
(2006) 10 GAU CK 0020
In the Gauhati High Court

1997 Primary Teacher D.P.C.faced Candidates Association	APPELLANT
Vs	
State of Manipur	RESPONDENT

Date of Decision : 27-10-2006

Acts Referred:

Citation : (2006) 10 GAU CK 0020

Hon'ble Judges : M.B.K.Singh, J

Bench : Single Bench

Advocate : B.P.Sahu, Ashok Potsangbam, Advocates appearing for Parties

Judgement

1. This writ petition has been filed praying mainly for quashing/setting aside of the Government order being No. 12(D)/52/2KSE(S), dated 13.12.2000, by which, interalia, the DPC held in 1997 for recruitment of 400 Primary School Teachers was cancelled by giving the reason of not receiving the proceedings of the said DPC by the Government till then. The impugned order further said that a fresh DPC for recruitment of primary school teachers would be held, when the ban on direct recruitment was lifted and that those who appeared in the DPC of 1997 would be allowed to appear at the fresh DPC if some of them happened to be overage for the fresh DPC.

2. I have Mr. B.P.Sahu, learned counsel appearing on behalf of the petitioner and Mr. Asok Potsangbam, learned Advocate General, Manipur appearing on behalf of the respondents.

3. There is no dispute in respect of the following facts:

On 29.6.1997, a written test was held for recruitment of 400 primary teachers in respect of schools under the Department of Education (Schools), Government of Manipur. 3379 candidates were declared successful in the written test. Thereafter, interview/vivavoce was held from 7.8.1997 to 16.10.1997 in respect of those declared successful in the written test. A Writ Petition being C.R.No. 923 of 1997 was filed by AllManipur Primary Teachership DPC faced Candidates Association praying for quashing the requisition of the said 400 primary teachers

and the subsequent test held on 29.6.1997. In the said C.R.No. 923 of 1997, it was further prayed for declaring the result of the 199192 DPC in respect of 550 vacant posts of Matric Teachers and for giving appointment to those selected candidates. This court, vide order passed in the said C.R.No. 923 of 1997 on 25.9.1997 ordered, in the interim, in effect, for not declaring the result of the DPC in respect of the said 400 primary teachers without permission of the court. This court disposed of the said C.R.No. 923 of 1997 along with other analogous cases being C.R.No.565 of 1997, C.R.No. 541 of 1998 and C.R.No. 570 of 1998, by a common judgment on 20.7.2000 holding that the said writ petitions were devoid of merit. While dismissing the above said writ petitions, the interim order passed on 25.9.1997 was also vacated.

Thereafter, the present petitioner filed WP(C) No. 1023 of 2000 praying for directing the respondents to declare the result of the said DPC held in 1997 for recruitment of 400 primary teachers and to make appointment as per recommendation of the said DPC. On 18.8.2000, this court directed the respondents to declare the result of the said DPC within two weeks. As per affidavit in opposition of the respondents submitted in the said WP(C) No. 1023 of 2000, the result of the DPC could not be announced due to the interim order of the High Court passed on 25.9.1997 and even after vacation of the said interim order on 20.7.2000, the said result could not be announced due to ban imposed by the Government on announcement of result of completed DPC pertaining to appointment against the direct recruitment quota.

The present petitioner filed a contempt petition being Contempt Petition No. 238 of 2000 in connection with the failure of the Government respondents to declare the result of the said DPC within a period of two weeks. A Misc. Application being M.A.No. 509 of 2000 was filed by the Government respondents with reference to WP(C) No. 1023 of 2000 praying for vacation of the interim order passed on 18.8.2000 or for giving one months time for announcement of the result from the date of lifting of ban by the Government. This court rejected the Misc. application on 9.11.2000 and directed the Government respondents to declare the result of the DPC within a period of 24 hours. While rejecting the Misc.Application, this Court observed that in case of failure to announce the result of the DPC within 24 hours, Contempt of Courts proceedings would be initiated.

An appeal being WA No.466 of 2000 was filed challenging the order dated 9.11.2000 passed in the said Misc.Application and a Division Bench of this court stayed the impugned order dated 9.11.2000, on 13.11.2000. On 14.11.2000, in connection with the proceedings of the contempt petition No.238 of 2000, a Single Bench of this court directed the Superintendent of Police, Imphal West District to produce the then Commissioner/Secretary, Education(S), Government of Manipur and the then Director of Education (S), Government of Manipur before the court on that very day at 2.00 pm for enabling them to explain as to why they did not implement the related court's order in time. On getting information

about the nonavailability of the said two officers, on the same day, i.e. on 14.11.2000, the court expressed its displeasure on failure to produce the said two officers before the court and gave direction for informing the Director General of Police, Manipur as well as the concerned Superintendent of Police about the existence of nonexecuted warrant of arrest as against the two officers. On 16.11.2000, this court directed the CJM, Imphal to pass necessary orders as required under section 82 and 83 of the Cr.PC in respect of the two officers. On 20.11.2000, the two officers appeared before the court and after directing them to appear on 27.11.2000, this court directed the learned CJM, Imphal for keeping the proceedings in connection with the attachment of the property, etc. in abeyance.

A Misc.Application No. 182 of 2000 was filed before a Division Bench of this court with reference to WA No. 466 of 2000 praying for staying the order of the learned Single Judge passed for declaration of the result of the said DPC. On 24.11.2000, the learned Advocate General, Manipur sought for adjournment of the said Misc. application till 12.12.2000 for enabling him to obtain instructions from the Government as to when the result could be declared. The Division Bench allowed the government respondents not to declare the result of the DPC till 12.12.2000. Then on 13.12.2000, the Government passed the impugned order, inter alia, the cancelling of the said DPC held for recruitment of 400 primary school teachers purportedly basing on a decision of the Cabinet in that regard.

On 19.12.2000, the said WA No. 466 of 2000 was dismissed. While disposing of the appeal, the direction of the learned Single Judge for declaration of the result of the DPC was restored.

Thereafter, a SLP was filed in the Supreme Court of India by the Government respondents challenging the said order of the Division Bench of this court. On 3.4.2001, the Supreme Court set aside the said order of the Division Bench of this court holding that as the selection itself had been cancelled, the direction to declare the result was wrong. Liberty was granted to the present petitioner to challenge the cancellation order, if so advised and permissible under law.

3. According to the petitioner, in the facts and circumstances existing before passing of the impugned order, it was illegal, unlawful, malafide, malicious, arbitrary and discriminatory, bias, capricious and vindictive on the part of the Government to pass the impugned order. According to the petitioner, the impugned order was passed to frustrate and counterblast the order of the court for declaration of the result and it is liable to be set aside.

4. On the other hand, according to the Government respondents, contrary to instruction contained in the office memo No. 1/6/91(DPC)/D.P dated 7.2.1991, under which the proceedings of the DPC was required to be completed on the concluding day of the DPC/Selection Committee Meeting and to be put up to the Minister concerned through the concerned Commissioner/Secretary on the same

day and in case of failure to put up the proceedings on the concluding day of the DPC/Selection Committee Meeting due to reasons beyond control, the Chief Secretary should be informed about it on the same day and the proceeding should be put up to the Minister concerned on the next working day for approval, the proceedings of the said DPC for recruitment of primary school teachers was not submitted to the Administrative Department and it was not even available in the Directorate also. Further, according to the Government respondents, as per order being No.14/6/DE (Pt) dated 6.11.1999 issued by the Department of Personnel and Administrative Reforms (Personnel Division), a complete ban on direct recruitment was made and the result of the DPC, if not declared as on the date, was frozen. As per further pleading of the Government respondents, the impugned order dated 13.12.2000 was passed pursuant to a decision of the Cabinet for cancellation of the DPC held for recruitment of 400 primary school teachers. According to the respondents, on getting direction of the court for declaration of the result of the 1997 DPC, the Chairman of the said DPC was asked to submit the proceedings of the said DPC through letter dated 29.9.2000, 20.10.2000 and 10.11.2000 but the said proceeding was submitted only on 20.9.2001. Further according to the respondents, in pursuance of the Government of Manipur Finance Department (PIC) order No.16/21/2001DPC (A) dated 11.7.2001 regarding downsizing /rightsizing of man power in Government services, 928 posts of primary teachers, which were lying vacant or not being held on regular basis as on 21.8.2001, were abolished by the Government by an order dated 21.8.2000 issued by the Education (S) Department, Government of Manipur. Moreover, according to the respondents, Government took a policy decision to fill up of the posts held by adhoc employees through public competition by relaxing general ban on direct recruitment and in accordance with the respective RRs.

5. On perusal of the impugned order dated 13.12.2000, it is ascertained that two main grounds for cancellation of the said DPC for recruitment of 400 primary school teachers are : (1) nonsubmission of the proceedings of the said DPC to the Government even after more than three years of the conclusion of the vivavoce in violation of the instructions contained in the office memo No. 11/6/91(DPC)/D.P dated 7.2.1991 of D.P., Government of Manipur regarding the need for submission of the proceeding of the DPC expeditiously and thereby creating suspicion as to the authenticity and fairness of the whole DPC; (2) holding of a fresh DPC for recruitment of primary teachers will be in the larger interest of all educated eligible youths by allowing all those who have become eligible subsequently to participate in the fresh DPC. While the taking the decision for cancellation of the said DPC, it is said that a fresh DPC for recruitment of primary school teachers will be held when the ban on direct recruitment is lifted. It is further said that those who appeared in the DPC of 1997 will be allowed to appear at the fresh DPC if some of them happen to be overage for the fresh DPC. Prima facie, the said decision was, apparently, taken after taking into consideration of valid and legal grounds.

6. However, the learned counsel appearing on behalf of the petitioner submits that as per letter dated 29.9.2001 written by Shri Th.Shamungou Singh, Chairman, Board of Secondary Education, Manipur, who was also serving as the Director of Education (S), Government of Manipur, to the Secretary, Education(S), Government of Manipur, regarding where about of the DPC proceedings held in 1997, the said proceedings of the DPC was not received by the concerned official inspite of repeated requests made in that regard. According to the learned counsel of the petitioner, the respondents should not be allowed to take advantage of their own commission or omission. I have perused the said letter, a copy of which is available at AnnexureC/1 of M.C. No. 268 of 2006. From the said letter, it is not clear as to when the said Th.Shamungou Singh was instructed by the then Minister not to submit the said proceeding and directed to keep the same in his custody. It is not also clear as to when the said Th.Shamungou Singh appraised the position to the new Minister. No date is found mentioned about the said facts. As per above said letter, September, 2001 was Sunday, Th.Shamungou Singh, who was then serving as Chairman, Board of Secondary Education, Manipur was submitting sealed envelope containing two copies of the said proceedings of DPC along with sealed envelope containing tabulation sheets on the morning of the next day for necessary action by the Government. Even if one assumes that all the facts stated in the letter are correct, the fact remains that the said proceedings of the DPC was not submitted to the concerned authority as per instructions and formalities prescribed in the office memorandum No.1/6/91(DPC)/D.P dated 7.2.1991 even after about 4 years from the date of completion of the said proceedings of the DPC. Without examining as to who was responsible for the delay in the submission of the said proceedings, the fact of delay in submitting the said proceedings to the concerned authority was sufficient to have suspicion as to the authenticity and fairness of the whole DPC. In my considered opinion, irrespective of and apart from the question as to who actually was responsible for the said delay, there was a need for making the recruitment process in respect of public employment to be fair and free from suspicion and as such, there were sufficient justifications on the part of the Government to take the impugned decision for cancellation of the DPC of 1997 and for holding another DPC afresh by giving opportunity of appearing in the fresh DPC to those who had appeared in the DPC of a few days later, the Commissioner (Education) wrote a letter dated 10.11.2000 to him to submit the proceedings of the DPC. From the said letter, it is also ascertained that since the 13th 1997. I do not find any unfairness, injustice or irrationality in the said decision.

7. Drawing the attention of this court to the pleading of the Government respondents, in their counteraffidavit filed in WP(C) No. 1023 of 2000 that due to the stay order of the High Court and the ban on direct recruitment, the Government could not announce the result of the DPC and that the Government took a stand to consider the announcement of the result of the DPC after lifting of the ban on direct recruitment, to the prayer of the respondent in Civil

Misc.Appln.No. 509 of 2000 with reference to WP(C) No. 1023 of 2000 for giving at least one months time just after lifting of the ban on direct recruitment for declaration of the result of the DPC and also to the fact of seeking adjournment till 12.12.2000 by the learned Advocate General, Manipur on 24.11.2000 in Civil Misc. Appln.No. 182 of 2000 with reference to WA No.466 of 2000 for seeking instructions from the Government as to when the result could be declared, the learned counsel of the petitioner submits that the reasons given in the impugned order for cancellation of the said DPC of 1997 are contradictory to the said earlier conduct/stand of the respondents. The said pleadings could not have barred the respondents from cancelling the DPC in case of finding sufficient reasons for doing so. In my considered opinion, though the above mentioned conduct/stand of the respondents created an impression that the result of the DPC would be announced within a short time of lifting of the ban on direct recruitment, there was no illegality in cancelling the said DPC on finding sufficient justifications for the purpose. On the basis of the cancellation of the said DPC on finding sufficient justifications for doing so, one cannot reasonably conclude that the respondents took advantage of their commissions and omissions. In the absence of anything to show that the Government issued any formal order either directing the said Th.Shamungou Singh not to submit the proceedings of the DPC or directing him to keep the said proceedings of the DPC in his custody, it cannot be said that the Government caused the delay in the submission of the proceedings of the DPC.

8. Further, according to the learned counsel of the petitioner, the impugned cancellation order was discriminatory in nature inasmuch as in respect of the vacant posts of Hindi Matriculate Teachers, for which also written test was held on 29.6.1997 and vivavoce was held from 7.8.1997 to 16.10.1997, the result of the DPC was declared and appointed 60 Hindi Matriculates Teachers on the basis of the result announced in the month of September, 1998. There is no dispute about the facts of holding of written test and vivavoce in respect of the Hindi Matriculate Teachers in 1997 and also about making appointment on the basis of the result of the DPC in the month of September, 1998. It is further to be noted that the said announcement of the result of the DPC and the appointment in respect of the Hindi Matriculate Teachers were published. The said Government order dated 6.11.1999 by which a complete ban on direct recruitment was made and the result of the DPC, if not declared as on date, was frozen. Though the said DPC in respect of the Hindi Matriculate Teachers and the DPC in respect of the Primary School Teachers were held on the same days, there is nothing to show that there was delay in submission of the proceedings of the DPC for Hindi Matriculate Teachers to the authority as in the case of Primary School Teachers. A discrimination, if any, can only arise as between the persons who are similarly situated, if not identically situated. There is nothing common in between the proceedings of the DPC for Hindi Matriculate Teachers and the proceedings of the DPC for Primary School Teachers. There is also nothing to show that any of the candidates who appeared in the said DPC for Primary School Teachers has been treated differently from any members of the petitioner's association. This

submission of the learned counsel of the petitioner is not acceptable.

9. The petitioner claims that it is an association formed and constituted by some of those candidates who had appeared in the interview/vivavoce which is held from 7.8.1997 to 16.10.1997 for recruitment of 400 primary school teachers in the Department of Education (S), Government of Manipur. There is no dispute that the petitioner is an unregistered body. Since the petitioner is not a registered body, it cannot be considered as a legal person having right to sue in its name. Nothing is produced to show that it can sue through its President under any statutory provision. In the above circumstances, Mr. Asok Potsangbam, learned Advocate General, Manipur submits that this writ petition filed by the said unregistered association is not maintainable and as such, it is liable to be dismissed on the said ground. It is well settled that where a number of individuals are affected by an official inaction or action, they can ordinarily bring a legal proceeding to challenge the said inaction or action only if all such persons joined in that proceeding by name. The following decisions i.e. All Manipur DIC Supervisors Association v. State of Manipur, (2000) 1 GLT 374. The Thoubal District Farmers' Association for Natural Calamities through its Secretary v. State of Manipur & ors. {WP(C) No. 978 of 2004 of Imphal Bench} and All Manipur Mandol DPC Successful Candidates Association, through its President v. State of Manipur & ors. {WP(C) No. 902 of 2002 of this Court} are also cited from the side of the respondents in support of the above position of law.

10. Even assuming that the present writ petition is maintainable, the members of the Petitioner Association are candidates who faced the DPC held in 1997 for recruitment of 400 primary school teachers. The result of the DPC was never announced. Merely on the ground that the members of the petitioner Association appeared before the DPC, they could not have acquired any indefeasible right to claim for declaration of the result of the DPC and to claim for appointment thereto. If there are valid and legal grounds for cancellation of DPC, the Government is not obliged to announce the result of the DPC. It will not be correct to say that despite the existence of sufficient justification for cancellation of the DPC, the Government is bound to announce the result of the DPC. The cancellation of the DPC in that situation cannot be considered as arbitrary action of the Government. It is also well settled that even the candidates who are selected and whose names are in the select list do not get vested right to claim appointment based on the select list. The members of the petitioner Association are not selected candidates for appointment to the posts of primary school teachers and they cannot claim the right which even the selected candidates do not have. In *Shankerson Dash v. Union of India*, (1991) 3 SCC 47, a Constitution Bench of the Supreme Court laid down that there was no absolute right in favour of the candidate whose name was included in the select list to be appointed.

11. Apart from the above considerations, because of lapse of time from the date of completion of the said DPC, it will not be proper and just to interfere with the

impugned cancellation order of the DPC held in 1997. In my considered opinion, the interest of justice will be served if the Government respondents are allowed to proceed in the manner provided in the impugned cancellation order. By doing so, the Government respondents will be in a position to select meritorious candidates for giving appointment in the vacant posts of primary school teachers from amongst the candidates, who appeared in the said DPC of 1997, and others, who have subsequently become eligible for the posts. That will be in consonance with our constitutional scheme of providing equality of opportunity in matters of public employment.

12. Moreover, there are so many subsequent developments after the said DPC held in 1997. As per order No.14/6/95DE (Pt) dated 6.11.1999, issued by the Department of Personnel and Administrative Reforms (Personnel Division), a complete ban on direct recruitment was made and the result of the DPC, if not declared as on the date, was frozen. Then, in pursuance of the Government of Manipur, Finance Department (PIC) Order No.16/21/2001PIC (A) dated 11.7.2001 regarding the downsizing/rightsizing of man power in Government services, 928 posts of primary school teachers, which were lying vacant or not being held on regular basis as on 21.8.2001, were abolished by the Government under order dated 21.8.2001 issued by the Education (S) Department, Government of Manipur. Further, it has been brought to the notice of this court that as the result of allotting 50 marks for vivavoce when the marks allotted for the written test was 100 marks, there has been arbitrariness in making selection of candidates in the said DPC of 1997. There is no need of entering into details about this matter.

13. In the result, I am of the opinion that apart from the finding of unmaintainability of the writ petition by the unregistered association, there is also no merit in the case. Accordingly, this writ petition is hereby dismissed. The earlier interim order also stands vacated.