

GAHC030000192022



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

Case No. : WP(C)/4/2022

Vanhmingthangi Renthlei
MINECO, Khatla, Aizawl, Mizoram

VERSUS

Zoram Industrial Corporation Limited (ZIDCO) and Anr.
MINECO, Khatla, Aizawl, Mizoram 2:Managing Directo

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Mr B Lalramenga for R1-R2

Linked Case : WP(C)/3/2022

P.C.Zorinmawia
Zotlang
Aizawl
Mizoram

VERSUS

Zoram Industrial Corporation Limited (ZIDCO) and Anr.
r/b its Chairman
MINECO
Khatla
Mizoram
Aizawl

2:Managing Director

ZIDCO
MINECO
Khatla
Aizawl

Advocate for the Petitioner : Mr A.R. Malhotra
Advocate for the Respondent : Mr B Lalramenga for R1-R2

B E F O R E

THE HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : 26.09.2023

Date of Judgment : 04.10.2023

JUDGMENT & ORDER (CAV)

This order will dispose of both the writ petitions filed by the writ petitioners concerned since the facts involved are more or less similar and as for the issues involved, they are similar and identical i.e., promotion to the post of Dy. Manager (Group 'A' Executive) w.e.f., the date of vacancy in view of Departmental Enquiry concluding in their favour.

[2.] Heard Mr. A.R Malhotra, learned counsel for the petitioner and Mr. B Lalramenga, learned counsel appearing for the respondent Nos. 1 & 2. For the purpose of convenience, the facts set out in WP(C) No. 4/2022 shall be referred to. The petitioner was initially appointed as an Accountant in Zoram Industrial Development Corporation Limited (ZIDCO) which is a Government of Mizoram undertaking. Vide Office Order dated 28.05.2012, she was promoted from the post of Accountant the post of Accounts Officer in the scale of pay of Rs. 15600-39100+ Grade Pay of Rs. 5400 per month with allowances as admissible with immediate effect. As per the ZIDCO Ltd. (Group 'A' posts) Recruitment Rules, 1994 (Rules of 1994) as

amended, the next promotional post from the post of Accounts Officer or Assistant Manager is to the post of Dy. Manager. 75% of the post is to be filled up by promotion and 25% by direct recruitment. In order to be eligible for promotion, those in the feeder grade should have rendered at least 5 years of service to the feeder grade.

[3.] The petitioner, after having completed 5 years of service in the post of Accounts Officer, submitted his representation to the respondent No. 2 on 16.06.2017 requesting the said authority to consider her promotion to the post of Dy. Manager. However, the petitioner was placed under suspension w.e.f., 01.06.2018 vide Office Order No. 95/2018 dated 31.05.2018 pending drawal of disciplinary proceeding against her. Thereafter, departmental proceeding was drawn against the petitioner and the enquiry officer upon completing his enquiry submitted the enquiry report on 01.07.2019 by coming to a conclusion that the charges leveled against the petitioner were not proved. Following the submission of the enquiry report, the suspension of the petitioner was revoked w.e.f., 28.08.2019 vide Order dated 27.08.2019. However, the disciplinary authority disagreed with the findings of the enquiry officer and directed the petitioner to submit a reply within 15 days from the date of issuance of the communication while forwarding a copy of the enquiry report to her as to why disciplinary action shall not be taken against her for full recovery of the loss caused by her. The petitioner accordingly submitted her reply on 09.09.2019 but despite the reply, no further action was taken by the respondent authority.

[4.] The petitioner then submitted her representation on 22.09.2020 to the respondent No. 2 asking the said authority to settle her case and to consider promoting her to the next higher post. Thereafter, the respondent No. 2 vide Order dated 22.12.2020 in exercise of the powers conferred by Rule 22(1)(a) of the Conduct, Discipline and Appeal Rules, 1985 of ZIDCO and following the vacation of the suspension of the petitioner ordered that the period of suspension of the petitioner w.e.f., 31.05.2018 to 27.08.2019 shall be treated as periods spent on duty for all

purposes solely on humanitarian ground.

[5.] The petitioner then on 05.02.2021 submitted her represented for retrospective promotion w.e.f., the month of June 2017 when she completed 5 years of service as Accounts Officer. The representation having not being considered, the petitioner filed WP(C) No. 45/2021. During pendency of the writ petition, the respondent authorities initiated the process of promotion for filling up the post of Dy. Manager by considering the eligible candidates including the petitioner. Accordingly, vide the minutes of the Departmental Promotion Committee (DPC) dated 03.09.2021, the petitioner along with two other persons, including the writ petitioner in WP(C) No. 3/2022 were recommended for promotion to the post of Dy. Manager (Executive) with effect from the date of issue of order. Thereafter, vide Office Order no. 44/2021 dated 10.09.2021, the petitioner was promoted to the post of Dy. Manager (Group 'A' Executive) in Level-11 of the pay matrix plus all other allowances admissible under ZIDCO with effect from the date of joining the post. In view of the said promotion, the writ petitioner withdrew her writ petition vide Order dated 14.01.2022 with liberty to file afresh, insofar as, the claim for retrospective promotion is concerned. That is how the present writ petition has been filed by the present writ petitioner claiming retrospective promotion from the date she became eligible for promotion to the post of Dy. Manager.

[6.] Mr. A.R Malhotra, learned counsel for the petitioner submits that as per the Office Memorandum dated 28.02.2018, the DPC has to be constituted every year and as per Clause-15 of the Office Memorandum, the procedure to be followed in respect of all officers under cloud has been laid down. He submits that at the time of considering the case of officers for promotion, details of officers in the zone of consideration for promotion falling under different categories including the case of officers placed under suspension has to be brought to the notice of the DPC. The DPC shall then assess the suitability of the officers coming within its purview along with

other eligible officers without taking into consideration, the disciplinary case/criminal prosecution pending. The assessment shall be kept in a sealed cover only to be opened at a later point of time depending upon the outcome of the disciplinary case or criminal prosecution pending against the officer concerned.

[7.] The learned counsel submits that the procedure to be followed by the DPC as prescribed by the State Government through Office Memorandums are being followed by ZIDCO and that there is no dispute on its applicability to ZIDCO. In this connection, the learned counsel has referred to the Meeting Minutes of the Board of Directors which held its meeting on 22.09.2003. The learned counsel submits that from a perusal of the Meeting Minutes, it is clear that the Government orders or Office Memorandums issued from time to time which do not appear in the recruitment rules of ZIDCO or other rules are to be applicable to the employees of ZIDCO. He therefore submits that since the petitioner was not considered for promotion to the post of Dy. Manager despite the fact that she had completed 5 years of service in the feeder grade, the respondent authorities should be directed to consider her promotion retrospectively by holding of a DPC for the purpose. The learned counsel submits that since the suspension of the petitioner was revoked w.e.f., 28.08.2019 and thereafter, the period of suspension was treated as on duty for all purpose vide Order dated 22.12.2020, there is no delay or laches on the part of the petitioner in approaching this Court. The learned counsel in support of his submission has relied upon the following authorities:-

(1) Union of India & Anr. vs. Hemraj Singh Chauhan & Ors. (2010) 4 SCC 290.

(2) Karnati Ravi & Anr. vs. Commissioner, Survey Settlements and Land Records & Ors., (2018) 12 SCC 635.

(3) Union of India & Ors. vs. N.C Murali & Ors., (2017) 13 SCC

575.

[8.] Mr. B Lalramenga, learned counsel for the respondents, on the other hand, submits that ZIDCO is a Government company and is owned by both the Government of Mizoram as well as the IDBI Bank. He submits that all the Office Memorandums issued by the State Government does not automatically apply to ZIDCO. The learned counsel referring to the Meeting Minutes of the 152 Board of Directors held on 22.09.2003 submits that as per the resolution adopted in the meeting, the Office Memorandum dated 10.10.2002 of the DP&AR regarding the procedure to be followed by a DPC was adopted for the employees of ZIDCO. However, the Office Memorandum relied upon by the petitioners which was issued on 28.02.2018 cannot be said to be applicable to their case as no decision in that regard was taken by ZIDCO. He submits that there is no compulsion upon the ZIDCO to hold DPC every year and that DPC is conducted and as and when required. Therefore, the stipulation of holding DPC annually as contained in the Office Memorandum dated 28.02.2018 have no application insofar as ZIDCO is concerned. The learned counsel further submits that the writ petition suffers from delay and laches in view of the fact that according to the petitioners themselves, they are eligible to be considered for promotion to the post of Dy. Manager as far back as in the year 2017. However, the petitioners have approached this Court only in the year 2021 and therefore, even on this ground, the writ petition should be dismissed. In support of his submission, the learned counsel has relied upon the case of *State of Uttaranchal & Anr. vs. Shiv Charan Singh Bhandari & Ors. (2013) 12 SCC 179*.

[9.] The learned counsel further submits that the vacancy may have arisen in the year 2017 but that does not mean that the petitioners have the right to be consider for promotion from the date of vacancy. He submits that mere existence of vacancy by itself will not create a right in favour of the petitioners for retrospective promotion. In this connection, the learned counsel has relied upon the case of the

Union of India & Anr. vs. Manpreet Singh Poonam & Ors. (2022) 6 SCC 105. The learned counsel thus submits that the petitioners cannot be said to have any legitimate grievance and under the facts and circumstances, the writ petition being without merit should be dismissed.

[10.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[11.] As may be noticed, the claim of the petitioners is that they should be considered for promotion to the post of Dy. Manager (Group 'A' Executive) retrospectively w.e.f., 16.06.2017 when representation was submitted. From the representation submitted by the petitioner in WP(C) No. 4/2022 on 16.06.2017 (Annexure-3), it can be seen that according to the said petitioner two posts of Dy. Manager were lying vacant and therefore, she had prayed for consideration for promotion to the said posts as per the existing recruitment rules of ZIDCO. However, the petitioners came to be placed under suspension soon after and that the departmental proceeding was drawn against them. The enquiry report of the enquiry officer was to the effect that the charges made against the petitioners were found to be not proved. However, the disciplinary authority disagreed with the finding and decided to call for a reply from the petitioners as to why disciplinary action should not be taken against them for the loss caused by them.

[12.] Following the submission of the enquiry report, the suspension of the petitioners were revoked and subsequently, an order was passed to the effect that the period of suspension of the petitioners w.e.f., 31.05.2018 to 27.08.2019 shall be treated as period spent on duty for all purposes. In other words, it can be only understood that the petitioners were discharged from the charges leveled against them and the period of their suspension was also treated as on duty for all purposes. In such circumstance, the question which arise is as to whether the petitioners will be entitled to be considered for promotion to the post of Dy. Manager (Group 'A'

Executive) from the time when the posts became vacant. In this regard, the petitioners have relied upon the Meeting Minutes of the Board of Directors dated 22.09.2003 wherein it was resolved that the Government orders or Office Memorandums issued from time to time which do not find mention in the recruitment rules of ZIDCO or other rules will be applicable to the employees of ZIDCO. The same Meeting Minutes also goes to show that it was resolved to adopt the Office Memorandum dated 10.10.2002 issued by the DP&AR, Govt. of Mizoram, in respect of the procedure to be observed by the DPC.

[13.] The petitioners in their reply affidavit have annexed the Office Memorandum dated 10.10.2002, wherein at paragraph No. 3.6 of the Office Memorandum, the procedure to be adopted if the DPC could not be held in a year(s) even though vacancies had arisen during that year/years and the procedure to be adopted by the DPC which meets subsequently has been prescribed.

[14.] In respect of the Office Memorandum dated 28.02.2018, the same provides that the DPC should be convened at regular annual intervals to draw up select list which could be utilize for making promotions against vacancies occurring during the course of the year. Clause-15 of the Office Memorandum further provides for the procedure to be followed in respect of the officers under cloud as already stated earlier. Even if the officer concerned is placed under suspension, his/her suitability has to be assessed and the same kept in a sealed cover. The representation of the petitioners dated 16.06.2017 goes to show that there were two posts of Dy. Manager lying vacant at the relevant time. There are no materials available on record to show that DPC had been conducted for considering the promotion of eligible candidates against the vacancies available in the post of Dy. Manager as on 16.06.2017. It was only in the DPC which met on 03.09.2021 that the petitioners along with one more officer i.e., Sh. V.L Huma were recommended and promoted to the post of Dy. Manager (Group 'A' Executive).

[15.] The Apex Court in *Union of India & Anr. vs. Hemraj Singh Chauhan & Ors. (supra)* in the given facts of that case held that the Court must keep in mind the Constitution obligation of both the Central and State Government that they are to act as a model employers which is consistent with their role in a welfare State. The guarantee of a fair consideration in matters of promotion virtually flows from guarantee of equality under Article 14 of the Constitution. For the delay in considering the officers concerned, the Apex Court was of the view that the legitimate expectation of the officers for being considered for promotion was defeated. Accordingly, the direction of the High Court that the cadre review exercised be undertaken as if it was taking place on 30.04.2003 with reference to the vacancy position as on 01.01.2004 was upheld with the reiteration that the same was also now a direction of the Apex Court in exercise of its powers under Article 142 of the Constitution. It was further observed that in normal cases, the provisions of the rules concerned will not be construed retrospectively.

[16.] In *Karnati Ravi & Anr. (supra)*, the Apex Court in the given facts of the case held that in the absence of rules, it is within the powers of the executive under Article 162 of the Constitution to provide for the required instructions with regard to the procedure for selection so long as they do not come in conflict with the rules. In the present case as well, what can be noticed is that the recruitment rules of ZIDCO does not provide for the manner in which the DPC should be guided in making its recommendation. Therefore, in absence of any conflict with the Rules, the Office Memorandums issued by the DP&AR from time to time as was also resolved to be adopted for the employees of ZIDCO, which includes the Office Memorandum dated 10.10.2002 and other Office Memorandums issued from time to time can be applied.

[17.] The case of *State of Uttaranchal & Anr. vs. Shiv Charan Singh Bhandari & Ors. (supra)* relied upon by the learned counsel for the respondents regarding the delay in approaching the Court or the petitioners having waived their right to agitate

their cause is only distinguishable in view of the fact that in that case, the promotion of a junior employee ahead of the petitioners was involved. It was in that context that the Apex Court held that the petitioners failed to approach the Court when the cause of action arose. In the present case, it is an admitted position that since the year 2017 and up till the promotion of the petitioners on 10.09.2021, no promotions have been affected in the post of Dy. Manager (Group 'A' Executive). Admittedly, vacancy arose in 2017 and the respondents failed to initiate any process for filling up the vacancy although the guidelines in this regard through the Office Memorandums, provide for regular sitting of DPC. The cause of action in a strict sense cannot be said to have arisen in the year 2017, inasmuch as, the petitioners were facing departmental proceedings. In any case, the respondents themselves ought to have initiated the process and kept the recommendations or otherwise, in respect of the petitioners in a sealed cover.

[18.] The learned counsel for the respondents have also relied upon the case of *Union of India & Anr. vs. Manpreet Singh Poonam & Ors. (supra)*, but however, the same is also distinguishable to the present case, inasmuch as in that case, mere existence of notional vacancy in its own did not create a right in favour of the employee since the rules mandate a clearance through a selection process in terms of the Rules concerned. The same are not the stipulation in the present case.

[19.] Thus, upon due consideration of the matter in its entirety, this Court is of the considered view that the grievances raised by the petitioners are legitimate and they are entitled to be considered for promotion from the date vacancy in the post of Dy. Manager (Group 'A' Executive) arose.

[20.] The respondents are, therefore, directed to convene a DPC within a period of 1 (one) month from the date of receipt of a certificate copy of this order and to consider the case of the petitioners along with others (if any) who may be eligible for such consideration i.e., for promotion to the post of Dy. Manager (Group 'A'

Executive) from the date when such vacancies arose. Upon such consideration, the petitioners and other eligible candidate(s) if found to be fit and suitable for promotion, consequential orders should follow. The respondent authorities shall also decide on the consequential entitlements of the petitioners/promotees as per law in the event they are recommended to be promoted. The entire exercise shall be carried out within a period of 2 (two) months from the date of receipt of a certified copy of this order.

[21.] With the above observation and direction, both the writ petitions are disposed of. No cost.

JUDGE

Comparing Assistant