

A STATE OF NAGALAND AND ANR.
v.
TOULVI KIBAMI AND ANR.

OCTOBER 16, 2003

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

C *Review—Maintainability of—Subsequent event—High Court—Letters Patent Appeal—Judgment by Letters Patent Bench directing to amend Nagaland Engineering Service Rules, so as to include in eligibility criteria cases of exceptionally meritorious persons who were diploma holders for promotion to the post of Additional Chief Engineer—Government amended the Rules and promoted the officer—Review petition filed—Division Bench allowing the review and setting aside the earlier judgment under review—Held, in view of the subsequent event that had taken place consequent upon the judgment of the Division Bench, the review petition was not maintainable—In fact the judgment of the Letters Patent Bench was acted upon and it stood exhausted—The review petition was futile, and ought not to have been entertained and decided on merits.*

Service Law :

E *Nagaland Engineering Service Rules, 1977 (Class I & II)—Additional Chief Engineer—Promotion to—On directions of High Court rules amended so as to include in eligibility criteria cases of exceptionally meritorious diploma holders for promotion as Additional Chief Engineer—Officer accordingly promoted—Later, review petition allowed and judgment under review set aside—Held, review petition was not maintainable—Impugned judgment of High Court set aside—However, on merits, all questions of law relating to eligibility left open.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2533 of 1998.

G From the Judgment and Order dated 8.1.98 of the Gauhati High Court at Assam in Review Application No. 31/97 in W.A. No. 142 of 1993.

WITH

H C.A. No. 2536 of 1998.

S. Ravindra Bhat, Naveen R. Nath, Sanjay Sharawat, Ms. Hetu Arora, A
Ms. Lalit Mohini Bhat, Vijay Kumar and Ms. V. Mohana, for the
Appellants.

Vijay Hansaria, Sunil Kumar Jain and Jayesh K.U. for the Respondents.

The following Order of the Court was delivered :

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 Superintending 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
Ruler 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 person who are diploma-holders for promotion
to the post of Additional Chief Engineer with retrospective effect i.e. from

A 12.9.1996. In the 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.

B
C 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.

D 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.

E No costs.

R.P.

Appeals allowed.