**W.P.(C) No. 170(AP)/2016**

Shri Rana Ngadong .....Petitioner

Vs.

The State of Arunachal Pradesh ..... Respondent

**BEFORE**

**HON'BLE MR. JUSTICE SUMAN SHYAM**

For the petitioner : Mr. S. Mow, Advocate  
For the respondent : Ms. G. Ete, Govt. Advocate  
Ms. N. Danggen, Advocate  
Date of hearing and judgment : 11-05-2017

**JUDGEMENT AND ORDER (ORAL)**

Heard Mr. S. Mow, learned counsel for the writ petitioner. Also heard Ms. G. Ete, learned Addl. Sr. Govt. Advocate, Arunachal Pradesh appearing on behalf of respondent Nos. 1 to 3 whereas Ms. N. Danggen, learned counsel appearing for the respondent No. 4.

2. By filing the present writ petition, a challenge has been made to the notification dated 03-11-2015 issued by the Chief Secretary to the Government of Arunachal Pradesh, by means of which officiating promotion was given to the respondent No. 4 to the post of District Land Revenue & Settlement Officer (DLR&SO).

3. The case of the petitioner, in brief, is that the petitioner had joined in the department of Land Management, Itanagar, Arunachal Pradesh as Supervisor

Kanungo on 05-05-2003 on officiating basis and his service was regularised on 19-01-2005. At the time of joining service, the petitioner was holding a graduate degree of Bachelor of Arts. The respondent No. 4 had joined the department on 16-03-2001 but at the time of his joining in the service, he was having a qualification which was less than Class-XII pass. While both the petitioner and the respondent No. 4 were working in the post of Supervisor Kanungo (SK) in the department, a vacancy in the post of DLR&SO arose. As per the Land Revenue & Settlement Officer, Group-B (Gazatted) Rules, 2006, the post of DLR&SO is required to be filled up 50% by promotion and 50% by direct recruitment. Feeder cadre for promotion to the said post includes the post of Plane Tabler, Surveyor, Recorder Kanungo, Supervisor Kanungo of the department who have rendered 08 years of regular service in the grade and is possessing the qualification of (i) Class XII passed from a recognised institution; and (ii) Certificate course in Survey & Settlement from a recognised Institution. Subsequently, the Rules of 2006 were replaced by "The District Land Revenue & Settlement Officer, Recruitment (Amendment) Rules, 2015", which was notified on 01-09-2015. As per the mandate of Rules of 2015, the qualification for promotion to the post of DLR&SO is 15 years of regular service in the grade and the educational qualification required is (i) Graduation or Bachelor Degree in any discipline from a recognised University; and (ii) Certificate course in Survey & Settlement from a recognised Institution. By applying the Rules of 2015, the DPC, in its meeting held on 23-10-2015, had recommended the respondent No. 4 for officiating promotion to the post of DLR&SO. Consequently, the impugned

order dated 03-11-2015 has been issued, which order is under challenge in the present writ proceeding.

4. Mr. Mow, learned counsel for the petitioner submits that the vacancy in question arose prior to the notification of the Rules of 2015 and therefore, it is the Rules of 2006 that would have application this case. Since the respondent No. 4 had acquired the qualification of Class-XII pass only on 07-09-2009, hence, he was not eligible for being promoted to the post of DLR&SO under the Rules of 2006. According to, Mr. Mow, the qualification of 08 years of service has to be counted with effect from the date on which the respondent had acquired the qualification of Class-XII pass. Mr. Mow has further contended that since the consideration for promotion has been made by applying Rules of 2015 for filling up a vacancy which arose before the 2015 Rules were notified, the minutes of the DPC held on 23-10-2015 as well as the consequential order dated 03-11-2015 granting officiating promotion in favour of the respondent No. 4 are par se illegal and hence, liable to be set aside.

5. Resisting the aforesaid arguments, Ms. Danggen, learned counsel for the respondent No. 4 submits that the use of word "and" in the rules makes it clear that the requirement of possessing the educational qualification is independent of the length of service to be rendered by a candidate for being eligible for promotion and therefore, the fact that the respondent No. 4 had acquired the eligibility qualification in the year 2009 will have no bearing in the facts and circumstances of the case. The learned counsel further submits that the respondent No. 4 has acquired the qualification of graduation well before he was

considered by the DPC for promotion to the post of DLR&SO and therefore, viewed from any angle, the promotion given to the respondent No. 4 cannot be assailed in the present writ petition. Ms. Danggen has, however, fairly submitted that the Rules holding the field on the date on which the vacancy arose shall alone be applicable for filling up the promotional post.

6. The learned Govt. Advocate, Ms. G. Ete, has submitted that the educational qualification would be independent of the requirement of length of service in the grade for the purpose of consideration for promotion and therefore, the decision of the DPC cannot be faulted on such count.

7. In the case of ***A. Manoharan & Ors. Vs. Union of India & Ors.*** reported in ***(2008) 3 SCC 641***, the Hon'ble Supreme Court has held that vacancies which arose prior to formal amendment to the rules are to be filled up according to rules applicable prior to amendment. It is, therefore, clear that even in the present case, the respondents would be required to apply the Rules which were holding the field on the date on which the vacancy in the rank of DLR&SO arose and not the amended Rules.

8. From a scrutiny of the minutes of the DPC dated 23-10-2015, I find that the candidature of the departmental candidates for promotion to the post of DLR&SO was considered under the 2015 Rules. Not only that, on application of the Rules of 2015, it was found that none of the candidates including respondent No. 4 had the qualifying period of service for being promoted to the post of DLR&SO. Taking note of the same, the committee had recommended officiating promotion to be given to the respondent No. 4, till such time, he

completes the qualifying service of 15 years. Accordingly, the impugned order dated 03-11-2015 was issued giving officiating promotion to the respondent No. 4 to the post of DLR&SO. In the order of promotion dated 03-11-2015, it has been mentioned that the promotion will "stand regularised on the date he completes the required qualifying service of 15 years". When the respondent No. 4 was not found to be eligible under the Rules to be promoted to the post of DLR&SO as on 23-10-2015, no contingent recommendation could have been made by the DPC for his regular promotion since the Rules did not permit so.

9. As noted above, in the present case, the DPC has not made any recommendation for regular promotion in favour of the respondent No. 4. The recommendation of the DPC was evidently of a contingent nature, since the respondent No. 4 admittedly did not meet the eligibility norms under the Rules. The said recommendation of the DPC, therefore, cannot be the basis for regular promotion of the respondent No. 4 to the post of DLR&SO. If the department wants to give regular promotion to a candidate to the post of DLR&SO, then the candidature of all the eligible candidates will have to be considered as per the relevant service rules which was holding the field on the date on which the vacancy arose and only those candidates, who meet the eligibility norms under the Rules and comes within the zone of consideration can be considered for regular promotion.

10. In the light of the observation made hereinabove, this writ petition stands disposed of by issuing direction upon the respondent Nos. 1 to 3 to constitute a fresh DPC for considering the case of the eligible departmental

candidate for regular promotion to the post of DLR&SO as per the Rules applicable in this case.

11. It is made clear that the order dated 03-11-2015 would be counted only for the purpose of officiating promotion of the petitioner and the same would not confer any right upon the respondent No. 4 on the post of DLR&SO.

With the above observation, this writ petition stands disposed of.

Until such time, the exercise as directed by this Court, is completed, the present status of the respondent No. 4 shall not be disturbed.

No order as to cost.

**JUDGE**

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