

ITEM NO.2

COURT NO.9

SECTION XIV

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

Petition(s) for Special Leave to Appeal (Civil) No(s).19589-19590/2008

(From the judgement and order dated 13/11/2006&21/5/08 in RA No. 23/2008 & WA No. 457/2003 of The HIGH COURT OF GUWAHATI, ASSAM)

HAGE GUMTO & ORS.

Petitioner(s)

VERSUS

NINYA BAGRA & ORS.

Respondent(s)

(With
appln(s)
for



permission to file addl. affidavit and prayer for interim relief and office report)(for final disposal)

Date: 15/09/2009 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE J.M. PANCHAL

For Petitioner(s)

Mr. Sanjay Parikh, Adv.
Mr. Mamta Saxena, Adv.
Mr. A.N. Singh, Adv.
Mr. J. Sahni, Adv.
Ms. Anitha Shenoy, Adv.

For Respondent(s) Mr. Ashok Panigrahi, Adv.
 Mr. S.S.Dash, Adv. for
 Mr. Satya Mitra Garg, Adv.

Mr. Anil Shrivastav , Adv
Mr. Ashish Gupta, Adv.

UPON hearing counsel the Court made the following
O R D E R
Leave granted.

The appeals are allowed,

[SUMAN
WADHWA]
[VINOD
KULVI]



COURT
MASTER

COURT
MASTER

Signed
order is
placed
on the
file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6293-6294 OF 2009
(Arising out of SLP(C) Nos. 19589-19590/2008)

Hage Gumto & Ors.

...Appellant(s)

Versus

Ninya Bagra & Ors.

...Respondent(s)



Leave granted.

The writ petitioner-respondent herein, Ninya, Bagra was appointed as a Junior Engineer on 11th August, 1992, under the Arunachal Pradesh Administration (Public Works Department) Group 'B' Post, Recruitment Rules, 1983, (hereinafter called 1983 Rules). The Rules aforesaid provided that for promotion to the post of

Assistant Engineer from the post of Junior Engineer, a degree holder had to have atleast five years and a diploma holder 10 years of regular service. Subsequent to the appointment of Ninya Bagra as junior Engineer, the 1983 Rules were repealed and the Arunachal Pradesh Power Engineering Service Rules, 1993 (hereinafter called the 1993 Rules) came into force on 1st November,



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1993. The 1993 Rules (in so far as we are presently concerned) fixed the period of service required for promotion to the post of Assistant Engineer at 8 and 10 years from amongst degree and diploma holders

respectively. Concededly under the 1993 Rules Ninya Bagra could have become eligible for promotion only on 11th August, 2000, though he was given officiating promotion vide order dated 16th July, 1997. The appellants herein were appointed as Assistant Engineers under the direct recruitment quota between the years 1998-1999 on regular basis after due process of selection as Assistant Engineers under the 1993 Rules,



JUDGMENT

and Ninya Bagra was promoted as Assistant Engineer on regular basis on the recommendation of the DPC on 12th July, 2001 as he had completed 8 years of service on 11th August 2000. He thereupon filed a writ petition before the Gauhati High Court claiming promotion with retrospective effect on the basis of the 1983 Rules claiming seniority from the date that he had completed five years of service as Junior Engineer as on 16th July,

1997. A reply affidavit was filed by the State of Arunachal Pradesh on 6th September, 2002 and the stand taken was that with the enforcement of 1993 Rules, the

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1983 Rules stood repealed and that Ninya Bagra would be



eligible for promotion after 8 years of regular service as Junior Engineer.

The writ petition was taken up for hearing by the single Bench and the Bench observed that admittedly the 1993 Rules alone governed the case of Ninya Bagra-respondent No.1 herein and he was therefore entitled to promotion with effect from the date of completion of 8 years of service as Junior Engineer i.e. from 11/8/2000.

The writ petition was allowed to the limited extent that the benefit of 8 years of service be taken as on the date when he had completed 8 years of service and not on the date when the DPC had met. The matter was thereafter taken before the Division bench in appeal by Ninya Bagra. The Division Bench relying almost exclusively on the statement made by the Advocate General that the 1983 Rules would be applicable to the



case set aside the order of the single Bench and held that:

“We are of the firm opinion that the appellant was entitled to regular promotion to the post of Assistant Engineer with effect from 11.8.97. The Rules framed in 1993 as well as in 2005 have no bearing on the case at hand. Since the appellant has already been regularized in service with effect from the date of recommendation of the DPC, we see no bar in

issuing as direction to the respondent. State to modify the impugned order dated 12.3.2001 and to pass a fresh order regularizing the promotion of the appellant what effect from 11.8.1997. Accordingly, we dispose of the writ appeal calling upon the respondent State to pass appropriate



orders in the light of the direction given above. The judgment under appeal accordingly stands modified.

Before parting with, we feel it necessary to observe that if any senior engineer junior in service to the appellant was promoted subsequent to 11.8.97, his case may be reconsidered and appropriate orders may be passed by the respondent State without adversely affecting the right of the appellant."

It is this situation that the matter is before us by way of special leave at the instance of Hage Gumto, the respondent in the writ petition.

Mr. Sanjay Parikh, the learned counsel for the appellant has pointed out that there were two factual errors in the order of the Division Bench viz. that the Rules of 1983 were no longer in operation in view of the



fact that 1993 Rules repealed the Rules 1983 and the statement made by the Advocate General was thus contrary to the record and was, therefore, not binding on the appellant and secondly, the observation of the Division

Bench that the respondent had been selected by a properly constituted Departmental Promotion Committee was wrong in view of the order dated 16/7/1997 which clearly provided that the arrangement was purely temporary and the promotees (i.e. Ninya Bagra and others) could not claim any benefit unless regularized by a Departmental Promotion Committee. He has also referred us to the various documents on record including



the categorical stand of the respondent-State Government taken before the single Judge and the Division Bench, as also the counter affidavit filed in this Court to contend that the Rules of 1983 were not applicable.

The learned counsel for Ninya Bagra has, however, submitted that some subsequent developments had taken place in the matter as his client had been taken on absorption by some other Governmental agency and he was

no longer in the Department, and that as far as he was concerned he would have no objection if the legal issues were settled either way provided his present position was not disturbed in any manner. The learned counsel for the State has however pointed out that the stand of the State was that the Rules of 1993 and not of 1983 were applicable to the present matter and as the Government was feeling some difficulty in complying with



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the broad directions of the Division Bench and a chain reaction had ensued which made it imperative that the judgment of the Division Bench be set aside.

We have heard learned counsel for the parties and

gone through the record. It would be clear from the positive stand of the respondent State that the statement made by the Advocate General before the Division Bench was not authorized and was contrary to the record.

Equally the observation of Division Bench that Ninya Bagra respondent herein had been selected on 16/7/1997 by a Departmental Promotion Committee was also



incorrect.

We reproduce herein the relevant part of the order dated 16.7.1997:

"This Arrangement is purely on temporary basis and will not bestow on them any claim for regular appointment as AF-E) unless their services are regularized by a regular DPC in concerning with the provisions of Recruitment Rules.

This officiating arrangement may be terminated/removed to their original post at any time without assigning any reason thereof."

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A bare reading of the aforesaid clause makes it



evident that the promotion was de-hors the Rules & did not confer any substantive right on the promotees.

We have also gone through the repealing clause in the 1993 Rules. Rule 35 which is the repealing clause reads as under:

"35. Repeal (1) All recruitment rules of post (s)/grades included in the service, as in force,

prior to commencement of these rules, in the department are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of recruitment rules existing prior to commencement of three rules in respect of post/grades included in the service, shall be deemed to have been validly done on taken under these rules."

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This Rule has to be read along with Rule 32 which is the transitional clause. This Rule too is reproduced below:

"32. Transitional provision: (1) On and from the commencement of these rules and until persons are appointed to hold the posts included in the service in accordance with the provisions of these rules, such post (s) may continue to be held by officers appointed thereto as if these

rules had not come into force. Persons appointed to posts included in the service, on regular basis in accordance with the provisions of the recruitment rules as existed prior to commencement



of these rules, shall be deemed to have been appointed to post included in the service under these rules."

Sub-Rule (2) of Rule 32 subsequently provides that the transitional clause would be operative for a period of two years from the date of commencement of the 1993 Rules which would thus be applicable in toto with effect from 1995. The net result is that Ninya

Bagra's ad hoc promotion which was made in the year 1997 was to be governed by the Rules of 1993 and not by the 1983 Rules. We accordingly feel that the judgment of the Division Bench is erroneous both on fact and law. We accordingly set aside the same. As pointed out by the learned counsel, Ninya Bagra respondent herein had gone on deputation to some other Department and has been subsequently absorbed in that Organization, we are,



accordingly, of the opinion that notwithstanding

the observations in this matter his position will not be touched in any manner.

The appeals are allowed accordingly.

.....J.
(HARJIT SINGH BEDI)



.....J.
(J.M.PANCHAL)

New Delhi,
September 15, 2009.