

A

R. K. JIBANLATA DEVI

v.

HIGH COURT OF MANIPUR THROUGH ITS REGISTRAR
GENERAL AND OTHERS

B

(Writ Petition (Civil) No. 1209 of 2021)

FEBRUARY 24, 2023

[M. R. SHAH AND C.T. RAVIKUMAR, JJ.]

C *Service Law – High Court of Manipur Officers and Employees Recruitment and Conditions of Service (Classification, Control, Appeal and Conduct) Rules, 2020 – Promotion – Reliance upon uncommunicated adverse ACRs – Impermissibility of – Held: Uncommunicated adverse ACRs may be even with “Good” entry which can be said to be adverse in the context of eligibility for promotion is not to be relied upon for consideration of promotion –*
D *In the present case, the case of the petitioner for promotion to the post of Assistant Registrar as on 09.04.2021 to be considered afresh ignoring the uncommunicated ACRs for the years 2016-17 and 2019-20 and taking into consideration the ACRs for the years 2017-18 & 2018-19 for which the petitioner was having “Very Good” gradings – DPC proceedings dated 09.04.2021 denying the*
E *promotion to the petitioner for the post of Assistant Registrar quashed and set aside – Constitution of India – Art. 32 – Gauhati High Court Service Rules, 1967 .*

Allowing the writ petition, the Court

F

HELD: 1.1 In the present case the dispute is with respect to the post of Assistant Registrar in the High Court of Manipur. Prior to the Rules 2020, the promotion to the post of Assistant Registrar was governed by the Gauhati High Court Service Rules, 1967. However, the Manipur High Court framed its own rules namely Rules, 2020. The DPC met to fill up the post of Assistant Registrar on 09.04.2021. Therefore, as such the Rules, 2020
G **which were prevailing at the time when the DPC met were rightly considered. It is not in dispute and cannot be disputed that for the post of promotion to the Assistant Registrar the ACRs of preceding four years from the date of DPC were required to be**
H **taken into consideration. Therefore, in the present case the ACRs**

for the period between 2016- 2017 to 2019-2020 were required to be taken into consideration and in fact taken into consideration. As observed hereinabove out of 100 marks ACR weightage was of 80 marks. [Paras 6 and 6.3][103-A-C, F-G]

1.2 In the present case the petitioner got “Good” gradings for the year 2016-17 and received “Very Good” gradings in her ACRs for the years 2017-18 and 2018-2019. It was the specific case on behalf of the petitioner which has not been denied that the ACRs grading of “Good” for the year 2016-17 was never communicated to the petitioner even till the DPC met. Therefore, uncommunicated ACR for the year 2016-17 having the grading “Good” could not have been relied upon for consideration for promotion. Similarly, so far as the ACR gradings for the year 2019-2020 is concerned, admittedly the same was communicated to the petitioner on 08.04.2021, just one day before the DPC met on 09.04.2021. The petitioner was having 15 days’ time to make the representation against the ACR grading for the year 2019-2020. Before the 15 days were over, the DPC met on 09.04.2021 and considered the case of the petitioner for promotion. The petitioner was having 15 days’ time from 08.04.2021 to make a representation. Therefore, either the DPC could have been postponed or the ACR for the year 2019-2020 ought not to have been considered and the same ought to have been treated as uncommunicated ACR. As the ACR Grading of “Good” for the year 2016-17 was not communicated till the DPC met, the same is to be ignored and/ or be not relied upon for consideration of promotion. Similarly, the grading for the year 2019-2020 also is to be excluded and/or be not relied upon for consideration for promotion as the same was communicated on 08.04.2021 and the petitioner was granted 15 days’ time to make representation and before the representation could be made the DPC met on 09.04.2021 and considered the case of the petitioner for promotion. [Paras 6.4, 6.5 and 6.7][103-H; 104-A-G]

1.3 The DPC proceedings dated 09.04.2021 denying the promotion to the petitioner for the post of Assistant Registrar are hereby quashed and set aside. The case of the petitioner for promotion to the post of Assistant Registrar as on 09.04.2021

- A i.e., the date on which the juniors came to be promoted is directed to be considered afresh ignoring the uncommunicated ACRs for the years 2016-17 and 2019-20 and thereafter the DPC/competent authority to take a fresh decision in accordance with law and taking into consideration the ACRs of remaining years, i.e., 2017-18 and 2018-19. In case after fresh exercise the petitioner is promoted to the post of Assistant Registrar, she shall be entitled to all the consequential benefits including the arrears, seniority etc. w.e.f. 09.04.2021 - the day on which the juniors came to be promoted. [Paras 8, 8.1][105-E-H]

- C *Sukhdev Singh v. Union of India and Others* (2013) 9 SCC 566 : [2013] 5 SCR 1004; *Rukhsana Shaheen Khan v. Union of India and others*, (2018) 18 SCC 640; *Dev Dutt vs. Union of India and Ors*, (2008) 8 SCC 725 : [2008] 8 SCR 174 – relied on.

- D *State of Himachal Pradesh vs. Raj Kumar*, 2022 SCC OnLine SC 680; *Prabhu Dayal Khandelwal v. Chairman, UPSC* (2015) 14 SCC 427 – referred to.

Case Law Reference

- | | | | |
|---|-------------------|--------------|----------|
| | [2013] 5 SCR 1004 | relied on | Para 3.1 |
| E | (2015) 14 SCC 427 | referred to. | Para 3.1 |
| | [2008] 8 SCR 174 | relied on | Para 6.4 |

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil)
No.1209 of 2021.

(Under Article 32 Of The Constitution of India)

- F R. Bala Subramanian, Sr. Adv., David Ahongsangbam, Raj Singh, Ms. Rajkumari Banju, Advs. for the Petitioner.

Jaideep Gupta, Sr. Adv., Maibam Nabaghanashyam Singh, Ahantham Henry, Ahantham Rohen Singh, Vivek Kumar, Mohan Singh, Vivek Kumar Singh, Kumar Mihir, Advs. for the Respondents.

- G The Judgment of the Court was delivered by
M. R. SHAH, J.

- H 1. By way of this petition preferred under Article 32 of the Constitution of India, the petitioner has prayed for an appropriate relief, direction or order to set aside the Departmental Promotion Committee

(for short, ‘DPC’) dated 9.4.2021 denying her promotion to the post of Assistant Registrar and to direct respondent Nos. 1 & 2 herein to hold a fresh DPC. A

2. The facts leading to the present writ petition in a nutshell are as under:

The petitioner initially joined her services as Lower Division Assistant in the establishment of the Gauhati High Court in the year 1991. Thereafter, she was promoted to the post of Upper Division Assistant in the year 1993. That thereafter she was promoted to the post of Superintendent in the Gauhati High Court on 5.1.2012. That in the year 2013, the High Court of Manipur came to be established as it was separated from the Gauhati High Court. At the relevant time and till the High Court of Manipur Officers and Employees Recruitment and Conditions of Service (Classification, Control, Appeal and Conduct) Rules, 2020 (hereinafter referred to as the ‘Rules 2020’) came to be framed, the Manipur High Court was enforcing the Gauhati High Court Service Rules, 1967 (hereinafter referred to as the ‘Rules 1967’). B C D

2.1 The next promotion from the post of Superintendent was to the post of Assistant Registrar. One post of Assistant Registrar fell vacant on 1.2.2019. As on August, 2020, four posts of Assistant Registrars were available. Therefore, according to the writ petitioner, as after the establishment of separate High Court of Manipur in the year 2013, the rules for appointment and other service conditions of the staff were governed by the Rules, 1967 and the post of Assistant Registrar was to be filled by way of seniority-cum-merit and the petitioner being seniormost amongst the Superintendents, she was entitled to the promotion to the said post of Assistant Registrar. Thereafter, the High Court of Manipur framed its own Rules, 2020. However, the DPC was held on 9.4.2021 for promotion to the post of Assistant Registrar (six posts) including one vacant post of the year 2019 and the remaining posts which occurred in the month of August, 2020. As per the Rules, 2020, last four years ACRs were required to be considered and accordingly DPC considered the ACRs from 2016 onwards till the date of DPC held on 9.4.2021. E F G

2.2 The DPC did not recommend the name of the petitioner and promoted other persons – private respondents herein and hence aggrieved by the denial of promotion to the post of Assistant Registrar, the petitioner has preferred the present petition under Article 32 of the Constitution of India. H

A At this stage, it is required to be noted that the petitioner has filed the writ petition before this Court in the peculiar facts and circumstances of the case and on the rule of necessity as there were three Hon'ble Judges in the Manipur High Court including the Chief Justice, out of which two were the members of the DPC and the ACRs were considered by the Chief Justice and therefore the present writ petition before this Court.

B 3. Shri R. Bala Subramanian, learned Senior Advocate appearing on behalf of the petitioner has made the following submissions:

C (i) That as the post of Assistant Registrar fell vacant on 1.2.2019 and in the month of August, 2020 (4 posts) and the Rules, 2020 came into force in the month of December, 2020 and prior thereto the Rules, 1967 were applicable, the Rules 1967 prevalent at the relevant time when the posts remained vacant were required to be applied;

D (ii) That under the Rules, 1967 which were prevalent at the relevant time, the promotion to the post of Assistant Registrar was on the basis of the seniority-cum-merit and the petitioner being the seniormost in the cadre of Superintendent ought to have been promoted to the post of Assistant Registrar;

E (iii) That as per the Rules, 1967, last five years ACRs were required to be considered for promotion to the post of Assistant Registrar against which while applying the Rules 2020, last four years ACRs have been considered;

F (iv) That as per the DPC Guidelines, the year wise vacancy was required to be considered and therefore as the post of Assistant Registrar fell vacant on 1.2.2019, considering the vacancy of that year the DPC ought to have been held for promotion to the post of Assistant Registrar in the year 2019 itself and in any case as and when the DPC met, the Rules, 1967 ought to have been applied considering the fact that one post of Assistant Registrar fell vacant on 1.2.2019;

G (v) That under the Rules, 2020, more candidates become eligible which adversely affected the promotion of the petitioner as she was required to compete with more persons on applying Rules, 2020;

H

(vi) That the ACR for the year 2016-17 having “Good” grading was not communicated to the petitioner and therefore the same ought not to have been considered by the DPC; A

(vii) That the ACR for the year 2019-2020 having “Good” grading was communicated to the petitioner on 8.4.2021 granting 15 days’ time to the petitioner to make representation against the said ACR and before even completion of the 15 days’ time, the DPC met on 9.4.2021 itself and considered the ACR for the year 2019-2020 having “Good” grading and accordingly considered the case of the petitioner for promotion. B

3.1 Relying upon the decisions of this Court in the case of *Sukhdev Singh v. Union of India and Others*, reported in (2013) 9 SCC 566; *Prabhu Dayal Khandelwal v. Chairman, UPSC*, reported in (2015) 14 SCC 427 (Paragraphs 7 to 9) and *Rukhsana Shaheen Khan v. Union of India and others*, reported in (2018) 18 SCC 640, it is submitted that the DPC had materially erred in taking into consideration the ACR for the year 2016-17 (uncommunicated ACR) and also the ACR for the year 2019-2020 which was communicated to the petitioner only on 8.4.2021. It is submitted that if the ACRs for the years 2016-17 and 2019-20 both having “Good” grading are excluded, in that case for rest of the years, the petitioner was having grading “Very Good” and therefore the petitioner would have got the promotion accordingly. C D E

3.2 Making above submissions and relying upon the aforesaid decisions, it is prayed to direct the DPC/High Court to ignore the uncommunicated ACR for the year 2016-17 and also the ACR for the year 2019-20, both having “Good” grading and to consider the case of the petitioner for promotion taking into consideration the remaining ACRs, namely, ACRs for the years 2017-18 and 2018-19 in which the petitioner was having “Very Good” grading. F

4. While opposing the present appeal, Shri Maibam Nabaghanashyam Singh, learned counsel appearing on behalf of the High Court has submitted that the petitioner received “Very Good” gradings only in her ACRs for the year 2017 to 2019 and her ACR gradings were “Good” for the years 2015 and 2016. G

4.1 It is submitted that the gradings in the ACRs for the years 2017, 2018, 2019 and 2020 were communicated to the petitioner and others on 08.04.2021, one day before the impugned Departmental H

- A Promotion Committee proceedings. It is submitted that this did not deprive the petitioner and/or any other candidate for submitting their representations, if any, with regard to the said gradings within 15 days from the date of receipt of such communication. It is submitted that in fact other candidates submitted their representations on the very next date i.e. 09.04.2021 and the petitioner did not submit any representation
- B which she could have submitted like other employees/candidates. It is submitted that as such in the present case the promotion orders in favour of the meritorious candidates were issued only on 28.04.2021, which accounted for the time period during which the petitioner or any other candidate, having a grievance with respect to the gradings could have
- C submitted their representations.

- 4.2 It is submitted that as such the interviews for the post of Assistant Registrars were conducted by two Hon'ble Judges of the High Court on 09.04.2021. The gradings in the ACRs and information with regard to such gradings was not provided or made available to the Hon'ble
- D Judges conducting the interviews. It is submitted that as such the viva voce of the petitioner and all other eligible candidates were not influenced and were independent of the gradings in the ACRs of the eligible candidates.

- 4.3 Now so far as the submission on behalf of the petitioner that as the vacancy arose on 29.01.2019 the said post ought to have been filled in by promotion immediately, occurring the vacancy and that as the post fall vacant in the month of August 2020 and therefore the relevant rules – High Court Rules ought to have been made applicable. It is submitted that it is ultimately for the employer/High Court to fill up the post by promotion.
- E

- F 4.4 Learned Counsel appearing on behalf of the High Court as well as Shri Jaideep Gupta, learned Sr. Advocate appearing on behalf of the promoted candidates relying upon the decision of this Court in the case of **State of Himachal Pradesh vs. Raj Kumar, 2022 SCC OnLine SC 680** has vehemently submitted that as observed and held
- G by this Court there is no rule of universal application that vacancies must necessarily be filled on the basis of rules which existed on the date when they arose.

- H Making the above submissions and relying upon above decisions, it is prayed to dismiss the present petition.

5. We have heard learned counsel for the respective parties at length. A

6. In the present case the dispute is with respect to the post of Assistant Registrar in the High Court of Manipur. Prior to the Rules 2020, the promotion to the post of Assistant Registrar was governed by the Gauhati High Court Service Rules, 1967. However, the Manipur High Court framed its own rules namely Rules, 2020. The DPC met to fill up the post of Assistant Registrar on 09.04.2021. Therefore, as such the Rules, 2020 which were prevailing at the time when the DPC met were rightly considered. B

6.1 As per the 'Scheme of Examination' for promotion/appointment to the posts of Assistant Registrar under Schedule III of the Rules, 2020 under Serial No. 12 which governs the "Assessment for Promotion to Superintendent/Equivalent and above" the Departmental Promotion proceedings were required to be conducted. As per the said Rule at Serial No. 12, contained in Schedule III of the Rules, 2020, the assessment for promotion to the post of Superintendent/Equivalent and above was to be made as under: C D

"12. Assessment for Promotion to Superintendent/Equivalent and its above:

(i) ACR Weightage : 80 marks E

(ii) Viva Voce/ Interview : 20 marks (to assess the suitability and compatibility of the candidate to the said post)"

6.2 As per Sl. No.13 of Schedule III, only when the merit of the candidates is the same, promotion shall be given on the basis of seniority. F

6.3 It is not in dispute and cannot be disputed that for the post of promotion to the Assistant Registrar the ACRs of preceding four years from the date of DPC were required to be taken into consideration. Therefore, in the present case the ACRs for the period between 2016-2017 to 2019-2020 were required to be taken into consideration and in fact taken into consideration. As observed hereinabove out of 100 marks ACR weightage was of 80 marks. G

6.4 In the present case the petitioner got "Good" gradings for the year 2016-17 and received "Very Good" gradings in her ACRs for the years 2017-18 and 2018-2019. It was the specific case on behalf of the petitioner which has not been denied that the ACRs grading of "Good" H

- A for the year 2016-17 was never communicated to the petitioner even till the DPC met. Therefore, as per the law laid down by this Court in catena of decisions more particularly, as observed and held by this Court in *Rukhsana Shaheen Khan (supra)*; *Sukhdev Singh (supra)* and *Dev Dutt vs. Union of India and Ors, (2008) 8 SCC 725*
- B uncommunicated adverse ACRs may be even with “Good” entry which can be said to be adverse in the context of eligibility for promotion is not to be relied upon for consideration of promotion.

Therefore, uncommunicated ACR for the year 2016-17 having the grading “Good” could not have been relied upon for consideration for promotion.

- C 6.5 Similarly so far as the ACR gradings for the year 2019-2020 is concerned, admittedly the same was communicated to the petitioner on 08.04.2021, just one day before the DPC met on 09.04.2021. The petitioner was having 15 days’ time to make the representation against the ACR grading for the year 2019-2020. Before the 15 days were over,
- D the DPC met on 09.04.2021 and considered the case of the petitioner for promotion. The submission on behalf of the High Court that the other candidates who were also communicated the ACRs for the year 2019-2020 on 08.04.2021 submitted their representations on 09.04.2021 and therefore the petitioner also could have submitted the representation on 09.04.2021 like other candidates is concerned, it is neither here nor there.
- E The fact remains that the petitioner was having 15 days’ time from 08.04.2021 to make a representation. Therefore, either the DPC could have been postponed or the ACR for the year 2019-2020 ought not to have been considered and the same ought to have been treated as uncommunicated ACR.

- F 6.7 The sum and substance of the aforesaid discussion would be that as the ACR Grading of “Good” for the year 2016-17 was not communicated till the DPC met, the same is to be ignored and/ or be not relied upon for consideration of promotion. Similarly, the grading for the year 2019-2020 also is to be excluded and/or be not relied upon for consideration for promotion as the same was communicated on
- G 08.04.2021 and the petitioner was granted 15 days’ time to make representation and before the representation could be made the DPC met on 09.04.2021 and considered the case of the petitioner for promotion.

- H 6.8 At this stage the averments made in para 23 of the counter on behalf of the High Court deserves to be noted. In paragraph 23, it is stated as under:

“23. That, as a matter of fact, the interviews for the post of Assistant Registrar were conducted by two Hon’ble Judges of the Manipur High Court on 09.04.2021. The gradings in the ACRs and information with regard to such gradings was not provided or made available to the Hon’ble Judges conducting the interviews. As such, the viva voce of the Petitioner and all other eligible candidates were not influenced and were independent of the gradings in the ACRs of the eligible candidates.”

Thus, according to the High Court, the grading in the ACRs and information with respect to such grading was not provided and/or made available to the Hon’ble Judges conducting the interviews. The aforesaid is absolutely erroneous. As observed and held hereinabove the ACR weightage was to be given of 80 marks and therefore the ACRs gradings which carry a bigger portion of marks i.e., 80 marks out of 100 marks ought to have been taken into consideration by the High Court.

7. In view of the above and for the reasons stated above, the case of the petitioner for promotion to the post of Assistant Registrar as on 09.04.2021 is required to be considered afresh ignoring the uncommunicated ACRs for the years 2016-17 and 2019-20 and her case is required to be considered afresh taking into consideration the ACRs for the years 2017-18 & 2018-19 for which the petitioner was having “Very Good” gradings.

8. In view of the above and for the reasons stated above, present petition is allowed. The DPC proceedings dated 09.04.2021 denying the promotion to the petitioner for the post of Assistant Registrar are hereby quashed and set aside. The case of the petitioner for promotion to the post of Assistant Registrar as on 09.04.2021 i.e., the date on which the juniors came to be promoted is directed to be considered afresh ignoring the uncommunicated ACRs for the years 2016-17 and 2019-20 and thereafter the DPC/competent authority to take a fresh decision in accordance with law and taking into consideration the ACRs of remaining years, i.e., 2017-18 and 2018-19. Such an exercise be completed within a period of six weeks from today.

8.1 In case after fresh exercise as above the petitioner is promoted to the post of Assistant Registrar, it goes without saying that she shall be entitled to all the consequential benefits including the arrears, seniority etc. w.e.f. 09.04.2021 - the day on which the juniors came to be promoted.

A Present writ petition is accordingly allowed to the aforesaid extent.
In the facts and circumstances of the case, there shall be no order as to costs.

Divya Pandey

Writ petition allowed.

(Assisted by : Abhishek Pratap Singh and Roopanshi Virang, LCRAs)