

SUPREME COURT OF INDIA

State of Nagaland

Vs.

Toulvi Kibami

(V.N. Khare and S.B. Sinha JJ.)

16.10.2003

ORDER

1. In the State of Nagaland, the promotion of Superintending Engineer to the post of Additional Chief Engineer in the Department of Public Health and Engineering is governed by the service rules known as *Nagaland Engineering Services Rules, 1977* (Class I & II) (hereinafter referred to as "the rules"). The Respondent No. 2 in C.a. No. 2533/1998 (and appellant in C.a. No. 2536/1998) is a diploma-holder and at the relevant time was working as officiating Superintendent Engineer. On 26.3.1991, the Government of Nagaland promoted respondent No. 2 as Additional Chief Engineer. This promotion was challenged by respondent No. 1 who is a degree-holder by means of a petition under Article 226 of the Constitution on the ground that respondent No. 2 was not eligible for being promoted to the post of Additional Chief Engineer as the said post is to be filled up 100 per cent from amongst the degree-holders. This contention of respondent No. 1 was accepted by the learned Single Judge of the High Court. Consequently, the promotion of respondent No. 2 was set aside. Aggrieved, the State of Nagaland preferred a letters patent appeal which was allowed and order and judgment of the, learned Single Judge was set aside. The Division Bench while allowing the appeal directed the State Government to decide whether the diploma-holders could also be promoted to the post of Additional Chief Engineer under the relevant Rules on the basis of they having rendered meritorious service. It is not disputed that consequent upon the direction of the High Court, the Government took a decision in the year 1997 whereby the Government appropriately amended the relevant Rules on the basis of they having rendered meritorious service. It is not disputed that consequent upon the direction of the High Court, the Government took a decision in the year 1997 whereby the Government appropriately amended the relevant rules and brought in the line with the original approved Rules so as to include the reference to eligibility of cases of exceptionally meritorious persons who are diploma-holders for promotion to the post of Additional Chief Engineer with retrospective effect i.e. from 12.9.1996. In that view of the matter, respondent No. 2 was promoted to the post of Additional Chief Engineer. In between time, respondent No. 1 filed an application before the Division Bench for review of the order and judgment dated 4.9.1995. The Division Bench allowed the review petition and dismissed the appeal. It is against the said judgment and order of the High Court dated 8.1.1998, the appellants are in appeal before us.

2. Having heard learned counsel for the parties, we are of the view that in view of the subsequent events that had taken place consequent upon the judgment of the Division Bench, the review petition filed by respondent No. 1 was not maintainable. In fact the judgment of Letters Patent Bench was acted upon and it stood exhausted and the review petition was futile. Under such circumstances, the review petition ought not to have been entertained and decided on merits.

3. For the aforesaid reasons, we set aside the order and judgment under challenge. The appeals are allowed. However, it will be open to respondent No. 1 to challenge the promotion of respondent No. 2 afresh by a separate petition under Article 226 of the Constitution of India if he is so advised. In case such a petition is filed, it shall be entertained and decided on merits. We leave all questions of law open to be decided in that case.

4. No costs.