A MEGHALAYA STATE ELECTRICITY BOARD AND ORS.

v.

THULESWAR BARBARUAH & ORS.

NOVEMBER 24, 2006

B [S.B. SINHA AND MARKANDEY KATJU, JJ.]

Service Law:

Meghalaya State Electricity Board (Service) Regulations, 1996:

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Regulation 37(3)—Promotion—Orders of promotions challenged on the ground that in previous year when the writ petitioners became eligible, DPC was not convened—Held, only because there exists a provision for convening a DPC every year, the same by itself would not mean that DPC D *was required to be convened irrespective of the fact whether any vacancy arose or not.*

Respondents joined service of the Assam Electricity Board. In the year 1975, they were placed with the appellant-Board. The appellant framed the Meghalaya State Electricity Board (Service) Regulations, 1996. Regulation E **37(3), as amended from time to time, provided that a list of qualified and eligible employees equal to three times the number of vacancies plus one of both existing vacancies and those estimated to arise upto 31st December of the year would be prepared. For filling 10 vacancies of Executive Engineers, of the year 2002, in all 28 candidates including the respondents were found eligible and qualified for consideration. Ultimately, on the basis of the** F **recommendation of the Departmental Promotion Committee, order of promotion was issued on 15.1.2003. Respondents no. 1 to 3 who were holding the posts of Assistant Executive Engineer, and whose names did not find place in the order of promotion filed a writ petition. The Single Judge of the High Court dismissed the writ petition holding that orders of promotion did not become** G **vitiated only because no DPC was held in the year 2000-2001, as the vacancies arose only in the year 2002. However, the Division Bench allowed the appeal of the respondents. Aggrieved, the Board filed the present appeal.**

Allowing the appeal, the Court

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HELD: 1.1. The seniority list of the respondents, *vis-a-vis,* those candidates who are selected, is not in dispute. It is furthermore not in dispute that all the 28 candidates, whose cases were considered by the DPC, were qualified therefor. They had acquired the minimum eligibility criteria, as provided for in the Regulations, in 1998. The Single Judge arrived at a finding of fact that vacancies arose in the year 2002. If vacancies arose in 2002, a' fortiori the DPC was required to be reconvened only in that year. Only because there exists a provision for convening a Departmental Promotion Committee every year, the same by itself would not mean that the same was required to be convened irrespective of the fact as to whether any vacancy arose or not.

1.2. It may be that in terms of the extant regulations a panel was required to be formed, but, the same would not be applicable in the instant case as no vacancy arose in 2000. The Division Bench of the High Court could not have interfered with the judgment of the Single Judge without arriving at a finding that the finding of fact arrived at by the Single Judge in regard to the year in which the vacancies arose, was wrong. The impugned judgment cannot be sustained, which is accordingly set aside. [512-H; 513-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5182 of 2006.

From the Judgment and Order dated 19.5.2005 of the High Court of Gauhati, Shillong Bench in W.A. No.6 (S.H.) of 2005.

P.K. Goswami, Rajiv Mehta, B. Aggarwal and A. Henry for the Appellants.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

Respondents herein joined services of the Assam State Electricity Board (the Board). The terms and conditions of their services used to be governed by the regulations framed under the Electricity (Supply) Act, 1948 ('the 1948 Act', for short) known as Assam State Electricity Board General Regulations, 1960 ('the 1960 Regulations', for short) and Assam State Electricity Board Engineering Service Regulation, 1973 ('the 1973 Regulations', for short). Regulation 4 of the 1960 Regulations authorised the Board to prescribe the manner in which the record of services of its employees was required to be maintained, pursuant whereto the format of ACR and related guidelines were prescribed. The Board adopted the existing rules, regulations, orders and procedures of the old Board. On or about 22.1.1975, however, the Government

A of Meghalaya, in exercise of its power conferred upon it under Section 5 of the 1948 Act, constituted the Appellant Board, whereupon the Respondents herein were placed with the Appellant by the Assam State Electricity Board. The 1973 Regulations, however, were amended in 1984, pursuant whereto the Respondents were promoted to the post of Assistant Engineer. In between 7.1.1987 and 14.1.1992, Respondent Nos. 1 to 8 were promoted to the post of B Assistant Executive Engineer (Civil). On 19.4.1996 the Board recommended promotion of Respondent Nos. 4 to 6 to the post of Executive Engineer. On or about 18.6.1997 the *inter se* seniority list of Assistant Executive Engineers (Civil) was published. Appellant Board framed its own Regulations on 14.8.1997; Regulation 37 whereof provides for the eligibility for promotion. Sub-Regulation C (3) of Regulation 37 reads as under :

> "(3) All qualified and eligible employees equal to the number of vacancies both existing and estimated to arise up to 31st December every year shall be prepared during the period from September to December every year."

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The said Regulation was amended, in terms whereof it was provided that a list of qualified and eligible employees equal to three times the number of vacancies plus one, of both existing vacancies and those estimated to arise up to 31st December of the year shall be prepared during the period from September to December of the year. The cut-off date for determining the E eligibility criteria for promotion to various grades/cadres was fixed before the 1st April of the current year by a memorandum issued on 20th November, 1998. Further amendment was carried on 12th November, 1999, providing for categories to which promotion would be effected on the basis of merit-cum-seniority rule, which is in the following terms :

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> "1. The DPC shall initially arrive at the average of marks obtained in the latest of 5(five) years APARs in respect of each candidate who figures in the list referred to in Regulation 37(3).
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> 2. Such average mark shall then be rounded off to the nearest decimal.
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> 3. However, if the candidates obtain the same grade, the ranking shall be done according to seniority.
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> The existing provision of Regulation 40(2) stands amended as stated above, with immediate effect."

H For filling up 10 vacancies to the post of Executive Engineer, a

Departmental Promotion Committee (DPC) was constituted, the break-up whereof is as follows : 3 posts of Executive Engineer, 2 anticipated vacancies, 3 posts of Executive Engineers to be promoted to the post of Superintending Engineer, resulting in 3 more vacancies.

In total there were 28 eligible candidates. As in terms of the Regulations three times the number of vacancies, i.e., 30 candidates were to be taken into consideration, cases of all of them were considered by the DPC. Respondent Nos. 1 to 8 were amongst them. On the basis of the recommendations of the Departmental Promotion Committee, order of promotion was issued on 15.01.2003. Respondent Nos. 1 to 3, however, aggrieved by and dissatisfied therewith, filed a writ petition before the Gauhati High Court, Shillong Bench, wherein, *inter alia*, the following prayer was made :

> "Issue Rule calling upon the respondents as to why the impugned New Meghalaya State Electricity Board (Service) Regulations, 1996, subsequent amendments conveyed under Office Memorandum dated 7th Oct, 1997, 20th Nov. 1998 and 12th Nov. 1999 (Annexure XII, XIV and XV), the Gazette APAR Format (Annexure-XII), the impugned Promotion order dated 15.1.2003 (Annexure XVII) the proceedings and recommendations of DPC and the confidential Reports of the petitioners for the last 5 years commencing from 1997 on the APAR format, if any, be not set aside and quashed and as to why the petitioners should not be continued to be governed by the Old ASEB (General) Regulations, 1960 (Annexure-I), ASEB Engineering Service Regulation, 1973 since adopted and modified by Me.S.E.B. vide Annexure IV and V."

A learned Single Judge of the High Court by a judgment and order dated 18.3.2005 dismissed the said writ petition opining that the orders of promotion issued by the Board did not become vitiated only because no DPC was held in the year 2000-2001 as the vacancies arose only in the year 2002. It was noticed :

> "...Since no statement made by the petitioners with regard to the number of vacancies that arose in the year 2000-2001, this contention of the respondents is that till December 2002 there were seven vacant posts of Executive Engineer (Civil) and three resultant vacancies due to promotion this contention has to be accepted."

It was furthermore opined that the selection of candidates as per amended

A regulations for placing their names before the Departmental Promotion Committee was not against the provisions of the 1948 Act and, thus, constitution of DPC and selections made pursuant thereto were not illegal. An intra-court appeal was preferred thereagainst. The Division Bench, however, by the impugned judgment dated 19.5.2005, while noticing that the life of a B panel remains valid for one year, opined :

> "Admittedly, in the case in hand, the petitioners were eligible and qualified for consideration for promotion during the year 2000 and the seniority list would show that their names appeared at serial Nos. 2, 3, 4, 5, 6, 10, 13 and 22, whereas the names of Private Respondents C appeared at serial Nos. 1, 12, 15, 16, 21, 23, 25, 28, 29 and 30, but the respondent Board did not prepare the Panel as required under the Regulations during the year 2000 and no DPC was constituted for selection of the eligible candidate for promotion to the next higher grade. The Respondents Board did not make any endeavour to prepare the list and place it before the DPC during the year 2001 and as a D result thereof, there was accumulation of vacancies and the DPC was constituted and held on 13.12.2002 and on their recommendations, the Private Respondents were promoted *vide* order dated 15.1.2003, which cannot be sustained in view of the decisions and the law laid down by the Apex Court and by this Court."

E The only question which arises for our consideration is as to whether the Board was bound to constitute Departmental Promotion Committee during the year 2000-2001 only because the Respondent Nos. 1 to 8 herein became eligible for promotion. The seniority list of Respondents, *vis-a-vis*, those candidates who are selected, is not in dispute. It is furthermore not in dispute F that all the 28 candidates, whose cases were considered by the DPC, were qualified therefor. They had acquired the minimum eligibility criteria, as provided for in the Regulations, in 1998.

We have noticed hereinbefore that the learned Singh Judge arrived at a finding of fact that vacancies arose in the year 2002. If vacancies arose in G 2002, a' fortiori the DPC was required to be reconvened only in that year. Only because there exists a provision for convening a Departmental Promotion Committee every year, the same by itself would not mean that the same was *required* to be convened irrespective of the fact as to whether any vacancy arose or not.

H It may be that in terms of the extant regulations a panel was required

to be formed, but, the same, in our opinion, would not be applicable in the instant case as no vacancy arose in 2000. The Division Bench, in our opinion, could not have interfered with the judgment of the learned Single Judge without arriving at a finding that the finding of fact arrived at by it in regard to the year in which the vacancies arose, was wrong. A

For the aforementioned reasons, the impugned judgment cannot be sustained, which is accordingly set aside. The appeal is allowed. However, as the respondents are not represented before us, there shall be no order as to costs. B

R.P. Appeal allowed.