

THE GAUHATI HIGH COURT

(The High Court of Assam : Nagaland: Mizoram and Arunachal Pradesh)

ITANAGAR PERMANENT BENCH

WP(C) 172 (AP)/2015

Shri Dina Nath Upadhyay, AFA (Sr),
Son of Late Adya Prasad Upadhyay,
C/o. ADO Office, Chonwkhram,
District- Lohit, and 21 others.

.....Petitioners

-Versus-

1. The State of Arunachal Pradesh, represented by the Chief Secretary, Government of Arunachal Pradesh, Itanagar.
2. The Secretary (Agriculture), Government of Arunachal Pradesh, Itanagar.
3. The Director (Agriculture), Government of Arunachal Pradesh, Itanagar.

.....Respondents

BEFORE

**THE HON'BLE MR. JUSTICE SUMAN SHYAM
THE HON'BLE MR. JUSTICE AJIT BORTHAKUR**

For the Petitioners : Ms. Usha Das, Advocate.

For the respondents : Mr. R.H. Nabam, AAG, Arunachal Pradesh.

Date of hearing and judgement: 07/12/2016.

JUDGEMENT AND ORDER (ORAL)

Suman Shyam, J

Heard Ms. Usha Das, learned counsel for the petitioners. Also heard Mr. R.H. Nabam, learned Additional Advocate General, Arunachal Pradesh, appearing for the state respondents.

1. This is the second round of litigation whereby the petitioners have approached this Court, inter-alia, ventilating their grievances on the ground that they have been denied the benefit of Assured Career Progression (*for short ACP*) scheme by depriving them the benefit of the correct upgraded pay scale. The petitioners have also challenged the legality and validity of Rule 11 (ii) of "*The Arunachal Pradesh Agriculture Service Rules, 2005*" (For short "The Rules of 2005 ") as well as the "*Arunachal Pradesh Agriculture Service (Amendment) Rules, 2008*" (*for short "The Rules of 2008"*) *termining the same as discriminatory.*

2. The brief factual matrix of the case is that the petitioners, numbering 22 in total, were all appointed as Village Level Workers (*VLW for short*) (senior) in the Department of Agriculture, Government of Arunachal Pradesh, on different dates, during the period from 1984 - 1985. The recruitment of the petitioners were made in terms of the "*Arunachal Pradesh Recruitment Rules of 1973 for the post of VLW (senior)*" framed under the proviso to Article 309 of the Constitution of India. Subsequently, the post of Village Level Workers (senior) was re-designated as *Agriculture Field Assistant (senior) [AFA (sr.) for short]*.

3. The case of the petitioners is that the next higher grade in the department is the grade of Agriculture Inspector/Farm Manager Class-III/Technical Assistant,

which posts are required to be filled up 75% by direct recruitment and 25% by promoting matriculates trained in agriculture serving as VLW (sr.) having 5 (five) years of experience on the basis of seniority-cum-merit. According to the petitioners, at the time of their recruitment, the educational qualification for appointment to the post of VLW (sr.) for APSC/ST candidates was matriculate and those in the General Category was class XII / ISC (Agri) pass and therefore, as per the "*Arunachal Pradesh Recruitment Rules of 1973 for the post of Agriculture Inspector/Farm Manager Class-III/Tech. Assistant (Agriculture Soil Conservation)/Horticulture Inspector*", [for short "Rules of 1973 "] the promotional avenues against 25% promotee quota was available to the petitioners. However, by framing "*The Rules, 2005*", the Government has inserted Rule 11 Sub-Rule (ii) by means of which a degree in B. Sc. (Agri) from a recognised University has been made the essential qualification for the AFA (sr.) for being considered for promotion to the post of Agriculture Inspector, which post has now been re-designated as Agriculture Development Officer (for short *ADO*). That apart, under the Rules of 2005, the 25% promotional quota has also been reduced to 20%, thereby further diminishing the scope of promotion for the petitioners.

4. It is the further case of the petitioners that the Rules of 2005 had been notified in the official Gazettee on 02-06-2005. After the framing of the Rules , none of the AFA (Sr) had been considered for promotion and instead, the Government had brought about an amendment to the Rule 11 (ii) of the Rules of 2005 with effect from 04-02-2009 by the introducing the "*Rules of 2008*" providing that for promotion to the post of ADO, candidates from the cadre of Agricultural Extension Officer, Marketing Inspectors and Statistical Inspectors would first be considered

and it was only thereafter, that the AFA (sr) holding a degree of B.Sc (Agri) will be considered for promotion to the post of ADO. Therefore, according to the petitioners, their chance of being promoted to the post of ADO has been eliminated for all practical purposes by the Rules of 2008. The petitioners' grievance is that they have been working in the same post of AFA (sr) since more than past 20 years without a single promotion and their chances of further promotion has also now being drastically diminished. That apart, the petitioners have also been denied the benefit of Assured Career Progression (ACP) scheme by upgrading their pay scale to the next higher grade of ADO which they were entitled to under the law.

5. It is also the pleaded case of the petitioners that prior to the year 1991, the Horticulture Directorate was a part of the Directorate of Agriculture and the posts of Horticulture Field Assistants (HFA) were equivalent and in the same grade as the AFA(sr) in as much as, prior to the bifurcation, there was a common gradation list of AFA's and AHAs. According to the petitioners, while extending the benefit of the ACP, the respondents have given the AHA's the pay scale of Rs 8,000/- – 275-13,500/- pm but similar claim of the petitioners have been rejected for no valid reason.

6. It would be pertinent to mention herein that the Government of India, through the Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) had earlier formulated an Assured Career Progression (ACP) Scheme vide OM dated 09/08/1999. As per the ACP scheme, financial upgradation was to be given to those employees of the Government who fulfil the normal promotional norms but could not be promoted due to the absence of promotional vacancies. The ACP scheme, inter-alia, envisages that financial

upgradation shall be allowed after completion of 12 years of regular service and the second upgradation after another 12 years of regular service from the date of first financial upgradation, i.e. after 24 years, subject to fulfilment of prescribed conditions.

7. By issuing a notification dated 21/11/2003, the Government of Arunachal Pradesh had adopted the ACP scheme without any modification and thereafter, instructed all the Ministries/Departments/Offices to take immediate steps for implementation of the scheme. According to the petitioners, having rendered 12 years of continuous service in the cadre of AFA (Sr), they were also entitled to the benefits of the ACP scheme. Although, the Government has now extended the benefit of the ACP after much delay, yet, instead of giving them the benefit of the pay scale applicable to the post of ADO, they have been upgraded to the scale of Rs 5000/- to 8,000/- pm which is the scale applicable to the post of Agriculture Field Supervisor (AFS) and not the ADO.

8. Ms. U. Das, learned counsel for the writ petitioners submits that although the petitioners have challenged the legality and validity of the amended Rule 11 (ii) of the Rules of 2005 along with the notification dated 25/02/2015 issued by the Joint Director, Agriculture, yet, the basic grievance of the petitioners in this writ petition is that instead of giving them the benefit of ACP scheme according to the pay scale of ADO which is Rs. 8000/- to Rs. 13,500/- pm, the authorities have given them the benefit of an intermediate pay scale of Rs. 5000/- to Rs. 8000/- applicable to the AFS, which is not justified. She submits that the next higher grade for the purpose of the petitioners' claim is the grade of ADO which fact would be evident from a reading of Rule 11 (ii) of the Rules of 2005 and, therefore, the

respondents could not have denied the benefit of the pay scale of ADO to the petitioners under the ACP scheme.

9. By referring to a notification dated 19/05/2000 as well as the "*Agriculture Extension Assistant Recruitment Rules, 1999*", Mr. R.H. Nabam, learned Additional Advocate General, Arunachal Pradesh, on the other hand, submits that the post of Agriculture Extension Assistant, subsequently re-designated as "Agriculture Field Supervisor" (AFS) is a post carrying the pay scale of Rs. 5000/- to Rs. 8000/- per month and the said post is required to be filled up 100% by way of promotion from amongst the AFA (Sr.) who have rendered at-least 5 years of regular service in the cadre. As such, the next higher grade for the purpose of considering the petitioners entitlement would be that of the grade of AFS and not the grade ADO, which is of even higher grade.

10. By referring to the Government Order dated 15-12-2008 issued by the Commissioner to the Government of Arunachal Pradesh, Agriculture Department, Mr Nabam submits that the decision to extend the pay scale of Rs 5000/- to Rs 8000/- pm to the AFA (senior) with B.Sc. (Agri) as the first upgradation under the ACP Scheme on completion of 12 years of service had been notified and the notification dated 15-12-2008 is still holding the field. The impugned order dated 05-01-2015 having been issued in conformity with the notification dated 15-12-2008, submits Mr. Nabam, there is no illegality or infirmity in the order dated 05-01-2015.

11. We have bestowed our anxious considerations to the submissions advanced by the learned counsel for both the parties and have also examined the record. It appears from the record that 6 AFA (senior) holding the degree of B.Sc (Agri) had earlier approached this Court by filing WP(C) No. 420(AP)/2009 assailing the validity

of the Rules of 2008 inter-alia on the ground that the amended Rules diminishes the chance of promotion of the AFA (Sr) to the post of ADO. The petitioners therein had also claimed to be entitled to the benefit of the ACP Scheme and, therefore, had prayed for a direction from this case to consider their cases accordingly. After a thread bare discussion of the issues raised in the said proceeding pertaining to the legality and validity of the Rules of 2008, the Division Bench, in its judgement and order dated 26/04/2011 rendered in connection WP(C) No. 420(AP)/2009, had upheld the validity of the said Rules. In paragraph 12 of the Judgement, the following observations had been made :-

“12. *The submissions made by the rival counsels on the different opportunities of promotion made available to the AFA (sr.) under 3 separate Rules has been duly considered. It is seen that the AFA (sr.) are entitled to promotion to the extent permissible by the Rules, not only to the post of ADO under the 2008 Rules, but also to the post of Statistical Inspector, Marketing Inspector and further to the post of Agriculture Extension Assistants (now re-designated as Agriculture Field Superviros). Therefore, it can't be said that the petitioners are not having reasonable avenues for promotion. Therefore, the 2008 Rules can't be considered to be unsustainable on the ground that reasonable promotional benefits to the AFA (Sr.) has been taken away by the 2008 Rules”.*

While up-holding the Rules of 2008, the Division Bench had however, observed that the distinction amongst the different feeder cadre employees in the 2008 Rules, was not reasonable as it is not entirely based on the pay scale of the respective category. The amended Rule 11(ii) was therefore, held to be discriminatory.

12. On the question of entitlement of the petitioners therein for receipt of benefits under the ACP scheme, the Division Bench had made the following observations in the judgement and order dated 26/04/2011 :-

"15. As regards the claim for ACP benefits, we find that the petitioners are having to serve in the same cadre without any promotion for their entire career and obviously their moral and zeal to serve the Government, is found to be on the wane. Therefore we are of the considered opinion that if promotions can't be granted, their cases should be appropriately considered for ACP benefits. Since the only ground pleaded for not acting on the recommendation is the incompetence of the earlier Screening Committee, we direct the respondents to immediately constitute a competent committee, to consider the petitioners for granting of ACP benefits. The necessary exercise in this regard should not be delayed and be completed within the next 3 months.

16. As we have already held that the amendment made in the year 2009 to Rule 11 (ii) as discriminatory, the Government should revisit the Rule and make necessary correction to ensure that the all the placed in feeder cadre, are treated fairly without any discrimination, for being considered for promotion to the post of ADOs under the 2005 Rules. This exercise should receive urgent attention and preferably be completed within 3 months from the date of receipt of this order.

17. With the above declaration and direction, the writ petition stands allowed to the extent indicated above, without any order of cost."

13. A bare perusal of the judgement and order 26-04-2011 goes to show that both the issues raised in the present writ petition had been substantively dealt with by the Division Bench of this court in the manner indicated here-in-above. The Rules of 2008 have been up-held and the said decision of this court has attained finality. The decision of the Division Bench would be binding on this court. That apart, as has been noted above, during the course of argument, the learned counsel for the petitioners has also not raised any new ground for challenging the Rule 11 (ii) of the amended Rules. As such, we are of the view that there is no scope for this court to entertain a fresh challenge to the Rules of 2008 in the present proceeding in the facts and circumstances of the present case.

14. In so far as the challenge made to Rule 11 (ii) of the " The Rules of 2005 " as well as the claim of the petitioners to receive the benefit under the ACP Scheme are concerned, it would be pertinent to mention here-in that the present petitioners had earlier approached this Court by filing WP(C) No. 152(AP)/2012 agitating similar cause as in the present petition whereby the petitioners had not only challenged the Rule 11 (ii) of the 2005 Rules but had also contended that the authorities have illegally denied them the benefits of the ACP scheme which they were entitled to receive on completion of 12 years of continuous service in the grade of AFA (sr). According to the petitioners, they are entitled to the next higher pay scale of Rs. 8000/- to Rs. 13,500/- applicable in the case of ADO since the next higher grade is that of the rank of ADO.

15. Taking note of the submissions made by the learned counsel for the parties as well as the observations made in the judgement and order dated 26/04/2011, another Division Bench of this Court had disposed of WP(C) No. 152 (AP)/2012 by

the judgement and order dated 08/05/2014 by making the following observations and directions :-

"11. Since the petitioners have contended that their counterpart in the Horticulture Department under the same Government have been granted up-gradation to the scale of Rs. 8000-13,500/- and have also referred to the aforesaid Division Bench judgement of this Court so as to contend that they are entitled to get the said benefit and their representations are still pending before the Government, it will be appropriate for the authority, before whom the aforesaid representations have been made to deal with the matter appropriately taking note of all the attending facts and circumstances and in accordance with law. While doing so, they will bear in mind the aforesaid pleas of the petitioners as well as the stand of the respondents in their counter affidavit.

12. Although, there is challenge to the aforesaid provisions of the Rules, but in view of the submissions made by the learned counsel for the petitioners that the aforesaid rule of 2005 will have only prospective application and the accrued right of the petitioners under the ACP scheme, 2003 cannot be defeated, that aspect of the matter need not be gone into in this proceeding. The authority shall dispose of the representations by passing a speaking order as expeditiously as possible, preferably within 31.7.2014."

In view of the observations made in para 12 of the judgement and order 08-05-2014, the petitioners cannot be permitted to agitate same issue regarding the validity of the Rule 11 (ii) of the Rules 2005 once again in the present petition.

16. Coming to the issue of benefits to be paid to the petitioners under the ACP Scheme, Pursuant to the directions issued by the Division Bench of this Court on

08/05/2014, a Screening Committee was constituted for considering the grievances of the petitioners. In the meeting of the Screening Committee held on 22/07/2014, although it was agreed that the petitioners would be entitled to the benefits of the ACP scheme, yet, instead of giving them the benefit of the pay scale of Rs. 8,000/- to Rs. 13,500/- as demanded by the petitioners, the Committee had recommended that the petitioners will be entitled to the pay scale of Rs. 5,000/- to Rs. 8,000/- per month, since acceding to their demand for granting upgradation to the scale of ADO would amount to "over jumping to another pay scale".

17. On the basis of the recommendation made by the Screening Committee, the Commissioner (Agriculture), Government of Arunachal Pradesh had issued an order dated 05/01/2015 accepting the said recommendation where-after, another notification dated 25/02/2015 was issued by the Joint Director of Agriculture (PP) instructing the District Agriculture Officers to give the benefit of next higher grade of pay to the petitioners. It is the admitted position of fact that the petitioners have received the upgraded pay scale under ACP Scheme in terms of the notification dated 05-01-2015.

18. There is no wrangle at the bar that the AFA (Sr.) forms the feeder cadre for filling up the post of AFS by way of promotion. It is also not in dispute that the pay scale of AFS is higher than that of the AFA (Sr.). The said fact is also evident from the Rules of 1999 which is still holding the field. Even under the Rules of 2005, the posts of Statistical Inspector and Marketing Inspector and AFS have been assigned a superior position than the AFA(Sr.) on the basis of difference in their pay scale. The fact that the post of AFA (Sr.) is not equivalent but of a lower grade than the posts of Statistical Inspector and Marketing Inspector and AFS has also been

recognized by the Division Bench of this court in the judgement and order dated 26-04-2011. If that be so, then there can hardly be any doubt about that fact that the grade of AFS is higher than the AFA (Sr.).

19. In the present case, the petitioners have been extended the pay scale of AFS i.e. Rs 5000/- to 8000/- p.m. as the first up gradation under the ACP Scheme on completion of 12 years of continuous service. That is the pay scale applicable to the AFS. Under the ACP scheme, the beneficiaries are entitled to upgradation of their pay to the next higher. Under the Rules of 2005, there are intermediate pay scales in between the rank of AFA (Sr) and ADO. Therefore, the core question that would arise for consideration in the facts of the present case is as to whether the pay scale of Rs 5000/- to 8000/- given to the petitioners is higher than the one currently drawn by them as AFA (Sr.). For the reasons indicated above, the said question has to be answered in the affirmative. The mere fact that the AFA (Sr.) has also been made one of the feeder cadres, although constituting the fourth category in order of preference, for promotion to the post of ADO, cannot lead to the conclusion that the grade of ADO is the next higher grade for the purpose of computing the pay scale applicable to the petitioners.

20. There is yet another significant aspect of the matter which deserves mention here-in. As has been noted above, by the notification issued under memo No. Agri./LM-71/2009 dated 15-12-2008, the Government of Arunachal Pradesh had not only fixed the next higher pay scale applicable for ASA (Sr.) under the ACP on completion of 12 years of service as Rs 5000/- – Rs 8000/- p.m. but had also fixed the slab on the completion of 24 years of service at Rs 8000/- to 13500 /- pm. The notification dated 15-12-2008 is not under challenge in this proceeding. There is

nothing on record to indicate that the said notification had been revoked or modified by the state. Therefore, it is evident on the face of the record that the pay band of Rs 8000/- - 13500/- pm claimed by the petitioners, as their first slab of upgraded pay scale under the ACP on completion of 12 years of service is actually the pay band fixed by the government for the second ungradation on completion of 24 years of service by the AFA (Sr.) There is no explanation why the petitioners had not challenged the said notification till date despite being aware of the same. In the absence of any challenge made to the notification dated 15-12-2008, the prayer of the petitioners for extending the pay band of Rs 8000/- to Rs 13,500/- under the ACP scheme as the first upgradation of pay on completion of 12 years, in our considered opinion, would not be maintainable in the eye of law.

21. For the reasons stated above, we are of the opinion that there is no merit in this writ petition. In the result, this writ petition fails and is accordingly dismissed.

There would be no order as to costs.

JUDGE

JUDGE

Sukhamay