

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL
PRADESH)

ITANAGAR PERMANENT BENCH

WP (C) 101 (AP) 2013

Sri Bengkut Gammeng
S/o late Taring Gammeng
R/o Polo Colony
Naharlagun
PO/PS Naharlagun
Papum Pare District , Arunachal Pradesh

..... petitioner

-Vs-

The State of Arunachal Pradesh and others.

..... Respondent

By Advocates:

Mr. N. Tagia, learned Senior Counsel
Mr. R. B. Yadav
Mr. N. Pada
T. Tabing
K. Darang
T. Tamuk
K. Ga

..... For the petitioner

Mr. S. Tapin, learned Senior Govt. Advocate

..... For the respondent/State

:::BEFORE:::
THE HON'BLE MR JUSTICE AJIT BORTHAKUR

Date of hearing - 27.04.2018
Date of judgment - 03.05.2018

JUDGMENT & ORDER (ORAL)

Heard Mr. N. Tagia, learned Sr. counsel, appearing for the petitioner and Mr. S. Tapin, learned Sr. Govt. Advocate, appearing for the State respondents No. 4, 5, 6, 7, 8 & 9 as well as Mr. M. Kato, learned CGC for respondents No. 1, 2 & 3.

2. By preferring the instant petition under Article 226 of the Constitution of India, the petitioner, who is the Joint Registrar of the Co-operative Societies (for short 'Jt. RCS'), Govt. of Arunachal Pradesh is seeking directions to the respondent authorities to De-Cadre the post of Registrar of the Co-operative Societies, (for short 'RCS') Department of Cooperation, Govt. of Arunachal Pradesh, which is presently encadred for officer of the Indian Administrative Service (IAS) and to make it a promotional post from the Cadre of Jt. RCS, Department of Co-operation, Govt. of Arunachal Pradesh, in consonance with the principles of law enunciated by the Apex Court in the cases of Council of Scientific and Industrial Research & Anr. Vs. K.G.S. Bhatt and Anr., reported in (1989) 4 SCC 635 and in O.Z. Hussain Vs. Union of India, reported in AIR 1990 SC 311.

3. The petitioner's case, in a nutshell, is that he was appointed as Assistant Registrar of Co-operative Societies (ARCS), Govt. of Arunachal Pradesh (Group-B Gazetted, Non-Ministerial), in the

Department of Co-operation, on 20.06.1988, w.e.f. 19.05.1988; promoted as Deputy Registrar of Co-operative Societies (DRCS)(Group-A Gazetted), on 18.02.1995, w.e.f. 11.04.1995; and, thereafter, promoted as Jt.RCS (Group-A Gazetted), on 17.06.1999, w.e.f. 28.05.1999. The petitioner has been rendering his service in the post of Jt. RCS for the last more than 18 years without any avenue of promotion. The next higher post above the Jt. RCS is the post of RCS who is the Administrative Head of the Department. The post of RCS is an IAS cadre post which was en-cadred in the year 1986, on the recommendation of the State Govt. vide letter No. 1/75, dated 13.08.1982. The post of RCS has since been filled up from amongst the IAS officers. The result of the aforesaid scheme, therefore, has been that the post of RCS is continued to be filled up from amongst the IAS officers and the petitioner, who has been working as Jt.RCS since 1999 continues to remain in the same post for the last about 19 years, without any promotional avenue and would continue to remain so, unless the post of RCS is de-cadred from the IAS cadre post and a promotional avenue is provided to the petitioner in the next higher post of RCS. Such scheme of arrangement, which does not provide for promotional avenue results in stagnation which reduces efficiency of the incumbent and makes his service ineffective and, therefore, is unfair, unjust and against public interest violating Articles 14 and 16 of the Constitution of India.

4. The respondent No.3, the Union Public Service Commission (UPSC) in its affidavit-in-opposition and Mr. M. Kato, learned CGC submitted that UPSC being a Constitutional body, under Articles 315 to 323, Part-XIV (Services under the Union and the State), Chapter-II of the Constitution, discharge their functions, duties and obligations assigned to them under Article 320 of the Constitution.

Further, by virtue of the provisions made in the All India Services Act, 1951, separate Recruitment Rules have been framed for the IAS/IFS/IPS. In pursuance of these Rules, the IAS (Appointment by Promotion) Regulations, 1955 have been made in accordance with the provisions of the said Regulations, the Selection Committee, presided over by the Chairman/Member of the UPSC, makes selection of State Civil Service Officers for promotion to the Indian Administrative Service (IAS). It is averred that the UPSC has no role in the matter of en-cadrement or de-cadrement of any post under the State Government into IAS Cadre and this subject comes under the purview of the Central Government and the concerned State Government.

5. The State respondents No. 4 & 6 in their affidavit-in-opposition and Mr. S. Tapin, learned Sr. Govt. Advocate, submitted that the post of RCS was en-cadred to IAS, through Triennial Cadre Review of IAS (UT), carried out by the Ministry of Home Affairs (for short 'MHA'), Govt. of India, in the year 1986 on the basis of the recommendations made by the Govt. of Arunachal Pradesh vide letter No. 1/75, dated 13.08.1982. It has been further averred that Arunachal Pradesh Civil Service (APCS) officers' qualifying service for promotion is fixed at 5 years, but such promotion is subject to the availability of posts. It takes about 15-20 years for an APCS officer from Entry Grade to get his promotion to Senior Grade, subject to availability of post. It has been further averred that the APCS (Senior Grade) post and the post of Deputy Registrar of Co-operative Societies in the Co-operation Department cannot be compared with each other as both the posts have different Recruitment Rules and separate hierarchy of promotion. There is no violation of Article 14 of the Constitution of India as the posting of RCS is done from IAS Cadre or APCS Cadre, whenever there is

shortage of IAS Officer as the APCS (Admn. Grd.) are in the line of the department. It is the contention of the State respondents that the post of RCS is an IAS Cadre post and the posting is being done accordingly. The APCS officers are sometimes posted on a stop-gap arrangement and therefore, the cadre post of IAS, that is, RCS cannot be filled up by appointing any departmental officer.

6. The State respondents No. 7 & 8, in their separate affidavit-in-opposition averred that the whole matter of en-cadrement or de-cadrement of the post of RCS is a matter of Govt. policy and neither the petitioner has any right to demand or to make any claim. It has been further averred that recommendation of the expert committee is only suggestive in nature and not enforceable against the Govt. policy in this regard.

7. Perusal of the contentions made in the writ petition reveals that the petitioner was appointed to the post of Assistant Registrar of Co-operative Societies (for short 'ARCS') in the Department of Co-operation in Arunachal Pradesh vide order No. PD(ES)45/87, dated 20.06.1988. The petitioner, however, most surprisingly, joined the post of ARCS at Daporijo, on 20.05.1988 vide the joining report. Thereafter, the petitioner was promoted to the post of Deputy Registrar vide order No. PD(ES)-131/86, dated 18.02.1995 and joined in the said post at the Office of the Registrar of the Co-operative Societies, Govt. of Arunachal Pradesh on 11.04.1995 vide the joining report. Then, on the recommendation of the Departmental Promotion Committee (for short 'DPC'), constituted by the Arunachal Pradesh Public Service Commission, the writ petitioner was promoted and appointed to the post of Jt. RCS along with another vide order No. PD(ES)-2/99, dated 17.06.1999 and since then, he has been rendering service in that capacity, that is,

for more than 18 (eighteen) years. The Final Seniority List of combined Group 'A' & 'B' officers, published vide No. COOP(E)12/90, dated 12.10.2012, shows that he is the senior-most Jt. RCS in which post he joined on 28.05.1999.

8. Be it mentioned here that the scheme of the Arunachal Pradesh Co-operative Rules, 1982(for short 'APCR'), recognizes 5 (five) categories of designations in the Department. They are Assistant Registrar(ARCS), Deputy Registrar (DRCS), Joint Registrar(Jt.RCS), Additional Registrar(Addl.RCS) and Registrar of Co-operative Societies (RCS). The post of RCS was created in March 1966 and it was accorded permanent status in 1971 vide order No. COOP(G)46/70, dated 14.05.1971 of the Govt. of India (North East Frontier Agency). The post of the RCS carries the status of the Head of Office vide order, No. ESTT 196/68, dated 18.11.1969. Thereafter, the post was en-cadred as an IAS cadre post in 1986, after which the IAS officers have continued to hold the said post from the year 1981. The said post was en-cadred as the Govt. of Arunachal Pradesh felt it necessary to post a Senior Officer to head the Department of Cooperation at par with the existing policy followed in almost all other States of the Country and accordingly, on the basis of the recommendation of the Govt. of Arunachal Pradesh, the Post of the RCS was en-cadred to IAS cadre by the Ministry of Home Affairs, Govt. of India, through triennial review of IAS (UT) carried out by MHA, Govt. of India, during the year 1986 and as created by an Act of Parliament under Article 312 (2) of the Constitution of India. The IAS cadre Rules, 1954 were framed by the Govt. of India in consultation with the States under Rule 8 of the said Rules of 1954 under Entry 70 of the Union List of the Constitution of India. The post of RCS was recommended for en-cadrement in the authorized strength of the IAS cadre of Union

Territories vide letter No. NFS.1/75, dated 13.08.1982 of the Joint Secretary (Appointment), Govt. of Arunachal Pradesh.

9. Rule 4 of the Indian Administrative Service (Cadre) Rules, 1954 framed under Section 3 (1) of the All India Services Act, 1951 (LXI), provides as herein below extracted:

1. "Strength of Cadres.- (1) The strength and composition of each of the cadres constituted under Rule 3 shall be as determined by regulations made by the Central Government in consultation with the State Government in this behalf and until such regulations are made, shall be as in force immediately before the commencement of these rules.

(2) The Central Government shall, at the interval of every three years, re-examine the strength and composition of each such cadre in consultation with the State Government or the State Government concerned and may make such alterations therein as it deems fit;

Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time;

Provided further that the State Government concerned may add for a period not exceeding one year and with the approval of the Central Government for a further period not exceeding two years to a State of Joint Cadre one or more post carrying duties or responsibilities of a like nature to cadre posts."

10. In pursuance of the said Rule 4 (1), the Central Government in consultation with the Government of Arunachal Pradesh, notified the post of RCS of the Govt. of Arunachal Pradesh as cadre post born on the IAS along with other Union Territories namely, Goa and Mizoram.

11. Mr. S. Tapin, learned Sr. Govt. Advocate for the State respondents, submitted that as per Rule 4 (2) of the IAS Cadre Rules, no re-examination of the strength and composition of cadre posts born on IAS in respect of Arunachal Pradesh has been undertaken after 2010 and as such, no modification/alteration in respect thereof has taken place and on the other hand, the Central Government has not altered the strength and composition of the cadre strength. The Govt. of India vide clause 1.2 of the letter No. G.I. M.H.A. letter No. 5/61/57-AIS(ii), dated 22.11.1957, the Central Govt. reserves the right to take a final decision regarding inclusion of a post in the cadre, clarifying thereby the exclusive right of the Central Govt. to en-cadre or de-cadre any such post. Be that as it may, the Cadre Rule, under which the post of RCS has been en-cadred to an IAS post itself mandates the Central and State Governments respectively to review the strength and composition of each such cadre post at an interval of every 3 (three) years to consider the need for continuation of such post en-cadrement.

12. In para 9 of the judgment delivered in the case of **Council of Scientific and Industrial Research Vs. K.G.S. Bhatt**, reported in **(1989) 4 SCC 635**, the Supreme Court observed:

"It is often said and indeed, adroitly, an organization public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organization not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organization. It is an incentive for personnel development as well. Every management must provide realistic opportunities for promising employees to move upward. "The organization that fails to develop a satisfactory procedure for promotion is

bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisor." There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions."

13. In para 7 of the judgment rendered in **O.Z. Hussain vs. Union of India**, reported in **AIR 1990 SC 311**, the Apex Court once again reiterated the aforesaid view on service prospect in public employment thus:

"This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In the welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representation of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate."

14. Citing the above two judgments of the Apex Court, Mr. N. Tagia, learned Sr. counsel for the petitioner submitted that the policy of the Govt. for en-cadrement of the post of RCS in the State of Arunachal Pradesh is par se unfair, unjust and against public interest and therefore, unreasonable and arbitrary being violative of

Articles 14 & 16 of the Constitution of India, as it has resulted in reduction of the efficiency in public service due to stagnation in career of the officers of the Co-operation Department of the State. Mr. Tagia has drawn attention of this Court to the various recommendations of Expert Committees on Co-operative Administrations from time to time and among these, he referred to the recommendations of the Expert Committees, namely, the Working Group on Co-operation (Administration Reforms Commission), 1968 and Report of the Brahm Prakash Committee on Model Co-operatives Act, 1992. Mr. Tagia, learned Sr. counsel further submitted that after extensive study of the gamut of the subject, the successive Expert Committees' reports favour the view that the RCS Post should be filled up from amongst the senior officers of the Department of Co-operation of the State and discontinuance of filling up the said post from the IAS cadre officers.

15. The Working Group on Co-operation (Administration Reforms Commission), 1968 report is extracted herein below:

"We, are, therefore, of the view that unless right type of IAS officers are available and can be placed as Registrars for a reasonably long period, the choice for the post should be the most suitable officer among those belonging to the department. Similarly, whenever, departmental officer of requisite caliber and efficiency are available, they should be considered for appointment as Registrars".

The report of **Brahm Prakash Committee on Model Co-operatives Act, 1992**, recommended as follows:

"Only such persons may be appointed as Registrar as have: (a) served as senior officer of the Government for at least 3 years in the Co-operative Department; or (b) served as Chief Executive for at least 3 years in any Co-operative; or (c) held a

senior or faculty position for at least 3 years in any Co-operative promotional body or academic institution dealing with co-operatives.”

16. This Court is, however, not concerned whether the suggestions made by the above Expert Committees as being suitable to be accepted or chosen to comment upon as the Judicial review is not concerned with the matters of Government policy. However, the fact remains that the writ petitioner has failed to show that those suggestions have been accepted by the Government, Central or State, which is committed to the welfare of their employees.

17. Mr. S. Tapin, learned Sr. Govt. Advocate appearing for the State respondents submitted that the whole grievance of the writ petitioner, who is belonged to the State service, lies in stagnancy in his present position for many years as Jt. RCS and it is the policy of the Government to provide incentive in the scope of promotion in his career to the present rank. Mr. Tapin has further submitted that under the scheme provided under the Arunachal Pradesh Co-operative Rules, an officer who joined as an ARCS is entitled to be promoted to the rank of the Addl.RCS but the post of Addl.RCS, has not been created by the Government. However, Mr. Tapin submitted that under the Modified Assured Career Progressions Scheme (MACPS), recently third financial up-gradation on completion of continuous service in the Jt.RCS post has been given to the petitioner raising his scale of pay vide order No. COOP(E)08/10, dated 13.08.2012 of the Co-operation Department, on the recommendation of the Screening Committee and there is possibility of him getting the 3rd financial up-gradation on completion of 24 years of service in the post. According to Mr.

Tapin, it is not the case of the petitioner that there is no scheme for promotion. It is the matter of Government policy to make or unmake any post as en-cadred depending on administrative exigency and as such, it is not a matter of right of any individual employee when the structures of grade of officers of the Co-operation Department of the State are well set. Mr. Tapin also submitted that, in fact, the writ petitioner has not suffered any stagnation in career prospect as he has already availed 2 (two) promotions, since he joined as ARCS and 2 (two) financial upgradations. At this stage, Mr. N. Tagia drawing attention of this Court to the observations made by the Supreme Court in the cases of KGS Bhatt (supra) and O.Z. Hussain (supra), submitted that the Apex Court held its observations on the matter of promotional avenues of public servants and not some kind of incentives in service career. In reply Mr. S. Tapin, learned Sr. Govt. Advocate submitted that it is not the matter falling within the jurisdiction of the writ Court to direct the Government to de-cadre the post of RCS as it is a matter of Government policy. Mr. Tapin pertinently referred to the observations made by the Apex Court in para 6 of the judgment in **State of Tripura & Ors Vs. K. K. Roy, reported in (2004) 9 SCC 65** and submitted that there is set scheme for promotion of the officers of the State Co-operative service and Rule 4 of the IAS (Cadre) Rules, 1954 does not provide an exclusive mandatory statutory rule, but depends on administrative exigency to undertake the exercise of periodical review, whenever need arises, to bring any alteration in the strength and composition of such cadres as it deems fit. Mr. Tapin also relevantly referred to the Rules of interpretation of the statutory provisions and the precedents laid in the case of **Bharat Petroleum Corporation Ltd and Anr Vs. N.R. Vairamani and Anr.** reported in **(2004) 8 SCC**

579 and submitted that from the point of view of the factual matrix, the observations of the Apex Court rendered in K. G. S. Bhatt case (supra) and O.Z. Hussain case (supra) are not applicable to the case of the writ petitioner, who is belonged to a distinct service with set scheme for career prospect, is not comparable to the Scheme in other services of the State.

18. In K.K. Roy case (supra), the Supreme Court in para 6 of the judgment observed as herein below extracted:

"It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 & 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue of appointment, he cannot resile therefrom. It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that the other States in India Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. When questioned, the learned counsel appearing on behalf of the appellant, even could not point out that the State of Tripura has introduced such a scheme. We wonder as to why such a scheme was not introduced by the Appellant like the other States in India, and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this court in the decisions referred to hereinbefore, it was expected that the Appellant should have followed the said principle."

19. In para 9 & 11 of the judgment in **Bharat Petroleum Corporation Ltd. and Anr. Vs. N.R. Vairamani and Anr.** reported in (2004) 8 SCC 579 observed:

" 9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in the fact situation of the decision on which reliance placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussions is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."

10. *****

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the board resemblance to another case is not all decisive."

**** ***** *****

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickest and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

20. In view of the above observations made by the Supreme Court in the case of N.R. Vairamani (supra), it is respectfully

submitted that in the context of the factual matrix of the grievance of the present writ petitioner, the observations made by the Apex Court in K.G.S. Bhatt case (supra) cannot appropriately be applied as the Arunachal Pradesh Co-operative Service Rules 1982 provides a distinct and separate service of officers in the Co-operation Department, not comparable at par with the other services of the State as the same is embodied with a clear service scheme applicable to them unlike any other service, where there is no scope for promotion for want of well planned service policy. The writ petitioner undisputedly has availed his promotions and incentives in service career in the form of two financial up-gradations as provided under the service rules with scope for further financial up-gradation in near future. Therefore, it cannot be said that the petitioner is stuck in stagnation for an unreasonable period justifying for a direction to the respondent authorities to de-cadre the post of RCS, which is reserved for IAS cadre by way of alteration in the cadre, invoking Rule 4 (2) of the IAS (Cadre) Rules, 1952 and in the corresponding IAS (Fixation of Cadre Strength) Regulations, 1955 to open further promotion avenue to him. Therefore, in the instant proceeding, the writ petitioner has failed to establish that he has been denied or deprived of his promotion to the post of RCS to which he is legally entitled.

21. Consequently, the writ petition stands dismissed.

Judge

Lumbi