

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1331 OF 2001

ASIS KUMAR SAMANTA AND ORS. . . . APPELLANT(S)

VERSUS

STATE OF WEST BENGAL AND ORS. . . . RESPONDENT(S)

J U D G M E N T

R.M. LODHA, CJI :

It is not necessary to answer the reference for two reasons.

2. In the first place, there is already a three-Judge Bench decision, namely, *U.D. Lama and Ors. Vs. State of Sikkim and Ors.*¹ on the issue referred by the two-Judge Bench. In *U.D. Lama*¹, this Court held in paragraphs 20 and 21 of the report as follows :-

1 (1997) 1 SCC 111

"20. On the other hand, it cannot be overlooked that the appellants were not appointed by following the regular procedure of appointment. Under Rule 4(1), recruitment could be made to the newly-created State Civil Service by competitive examinations to be held by the Sikkim Public Service Commission. This competition is not confined to persons who are already in government employment. The second method of recruitment is selection from persons "serving in connection with the affairs of the State of Sikkim". In the second category of recruitment, specifically no provision of holding written and viva voce has been laid down. The respondents claim that had the procedure in Rule 4(1)(b) been followed, they would have got into the Service without any examination. But their lawful exception was denied by the failure of the Government to set up a Commission or appoint a Chairman. What would have happened in normal course, did not happen because of the Government's failure. Only because of this, quite contrary to the Rules, written and oral tests were held. This was upheld by this Court principally on the ground of what was described as "peculiar situation" which was created by the absence of a Commission and its Chairman. The selection and appointments made in 1982 were dictated by peculiar circumstances obtaining at that time. The appointments were not made strictly in accordance with the Rules but, as was held by this Court, in exercise of the executive power of the State. It is true that some of the respondents

appeared in the tests and did not qualify but there is substance in the contention of the respondents that they were entitled to be appointed even without these tests if Rule 4(1)(b) was followed. They were deprived of this chance. Even for Rule 4(1)(b), the instrumentality of Public Service Commission was necessary for making any appointment. Now that the Public Service Commission has been set up, the State Government has to undo the wrong that was initially done to these employees by subjecting them to tests which was not warranted by Rule 4(1)(b). Therefore, they should not be made to suffer in the matter of seniority or promotion in any way by failure of the State Government to implement the Rules laid down by it. In these circumstances by directing the new recruits to be treated to have been recruited on the day the appellants were recruited, the State Government has not done anything contrary or wrong but has really restored (*sic removed*) the injustice done to the respondents by the State Government's failure to recruit them into the Service in accordance with Rule 4(1)(b). In fact, the only door that was open to the appellants under the Rules to enter the Service was through Rule 4(1)(b). They might have also joined through open competition but neither of the two steps were taken or could be taken. In these circumstances, the appellants have really tried to steal a march upon the respondents by being successful in the tests which should not have been held in any event. (emphasis supplied)

21. We are of the view that the contention of the respondents must be upheld. The point in dispute has been examined in depth by two Committees set up by the State Government. The earlier judgment of this Court upholding the recruitment of the appellants was because of the failure of the State Government to appoint the State Public Service Commission. As no appointments were being made for a number of years, the Government adopted the device of holding a written test which was not laid down by the Rules. This Court held that under the peculiar circumstances, it was justified. This, however, does not mean that the State Government would not be entitled to regularise the service on the basis of the rules framed. The appellants who were appointed under very special circumstances cannot claim any special right in the matter of promotion or seniority. It was not the fault of the respondents that appointments according to rules could not be made in time. Taking an overall view of the matter, we are of the opinion that the High Court has come to a correct decision. The appeal is, therefore, dismissed with no order as to costs."

3. We are in respectful agreement with the legal position expounded in *U.D. Lama*¹.

4. Applying the above legal position to the facts of the present case, it may be noted that vacancy against promotion quota in the cadre of 22

Forest Rangers occurred on 1.1.1989. But their case could not be processed because of the interim order passed by the High Court restraining the authorities from giving them promotion to the West Bengal Forest Service. The stay order was vacated on 11.12.1990. It was only thereafter the selection process for promotion commenced. It was for this reason that the Public Service Commission recommended that private respondents be given retrospective seniority with effect from 31.12.1990. As per Rule 6(2) of the W.B. Services (Determination of Seniority) Rules, 1981 (for short, '1981 Rules') the promotees shall be en-bloc senior to the direct recruits of the same year, the private respondents in the writ petition were given notional seniority with effect from 01.01.1990.

5. The legal position in *U.D. Lama*¹ squarely applies to the present fact situation. The private respondents could not have been made to suffer because of intervention by the court by way of interim relief. The State Government was

not in a position to proceed with the selection by way of promotion under the Rules in view of the stay order passed by the court. No sooner the stay order was vacated, the process for the selection by way of promotion commenced. The impugned seniority list cannot, in these circumstances, be said to be legally flawed.

6. Secondly, some of the private respondents who were given promotion on 01.01.1990 by virtue of Rule 6(2) of the 1981 Rules have already superannuated.

7. In light of the above, we think, it is not necessary to send the matter back to the two-Judge Bench. Civil Appeal is dismissed with no order as to costs.

.....CJI.
(R.M. LODHA)

.....J.
(KURIAN JOSEPH)

NEW DELHI;
SEPTEMBER 4, 2014

.....J.
(ROHINTON FALI NARIMAN)

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8471 OF 2014

(arising out of S.L.P. (C) No. 27687 of 2011)

PHEIROIJAM RAJENDRA SINGH

...APPELLANT(S)

VERSUS

KHUMANTHEM JUGESHWAR SINGH
& ORS

...RESPONDENT(S)

O R D E R

Leave granted.

2. The present respondent Nos. 1 to 11 (hereinafter to be referred as 'writ petitioners') filed a Writ Petition before the Gauhati High Court, Imphal Bench challenging the seniority list of Agriculture Officers dated 27.11.1999 working in the Agriculture Department, Government of Manipur.

3. In the Writ Petition, the present appellant and performa respondent Nos. 13, 14 and 15 were impleaded as respondent Nos. 2 to 5. These respondents contested the Writ Petition and justified their seniority over the writ petitioners.

4. Learned single Judge of the High Court on hearing the parties quashed the impugned seniority list and directed the Government to prepare a fresh list of Agriculture Officers in light of the finding, direction and observation made in the judgment. Learned single Judge also fixed time for preparation and finalisation of fresh seniority list.

5. The respondent Nos. 2 to 5 in the writ petition filed *intra-court* appeal which was heard by the Division Bench. Vide its order dated 1.9.2011, the Division Bench maintained the order of the learned single Judge. The *intra-court* appeal was thus dismissed. It is from this order that the present Appeal has arisen.

The Director of Agriculture, Manipur.

Sir,

We, the undersigned Agriculture Officers have the honour to lay down following few lines for your kind perusal and further necessary action:

- i. That, we are the senior most Agriculture Officers to the Agriculture Department, Manipur and put up more than 30(thirty) years of regular service in the Department.

- ii. That, some of us are also going to retire on 28.02.2014 on attaining the age of superannuation.
- iii. That, at present there are 10(ten) vacant post of Deputy Director/Equivalent lying vacant in the Department.
- iv. That, being aggrieved by the seniority list of Agriculture Officers published on 27-11-1999, we the undersigned contested the said seniority list by filing Court Cases. However, the said court cases are still pending and as such our chance for getting promotion to the posts of Deputy Director/Equivalent is being denied because of the pending Court Cases.
- v. That, as some of us are getting retired on 28-02-2014, we request you kindly to move for holding the DPC meeting for filling up the above 10(ten) vacant post of Deputy Director/Equivalent lying vacant in the Department based on the existing seniority list of Agriculture Officer notified on 27-11-1999.
- vi. That, we do not have any objection in holding the said DPC based on the existing seniority list published on 27.11.1999.

In view of above, we the undersigned request you kindly to take up the matter with the competent authority for holding the said DPC on the basis of the existing seniority list of Agriculture Officer published on 27-11-1999 at an early date."

7. A perusal of the above communication shows that though the writ petitioners were

aggrieved by the impugned seniority list dated 27.11.1999, but in view of the impending retirement of some of them, 7 writ petitioners desired not to contest the seniority list dated 27.11.1999 and instead they requested the Director to consider their case for the 10 vacant post of Deputy Director/Equivalent. It seems that the remaining 4 writ petitioners did not join in the above communication as they had already retired from service.

8. We are informed that the Director of Agriculture acted on the request made by the 7 writ petitioners, DPC was held and, except 2 of them who were not found fit for promotion, the other 5 were then promoted vide order dated 27.2.2014, i.e., a day before their retirement.

9. In view of the above subsequent events which are not disputed by Mr. S.P. Singh, learned senior counsel for the State of Manipur, we are satisfied that merits of the diverse contentions raised in the Appeal need not be examined by us.

10. The impugned orders stand modified by treating the seniority list dated 27.11.1999 effective for the purposes of promotion as it has already been accepted by 7 writ petitioners.

11. Appeal is disposed of as above with no order as to costs.

.....CJI.
(R.M. LODHA)

.....J.
(KURIAN JOSEPH)

NEW DELHI;
SEPTEMBER 4, 2014

.....J.
(ROHINTON FALI NARIMAN)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8474 OF 2014

(arising out of S.L.P. (Civil) No. 29359 of 2011)

STATE OF MANIPUR

...APPELLANT(S)

VERSUS

KHUMANTHEM JUGESHWAR SINGH
& ORS.

...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 8475 OF 2014

(arising out of S.L.P. (Civil) No. 35921 of 2011)

O R D E R

Leave granted.

2. In view of the order passed by us today in Civil Appeal No. 8471 of 2014 [arising out of Special Leave Petition (Civil) No. 27687 of 2011], *Pheiroijam Rajendra Singh vs. Khumanthem Jugeshwar Singh & Ors.*, no separate order needs to be passed in these Appeals and they will be treated as disposed of in terms of the order passed in Civil Appeal No. 8471 of 2014 [arising out of Special Leave Petition (Civil) No. 27687 of 2011].

3. No costs.

.....CJI.
(R.M. LODHA)

.....J.
(KURIAN JOSEPH)

NEW DELHI;
SEPTEMBER 4, 2014

.....J.
(ROHINTON FALI NARIMAN)

ITEM NO.104

COURT NO.1

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 1331/2001

ASIS KUMAR SAMANTA AND ORS.

Appellant(s)

VERSUS

STATE OF WEST BENGAL AND ORS.

Respondent(s)

WITH

SLP(C) No. 27687/2011

(With Interim Relief and Office Report)

SLP(C) No. 29359/2011

(With Interim Relief and Office Report)

SLP(C) No. 35921/2011

(With Interim Relief and Office Report)

Date : 04/09/2014 These matters were called on for hearing
today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE KURIAN JOSEPH

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

CA 1331/2001

Mr. Rupesh Kumar, Adv.

Mr. Parvesh Bahugana, Adv.

Ms. Pankhuri Shrivastava, Adv.

SLP 27687/2011

Mr. P.P. Rao, Sr. Adv.

Mr. Ahanthem Bimol Singh, Adv.

Mr. Ahanthem Henry, Adv.

Mr. Ahanthem Rohen Singh, Adv.

Mr. Anil Kumar Mishra-I, Adv.

Mr. Vivek Kumar, Adv.

SLP 29359/2011

Mr. S.P. Singh, Sr. Adv.

Mr. Sapam Biswajit, Adv.

Mr. Khwairakpam Nobin Singh, Adv.

SLP 35921/2011

Mr. Rarry Mangsataban, Adv.
Mr. Rameshwar Prasad Goyal, Adv.
Mr. Satyendr Kr. Singh, Adv.

For Respondent(s)

Mr. Anip Sachthey, Adv.
Mr. Soumitra G. Chaudhuri, Adv.
Ms. Shagun Matta, Adv.

Mrs Sarla Chandra, Adv.

Mr. Raj Kumar Mehta, Adv.

Ms. Rajani K. Prasad, Adv.
Ms. Abha R. Sharma, Adv.

Mr. Rarry Mangsataban, Adv.
Mr. Rameshwar Prasad Goyal, Adv.
Mr. Satyendr Kr. Singh, Adv.

Mr. Somiran Sharma, Adv.

Mr. P.P. Rao, Sr. Adv.
Mr. Ahanthem Bimol Singh, Adv.
Mr. Ahanthem Henry, Adv.
Mr. Ahanthem Rohen Singh, Adv.
Mr. Anil Kumar Mishra-I, Adv.
Mr. Vivek Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

CIVIL APPEAL NO. 1331 OF 2001

Civil Appeal is dismissed in terms of the
reportable Judgment.

Pending application, if any, stands disposed of.

S.L.P.(C) No. 27687 of 2011

Leave granted.

Appeal is disposed of in terms of the signed
order.

Pending application, if any, stands disposed of.

S.L.P. (Civil) No. 29359 of 2011 &
S.L.P. (Civil) No. 35921 of 2011

Leave granted.

In terms of the signed order, in view of the order passed today in Civil Appeal No. 8471 of 2014 [arising out of Special Leave Petition (Civil) No. 27687 of 2011], no separate order needs to be passed in these Appeals and they will be treated as disposed of in terms of the order passed in Civil Appeal No. 8471 of 2014 [arising out of Special Leave Petition (Civil) No. 27687 of 2011].

Pending application, if any, stands disposed of.

(RAJESH DHAM)
COURT MASTER

(RENU DIWAN)
COURT MASTER

[signed reportable Judgment in Civil Appeal No. 1331 of 2001, non-reportable signed orders in Civil Appeal No. 8471 of 2014 {@ S.L.P.(C) No. 27687 of 2011} and Civil Appeal No. 8474 of 2014 {@ S.L.P. (Civil) No. 29359 of 2011} & Civil Appeal No. 8475 of 2014 {@ S.L.P. (Civil) No. 35921 of 2011} are placed on the file]