

(2009) 05 GAU CK 0057

In the Gauhati High Court

Case No : Writ Petition No. 1302 of 2005

Ch. Sana Devi (Miss) and Others

APPELLANT

Vs

State of Manipur and Another

RESPONDENT

Date of Decision : 12-05-2009

Acts Referred:

Citation : (2009) 1 GLD 881

Hon'ble Judges : T.N.K. Singh, J

Bench : Single Bench

Advocate : H.S. Paonam, for the Appellant; Y. Ashang, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

T.N.K. Singh, J.—Heard Mr. H.S. Paonam, learned Counsel appearing for the Petitioners as well as Mr. Y. Ashang, learned Addl. Government Advocate appearing on behalf of the State Respondents.

2. The succinct facts of the Petitioners' case in W.P.(C) No. 1302/05 are that the Petitioners had joined their services, as Lower Division Clerk (for short "LDC") on ad-hoc basis pursuant to the common appointment order viz. order dated 22.1.1997 and 18.12.1998 respectively issued by the Director of Education (U), Government of Manipur. The said appointments of the Petitioners on ad hoc basis were in accordance with the guidelines laid down in the office memorandum dated 26.7.1996 issued by the Department of Personnel & Administrative Reforms (Personnel Division), Government of Manipur regarding the ad-hoc appointment of Class-III and Class-IV post against the direct recruitment quota. Since the date of their initial ad hoc appointments, the Petitioners are continuing to discharge their duty sincerely and diligently to the satisfaction of all concerned without any break.

3. The Director of Education (U), Government of Manipur under his letter being No. 3/3/214/80/EDC, Imphal dated 16th January, 1999 requested the Employment Exchange i.e. District Employment Officers of all Districts to sponsor

candidates for appointment to 11 posts of LDC in the Directorate of Education (U), Government of Manipur. Pursuant to that requisition letter of the Director of Education (U), Government of Manipur dated 16.1.1999, the Petitioners and others were sponsored by the Employment Exchanges for appearing in the DPC for appointment to the said 11 posts of LDC in the Directorate of Education (U), Government of Manipur. The Petitioners appeared before the DPC for the said posts held on 27.3.2000 and their roll numbers were 13, 188, 383, 382, 15, 50 and 25 respectively. As the result of the said DPC held on 27.3.2000 was not announced for quite a long time in violation of the office memorandum issued by the Government of Manipur, the Department of Personnel & Administrative Reforms (Personnel Division), Imphal the 20th May, 1982 wherein and whereunder the Government of Manipur had decided that (i) the result of the DPC meeting for selection of candidates for appointment to Class-III and Class-IV posts should be announced on the concluding day of the DPC meeting; (ii) the result of the DPC, if for some unavoidable reasons cannot be announced on the concluding day, a specific approval for postponement of the announcement of the result should be obtained from the Chief Secretary and (iii) but for issuance of the appointment order of the selected candidates, on the result of the Class-III and Class-IV DPC at meeting, the proceeding of the meeting should be approved by the Minister concerned prior to the issue of appointment orders. The Petitioners had earlier approached this Court by filing a writ petition i.e. W.P. (C) No. 1496 of 2000 praying for a direction for declaration of the result of the DPC held on 27.3.2000 and make regular appointment of the successful candidates and also for not dispensing with their services till the posts held by them are filled up on regular basis. The said writ petition i.e. W.P. (C) No. 1496 of 2000 was finally disposed of by this Court by passing a final judgment and order dated 30.1.2001 to the effect that "having perused the entire material on record and considering the facts and circumstances of the case in hand also hearing the learned Counsel of all the parties, I am inclined to issue a direction to the Respondents to declare the result of the DPC as soon as the ban imposed on direct recruitment is lifted and till then it is directed that the Petitioners shall be allowed to continue in the irrespective post". The said final judgment and order of this Court dated 30.1.2001 passed in W.P. (C) No. 1436/2000 had attained finality in as much as neither the State Respondents filed appeal against the said order nor sought for a review or modification of the same by filing necessary application.

4. After disposing the W.P. (C) No. 1496 of 2000 by this Court by passing the said judgment and order dated 30.1.2001 with the above directions, the Government of Manipur issued order bearing No. 1/15/2000-FC Imphal the 19th March, 2001, para No. 4 of which read as follows:

Result of the DPCs which have not been announced so far, shall be treated as cancelled. Similarly, recommendation of DPCs which have been notified but for which orders for appointment have not yet been issued shall be treated as cancelled.

The Petitioners being aggrieved by the said order of the Government of Manipur dated 19.3.2001" filed W.P.(C) No. 585 of 2001 for quashing and setting aside the order of the Government of Manipur dated 19.3.2001. The W.P. (C) No. 585 of 2001 was finally disposed of by this Court vide judgment and order dated 19.6.2006, which reads as follows:

As agreed to by both the parties, this writ petition is disposed of with the following simple direction.:

The Petitioners are initially appointed as ad hoc LDCs between 1997 and 1998. By this writ petition, the Petitioners are assailing the order of Government of Manipur dated 19.3.2001 whereunder the Government had decided to terminate all the appointment in any form subsequent to 19.4.1999.

Mr. Suresh, learned Counsel appearing on behalf of the Respondents fairly submits that the said order of the Government of Manipur dated 19.3.2001 had been modified by a subsequent order of the Government of Manipur dated 19.6.2002 whereunder the cut off date i.e. 19.4.1999 mentioned in the earlier order of the Government of Manipur dated 19.3.2001 had been changed to 6.11.1999. Such being the situation, the learned Counsel appearing on both the sides submit that the present case is not covered by the said order of the Government of Manipur dated 19.3.2001 which had been subsequently modified by subsequent order of the Government of Manipur dated 19.6.2002.

Taking into consideration of the submission of learned Counsel of both the parties, this writ petition is disposed of with the observation that the case of the writ Petitioners are not covered by the said order of the Government of Manipur dated 19.3.2001 which has been subsequently modified by the subsequent order of the Government of Manipur dated 19.6.2002.

With the above observation, writ petition is disposed of.

Interim order, if any, stands merged with this order.

5. The Government of Manipur, Department of Personnel & Administrative Reforms (Personnel Division), under the letter of the Under Secretary (DP), Government of Manipur being No. 3/14/2005-DP(DR) Imphal, 2nd September, 2005 requested the Additional Chief Secretaries, Government of Manipur, all the Principal Secretaries/Commissioners/Secretaries, Government of Manipur to furnish information whether there are any post(s) to be filled by direct recruitment recommended by the MPSC (Manipur Public Service Commission) and other competent DPC but not yet been issued appointment order due to ban on direct recruitment in the department concerned. The required information shall be furnished in the prescribed format so as to reach the Department of Personnel & Administrative Reforms (Personnel Division), on or before 12.9.2005 positively. Later on, the Government of Manipur under an office memorandum being No. 12/13/92-AQ/DP(Pt) Imphal 24th September, 2005 had decided to fill up the posts held by direct recruited ad-hoc employees in the different

departments on regular basis through DPC. Under para 5 of the said office memorandum, the ban on direct recruitment is relaxed insofar as the filling up of the above posts and vacancies i.e. the posts held by the direct recruited employees on ad-hoc basis are concerned. It is further case of the writ Petitioners that since the ban on direct recruitment so far as the filling up of the posts held by the ad-hoc employees on direct recruitment had been relaxed under the said office memorandum of the Government of Manipur dated 24.9.2005, they again filed joint writ petition i.e. W.P.(C) No. 1302 of 2005 for a direction to the State Respondents to declare the result of the DPC as per the final order dated 30.1.2001 passed in W.P.(C) No. 1496 of 2000 wherein this Court had directed the State Respondents to declare the result of the said DPC i.e. DPC held on 27.3.2000 for appointment to 11 posts of LDC in the Directorate of Education (U), Government of Manipur as soon as the ban imposed on direct recruitment is lifted.

6. The State Respondents filed counter-affidavit contending inter alia that the result of the DPC held on 27.3.2000 cannot be declared because of the subsequent order of the Government of Manipur i.e. Order No. 1/15/2000-FC Imphal 19th March, 2001 wherein and whereunder it was ordered that the result of the DPCs which had not been announced so far shall be treated as cancelled; and the recommendation of DPCs which had been notified but for which orders for appointment have not yet been issued shall be treated as cancelled and also that the case of the present writ Petitioners is covered by the said order of the Government of Manipur dated 19.3.2001.

7. Mr. H.S. Paonam, learned Counsel appearing for the Petitioners contended that the said order of the Government of Manipur dated 19.3.2001 cannot be applicable to the cases of the present writ Petitioners in whose favour this Court has already passed a final judgment and order dated 30.1.2001 in W.P.(C) No. 1496 of 2000 directing the State Respondents to declare the result of the said DPC held on 27.3.2000 and also that the Government of Manipur cannot issue the said order for nullifying the directions of this Court in the final judgment and order dated 30.1.2001 passed in W.P. (C) No. 1496 of 2000 and also because of the final judgment and order of this Court dated 19.6.2006 passed in W.P.(C) No. 585 of 2001. In order to substantiate this point, Mr. H.S. Paonam had placed heavy reliance on the decision of the Hon''ble Apex Court in the Central Dairy Farm Vs. Glindia Ltd. and Others, . The fact in that case is that the earlier writ petition between the same parties, has been settled that the price of the cream supplied by the Respondent company are to be regulated by the directions made by the High Court vide judgment and order which attained finality. The Hon''ble Apex Court held that the directions issued by the High Court in the earlier judgments could not have been nullified by invoking the power of the State by issuing price fixation notification u/s 15 of Milk Act. The statutory power u/s 15 of the Milk Act of issuing notification for price fixation could not have been invoked by the State to by-pass or commit breach of directions made by the High Court in the earlier writ petition. Para No. 18 of the SCC in Central Dairy case

(supra) reads as follows:

18. In the earlier judgment of the High Court (W.P. No. 16526 of 1988 decided on 14.10.1988), the power of the State Government to fix the prices of milk and milk products u/s 15 of the Act was recognized and it was held that the Additional Milk Commissioner as the licensing authority had no power to interfere in the matter of fixation of price of milk and milk products. The operative part of the judgment in the earlier writ petition, however, settled the controversy between the parties that the prices of supplies by the Respondent Company were to be regulated by the directions made by the High Court in the said writ petition. The earlier judgment in the writ petition between the same parties (supra) has attained finality. The written directions issued in the earlier judgment (supra) have been quoted by us above. Those binding directions of the Court could not have been nullified by invoking the power of the State of issuing price fixation notification u/s 15 of the Milk Act. The issuance of the impugned notification has rightly been held by the High Court to be an attempt to nullify the directions made by the High Court in its earlier judgment. Direction (ii) in the operative part required determination of the price of cream/paneer by an agreement and in the absence of agreement on the basis of price payable by cooperative societies to purchasers with overhead charges. The dispute about over payment was directed to be resolved by a committee to be appointed by the two companies comprising officers of the two organizations and the high officials designated under the Milk Act. The statutory power u/s 15 of the Milk Act of issuing notification for price fixation could not have been invoked by the State to bypass or commit breach of directions made by the High Court in the earlier writ petition. The High Court was fully justified in coming to the conclusion that the issuance of the notification u/s 15 of the Act was an exercise done for oblique purpose and to somehow get over the judgment of the High Court in the earlier writ petition. The notification was ineffectual to frustrate the agreements and settlements reached on price fixation through mutual negotiations between the authorized representatives of the two companies and the authorized officers of the State.

(Emphasized mine).

8. The Hon''ble Apex Court in Mohan Kumar Lal v. Vinoba Bhave University and Ors., (2002) 10 SCC 704 held that new introduction of reservation provision in the Act for reservation will not apply in respect of the posts for which recruitment process had been initiated prior to the introduction of the new reservation provision. The Hon''bie Apex Court in Chandgi Ram Vs. University of Rajasthan, held that the memorandum of understanding (MOU) issued by the State Government to the University of Rajasthan cannot be relied upon by the University for the delay of completing recruitment process, for completion of which direction had already been made by the High Court and also further held that MOU cannot come in the way of completing the recruitment process. The direction of the High Court in the earlier appeal are mentioned in para No. (2) of

the judgment in Chandgi Ram (supra) which reads as follows:

Since we have been informed that the recruitment process for appointment of regularly selected candidate as against sanctioned post is currently going on, the impugned order dated 7.5.1998 passed by the learned Single Judge is modified to the extent that the Appellant shall be eligible to participate in the selection process along with other eligible candidates, who have applied for such posts, which they were holding as on the date of their termination and if they are declared successful in pursuance of the recommendations of the Selection Committee, they may be appointed by the University of Rajasthan.

The discussions and directions of the Hon'ble Apex Court are mentioned at para No. 7 and 8 of the judgment in Chandgi Ram (supra) are as follows:

7. However, after hearing learned Counsels for the parties, we do not feel it appropriate on the facts of this case to await any response from the State Government. We heard learned Counsels for the parties at length. We find such problems, as in the present case, arise quite often when delay is made in making the regular selection. If the authorities fill up these vacancies at the earliest, this culture of ad hocism could not develop. This deteriorates the fibre of the institution affecting the very foundation of our culture specially when it is in the educational field. Even Section 3(3) of the Act does not permit ad hoc appointment but only for a short period, not to continue for years. Institutions not filling vacancies for a long time develop the culture of ad hocism. Sometimes not filling is for a coloured purpose to favour one or the other. This has to be denounced. This not only permits irregular appointees to continue for a long time but thwarts a regularly competent appointee to come in, deteriorating the very standard of the institution. This brings in internal struggle to appoint or continue one or the other ad hoc appointees leading to inter se contest in Courts, as in the present case taking large cake of time in the Courts. However, the aforesaid facts reveal that the post for which there is a contest, has already been advertised for its filling as far back as in the year 1998 yet the process did not progress further. It is now not in dispute that this post is a sanctioned post for which the University has already issued, the aforesaid advertisement. The only difficulty felt by the University, though belated, is the memorandum of understanding (MOU) issued by the State Government to University of Rajasthan which is annexed along with the affidavit of one Rajendra Babo Srivastava, Assistant Registrar (Esstt. II), University of Rajasthan. The submission is, under it University of Rajasthan can neither create any new post nor fill up any vacant posts without obtaining permission of the Government of Rajasthan. The short question for our consideration, is whether on the facts and circumstances of this case, this MOU could be an obstacle in the way of the University to fill up the aforesaid vacant post. We do not find this to be any obstacle in the way of the University. We firstly want to record that the University created this situation by not filling up these vacant posts for a long number of years and now is taking a defence under the garb of this MOU. We find this stand of MOU is taken now before this Court

as no such stand was taken earlier before the High Court. Even this MOU is annexed without any date with an affidavit without stating when and how this MOU was communicated to the University. It is however not disputed that this MOU, if it existed, was born after the aforesaid advertisement for filling up the posts. Without going into the merits of this MOU, on admitted facts when the process of filling up of the vacancy started long before this MOU was born, this MOU could not be any impediment to fill up these posts.

8. Accordingly, we direct the University to hold the interview for the posts already advertised in accordance with law by fixing the date of interview, but we make it clear that the date should be so fixed that the Selection Committee completes its interview by or before 31.1.2001. The Selection Committee shall meet on such date/dates fixed and will send its recommendations, the process of which is to be concluded by or before the end of February, 2001 and appointment be made within four weeks of such recommendation received by the University. We make it clear that the Appellant will be entitled to participate in this section process.

9. This Court in *Lourembam Ibemhal Devi v. State of Manipur* 2000 (3) GLT 545; *Kh. Iobindw and Ors. v. State of Assam and Ors.* 2001 (2) GLT 26; *Akoijam Dorendro Singh and Ors. v. State of Manipur and Ors.* 2006 1 GLT 461 and also the Hon'ble Apex Court in *State of U.P. Vs. Ram Sawrup Saroj*, held that the claim of a candidate included in a panel cannot be defeated merely because the currency of the panel expired during the pendency of the litigations when there are vacancies available for making appointment. The Apex Court is of the similar view in *Vijay Kumar Sharma and Others Vs. Chairman, School Service Commission and Others*, that there cannot be denial of appointment to the selected candidates merely on the ground that the currency of the panel list expired when the vacancies are still existing. Para 8 of the SCC in *Vijay Kumar Sharma and Ors. v. Chairman School Service Commission and Ors.* (supra) read as follows:

8. Appellant 1 belongs to the OBC Category. For reasons best known to the Respondents, even though the life of the panel for General Category has been extended to 2.2.2002, the same has not been done for the panel of the OBC Category. It has been pointed out to us that in the OBC Category there were vacancies, yet Appellant 1 was not appointed and the panel was allowed to lapse. We see no justification for not appointing Appellant 1 when vacancies were available. We also see no justification for not extending the panel life of the OBC Category. We, therefore, direct that Appellant 1 be appointed against the vacancies which are available in the OBC Category.

10. For the foregoing discussions, this Court is of the considered view that by the said order of the Government of Manipur being No. 1/15/2000-FC Imphal 19th March, 2001 cannot nullify the directions of this Court in the said judgment and order dated 30.1.2001 passed in W.P. (C) No. 1496 of 2000, which admittedly, attained finality. In other words, the said order of the Government of Manipur

dated 19.3.2001 so far as the case of the Petitioners are concerned would be illegal and ineffective and also this Court is of the considered view that the ban on direct recruitment to the posts of LDC held by the Petitioners on ad-hoc basis, as it appears from the letter of the Additional Director (University and Hr. Education), Government of Manipur being No. 3/3/214/80-EDC/xi/924, dated 11th November, 2006 to the Employment Exchange Officers of all the Districts for requisition of candidates for appointment to the said posts of Lower Division Clerk and also the notice being No. 3/3/214/80-EDC 11(Pt) Imphal the 9th July, 2001 for holding test for recruitment to the said post of the LDC and also the said office memorandum of the Government of Manipur dated 24.9.2005, had been lifted. Accordingly, the State Respondents are directed to declare the result of the said DPC held on 27.3.2000 for recruitment to the posts of LDC as ordered earlier by this Court in the final judgment and order dated 30.1.2001 passed in W.P. (C) No. 1496 of 2000 within two months from the date of receipt of a certified copy of this judgment and order of this Court. The writ petition is allowed to the extent mentioned above. Parties are to bear their own costs. This writ petition is disposed of.