

(1997) 08 GAU CK 0031

In the Gauhati High Court

Case No : Civil Rule No's. 125 of 1996 and 15, 25, 26, 47, 48, 66, 75, 299, 207 and 370 of 1997

All Manipur Unemployed Master Degree Holders' Association and Others APPELLANT

Vs

State of Manipur and Others RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

Citation : (1998) 1 GLT 219

Hon'ble Judges : W.A. Shishak, J

Bench : Single Bench

Advocate : N.G. Kumar, in C.R. No. 370/97, L. Sharat Sharma, in C.R. 15, 25/97, H.N.K. Singh, in C.R. Nos. 26, 47, 48/97, T. Nanda Kr. Singh, Hemchandra, in C.R. No. 66, 299/97, R.K. Nokulsana, in C.R. No. 207/97, H.S. Paonam, in C.R. 125/96 and N. Kotiswar, in C.R. No. 75/97, for the Appellant; A.G., for the Respondent

Judgement

W.A. Shishak, J.—In the above writ petitions issues raised by the Petitioners are common and they are interrelated to each other, hence I propose to dispose of the above writ petitions by a common judgment.

2. Civil Rule 370/1997 has been filed by All Manipur Unemployed Masters Degree Holders Association having a membership of 599 members. It is contended that the members of the Petitioner Association are eligible for appointment as Lecturers of Higher Secondary Schools as well as of Colleges in terms of Recruitment Rules prescribed in this regard. It is contended that posts of Lecturers are graded as Class-I posts in the State of Manipur and accordingly recruitment to such posts is to be made through Manipur Public Service Commission. It is contended that this has been so for many years even before 1988. Mr. Ng. Kumar, learned Counsel appearing for the Petitioner Association submits that no other method except the method of recruitment through Manipur Public Service Commission has been prescribed in the matter of selection of Lecturers for Higher Secondary Schools as well as Colleges in the State of

Manipur. In support of his contention Mr. Ng. Kumar refers me to Civil Rule 308/1988 which was disposed of on 7.7.1988 by a Division Bench of this Court. The said petition was filed by the Members of the Association contending that the appointments of 281 persons as Lecturers in the Government Higher Secondary Schools without following any procedure of selection. this Court held:

There is no dispute that the 281 persons named in the application were appointed without following the procedures prescribed by the relevant Recruitment Rules, Learned Advocate General appearing for the official Respondents contends that the Manipur Public Service Commission has in the meantime held written examination meant for selection of Lecturers in Government Higher Secondary Schools.

The operative portion of the said order is as follows:

The persons who are presently holding the posts in the H.S. Schools shall acquire no vested rights and their appointments would be subject to the selection to be made by the M.P.S.C. The recommendation of the Public Service Commission shall be made available to the authorities within August, 1988 and the appointments pursuant thereto shall be made within a month thereafter.

Another Writ Petition viz. Civil Rule 309/1988 was also filed by the Petitioner Association challenging the appointments made dehors Recruitment Rules in respect of College Lecturers. The said petition was disposed of on 7.7.1988. The direction of this Court was as follows:

The M.P.S.C. shall advertise the post within a month from the date of finalisation of the Recruitment Rules. Those persons who have already applied may not apply again, if found eligible under the revised Recruitment Rules. If any of the present applicants would be overaged by the time of calling fresh applications, the age bar would not operate. After advertisement made by the M.P.S.C. as aforesaid, the examination shall be held within six weeks thereafter and the viva voce a month thereafter.

It was further stated;

The State of Manipur and the concerned authorities shall made appointments pursuant to the recommendation of the M.P.S.C.

The said order was also passed by a Division Bench of this Court. In yet another writ petition vide Civil Rule No. 2161 of 1992/1344/92 which was disposed of by a learned Single Judge of this Court on 7.7.1994, it was held in para 4 of the said order:

In the circumstances, I direct that henceforth Respondents shall not make any appointments on ad hoc or officiating basis in any such posts of lecturer which are not covered by High Court orders in respect of existing ad hoc/officiating appointees. All such appointments shall be made only on regular basis provided the candidates are selected by the Public Service Commission of the State, none

should be appointed to any such Posts of Lecturer which are not covered by such orders of this Court in respect of ad hoc officiating appointees.

Mr. Ng. Kumar states that the said three orders passed by this Court were not appealed against and they are still in operation.

3. It may be stated that during the period from 1992 to 1995 and even thereafter several persons were engaged by the State Government as Part Time Teacher in Government Colleges on payment of Rs. 1,000/- (Rupees one thousand) per month. However, in such order of engagement dated 15.11.1995 in para 2 it was stated:

This engagement does not confer any claim or right for regular appointment by virtue of the present engagement and the engagement is also liable to be terminated at any time without assigning any reason thereof.

The members of this Association had requested the Chief Minister of Manipur by letter dated 11 April, 1997 to send necessary requisitions to the M.P.S.C. for filling up all vacant posts of Lecturers of Government Colleges/Higher Secondary Schools without further delay. Mr. Ng. Kumar submits that this petition was made in view of the large number of qualified persons who are looking for an opportunity to compete for employment in the State of Manipur. It is also further submitted that the Government should comply with the direction given on 7.7.1994 in Civil Rule 2161 of 1992/1344/92. In J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., it was held that ad hoc employment should be replaced by regularly recruited persons in accordance with the provisions of relevant Recruitment Rules. Hence it is submitted that recruitment for the post of Lecturers in Government Colleges as well as in Higher Secondary Schools should be done on regular basis in accordance with the relevant Recruitment Rules prescribed in this regard. This submission has been made in view of several Petitioners in the above petitions who are claiming that in view of engagement made in respect of several persons, their cases should be considered for regularisation. Mr. Ng. Kumar submits that no right for consideration for regularisation has been accrued in respect of any of the persons who have been engaged as Part Time Lecturers. Such engagement is purely in the nature of stop-gap arrangement.

4. Mr. L. Sharat Sharma, learned Counsel appears on behalf of the Petitioners in Civil Rules 15/1997 and 25/1997. There are 33 Petitioners in Civil Rule 15/1997. There is one Petitioner in Civil Rule 25/1997. These Petitioners are claiming regularisation as Lecturers. The claim is based on the fact that they were regularly selected by competent authority. By Notification dated 8th June, 1995 applications are invited from the candidates who are willing to serve as Part Time Lecturer on payment of remuneration at the rate of Rs. 1,000/- (Rupees one thousand) only per month in the following subjects in the Government Colleges, Manipur. There were nineteen posts in Arts stream and 17 posts in Science stream. Selection was made on the recommendation of a Screening Committee.

Essential Educational Qualifications prescribed is Masters Degree in the relevant subject with at least 55% marks with or its equivalent grade from a recognised University. Mr. Sharat Sharma submits that since the selection was made by a competent authority, Petitioners in this case are entitled to regularisation. According to Mr. Sharat selection was made by a Screening Committee as at the relevant time Manipur Public Service Commission was not functioning. This submission does not find support from the State Government. Further on careful perusal of the advertisement and also the nature of employment as Part Time Lecturer/teacher it appears to me that it was some kind of stop-gap arrangement to tide over a particular situation. If, as contended by Mr. Sharat, it was a regular selection, then in my view the question of engagement by paying a lump sum of Rs. 1,000/- per month would not have arisen.

5. Mr. H.N.K. Singh, learned Counsel appears on behalf of the Petitioners in Civil Rules 26/1997, 47/1997 and 48/1997. Mr. H.N.K. Singh submits that the Part Time Lecturers who have been engaged on payment of Rs. 1,000/- per month should be considered in the light of an order passed by the Supreme Court in Civil Appeal No. 3832/1996 (State of Manipur v. Ms. Rajkumar Premila Devi). It may be stated that at one state the College Lecturers who have been engaged on Rs. 1,000/- per month sought to take advantage of the direction of the Supreme Court that those who were similarly situated with the said R.K. Premila Devi should be considered for regularisation. However, that matter has been clarified by the Supreme Court that as far as that case is concerned it would be confined to L.M.S. Law College only. However, Mr. H.N.K. Singh submits that it is open to this Court to examine as to whether the cases of the present Petitioners can be said to be similarly situated. On careful perusal of all the documents available before me, I am unable to accept the submission made by Mr. H.N.K. Singh in this regard.

6. Mr. Hemchandra, learned Counsel appears on behalf of the Petitioners in Civil Rules 66/1997 and 299/1997. He also supports the submissions made by Mr. H.N.K. Singh and Mr. L. Sharat Sharma.

7. Mr. R.K. Nokulsana, learned Counsel appears on behalf of the two Petitioners in Civil Rule 207/1997. The said two Petitioners were engaged at Rs. 1,000/- per month as Part Time Lecturers. Mr. Nokulsana submits that although practically there is no scope on the part of the Petitioners to claim regularisation in terms of the Supreme Court direction given in R.K. Premila's case, since these two persons have been engaged for some time, this Court may pass an equitable order which will meet the ends of justice and that they may not be treated at par with fresh applicants in the future recruitment. It appears my finding given above in respect of the other writ petitions should take care of Mr. Nokulsana's submission. I have already stated that engagement was made after a Screening Committee made the selection. I have held that such selection made by the Screening Committee cannot be equated with the selection made by the State Commission in view of the clear provisions of Recruitment Rules in this regard to

which I shall advert later.

8. Mr. H.S. Paoham, learned Counsel appears in Civil Rule 125/1996. There are 94 Petitioners in this case. Mr. Paonam's submissions are similar to the submissions made by Mr. L. Sharat Sharma, as I have stated above. Selection process was same. Nature of engagement is also same. It appears the only thing that was done was to verify the educational qualification. This in my view was necessary as the Part Time Lecturers have also to teach students. In the present case, on careful perusal I have no doubt in my mind that there was no tests as such. These Petitioners have been rendering service as Part Time teacher/Lecturers since September, 1993. Mr. Paonam submits that although the nature of employment is on engagement at the rate of Rs. 1,000/- per month, the engagement was not done through back door method but after advertisement was made. As I have stated above, engagement was issued on verification of certificates. It is submitted by Mr. Paonam that since they have been engaged for some time now the Petitioners have reasonable expectation for regularisation. On careful perusal of the order of engagement there can be no doubt that the conditions of engagement have been clearly set out. The conditions of engagement which were clearly made in the order of engagement were accepted by the Petitioners. Therefore, in my view, it is not open to them to say that since they have been engaged for some years, they should now be given regular appointments without going through the proper process of selection prescribed under relevant Recruitment Rules. Another submission that has been made by Mr. Paonam as well as Mr. H.N. K. Singh is that the sum of Rs. 1,000/- per month is too meagre for a Part Time College Lecturer. In other words it is submitted that these Part Time Lecturers are also entitled to get full pay and allowances following the principle of equal pay for equal work. This submission is based on the fact that although they have been engaged as Part Time Lecturers, they take as many classes as the regularly appointed Lecturers. It has also been stated that in fact on representation made by the Petitioners the Director of Education recommended by his letter dated 26.12.95 that part Time Lecturers/teachers might be paid a sum of Rs. 2,600/- instead of Rs. 1,000/- per month. It appears, it was for the competent authority to consider such request. However, as far as this Court is concerned, to give any direction as regards remunerations while the Petitioners are claiming regularisation would create unnecessary difficulties for the Government. It has also been submitted by Mr. H.N.K. Singh that the Part Time Lecturers should be given a separate D.P.C. or if that is not found feasible then at least they should be given some preferential treatment when regular recruitment is made in terms of the relevant Recruitment Rules.

9. Mr. N. Kotiswor, learned Counsel appears on behalf of the Petitioner in Civil Rule 75/1997. This Petitioner also is serving at present as Part Time Lecturer like many other persons as I have stated above in similar terms of engagement. However, the claim of the Petitioner in this case is that recruitment should be made strictly in accordance with the relevant Recruitment Rules prescribed in this regard and following the guidelines and directions issued from time to time

by the University Grants Commission in the matter of appointment of Lecturers in Universities and Colleges. The Petitioner contends that apart from the fact that U.G.C. Regulations have the force of law. Recruitment Rules framed by the State of Manipur should be strictly adhered to while making, selection for recruitment as Lecturers in the Colleges and Higher Secondary Schools in the entire State of Manipur.

10. Recruitment Rules for the Post of Lecturer of Government Colleges (except Law College, P.G.T. College, H.T.T. College, Lecturer (Computer Science), Lecturer (Electronics) and Lecturer (Govt. Polytechnic) in the Education (U) Department, Manipur were notified in Manipur Gazette on 15 January, 1997. Educational and other qualifications required for direct recruits are stated in Column 7 of the Recruitment Rules vide M.P.S.C. Form - 8. Qualifications are as follows:

ESSENTIAL:

(1) At least 55% marks at Post Graduate level.

(2) Passed Accredited State Level Eligibility Test (to be conducted by the M.P.S.C.)

OR

Passed National Eligibility Test/JRF conducted by UGC/CSIR.

NOTE : "Candidates who had submitted their Ph.D. Thesis upto 31.12.93 and candidates who have done M.Phil upto 30.12.92 had been exempted from passing Accredited State Level National Eligibility Test.

OR

Passed National Eligibility Test/JRF conducted by UGC/CSIR

(qualification relaxable at the discretion of the Commission in the case of candidates otherwise well qualified)

In short the submission of Mr. N. Kotiswor is that qualifications prescribed in this Recruitment Rules should be strictly adhered to in the matter of recruitment of Lecturers for the Colleges in Manipur. At this stage Mr. R.K. Nokulsana submits that the word "otherwise well qualified" should mean persons who have earned Ph. D. or M. Phil. It appears, it is for the competent authority to interpret as to what is meant "otherwise well qualified" and it is not for this Court to interpret in the present circumstances, inasmuch as this issue has not been raised before me. In other words in the facts and circumstances of the present case, I am not called upon to determine the meaning of "otherwise well qualified" which is mentioned is referred to above.

11. In a letter dated 15th June, 1993 addressed by the Secretary, U.G.C. to the Secretary, Education Department, among other things it was stated "the U.G.C. has been pointing out that unless the selections in the Universities and Colleges are made in this manner, they can be called into question in the Court of law and are likely to be set aside because the UGC Regulations have the force of law."

This emphasis was made in the light of the statement made in the said letter that recruitment should be made by open selection and that the candidates should have at least 55% marks at P.G. Level and also that the candidates should have passed National Education Test or Accredited State Level NET.

12. On perusal of various communications made between the UGC and the State Government, I have no doubt in my mind that the emphasis is as regards quality educating and hence the importance of recruiting qualified persons to teach in Universities and Colleges in view of importance of education.

13. Mr. Ashok Potsangbam, learned Advocate General appears on behalf of the State. I have heard him at length. He supports the contention of Petitioner in Civil Rule 75/1997 and also 370/1997. It is submitted by Mr. Potsangbam that recruitment of Lecturers will have to be made strictly in accordance with the Recruitment Rules notified on 15.1.1977. According to Mr. Potsangbam more than one hundred posts of Lecturers are to be filled up immediately in order to meet the acute shortage of Lecturers in Government Colleges. According to him Government had written to the Manipur Public Service Commission on 13.3.1997 requesting the Commission to conduct necessary tests in terms of the relevant Recruitment Rules, strictly following the educational qualifications prescribed in Column 7 in MPSC Form-8.

14. In J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., it was held that ad hoc employees should be replaced by regularly recruited persons in accordance with the relevant Recruitment Rules and appointments have to be fair and such appointments have to be made according to the Statutory Rules where such Rules are enforced and that Government cannot use its executive power to circumvent requirement of Statutory Recruitment Rules. It was further held that Public Service Commission cannot be ignored where appointments are required to be made through it and that continuance for some years does not entitle ad hoc appointees to regularisation. In Dr. Surinder Singh Jamwal and another Vs. State of Jammu and Kashmir and others, it was held that claim by ad hoc employees that they were entitled to regularisation as they had already put in 13 years of service was rejected inasmuch as ad hoc appointments had been made dehors the Service Rules. It was, however, held that such ad hoc employees could apply and seek selection according to Rules. It was also further held that if the Petitioners had become age barred on relevant date of recruitment the State should relax necessary age qualifications. Mr. H.N.K. Singh submits that the case of the Part Time Lecturers should come within the purview of the decision made in Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, known as Jacob's case. I have carefully perused the said order. It appears the ratio of that case cannot be applied to the present case. In the case in hand the Part Time Lecturers were simply engaged on payment of Rs. 1,000/- per month in order to meet a particular situation before regular recruitments are made. In Union of India (UOI) and Another Vs. Yogendra Singh, it was held that no candidate who

does not possess the currently prescribed qualifications but who may possess educational qualifications prescribed earlier can be said to be qualified or have any vested right to appointment even against some earlier unfilled vacancies. It was further held that every candidate who aspires to fill any vacancy must possess the educational qualifications that are then prescribed. Para 5 of the said judgment which is relevant in the present case is as follows:

At the time the applications were invited for the posts in question the educational qualifications, already prescribed on 24.5.1990, were B.Sc. (Chemistry) plus Diploma of Health Inspector from a recognised institute. The employment notice set out these to be the educational qualifications. The Respondent did not possess these educational qualifications. No candidate who does not possess the currently prescribed qualifications, but who may possess the educational qualifications, prescribed earlier, can be said to qualify or have any vested right to appointment even against some earlier unfilled vacancy. Every candidate who aspires to fill any vacancy must possess the educational qualifications that are then prescribed.

15. It is stated at the Bar that there are hundreds of eligible persons seeking for employment as Lecturers in Colleges and Higher Secondary Schools in Manipur. There is an urgent need to fill up all the available vacancies up to date by taking urgent steps for recruitment of Lecturers. If process for recruitment is delayed further, frustrations among the qualified young people of the State will mount and such should be avoided. Further, for want of qualified Lecturers the student community should not be made to suffer. At the same time we must see to it that recruitments are made strictly in accordance with the educational qualifications prescribed in this regard and there should be no relaxation whatsoever. In my view there is no dearth of qualified persons who could be selected for appointment as Lecturers in Government Colleges and Higher Secondary Schools in Manipur. It must be borne in mind that we need to improve the quality of education in our State.

16. In view of the facts and circumstances that have been narrated above, the claim of the Part Time Lecturers who have been engaged on payment of Rs. 1000/- per month that they are entitled to regularisation is rejected. In my view all the available vacancies should be filled up after making proper selection by the Manipur Public Service Commission.

17. In the result, the above writ petitions are disposed of as follows:

(1) The State Government shall submit requisition to the M.P.S.C. in respect of all the vacancies available till date within a period of 1 (one) month from today. This will include the posts of Lecturers in Higher Secondary Schools also.

(2) Qualifications prescribed in Recruitment Rules shall be strictly adhered to.

(3) The entire process of calling for applications, tests and selection shall be completed as early as possible and at any rate not later than 6 (six) months from

the date of receipt of requisition.

(4) In case of age bar in respect of any or some of the Part Time Lecturers who have been engaged on payment of Rs. 1,000/- per month, the competent authority shall relax necessary age qualifications.