

(2000) 07 GAU CK 0027

In the Gauhati High Court

Case No : Civil Rule No's. 923 and 565 of 1997 and Civil Rule No's. 541 and 570 of 1998

All Manipur Primary Teachership DPC Faced Candidates
Association and Others

APPELLANT

Vs

Director of Education (S) Govt. of Manipur and Others

RESPONDENT

Date of Decision : 20-07-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2000) 2 GLT 712

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : A. Nilamani, A. Bimal, R.K. Sanajaoba and Rejeswar, for the Appellant; Ng. Kumar, Ashok Potsangbam, Nepolean and N. Kotiswar and Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, J.—The subject matter of all the four Civil Rules pertain to common questions of law relating to recruitment of Matriculate Primary Teachers in the State of Manipur. Therefore, the aforesaid writ petitions are being disposed of by this common judgment.

2. The Director of Education (Schools), Government of Manipur vide letter dated 27th June, 1991 addressed to the Director of Employment requested for sponsoring candidates for 270 posts of Matriculate Teachers at the ratio of 10 candidates for one post. But the Directorate of Employment, vide their letter dated 29.9.1991, sponsored 28,714 candidates out of which only 12,822 appeared in the written test. Of them, only 7,219 candidates qualified in the written test and were summoned for viva-voce held between 1.8.1992 and 11.9.1992. In the meantime, on 3rd August, 1991, a resolution adopted by the State Government was published in the Manipur Gazette dated 9.8.1991. The said resolution appended with the writ petitions as Annexure-A/1 incorporated in

clause, namely, Clause-7, providing for higher qualification i.e. Class-XII or PUC passed. The earlier qualification for this post as per Rules was matriculation only. The said clause also provided that the posts of Matriculate teachers will automatically be deemed to have been upgraded as Under-Graduate (Primary School Teachers) posts. The matter rested like that till 10.1.1996 when the State Government issued a notification suspending Clause-7 of the resolution dated 3rd August, 1991 to enable completion of recruitment process of 820 Matriculate Teachers" Posts i.e. additional 550 posts of Matriculate Teachers in addition to 270 posts already notified to the Employment Exchange. Accordingly, on 10.1.1996 (vide Annexure-A/3) the Director of Education was asked to recommend 550 candidates after preparation of the list as per guidelines indicated in para-3 of the said letter. The Director, on the following day i.e. on 11.1.1996, submitted the merit list of 550 candidates for appointment to the 550 additional posts of Matriculate Teachers. The State Government asked for all the relevant documents including D.P.C. proceedings for consideration vide letter dated 12.1.1996. The Director in his letter dated 30th January, 1996 informed the State Government that the recommendation of 550 candidates was made after taking into consideration the criteria prescribed in para-3 of the notification dated 10.1.1996 and that there was no irregularity in the recommendation. But the reply do not show that the proceedings of the D.P.G. and other documents were forwarded to the State Government

3. The posts of 270 Matriculate Teachers notified to the Employment Exchange were filled up by the 270 candidates recommended by the D.P.C. The vacancy position with regard to the additional posts was only indicated by the Director in his letter dated 27th May, 1995 (Annexure-A/8) appended with the rejoinder while the recruitment process was initiated in 1991. The State Government on consideration of the gamut of the entire situation decided not to fill up the additional posts of Matriculate Teachers as recommended by the D.P.C. It is this order of the State Government which is in challenge in these writ petitions. This notification also indicates the reasons for which the State decided not to go-ahead with the appointment Hence, this order issued on 29th May, 1998 is reproduced below for better appreciation of the matter.

Government of Manipur Secretariat: Education Department (School section)
Orders by the Governor : Manipur Imphal, the 29th May, 1998

No. 12/132/94-SE(S): whereas, requisition to the Employment Exchange for sponsoring of candidates for recruitment of 270 (two hundred seventy) posts of Matriculate Teachers had been made by the Director of Education (5), Manipur vide his letter No. 46/I/91-ED(V) dated the 27th June, 1991 for holding a Class-III D.P.C. The D.P.C. held from 1.8.1992 to 11.9.1992.

And, whereas the D.P.C. had recommended names of 270 (two hundred seventy) candidates and the Government had subsequently approved recommendation of the D.P.C. for appointment of 270 (two hundred seventy) Matriculate Teachers and they had accordingly been appointed.

Whereas, as per Government Resolution under No. 2(6)/S/91-SE(S) dated the 3rd August, 1991, in the context of Matriculate teachers, the question of appointment of such teachers against vacancies occurred after the issuance of this Notification would no longer arise as it should be treated as a vanishing cadre.

And whereas, the Hon''ble Supreme Court in their judgment and Orders delivered in a catena of cases held that recruitment of candidates in excess of the notified vacancies is illegal.

And, whereas, Shri Th. Bira Singh, the then Director of Education (S), Manipur vide letter No.2/347/94-ED(S) dated the 11th January, 1996 to the Government had stated, inter-alia, of being submitted proceedings of D.P.C. recommending 550 (five hundred fifty) candidates for the posts of Matriculate Teachers.

And whereas, Shri Th. Shamungou Singh (at present Director of Education(S), Manipur) who were then a member of the D.P.C. held from 1.8.92 to 11.9.92, vide his letter No.2/411/97-ED(S) dated 10th February, 1998 informed the Government that no advertisement was found in the office record for recruitment of 440/550 Matriculate teachers in the office record except the advertisement to the Employment Exchange for recruitment of 270 posts of Matriculate Teachers. Further, he has also categorically denied of having any file containing the proceedings of D.P.C. for 550 posts of Matriculate Teachers.

Now, therefore, the Governor of Manipur has been pleaded to order not to take any action in pursuance of the para II of the letter under No. 2/347/94-ED(S) dated the 11th January of the former Director of Education(S).

By Orders & in the name of the Governor.

Sd/- (Ch. Birendra Singh) Secretary (Education) Government of Manipur.

4. Certain important features emerge from what is stated above. Firstly, only 270 vacancies were notified to the Employment Exchange in the year 1991. Those notified vacancies were filled up on the recommendation of the D.P.C. and the matter was virtually closed, perhaps in view of the Government resolution dated 3.8.1991 providing for higher qualification. It was only in January, 1996 that the said notification was suspended and the Director of Education was asked to submit a merit list of additional 550 candidates. The Director of Education (Schools) submitted the merit list of such a large number of candidates of the following day i.e. on 11.1.1996. Since the initial notification was for 270 posts, it was not expected of the D.P.C. to keep Anr. list of 550 additional candidates ready for appointment in future. It is in this context, the State eventually decided not to appoint any candidate from the additional list.

5. The question is whether the State could be compelled to fill-up 550 number of posts after lapse of so many years. It is pertinent to mention here that in 1997, the State Government has advertised/notified a large number of posts of under-graduate teachers and the candidates who had appeared in the said selection

process have impleaded themselves as Respondents challenging the prayer of the writ Petitioners. That apart, a set of prospective candidates who have become eligible for the posts in the meantime also arrayed themselves as Respondents to oppose the appointment of the writ petitions. According to them they were in anticipation that the vacancies, both existing and that may arise in future will be advertised giving them an opportunity to appear in the selection process.

6. Shri A. Nilamani Singh, learned senior counsel submitted that Clause-7 of the resolution dated 3rd August, 1991 is still under suspension in view of the orders passed by the Government on 10th January, 1996 and, therefore, there is absolutely no legal bar on the part of the State Govt, to appoint the writ Petitioners as Matriculate Teachers by way of one-time measure. On careful consideration of the resolution and the orders referred to above, I am of the opinion that the resolution prescribing higher qualification is not in force on today and, therefore, the said authority is free to fill up the posts of Matriculate Teachers as were available on 10th January, 1996 on the basis of earlier qualification. But this does not mean that the Petitioners are entitled to appointment. The legal barrier with regard to appointment in excess of notified vacancies and the fairness of selection process in preparing the additional list stand on the way. Shri T. Nandakumar, learned Advocate General pointed out that 406 vacancies are still available and these vacancies occurred on or before 10th January, 1996 and, therefore, the State do not have any objection in appointing the writ Petitioners if it is so directed by this Court. But this does not seem to be enough. The objection raised on behalf of the private Respondents regarding permissibility of filling up of such a large number of vacancies in excess of notified vacancies after lapse of a number of years and the element of public interest involved in the matter of appointment of teachers need to be resolved before any direction is given in favour of the writ Petitioners.

7. In so far as the question relating to appointment in excess of notified vacancies is concerned, Shri A. Nilamani Singh, learned senior counsel tried to justify the same drawing support from a number of decisions of the Supreme Court. The decision in *Benny T.D. and Others Vs. Registrar of Cooperative Societies and Another*, has been referred to in order to show that the Supreme Court did not find fault with the appointments made in excess of the vacancies advertised. The observation of the Supreme Court in paragraph 18 of the said judgment was restricted to the question whether the appointments were made in excess of the cadre strength or not. The decision in this case cannot be accepted as an approval for appointment in excess of the vacancies advertised and applied as a straight-jacket formula in this case. The advertisement in mat case was issued indicating probable vacancies as 85, but before the selection process started the vacancies came to 116 and a resolution was adopted to appoint fill up 116 vacancies. In the instant case, the situation is completely different. Initially, only 270 posts of Matriculate Teachers were notified and appointed after completion of selection process. Additional recruitment of 550 candidates was

sought to be made in addition to 270 posts already filled up. Such a huge difference in the number of additional posts cannot be attributed to the factors like retirement of persons, death of employees, promotion of employees to higher posts which were determinative of the issue before the Supreme Court. Therefore, the said decision cannot be imported and applied as a panacea for all cases. Reliance has also been put on the decision in *Prem Singh and Ors. v. Haryana State Electricity Board and Ors.* (1996) 4 SCC 19 where the Supreme Court indicated that the selection process by way of requisition and advertisement can be started for clear vacancies. The Supreme Court further held that the State cannot make more appointment beyond the number of posts advertised, even though it might have prepared a select list of more candidates. The Supreme Court also held that the State can deviate from the advertisement and make appointment to the posts falling vacant thereafter only in exceptional circumstances or in an emergent situation and that too only by taking a policy decision. In the instant case, the State indicated its mind to fill up the additional posts from the candidates who had appeared for written tests and viva-voce in pursuant to the notification dated 27.6.1991 after five years i.e. in the month of January 1996. But the State on review of the matter and on consideration of the materials placed before it by the concerned authority decided not to make any appointment. Therefore, it cannot be said that the State has taken a decision by way of policy to appoint the writ Petitioners against the posts in addition to the posts advertised and already filled up. The element of public interest is also not indiscernible in the instant case and, as such, the decision in *Prem Singh and Ors.* (supra) cannot be of any assistance to the writ Petitioners. In *Bihar State Unemployed Civil Engineers Association and others Vs. The State of Bihar and others*, it has been held that the Court cannot give direction to fill up vacancies from the wait-list after lapse of one year. In this case the direction given by the High Court to identify the existing vacancies as on 31.12.1987 as per the resolution of the Government for being filled-up by the wait-listed candidates was not interfered with by way of exception as the select list was kept alive by an interim direction and the High Court was not in a position to record any finding as to the exact number of vacancies existing on 31.12.987. In the instant case, as indicated hereinbefore, the State as on today do not appear to have any policy decision to appoint the writ Petitioners. Moreover, the writ Petitioners were also not included in the merit list prepared in pursuance of the advertisement in 1991. There is also no wait-list available in the instant case. Therefore, it will not be permissible to allow any mileage to the writ Petitioners on the basis of the decision in the above case. My attention has been drawn to the decision in *Virender S. Hooda and Others Vs. State of Haryana and Another*, The view of the Supreme Court reflected in paragraph 4 of the said judgment has been relied upon to show that even administration instructions taken by way of policy with regard to the manner of filling up of posts so long the said instructions are not contrary to the rules have to be followed. I am unable to find as to how this decision could be of any assistance to the writ Petitioners. As on today, the Government Policy is to recruit the matriculate teachers as per earlier

qualification. It is true that the writ Petitioners are eligible for consideration for appointment to the said posts, but the Government's decision in the instant case is not to appoint from the additional list for reasons already indicated in the impugned order dated 13.1.98 and the affidavit filed by them. Therefore, the decisions relied upon do not appear to have any impact on the claim of the writ Petitioners since the State Government is reluctant to act on the additional list.

8. Moreover, what is apparent from the aforesaid decisions is that the vacancies beyond notified posts and arising during the selection process could be filled up provided it is supported by a policy decision. In the instant case, the decision of the State Government not to insist for higher qualification available from the order dated 10 January, 1996 is no doubt a decision taken by way of policy. But this document does not show that the State ever intended to fill up the additional vacancies by the candidates who had appeared in pursuance of the notification issued in 1991. Therefore, the order dated 10th January, 1996 cannot be construed as a policy decision for filling up the posts of additional vacancies from and amongst the candidates who had appeared for interview in 1991. This order was issued after lapse of five years from the date of initial notification and, by that time, the selection process was completed and the 270 number of notified vacancies were filled up. Therefore, this decision dated 10th January, 1996 not to insist for higher qualification cannot revive the right of the writ Petitioners closed long before. In my considered opinion, the case of the writ Petitioners here is distinguishable from those dealt with by the Supreme Court and, as such, the State at this belated stage cannot be compelled to go for appointment in excess of advertised vacancies even though the said vacancies might have arisen during the process of selection.

9. The stand of the State Government in this case is discernible in paragraphs 4, 5 and 6 of the affidavit-in-opposition. In paragraph-4, reluctance of the State Government is apparent in their plea that initially 270 posts of Matriculate Teachers were notified and any appointment in excess thereof would be in violation of the law interpreted by the Supreme Court. It is further evident that the State decided not to go for further appointment without fresh advertisement as it would be unconstitutional and would amount to denial and deprivation of the rights of the candidates who have become eligible after the said advertisement dated 27.6.98. In paragraph-5, reiterating the same stand it has been clarified that the higher qualification prescribed by the resolution dated 3rd August, 1991 was kept under suspension only to facilitate appointment of 270 notified vacancies. The State has in clear and unambiguous term expressed its reservation as to the fairness on the part of the D.P.C. in preparing the additional list. In paragraph-6, it has been stated that the D.P.C. did not prepare any additional list against likely future vacancies, recommendation was made only for 270 posts notified and that the D.P.C. was not authorised to prepare any list of additional candidates in excess of 10% of the notified vacancies in view of the instructions contained in the memorandum of the State Government issued in the Department of Personnel and Administrative Reforms on 4th November,

1987. The reservation of the State as to the fairness of the additional list is primarily on the reason that the selection process of 550 candidates was undertaken and completed in one day. The State also made it clear in their affidavit that the proceedings of the D.P.C. with regard to recommendation of 550 additional candidates were not made available to them.

10. The affidavit of the State Govt. clearly indicate that the State made an exercise by writing a letter to the Director of Education to have a list of 550 candidates for filling up the additional vacancies. Mr. T. Nandakumar, learned Advocate General placed the relevant office file for inspection by this Court. A perusal of the filed No. 12/132/94, Education Department would show that no materials were placed before the authorities by the Director of Education in order to show that merit list of 550 additional candidates was in fact prepared by the DPC while recommending 270 candidates. If the candidates were selected and a wait-list was prepared accordingly, it is not understood as to why the D.P.C. did not submit the wait-list to the appropriate authority while forwarding the names of 270 selected candidates. There is nothing in the official file placed before me to inspire confidence that any such list of additional candidates was in fact prepared by the D.P.C. at the relevant time. Since the State is opposed to the idea of filling up the additional vacancies from the same set of candidates who had appeared before the D.P.C. in 1991, the question of any direction to the State to appoint them does not arise, specially when this Court is unable to conclude on perusal of the materials on record that a list of additional candidates was duly prepared in a fair and proper manner. The objection of the State as to the fairness of the selection process cannot be said to be baseless and, therefore, there cannot be any compulsion on the part of the State to oblige the writ Petitioners by appointing them against the additional vacancies at this belated stage.

11. Shri A. Nilmani Singh, learned senior counsel insisted that the State Policy was to recruit 820 Matriculate Teachers as per earlier notification as a one-time measure. There is no dispute with regard to this decision of the State. But the resolution as well as the order dated 10th January, 1996 do not indicate that the State decided to fill up the additional posts from and amongst the candidates who had appeared before the D.P.C. in 1991 and did not find berth in the merit list prepared by the D.P.C.

12. Shri A. Nilamani Singh, learned Counsel, further argued that the decision of the State Government to appoint 820 candidates as a one-time measure and consequent direction given to the Director of Education to forward the list of 550 additional aroused legitimate expectation in the mind of the writ Petitioners that they would be appointed by the State Government. In addition, the learned Counsel also argued that the aforesaid exercise of the State would come into play as promissory estoppel preventing the State from making a departure from its decision to fill up the additional posts. According to the learned Counsel, once the State decided to fill up the posts and call for the additional lists, it is

incumbent upon the State to honour its decision. In my considered opinion, the Doctrine of Legitimate Expectation has no application in the instant case. It is because the writ Petitioners applied for selection against 270 notified vacancies only. Their names not having been recommended even in the wait-list, it would be too far fetched to say that merely because they appeared before the D.P.C. and the State subsequently made an attempt to explore the possibility of their appointment against additional vacancies, they could legitimately expect that they would be appointed. For the same reason, the Doctrine of Promissory Estoppel cannot come into play. The selection process as prescribed in the Rules will have to be followed. The question of promise by the State or the appointing authority to make appointment of the candidates though not selected appear to be completely foreign to the service jurisprudence. Appointment to the State services shall have to be made in order of merit against notified vacancies with exception of course only in certain exceptional circumstances as indicated by the Supreme Court in the judgments referred to above and not otherwise. Therefore, the submission of the learned Counsel appear to have no significance.

13. The attention of this Court has been drawn to the judgments of the Supreme Court in *P. Mahendran and others Vs. State of Karnataka and others*, , *Dr. P.N. Dubey and Others Vs. State of M.P.*, and in *State of Rajasthan Vs. R. Dayal and Others*, There cannot be any dispute with regard to the law interpreted by the Supreme Court. Recruitment Rules prevailing in the year when the vacancies arise should be applicable for the purpose of recruitment and appointment. This is the law settled by the Supreme Court. The higher qualification prescribed by the Resolution of the State Government has been kept under suspension and, therefore, recruitment of the vacancies as on today will naturally have to be in accordance with the Rules as are in force today. But this does not in any way help the writ Petitioners to secure appointment without being selected in accordance with the provisions of the Recruitment Rules. Their claim for appointment on the basis of additional list falls flat because of the doubtful manner in which it was prepared overnight.

14. Shri Kotiswar, learned Counsel for the private Respondents indicated that in the matter of appointment of school teachers utmost care has to be taken to select the best available candidates, and hence, to restrict the selection process amongst the candidates who were eligible in 1991 to the deprivation who have had acquired eligibility thereafter would be against the public interest. According to the learned Counsel, this would offend Articles 14 and 16 of the Constitution.

15. I fully agree to what is submitted by Shri Kotiswar, learned Counsel. In my considered opinion, the State cannot be compelled to restrict its selection and appointment from and amongst the candidates who have applied in 1991 to the deprivation of candidates who have acquired eligibility criteria subsequently. This is impermissible as it would seriously affect the element of merit involved in the selection and appointment of school teachers. From this point of view as well, it would not be conducive and in aid of justice to direct the State to appoint the

writ Petitioners against the additional vacancies without fresh notification/ advertisement

16. In the circumstances, I find that the writ petitions are devoid of merit and deserve dismissal. The interim directions given by this Court from time to time for publication of the result etc. appear to be of no significance since the writ Petitioners do not have any enforceable legal right. Consequently, the writ petitions are dismissed. Stay order, if any, passed earlier shall stand vacated.

The parties are directed to bear their own costs.