
(2008) 04 GAU CK 0067
In the Gauhati High Court
Case No : Writ Petition (C) No. 26 of 2007

B. Zakili	Vs	APPELLANT
Lai Autonomous District Council and Others		RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 351

Citation : (2009) 4 GLT 212

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : C. Lalramzauva, A.R. Malhotra, Haulianthanga and Joseph Lalfakawma, for the Appellant; N. Sailo, George Raju and Ricky Gurung, for the Respondent

Final Decision : Allowed

Judgement

H. Baruah, J.—By this writ petition, the writ Petitioner Smt. B. Zakili has challenged the office order No. 221/2002 dated 16.8.2002, by which appointment of the Petitioner along with other Hindi Teachers working in different Middle Schools under Lai Autonomous District Council (in short LADC) were terminated temporarily and the office orders No. 12-18 of 2003 circulated under Memo No. M./6/02-LDC/EDN dated 21.1.03 by which the Respondents No. 5-10 were illegally appointed as Hindi Teachers in different Middle Schools under the Lai Autonomous District Council.

2. The case of the writ Petitioner in a short campus can be described as under:

In order to propagate Hindi in Non-Hindi Speaking States/Union Territories, the Government of India, Ministry of Human Resources Development, Department of Secondary and Higher Education (Language Division) under the provisions contained in Article 351 of the Constitution of India, prepared a Scheme known as "the Scheme of financial Assistance for Appointment and Training of Hindi Teachers in Non-Hindi Speaking States/UTs". In pursuance of the said Scheme,

the Government of India, sanctioned a number of posts for which financial assistance was afforded to the State of Mizoram, which includes different posts for the 3 Autonomous District Councils. Under the Scheme, the Govt. of Mizoram allotted 10 (ten) posts of Middle School Hindi Teachers for LADC. Respondents No. 1 and 2 conducted a written test and personal interview for appointment of teachers to the said posts. The writ Petitioner appeared in the written test and personal interview and was selected alongwith 9 others. Vide office order No. 127/2000 dated 7.7.2000, the writ Petitioner alongwith 9 others were appointed wherein the places of posting against the name of the writ Petitioner and others has been indicated and the name of the writ Petitioner stands at Sl. No. 3 of the appointment letter. Pursuant to the appointment letter, writ Petitioner joined in Mampui Middle School and was discharging her duties as such. However, in the year 2002, on account of non-receipt of financial assistance from the Central Government, the services of 10 (ten) Hindi Teachers including the writ Petitioner working in different Middle Schools were temporarily terminated vide office order No. 221/2002 dated 16.8.2002 (Annexure-6).

3. Having received the required financial assistance from the Central Government, 4 Hindi Teachers whose services were terminated by the order above were taken back and the remaining 6 including the Petitioner were left out and 6 other persons were appointed in the vacant posts vide office order Nos. 12-18 issued under Memo No. M. 11026/6/2002-LDC/EDN dated 21.1.2003 (Annexure-7 to 12 respectively). It is contended and alleged that those 6 persons were appointed without adopting the selection procedure.

4. Being thus terminated, the writ Petitioner submitted various representations to the appropriate authority (Respondent No. 2). Even in spite of such representations the District Council authorities did not care to accommodate, in other words, reinstate the Petitioner to her post to which she was earlier selected through the selection process. Once again, on 22.12.2006 the writ Petitioner made a representation to the Respondent No. 2 to take care of her reinstatement to the post earlier held by her which too turned futile. The writ Petitioner further contended that since the fund was available and since the other four Hindi Teachers, out of 10 including herself, were taken back to their respective posts, it was incumbent on the part of the Respondent authorities to take back the remaining 6 Hindi Teachers to their respective posts including the writ Petitioner. The appointments of six other persons without resorting to selection procedure in the posts held by them was illegal and discriminatory, and the action so resorted to by the Respondent authorities are violative of Articles 14 and 16 of the Constitution of India.

5. Writ Petitioner, therefore, in view of entirety of the matters, prayed this Court to issue an appropriate writ or direction to the Respondent authorities to reappoint her in the post earlier held by her, and also to set aside the appointment orders in respect of 6 other persons whose appointment so made by the Respondent authorities illegally without resorting to selection procedure.

6. As against this claim of the writ Petitioner, the Respondent authorities (Respondent Nos. 1 and 2) filed affidavit-in-opposition wherein it is contended that the writ Petitioner, including five others who were not taken back to their respective posts were found not suitable to continue in the said service. The Respondent Nos. 1 and 2 further contend that since the private Respondents were found to be better qualified/experienced, they were appointed accordingly to the posts earlier held by the writ Petitioner and five others. It is further contended that all the 6 private Respondents were appointed on the recommendation of the Departmental Promotion Committee. Further the Respondents in their affidavit-in-opposition also claimed that making of representations by the writ Petitioner does not carry any truth, rather it is after thought. The initial appointments of the Petitioner and others was purely temporary and subject to number of conditions. It is further claimed in the affidavit-in-opposition that reappointment to the earlier post held by the Petitioner is subject to her performance. Since the writ Petitioner and other 5 (five) failed to perform as per required standard, she was not taken back to the posts held by her and others, some deserving and qualified candidates have been appointed to the said posts. The posts being co-terminus with the scheme, reappointment to the post held by her (writ Petitioner) is beyond the scope of consideration of the Respondents. The Respondents No. 1 and 2, therefore, in the facts situation contended in the affidavit-in-opposition prayed this Court to dismiss the writ petition.

7. In the context of allegation and counter allegation, we have heard Mr. A.R. Malhotra, learned Counsel for the writ Petitioner and Mr. Ricky Gurung as well for the Respondents at length.

8. Mr. A.R. Malhotra, at the very inception of his argument submits that the continuance of the scheme till date has become apparent in view of retaking of the 4 numbers of Hindi Teachers selected and appointed along with the Petitioner and five others and also the appointment of six other persons in the vacant posts created on the termination of the writ Petitioner and five others. Therefore, the contention of Respondents Nos. 1 and 2 that the appointment is co-terminus with the scheme is not sustainable. Mr. Ricky Gurung, learned Counsel for the Respondents in answer to this argument failed to lead this Court through any specific statement that the appointments are co-terminus with the scheme. Rather argument of Mr. A.R. Malhotra has been confirmed by the actions resorted to by the Respondent authorities.

9. It is found from the records that the appointments of 10 (ten) Hindi Teachers were made after resorting through selection process. For the purpose of selection, the LADC conducted written examination and also conducted viva-voce test and having found those 10 persons suitable, appointed as such, and posted each of them in the schools shown against their names. But after termination of the 10 Hindi Teachers for financial constraintment and retaking of four of them to their respective posts held by them, appointments of 6 other persons who were

appointed vide office order Nos. 12-18 under Memo No. M. 11026/6/2002-LDC/EDN dated 21.1.2003 (Annexures 7 to 12) was made by the Respondent authorities without resorting selection procedure as done in the case of the writ Petitioner and others. Therefore, it is argued by Mr. A. Malhotra that the Respondent authorities adopted a pick and choose policy which is not acceptable. The appointments so made in respect of those six persons, according to Mr. A.R. Malhotra are illegal. Mr. Ricky Gurung in the context of the above matter, i.e. in respect of appointment of six persons in the vacant posts earlier held by the writ Petitioner and five others failed to place a plausible explanation which can infer that the appointments were made not by resorting to a certain accepted procedure.

10. It is the claim of the Respondents that the writ Petitioner and the five others were not taken back to their respective posts earlier held by them since their performance were not found good. In this regard, Annexure-R/1 has been referred to by Mr. Ricky Gurung, which has been prepared by Education Officer, Lawngtlai. From the Annexure-R/1, it is found that the performance of the writ Petitioner is recorded as "not good" while performance of the teachers at Sl. Nos. 3 and 4 are recorded as "good" and, in respect of teachers at Sl. Nos. 4, 5 and 10, performance has been recorded as "not bad". Such information were received as stated in the Annexure-R/1 from some reliable teachers and other persons. It is argued by Mr. A.R. Malhotra that the remarks appearing in Annexure-R/1 cannot be a ground for reinstatement since the information so received from those persons are not the signatories of R/1, nor anything has been filed in support of it by the Respondent authorities. Mr. Ricky Gurung, on behalf of the Respondents also failed to answer the question raised by Mr. A.R. Malhotra to the satisfaction of the court. Unless an acceptable enquiry is made/ conducted by the authority concerned in respect of performance of duties by Hindi Teachers appointed under the scheme, any remarks endorsed as against each of the teachers cannot received finality on the basis of source information when source informers are not the signatories. This court does not see any force in Annexure-R/1 appended to the affidavit-in-opposition filed by the Respondents No. 1 and 2. Therefore, non taking of the writ Petitioner along with five others to the post earlier held by them is not justified when they were all selected by adopting a selection procedure and having been found suitable and, appointment of other six persons, who were, however, appointed without holding any selection test is discriminatory and illegal.

11. Since this scheme is still in operation and since the manner of termination though found acceptable for financial constraintment at the initial stage, factum of retaking of four teachers in their posts earlier held by them affords room in favour of the writ Petitioner too for reappointment in the post earlier held by her. It is discussed herein before that the appointments subsequently made in the vacant posts held by the writ Petitioner and five others being all illegal, in one of the posts held by any of them, the writ Petitioner can be accommodated. For this purpose, a stringent method is to be applied by this Court when the

appointments were made after adopting a pick and choose policy by the Respondent authorities. It would be against the selection procedure to retain them in the posts held by them presently. Eventually the office order No. 221/2002 dt. 16.8.2002 and Office orders Nos. 12 to 18 circulated under Memo No. M. 11026/6/2002-LDC/EDN dt. 21.1.2003 are set aside and quashed and it is directed that the teachers who were appointed in the vacant posts held by the writ Petitioner and five others be terminated from their respective post and reappoint the writ Petitioner in one of the posts held by them from the date when 4 (four) Hindi Teachers were taken back and shall be entitled to have all pay benefits. This exercise shall be adopted by the Respondent No. 1 and 2 within a period of one month from the date of receipt of the certified copy of this judgment and order. It is also directed that for filling up the remaining five posts, the Respondent authorities shall adopt selection procedure as per rule, if there is any and appoint the successful candidates accordingly.

12. With the above directions, this writ petition is allowed, however, with no cost.