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STATE OF MANIPUR AND ANR.

v.

R.K. MANIKANTA SINGH AND ORS.

DECEMBER 19, 2003

B

[V.N. KHARE, C.J. AND S.B. SINHA, J.]

*Service Law :*

C

*Promotion—Superintending Engineer in State of Manipur—Promotion to post of Additional Chief Engineer—Eligibility criteria—Relaxed in order to consider the case of respondent—Effect of—Respondent, when not promoted, filed writ petition before High Court—Meanwhile respondent promoted—Held, the implication of the order of grant of relaxation vis-à-vis the question as to whether the case of the respondent was duly considered by the Departmental Promotion Committee in the light of the order of relaxation passed by the State Government does not appear to have been adverted to before the High Court—It is for the appellant State now to consider the effect of such order of relaxation in the light of the order granting promotion to the respondent in proper perspective, keeping in view the fact that the respondent has already retired.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10207 of 2003.

F

From the Judgment and Order dated 29.1.2003 of the Gauhati High Court, Imphal Bench in W.A. No. 84 of 2000.

Khwairakpam Nobin Singh for the Appellants.

Respondent-in-person (NP).

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The following Order of the Court was delivered :

Leave granted.

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The State of Manipur is in appeal before us, aggrieved by a judgment and order dated 29.1.2003 passed by the Gauhati High Court in Writ Appeal No. 84 of 2000, insofar as the respondent herein had been granted

monetary benefits applicable to the post of Additional Chief Engineer on the basis of order of relaxation passed in his favour by an order dated 6.7.1999. In the said order the following directions were issued :

“Firstly, because the facts of the present case do not reveal any conscious deprivation of the appellant’s right by the State authorities and secondly, on the principle of ‘No work no pay’ which principle in our considered view, must be made applicable to service of Jurisprudence in appropriate cases. On the contrary, we are inclined to hold that the ends of justice would be met if the state respondents are directed to notionally fix the pay of the writ appellant in the scale of Addl. Chief Engineer w.e.f. such date/ dates when the principal respondents in the appeal were promoted to the said post and on that basis to compute the pensionary benefits due to the appellant.”

It is not in dispute that an order of relaxation was granted in favour of the respondent herein on or about 6.7.1999 which is in the following terms :

“No. 9/3/83-IFC (Pt. II) : After careful examination of the service matter in respect of Shri R.K. Manikanta Singh, Superintending Engineer, IFC Department, Manipur, the Governor of Manipur is pleased to relax the provision under Column-II of the M.P.S.C. Form-8 of the Recruitment Rule of the Additional Chief Engineer 1993 enquiring the Superintending Engineer with 5 years regular service in respect of Shri R.K. Manikanata Singh, Superintending Engineer for his eligibility for promotion to the post of Additional Chief Engineer in the public interest.

2. This is issued under the power to relax clause of Rule 5 of the Additional Chief Engineer, recruitment Rules, 1993.”

Such relaxation was purported to have been granted in terms of the recruitment rules applicable to the post of Additional Chief Engineer in the Public Health Engineering Department. It appears that the said post, having regard to Notification dated 25.11.1993, is a selection post.

The learned counsel for the appellant placed before us the minutes

A of the meetings held on 26.8.1999 and 20.10.2001 by the Departmental Promotion Committee to show that although the case of the respondent had been considered for promotion but he had not been found fit therefor. According to the learned counsel, the order of relaxation was passed by the State so as to enable the Departmental Promotion Committee to consider the case of the respondent, but the same by itself would not lead to the conclusion that by reason thereof he would be deemed to have been promoted. The directions issued by the High Court, the learned counsel would contend, therefore, must be held to be wrong.

C The respondent who appears in person urged that he is not concerned with the grant of promotion to the post of Additional Chief Engineer but concerned with the action of the State to the effect that after grant of relaxation in the matter, as stated hereinbefore, it sought to withdraw the same, and yet again reviving it. Once it is held that such relaxation is in force, the respondent would contend, the State is bound to consider the effect thereof in its proper perspective.

E It appears from the judgment of the High Court that during the pendency of the appeal before the High Court, the respondent had been promoted to the higher post of Additional Chief Engineer in October, 2001 and he had retired on superannuation on 28.2.2002.

F Having regard to the stand taken by the respondent, we are of the opinion that the implication of the order of grant of relaxation *vis-à-vis* the question as to whether the case of the respondent herein was duly considered by the Departmental Promotion Committee in the light of the order of relaxation passed by the State Government does not appear to have been adverted to before the High Court. We are, therefore, of the opinion that it is for the appellant State now to consider the effect of such order of relaxation in the light of the order granting promotion to respondent in proper perspective, keeping in view the fact that the respondent has already retired.

G The appeal is disposed of to the aforementioned extent without any order as to costs.