

GAHC020001752023



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

Case No. : WP(C)/76/2023

SHRI. DEITHO-O ZEHOL
SERVING AS PRINTER,
DIRECTORATE OF PRINTING AND STATIONERY,
KOHIMA, NAGALAND.

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
NAGALAND. 2:THE SECRETARY

DEPARTMENT OF PRINTING AND STATIONERY

NAGALAND
KOHIMA

3:THE DIRECTOR

DIRECTORATE OF PRINTING AND STATIONERY

NAGALAND
KOHIMA

4:SHRI. AKANGWATI

PRINTER

DIRECTORATE OF PRINTING AND STATIONERY

NAGALAND
KOHIMA

5:SHRI. RENATHUNG OVUNG

PRINTER

DIRECTORATE OF PRINTING AND STATIONERY

NAGALAND
KOHIM

Advocate for the Petitioner : TOSHI O LONGKUMER

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 07.03.2024

Heard Ms. Z. Zhimomi, learned counsel for the petitioner. Also heard Ms. Livika, learned Govt. Advocate appearing for respondent nos.1, 2 and 3; Mr. C.T Jamir, learned senior counsel, assisted by Mr. I. Inching, learned counsel for the respondent no.4 as well as Mr. Joshua Sheqi, learned counsel for the respondent no.5.

2. Once again, the question as to whether delay and laches on part of the petitioner to approach this Court would disentitle them to discretionary power of the Court under Article 226 of the Constitution of India has been raised by the respondents in the present case in hand.

3. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the seniority list dated 14.04.2023 of Printer as on 01.04.2023, with alternative prayer to issue direction to the respondent authorities for rectifying the seniority list dated 14.04.2023 in accordance with law. The

petitioner has also assailed the common order dated 18.12.2007 insofar it relates to promotion of the respondent nos.4 and 5 as Printers. The petitioner has also prayed for directing the respondents to bring out a fresh senior list of Printers in accordance with law and to hold a fresh DPC and consider promotion of the petitioner as Deputy Foreman by issuing a fresh seniority list of Printers or as per rectified seniority list.

4. Before advertizing to the case of the petitioner, it would be pertinent to mention that in the establishment of the Directorate of Printing and Stationary, Govt. of Nagaland, for the post of Printer, which is to be filled up by promotion, the post of Impositor is the feeder post. However, for the post of Impositor, the feeder posts are Inkman and Form Carrier.

5. The case of the petitioner is that he was first appointed as Inkman in the said establishment on 05.10.1999. By referring to the seniority list of Inkman, it is projected that the name of the petitioner appeared at Sl. No. 13 as per the seniority list as on 01.09.2000. The learned counsel for the petitioner has referred to subsequent seniority list of Inkman as on 19.09.2001, wherein the name of the petitioner is at Sl. No. 12. The learned counsel for the petitioner has projected that the seniority list, which was prepared up to 30.01.2006 contains only the name of the petitioner and the name of the respondent nos.4 and 5 did not find place in the said seniority list. Thereafter on 08.08.2006, the petitioner was promoted to the post of Impositor. However, in the seniority list prepared as on 31.12.2006, the name of respondent nos.4 and 5 were placed senior to that of the petitioner and their respective positions were at Sl. No. 2, 6 and 8 respectively. It is the case of the petitioner that

after 31.12.2006, the position of the petitioner remained below that of respondent nos.4 and 5.

6. The petitioner had made a complaint on 07.07.2007 with regard to his position in the seniority list, but though the petitioner was promoted to the post of Printer on 18.11.2010, the *inter se* seniority position *vis-a-vis* respondent no.4 and 5 remained unaltered and the position of the petitioner remained below the respondent nos.4 and 5 in the periodical seniority list, which were published as on 20.07.2016, 17.07.2017, 01.04.2018, 01.04.2019 and 01.04.2020. Thereafter, a complaint was made by the petitioner on 06.10.2020, but still the seniority position of the respondent nos.5 and 4 respectively was placed before the petitioner as on 01.04.2021 and 01.04.2023. Accordingly, by filing this writ petition, the seniority list has been assailed by the petitioner.

7. The learned counsel for the petitioner has submitted that the first complaint was made on 07.07.2007 and as the position of the petitioner was not altered, a subsequent complaint was made on 06.10.2020 and thereafter, this writ petition was filed. It has been submitted that the seniority position of respondent nos.4 and 5 placed before the petitioner cannot be permitted to be legalized and therefore, the present challenge was required to be entertained and the wrong committed to the petitioner ought to be corrected by setting aside the promotion orders of respondent nos.4 and 5.

8. Per contra, the learned counsel for the State respondent nos.1, 2 and 3 has referred to the stand taken in the affidavit-in-opposition of respondent nos.1, 2, and 3 and it was submitted that while Inkman and Form Carrier is the feeder post for Impositor, as

on 01.08.2005, the respondent no.4 was already appointed and working as an Impositor. Accordingly, it is submitted that the seniority position of respondent nos.5 and 4 respectively was always positioned before the petitioner. The respondent no.5 was appointed as Form Carrier on 01.06.2000. It is submitted that the separate seniority lists were maintained for the feeder post of Inkman and Form Carrier and the date of appointments of the respondent nos.4 and 5 are already indicated in their respective seniority list and in this regard, the learned counsel Govt. Advocate has referred to the annexures to the affidavit-in-opposition filed by the respondent nos.1, 2, and 3 to show that the name of respondent no.5 is at Sl. No.3 in the seniority list as on 01.03.2004 and as Inkman, the seniority list as on 01.03.2004 contained the name of the petitioner at Sl. No.6 as Inkman.

9. It was also submitted that a capability test was conducted amongst Impositors to fill up the post of Printer on 09.10.2007 and 14.11.2007 respectively where the respondent no.5 obtained the marks of 17½ and the respondent no.4 scored the marks of 11½ when the petitioner scored marks of 10½. Accordingly, it is submitted that in the seniority list of Printers, the name of respondent nos.5 and 4 were maintained above that of the petitioner. Referring to the documents annexed to the affidavit-in-opposition of respondent nos.1, 2 and 3, it was submitted that in the promotion order dated 18.12.2007, it was clearly mentioned that the promotion order would not confer any right to claim seniority and that the seniority would be determined as per merit of the capability test conducted on 07.10.2007 and 14.11.2007. Accordingly, it is submitted that the petitioner was all along aware of

how the seniority position would be determined and therefore, challenge to the said promotion order dated 18.12.2007 is vitiated by inordinate delay of nearly 16 years in making the challenge. It is also submitted that when the seniority list of Impositors was issued on 14.05.2007, being seniority list of Impositors as on 31.12.2006, it was clearly indicated that complaint, if any should be submitted to the Director of Printing and Stationary, Govt. of Nagaland within 1 (one) month from the date of issue and if no complaint was received within the specified period, the list would be treated as final. Accordingly, it is submitted that the complaint made on 07.07.2007 was beyond the time prescribed for making objection. It is also submitted that specific stand has been taken by the respondent nos.1, 2 and 3 in their affidavit-in-opposition that said complaint was never received by their department. In support of her submissions that delayed challenge to the seniority and promotion is not sustainable and in this regard, she places reliance in the case of *B.S. Bajwa & Anr. Vs. State of Punjab & Ors., (1998) 2 SCC 523*.

10. The learned senior counsel for the respondent no.4 has submitted that he supports the submission made by the learned Govt. Advocate and it was submitted that the respondent no.4 was appointed in the year 2005 as Impositor, which is the promotional post of Inkman and therefore, it was incorrect projection of the case by the petitioner as it was projected that the name of the respondent no.4 was not in the seniority list of Inkman, because by that time, the respondent no.4 was already posted in a higher seniority position. It was also submitted that the appointment of the petitioner, respondent no.4 and respondent no.5 were made before the draft Nagaland Govt. Printing Press (Technical) Service Rules

was rolled out in the year 2006-07 and therefore, as the 2007 Rules, which was adopted later on did not provide any retrospective affect of the promotions which were already made prior to the coming into force of the Nagaland Govt. Printing Press (Technical) Service Rules, 2007. Accordingly, it is submitted that the seniority position of the respondent no.4 cannot be disturbed in view of his appointment to the post of Impositor in the year 2005, which was before promotion was given to the petitioner. It has also been submitted that the petitioner has not challenged any of the seniority lists and that the order of appointment of the petitioner as Impositor and orders of promotion have also not been challenged, but the petitioner has challenged the consequential order of 18.12.2007. In this regard, it was submitted that as per the procedure adopted by the respondent authorities, the promotion was to be based on capability test where the respondent no.4 as well as the respondent no.5 scored higher than the petitioner and therefore, the consequential order of 18.02.2007 is only to give effect to the position of the respondent nos.4 and 5 in the eligibility test, for which the challenge to the consequential order dated 18.12.2007 would not be maintainable. It is also submitted that the belated challenge is not maintainable and the writ petition is liable to be dismissed on the ground of delay and laches alone and it was also submitted that the settled seniority position ought not to be altered as the name of the respondent nos.4 and 5 was all throughout placed before that of the petitioner.

11. The learned counsel for the respondent no.5 has also adopted the submissions made by the learned Govt. Advocate as well as the submissions made by the learned senior counsel for the respondent no.4, and it is submitted that the stand of the petitioner

was to the effect that he was not aware of the promotion order dated 18.12.2007 was not at all acceptable or that the petitioner was not aware of the initial promotion of the respondent no.5 to the post of Impositor by order dated 03.11.2005 was not within the knowledge of the petitioner, is not acceptable on account of the fact that the promotion of the respondent no.5 to the post of Impositor was prior to the date on which the petitioner was promoted, which happened on 08.08.2006. By referring to the contents of the promotion order of the respondent nos.4 and 5 to the post of Printer dated 18.12.2007, it was submitted that in the said order, it was clearly mentioned that the promotion order would not confer him/her any right to claim seniority and that the seniority would be determined as per the merit of the capability test conducted on 07.10.2007 and 14.11.2007. Accordingly, it is submitted that as the respondent no.5 was in receipt of a calling letter, which is annexed to the affidavit-in-opposition filed by the respondent no.5 as Annexure-D, it is inconceivable that the petitioner would not know about the call letter. Accordingly, it is submitted that not only the petitioner, but the respondent nos.4 and 5 had also participated in the capability test and the respondent nos.4 and 5 scored higher than the petitioner, which qualified the respondent nos.4 and 5 to hold seniority position to be reckoned as senior to that of the petitioner. Accordingly, it is submitted that the seniority position of the respondent no.5 would not be disturbed. In support of his submissions, the learned counsel for the respondent no.5, on the issue of delay and laches has cited the case of *State of Uttaranchal & Anr. Vs. Shiv Charan Singh Bhandari & Ors.*, (2013) 12 SCC 179 and *Shankara Co-Op. Housing Society Ltd. Vs. M. Prabhakar & Ors.*,

(2011) 5 SCC 607.

12. It is noticed that the petitioner has challenged the order of promotion of respondent nos.4 and 5 dated 18.12.2007 by filing this writ petition on 09.05.2023, which is more than 15 years after the order of promotion. It is also noticed that the *inter se* seniority position among the respondent nos.5, respondent no.4 and the petitioner were already notified in the seniority list published as on 01.11.2004, 20.07.2016, 17.07.2017, 01.04.2018, 01.04.2019, 01.04.2020, 01.04.2021, and 01.04.2023. Therefore, by not objecting to the *inter se* seniority position within the time allowed to make objection, all the seniority lists where the respondent nos.4 and 5 were positioned above the petitioner have attained finality. Therefore, the Court is disinclined to accept the challenge in respect of the *inter se* seniority position of respondent nos.4 and 5 in view of the inordinate delay of more than 15 years to approach this Court.

13. In this regard, we refer to the judgment of the Division Bench of this Court in the case of *Pankaj Prakash Deka Vs. State of Assam & Ors.*, (2021) 1 GLR 160 where this Court by placing reliance in the of *P.S. Sadasivaswamy Vs. The State of Tamil Nadu*, (1975) 1 SCC 152 had held that the person aggrieved by non-promotion or promotion made belatedly should approach the Court as early as possible and it was held that the belated challenge would be liable to be dismissed on the ground of delay and laches. It was also held that mere non-consideration of representations filed by the aggrieved does not give rise to new cause of action. In the present case in hand, the order of promotion was admittedly issued on 18.12.2007. Therefore, the challenge to the promotion order is after

more than fifteen and half years. The explanation by the learned counsel for the petitioner of the delay in approaching this Court is not found convincing and acceptable in view of the fact that *inter se* seniority list were published by the authorities in the Printing and Stationary Department, Nagaland from time to time, which reflected the seniority position of the petitioner below to that of the respondent nos.4 and 5.

14. In this regard, we also find support from the judgment of the Supreme Court of India in the case of *Shankara Co-Op. Housing Society Ltd. (supra)*, wherein it was reiterated by the Supreme Court of India that delay and laches is one of the factors that requires to be borne in mind by the High Courts when they exercise their discretionary power under Article 226 of the Constitution of India by further holding that in appropriate case, the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on part of the applicant to assert his rights taken in conjunction with the lapse of time and other circumstance. The same principle is also laid down in the cases of *Shiv Charan Singh Bhandari (supra)* and *B.S. Bajwa (supra)* cited at the bar. We do not intend to burden this order with repetitive replication of the same principles.

15. Therefore, as already indicated above, the Court is disinclined to entertain this writ petition on the ground of delay and laches as the seniority position of the respondent nos.4 and 5 had been perfected by passage of time and moreover, it is found that the position of the respondent nos.4 and 5 was always higher to that of the petitioner.

16. An incidental issue has cropped out in this matter. From the materials available on record, it appears that in the *inter se* seniority list, which was prepared on 01.04.2023, which is a part of the writ petition, the date of first promotion of the petitioner is shown as 01.08.2006. This is apparently an error, because the order of promotion was passed on 08.08.2006. Normally, as a thumb rule, the Court ought not to grant reliefs which are not otherwise prayed for. The error that has crept in the seniority list with regard to the recording of the date of first promotion, the petitioner has not made a prayer for its rectification. Nonetheless, having noted that the records reveal that the order of promotion of the petitioner as Impositor was passed on 08.08.2006, the Court is inclined to grant liberty to the petitioner to move the competent authorities for making rectification only in the date of first promotion as Impositor and for no other purpose. It is provided that if such an application is made by the petitioner, it is hoped that the competent respondent authorities would look into the grievance of the petitioner and pass appropriate orders thereon. This part of the order is an expression of hope of the Court and is not to be treated as order of the Court.

17. With leave as indicated above, this writ petition stands dismissed.

Sd/-

JUDGE

Comparing Assistant