
(2005) 08 GAU CK 0004
In the Gauhati High Court

Achong Haokip

APPELLANT

Vs

Low Veikhui and Ors.

RESPONDENT

Date of Decision : 31-08-2005

Acts Referred:

Citation : (2005) 08 GAU CK 0004

Hon'ble Judges : M.B.K.Singh, J and T.Nanda Kumar Singh, J

Bench : Division Bench

Advocate : N.Kotishwar Singh, Hungyo, Ch.Bidyamani Devi, Advocates
appearing for Parties

Judgement

T.N.K. Singh, J.—The present Writ Appeal, which is an intracourt appeal, is preferred against the judgment and order of the learned Single Judge, a coordinate bench of this court, dated 17.9.1999 allowing the C.R. No. 1266 of 1998 filed by the principal respondent/ writ petitioner, Mrs. Low Veikhui.

2. Heard Mr. N. Kotiswor Singh, learned counsel appearing on behalf of the appellant, Miss Achong Haokip, Mr. Hungyo, learned counsel for the principal respondent as well as Mrs. Ch. Bidiyamani Devi, learned Addl.G.A. for the state respondents.

3. The facts, stated in short, for deciding the present writ appeal are that the principal respondent/writ petitioner, Mrs. Low Veikhui, along with 13 others were initially appointed as Rural Labour Inspector on ad hoc basis for the period of six months or till the posts are filled up on regular basis whichever is earlier by an order dated 7.2.1991 and it had been extended from time to time. While the principal respondent and thirteen others were in service, they had formed an association in the name and style "All Manipur Ad hoc Rural Labour Inspectors" Welfare Association" and filed a writ petition being C.R. No. 178(a) of 1992 before this court. This court had disposed of the said Civil Rule by an order dated 12.12.1992 with the direction to the state respondents to constitute a special DPC exclusively for them (the principal respondent and the said 13 other Rural

Labour Inspectors). It is said that in pursuance of the directions of the order of this court dated 12.12.1992 passed in C.R.No.178(a) of 1992, a special DPC had been constituted and held its meeting on 5.7.1993 at 11 A.M. for regularization of the ad hoc appointments of the principal respondent and the said 13(thirteen) other ad hoc Rural Labour Inspectors. Admittedly, the principal respondent appeared before the said special DPC held on 5.7.1993, but the said special DPC recommended all the ad hoc Rural Labour Inspectors except the principal respondent for regularization of their ad hoc services and only ground for nonrecommendation of the principal respondent by said special DPC held on 5.7.1993 was that she had resigned from her service w.e.f. 1.3.1993.

4. Being aggrieved by the non recommendation of the said special DPC held on 5.7.1993, the principal respondent filed the writ petition being C.R.No.47 of 1994 for a direction to the state respondents to give regular appointment to the principal respondent in the post of Rural Labour Inspector and treat her equally with the said 13(thirteen) other ad hoc Rural Labour Inspectors who were appointed along with the principal respondent on ad hoc basis and had been given regular appointment under an order dated 10.11.1993 on the recommendation of the said special DPC held on 5.7.1993. The main grounds taken in the C.R.No.47 of 1994 by the principal respondent are that she had never tendered resignation from her services as ad hoc Rural Labour Inspector but she put her signature on a paper on the demand of the General Secretary of the Association "All Manipur Ad hoc Rural Labour Inspectors' Welfare Association" that the principal respondent had refused to pay an amount of Rs. 30,000/ demanded by the General Secretary of the Association from her in connection with the regularization of her ad hoc services as Rural Labour Inspector and also that there is no order of the Competent Authority for accepting her tender for resignation.

5. While the said Civil Rule, i.e. C .R. No. 47 of 1994, was pending, the Employment Officer, Imphal (W) issued a vacancy notice being No. EE/2/57/86 Imphal, the 19th September, 1998 notifying that willing and eligible candidates may contact the Employment Officer for submission on 22.9.1998 up to 2 P.M. for recruitment to one post of Labour Inspector. The said subsequent events were brought to the notice of this court in C.R.No.47 of 1994. As the state respondents were well aware that the C.R.No.47 of 1994 filed by the principal respondents relating to the one post of Labour Inspector which had been notified under the said notification dated 19.9.1998 was pending, the state respondents issued the conditional appointment order for the appellant being No. Lab/48/83(O)VolV, Lamphelpat, October 19, 1998 with the condition that "the appointment of the appellant is subject to the outcome of the decision of the Hon'ble Gauhati High Court under C.R.No.47 of 1994". Ultimately, this court had allowed the C.R.No.47 of 1994 by passing the final judgment and order dated 17.9.1999 with the direction to the state respondents to appoint the principal respondent to the post of Rural Labour Inspector for which the special DPC had been convened exclusively for them on 5.7.1993 within a period of one month

from the date of passing the order and also that in another C.R.No.1266 of 1998, the appointment order of the appellant dated 19.10.1998 had been quashed by this court in a separate judgment and there will be no difficulty in appointing the principal respondent as Rural Labour Inspector in the existing vacancy caused by the present appellant/ respondent No. 5 in C.R.No.1266 of 1998 inasmuch as the said appointment order of the appellant dated 19.10.1998 is subject to the outcome of the decision of the Hon'ble Gauhati High Court under the C.R.No.47 of 1994. Against the judgment and order of this court dated 17.9.1999 passed in C.R.No.47 of 1994, no appeal has been filed and as such it attains finality.

6. The present C.R. No. 1266 of 1998 from which the present appeal arises was filed by the principal respondent. The short facts of the principal respondent in the said C.R.No.1266 of 1998 are that when the said C.R.No.47 of 1994 in respect of one post of Rural Labour Inspector was pending, surprisingly a vacancy notice being No. EE/2/57/86 Imphal, the 19th September, 1998 notifying that the willing eligible candidates may contact Employment Officer for submission on 22.9.1998 upto 2 P.M. for appointments to one post of Labour Inspector which was the very post involved in the C.R.No.47 of 1994 was issued. From bare perusal of the vacancy notice dated 19.9.1998, it is crystal clear that only 3(three) days" time were notified to the willing and eligible candidates for the said one post of Rural Labour Inspector.

7. The said notification dated 19.9.1998 which granted only 3(three) days" time was not even notified through All India Radio or Local Newspapers and as such it would be practically impossible for the ST candidates residing in the hill areas, such as in the District of Churachandpur, Chandel, Tamenglong, Senapati and Ukhrul, to take necessary steps within the very short period of 3(three) days. It is also the case of the principal respondent that the ST candidates residing in the said Hill Districts had no knowledge of the said notification dated 19.9.1998.

8. Only on 27.9.1998 schedule for DPC for the said one post of Rural Labour Inspector which was to be held on 23.9.1998 was said to have been notified by the Employment Exchange through Local Newspapers and announcement in the All India Radio, Imphal that the DPC for the post of Rural Labour Inspector will be held on 28.9.1998. But, admittedly, the DPC which was not held on 23.9.1998 without any reasons was held hastily on 28.9.1998 under a short notice said to have been notified on 27.9.1998.

9. The further case of the principal respondent in C.R.No.1266 of 1998 is that on the recommendation of the said DPC which was held on 28.9.1998, in very unfair and unreasonable manner the appellant/private respondent No. 5 of the C.R.No.1266 of 1998 was appointed under the said appointment orders dated 19.10.1998 with the condition that the appointment is subject to the outcome of the decision of the Hon'ble Gauhati High Court under the C.R.No.47 of 1994. The learned Single Judge allowed the C.R.No.1266 of 1998 by passing the judgment and order dated 17.9.1998 to the effect that ?in the result the vacancy notice dated 19.9.1998, proceedings of the DPC dated 28.9.1998 and declaration of the

result dated 14.10.1998 and appointment order dated 19.10.1998 are quashed and set a side.?

10. Being aggrieved by the judgment and order of the learned Single Judge dated 17.9.1999 passed in C.R. No. 1299 of 1998, the present appellant filed the present Writ Appeal.

11. The main thrust for challenging the impugned judgment and order dated 17.9.1999 are that (i) the learned Single Judge without actually finding out as to whether the service upon the appellant had been properly served or not had erroneously held that service of notice to the appellant had been properly affected in the impugned judgment and order dated 17.9.1999; and (ii) the principal respondent had not produced the documents, viz. letter of the Dy. Labour Commissioner, Manipur dated 11.8.1998 to the Additional Direction of Employment, Govt. of Manipur, Lamphelpat to make available a list not more than 15 candidates suitable for one post of Labour Inspector on or before 5.9.1998 and another letter of the Additional Director of Employment Exchange dated 11.8.1998 to the Employment Officer for requisition of candidates for the one post of Rural Labour Inspector which were annexed as Annexures W2 and W3 respectively in the memo of present writ appeal before this Court while learned Single Judge deciding the C.R.No.1266 of 1998.

12. From the careful perusal of the records of C.R.No.1266 of 1998, it is crystal clear that there is an office note dated 18.12.1998 to the effect that notice upon the present appellant (respondent No. 5 of C.R.No.1266 of 1998) had been sent by registered post and acknowledgment with postal receipt filed and placed on record. On further perusal of the records, the postal receipts for sending the registered post to the appellant/respondent No. 5 of the C.R.No.1266 of 1998 as well as the letter for taking steps for sending notice to the appellant by the learned counsel for the principal respondent/writ petitioner are available in the file of C.R.No.1266 of 1998. The learned counsel for the principal respondent in support of the findings of the learned Single Judge in the impugned judgment and order dated 17.9.1999 passed in C.R.No.1266 of 1998 that notice to the appellant shall deem to have been served, had placed reliance on the decision of the Apex Court in Chief Commissioner of Income Tax (Administration) Bangalore vs Gururaj & Ors, reported in (1996) 7 SCC 275 that the notice by registered post and in the case of neither unserved envelop nor A.D. Card had been received, notice must be deemed to have been served. Para 1 of the judgment of the Apex Court reads as follows:

¶1. Office report shows that notice was issued to the respondents on 25.8.1993. Though it was served on the respondent No. 2 on 14.9.1993 and on respondent No. 7 on 7.9.1993, they do not appear either in person or through counsel. Neither unserved envelopes nor A.D. Cards had been received in respect of respondents 1, 3 to 6, under this circumstances, notice to them must be deemed to have been served.?

In the factual context mentioned above, by keeping in view the laws laid down by the Apex Court in *Chief Commissioner of Income Tax (Administration) Bangalore vrs Gururaj & Ors* (Supra), we are of the considered view that the findings of the learned Single Judge in the impugned judgment and order dated 17.9.1999 to the effect that notice to the appellant shall be deemed to have been served is legally sound and we are also in respectful agreement with the said findings.

13. From the perusal of the documents at Annexure W2 and W3 respectively produced by the appellant in the present writ appeal for the first time before this court, we are of the considered view that those letters are only an inter departmental correspondences and those inter departmental correspondences could not be taken as the notifications contemplated in Section 4 and 5 of the Employment Exchanges (Compulsory Notification of Vacancies) Act 1959 and Rule 5 of the Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960. The title of the Employment Exchanges (Compulsory Notification of Vacancies) Act 1959 itself speaks very clearly that vacancies should be notified but the said inter departmental correspondences at Annexures W2 and W3 themselves show that those are not the notifications of vacancies to the eligible and willing candidates but those are the letters about one vacancy in the post of Rural Labour Inspector in the files of the Dy. Labour Commissioner, Manipur and the Additional Director of Employment, Govt. of Manipur. In this regard, we may recall the decision of the Apex Court in (1) *Tagin Litin vrs State of Arunachal Pradesh & Ors*, reported in (1996) 5 SCC 83; and (2) *Puranjit Singh vrs Union Territory of Chandigarh & Ors*, reported in 1994 Supp.(3) SCC 471 that, in order to be effective, an order, passed by the state or its functionaries, must be communicated to the person(s) who would be affected by that order and until order is so communicated the said order is only provisional in character. In the case in hand, we are of the considered view that in order to make the notification of vacancy in one post of Rural Labour Inspector to be effective, it should be made known to the willing and eligible candidates by necessary notifications and unless and until it was notified and made known to the willing and eligible candidates, it cannot be considered that the said inter departmental correspondences about the vacancy in the post of Rural Labour Inspector in the official file will be the notification contemplated in the Sections 4 and 5 of the Employment Exchanges (Compulsory Notification of Vacancies) Act 1959 and Rule 5 of the Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960.

14. The Apex Court in *Union of India & Ors Vrs N. Hargopal & Ors*, reported in AIR 1987 SC 1227 had discussed the scope of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 and Rules frame thereunder. In that case, the Apex Court held that title of the Act itself suggests that the compulsion is in regard to notifying the vacancies only and nothing more. And the said Act is also for the benefit of the persons seeking employment and it means a mere equitable distribution of employment opportunities.

15. We are also in respectful agreement with the findings of the learned Single Judge in the impugned judgment and order dated 17.9.1999 that the said advertisement dated 19.9.1998 was issued in violation of the provisions of the Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960 inasmuch as merely 3(three) days' notice was given by the Employment Exchange to the willing and eligible candidates. In this regard, we may recall the decision of the Apex Court (C/B) in *Hukam Chand Shyam Lal vrs Union of India & Ors*, reported in AIR 1976 SC 789 that it is well settled that where a power is to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other mode of performances are necessary forbidden. The ratio laid down in *Hukam Chand Shyam Lal vrs Union of India & Ors*, (Supra) is followed in the subsequent decisions of the Apex Court in a catena of cases. The Apex Court in *Bhavnagar University vrs Palitana Sugar Mill (P) Ltd., & Ors.*, reported in (2003) 2 SCC 111 held that the statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when the statutory authority is required to do in a particular manner same must be done in the manner and not at all. The state and other authorities while acting under the act are only creatures of statute. They must act within the four corners thereof. In the case in hand, we are of the considered view that the state respondents are not acting within the four corners of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 and rules framed thereunder in issuing the notification dated 19.9.1998 by giving only 3(three) days' notice to the willing and eligible candidates inasmuch as the requirement of Rule 5 of the Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960 is 15(fifteen) days.

16. In the facts discussed above, we are of the considered view that there is a complete lack of administrative fairness in holding the DPC hastily on 28.9.1998 for recommending the appellant to the post of Rural Labour Inspector. In this regard we may refer to the decision of the Apex Court (C/B) in *S.G. Jaisinghani vrs Union of India & Ors.*, reported in AIR 1967 SC 1427.

17. For the reasons discussed above, we are of the considered view that the submissions of the learned counsel for the appellant hold a little water and not tenable in the eye of law. Accordingly no interference to the impugned judgment and order of the learned Single Judge dated 17.9.1999 passed in C.R.No.1266 of 1998 is called for, and Writ Appeal is hereby dismissed.

18. However, in the peculiar facts and circumstances of the present case, we are constrained to observe that the said mistakes in issuing the impugned notification dated 19.9.1998 and also in holding the DPC dated 28.9.98 were committed by the state respondents. For the said mistakes of the respondents and not for the fault of the appellant, we are dismissing the present writ appeal thereby affirming the judgment and order of the learned Single Judge dated 17.9.1999. In the course of hearing of the present writ appeal, the learned Government Advocate appearing for the state respondents has brought to the notice of this

court a letter from the Dy. Labour Commissioner, Manipur being No. Lab/48/83(CA)/235/05 Lamphelpat, August, 16, 2005 to the Addl. Govt. Advocate(HC), Govt.of Manipur (Sub: Writ Appeal No. 12 of 2000) which reads as follows:

?GOVT. OF MANIPUR

DEPARTMENT OF LABOUR

No.Lab/48/83(CA)/235/05 Lamphelpat,Aug.,16, 05

To.

The Addl.Govt.Advocate(HC)

Govt. of Manipur, Imphal.

Sub:Write Appeal No. 12 of 2000

Miss Achong Haokip

Vrs

Mrs. Low Veikhui & Ors.

Sir,

In inviting a reference to your letter No. 102/9/WA /2000GA dated 11.8.05 address to the Joint Secretary (Labour),Govt.of Manipur, on the above subject, it is to state that there is no vacant post of Rural Labour Inspector in this departmental at present. However, one post of Inspector of Statistics being the same Grade of Rural Labour Inspector may become vacant due to the voluntary retirement of the employee concerned due to physically affected with paralysis w.e.f. 30.9.05. It may be within the purview of downsizing of post and one post of LDC will be made as vacancy against the vacant post of UDC for which the DPC had already been done.

Yours faithfully,

Sd/

(G. Tombi Sharma)

Dy. Labour Commissioner,Manipur?

And it has been placed as a part of the records of the Appeal and marked "X" for identification.

19. From the letter of the Dy. Labour Commissioner, Manipur, it appears that one post of Inspector of Statistics having the same grade of Rural Labour Inspector may become vacant w.e.f. 30.9.2005. In this regard, we may conveniently rely on the decisions of the Apex Court in Roshan Deen vrs Preet Lal, reported in (2002) 1 SCC 100 that the purpose of power in the High Court under Articles 226

and 227 of the Constitution of India is to advance justice not to thwart it. Even when justice is the byproduct of erroneous interpretation of law, High Court ought not to wipe out such injustice in the name of correcting error of law. The Apex Court in *Air India Statutory Corporation Vrs United Labour Union & Ors.*, reported in 1997 (2) Supreme 165 held that the arm of the court is long enough to reach injustice wherever it is found. The Apex Court also in *State of Maharashtra vrs Digambar*, reported in (1995) 4 SCC 683 held that the power of the High Court to exercise under Article 226 of the Constitution of India if it is discretionary, its exercise must be judicious and reasonable. In *Amrik Singh Vrs Union of India & Ors*, reported in AIR 1980 SC 1447, the Apex Court held that if there was any administrative lapses, the concerned employees could not be victimized.

20. In the peculiar facts and circumstances of the present case and keeping in view of the laws laid down by the Apex Court, in spite of dismissal of the writ appeal, we direct the state respondents to adjust the present appointment of the present appellant as Rural Labour Inspector against the vacancy in the post of Inspector of Statistics which would arise w.e.f. 30.9.2005.

21. Taking into the entire facts and circumstances of the present case, parties have to bear their own costs.