



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

WA No.64/2018

Shri Imsenperong,
Presently serving as Sub-Divisional Officer (Civil) Higher Junior Grade,
Nagaland Civil Service, Mangkolemba,
Mokokchung, Nagaland.

.....Appellant.

-Versus-

1. The State of Nagaland,
Represented by the Chief Secretary to the
Government of Nagaland, Nagaland, Kohima.
2. The Commissioner & Secretary to the Government of Nagaland,
Department of Personnel & Administrative Reforms,
Nagaland, Kohima.
3. The Commissioner & Secretary to the Government of Nagaland,
Department of Justice and Law,
Nagaland, Kohima.
4. The Home Commissioner,
Government of Nagaland, Kohima.
5. Mr. Keyiranding Heguli,
Sub-Divisional Officer (Civil), Higher Junior Grade,
Alongkima, Mangkolemba,
District-Mokokchung, Nagaland.

.....Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. AJJIKUTTIRA SOMAIAH BOPANNA
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI

For the Appellant:

Mr. D.K. Mishra (Sr. Adv.),
Mr. S. Ali,
Mr. B. Prasad,
Ms. D. Saikia.

.....Advocates.

For the Respondents:

Ms. T. Khro, GA, Nagaland.

.....Advocate.

Date of Hearing & Judgment : **30th April, 2019**

JUDGMENT AND ORDER

[A.S. Bopanna, CJ]

Heard Mr. D.K. Mishra, learned Senior counsel for the appellant and Ms. T. Khro, learned Government Advocate, Nagaland, appearing for respondent Nos.1 to 4.

2. The appellant is before this Court assailing the order dated 08.08.2014 passed by the learned Single Judge in WP(C) No.149(K)/2011, which was considered and disposed of along with WP(C) No.150(K)/2011. The appellant herein was before the learned Single Judge assailing the order dated 23.11.2010 passed by the Chief Secretary to the Government of Nagaland ordering officiating promotion of the private respondent herein to the Higher Junior Grade in the scale of pay of Rs.10,000-325-15,200/- per month.

3. The contention on behalf of the appellant before the learned Single Judge was that the appellant being senior to the private respondent herein being listed at the higher position in the order of appointment was required to be considered for such officiating promotion. In that regard, it was contended that in the appointment notification dated 05.01.2005, the appellant was placed at Sl.No.6 while the 16th position, which was kept vacant, was subsequently filled up by appointing the private respondent herein through the notification dated 25.02.2005. In that light, it is contended that the appellant being senior to the private respondent and since both of them were ultimately confirmed on the same day through the notification dated 11.11.2010, the appellant should be placed higher in the seniority list and in such event, he being senior was entitled to the officiating promotion.

4. The learned Single Judge having taken note of the said contention has adverted to the facts in detail and with reference to Rule 18 of the Nagaland Civil Service Rules, 2005, for short, the Rules, has ultimately arrived at the conclusion that the case as put forth by the appellant does not merit consideration. Accordingly, the writ petition is dismissed. It is in that background, the appellant

claiming to be aggrieved by the order passed by the learned Single Judge is before this Court in this appeal.

5. The learned Senior counsel representing the appellant has at the outset referred to the order dated 05.01.2005, whereunder the appellant was appointed and the 16th position therein was kept vacant to be filled up by a candidate belonging to backward tribe (Zeliang). In that light, it is pointed out that the private respondent herein, who was considered to belong to the said backward tribe, was appointed through the notification dated 25.02.2005. In that circumstance, it is pointed out that when the appellant was placed at Sl.No.6 and the private respondent was placed at Sl.No.16, the appellant will have to be considered as senior. It is further pointed out that through the notification dated 11.11.2010 both the appellant as also the private respondent, who are found at Sl.Nos.2 and 5 therein, were confirmed in service. In such event, when both the appellant and the private respondent were appointed under the same notification and were also confirmed on the same day through a common notification, the appellant will have to be considered as senior since he was placed above the private respondent in the order of appointment.

6. To contend so, the learned Senior counsel has referred to the provisions as contained in the Rules, more particularly, to the procedure of recruitment as contemplated under Rule 12 as also the provision made pertaining to probation as contained in Rule 15 and the seniority that is required to be provided as contained in Rule 18 thereof. Hence, it is contended that the action of the official respondents in considering the private respondent herein to be senior to the appellant would not be justified and the officiating promotion which was the subject matter in the writ petition was not justified. It is further contended that in such circumstance, when the very manner in which the officiating promotion was made contrary to law, all subsequent action taken by the official respondents to promote the private respondent in that capacity on a permanent basis would also not be justified.

7. The learned counsel for the official respondents would also take us to the writ appeal papers and the Rules and in that regard would seek to contend that the learned Single Judge having taken into consideration these aspects of the matter and the contention that had been put forth in the affidavit-in-opposition,

had appropriately considered the matter and dismissed the writ petition. Hence, it is contended that the order passed by the learned Single Judge does not call for interference.

8. Having taken note of the rival contentions put forth and even though it is noticed that the learned Single Judge has made a detailed reference to all aspects of the matter, in the nature of the contention that has been put forth, the manner of consideration of Rule 18 of the Rules would become relevant herein. Hence, for an appropriate appreciation of the same, the Rule as contained is extracted, which reads as hereunder:-

"18. SENIORITY:

(a) Seniority of members of the service shall normally be determined with reference to the date of joining the service, except as provided under sub-rule (b) of this rule.

(b) The seniority of the promotees shall be determined in the order of preference, or select list prepared by the Committee, whereas the seniority of persons appointed through direct recruitment shall be determined in accordance with their position in the merit list prepared by the Commission, or the Selection Committee, provided that, if a person does not join the service within one month from the date of issue of the order of appointment or within the period specified or within the period of extended joining time allowed, he shall rank below those who joined before him.

(c) The candidates recruited under Rule 6(a)(i) shall rank senior to those recruited under Rule 6(a)(ii) during the same year.

(d) If the confirmation of a member of the service on probation is delayed on account of his failure to qualify for such confirmation, he shall lose his benefit in the order of seniority vis a vis such of his juniors who may be confirmed earlier than him.

(e) After confirmation to the service, supersession of one officer by another, having effect on the inter-se seniority of the affected officers, can take place only with the specific recommendation of the DPC which should also mention the reasons for recommending such supersession."

9. The factual aspect in the present case, if taken note, would ultimately depend on the manner of consideration relating to the provision in Rule 18(d). In the circumstance, where the provision made is with regard to the manner in which the seniority relating to the persons, whose confirmation is made, is provided therein, the Rule is clear that when two persons are considered for confirmation and if the confirmation is made on the same day, the person who is placed at the

higher serial number in the order of merit, will have to be provided the seniority. In other words, if a junior is confirmed earlier than the person who is placed higher in the order of merit in the appointment letter, the junior will be placed above the person whose position was higher in merit.

10. In that circumstance, in the instant case what is to be taken note is that the appellant as well as the private respondent were confirmed through the common notification dated 11.11.2010. In that backdrop, as already taken note, the appointment through the order dated 05.01.2005 indicated the name of the appellant at Sl.No.6 and the name of the private respondent herein due to his appointment through the notification dated 25.02.2005 was placed at Sl.No.16. The question, therefore, is in that circumstance, whether the action of the official respondents in treating the private respondent as senior to the appellant would be justified.

11. To arrive at this conclusion, what is also to be taken note of the additional facts that have arisen in this case. The appointment of the private respondent herein was called in question by certain other persons on the ground that they were entitled to be considered for appointment instead of the private respondent herein. In the said proceeding, the private respondent had ultimately succeeded and it is in that view a subsequent order dated 03.09.2009 was passed by the competent authority re-appointing the private respondent in view of the order passed in WP(C) No.33(K)/2007. The benefit of the said order in the manner as has been given to the private respondent herein is what is to be taken note. Through the notification dated 03.09.2009, it is indicated that the status quo of his seniority position (2005 batch) is to be maintained.

12. It is no doubt true as pointed out by the learned Senior counsel for the appellant, if such benefit of the status quo is also granted, it could only mean that he would be at Sl.No.16 in the original appointment order and the appellant would, in any event, be at Sl.No.6. Even if this aspect of the matter is kept in view, in a matter where the official respondents while taking into consideration these aspects of the matter, have also taken note of the fact that due to such litigation, the private respondent was kept out from the year 2005 up to 2009 during which period he, as a probationer, could have also taken the qualifying examination as required for confirmation under Rule 16 and in that circumstance,

after being put back into service through the notification dated 03.09.2009, he has cleared the examination in the first attempt and was confirmed on 06.11.2010. No doubt, the appellant was also confirmed on that day, but fact remains that though he was continuously in service from 2005, he could come out successful in the qualifying examination only in the year 2010 along with the private respondent. In that circumstance, when the benefit has been granted to the private respondent and he has been placed above in the inter-se seniority between the appellant and the private respondent, in our opinion in the facts herein, the seniority as granted to the private respondent herein would be justified.

13. While taking note of the above facts, we have also taken into consideration, the submission of the learned Senior counsel for the appellant that equitable consideration would not arise contrary to the Rules. In the present circumstances, we have not only taken into consideration the Rules, but the manner in which the Rule 18 was to be taken note by the competent authority in the circumstance, where the appellant as well as the private respondent had been considered for the purpose of confirmation of their probation. In that circumstance also we find that the interference is not called for.

14. Hence, in that circumstance, when the officiating promotion is granted to the private respondent, the learned Single Judge was justified in the conclusion. Hence, we are of the opinion that the order passed by the learned Single Judge does not call for interference in the instant intra-Court appeal. Accordingly, the appeal being devoid of merit stands disposed of.

Sd/-
JUDGE

Sd/-
CHIEF JUSTICE

Comparing Assistant