
(1993) 08 GAU CK 0005

In the Gauhati High Court

Case No : Civil Rule No's. 738 and 764 of 1993

Chingakham Bishwarjit Singh etc.

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 12-08-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1994) 2 LLJ 620

Hon'ble Judges : S.K. Homchaudhuri, J

Bench : Single Bench

Advocate : K. Bipin Chandra Sarma and Kh. Binoy Kumar Singh, for the Appellant; A.G., assisted by Jagatchandra Singh, Additional Government Advocate, for the Respondent

Judgement

S.K. Homchaudhuri, J.—Common point having involved in both the petitions, the petitions are disposed of by this common judgment and order.

2. Petitioner in Civil Rule No. 738/93, Shri Ch. Bishwarjit Singh came to be appointed as LDC on substitute basis by the order dated December 3, 1991 passed by the Commissioner (Education), Govt. of Manipur for a period of 6 months or till the post would be filled up on regular basis whichever was earlier. After appointment the petitioner was posted to work in the Govt. Hindi Teachers' Training College. By subsequent orders passed by the respondent No. 2, the Director of Education (s), Govt. of Manipur, the petitioner's appointment on substitute basis was extended from time to time. By order dated October, 1992 (Annexure-A/4) to the petition) passed by the respondent No. 2, substitute / ad-hoc / officiating appointment of 76 LDC including the petitioner and one Stenographer Grade III, were extended upto the end of October, 1992. By order dated October 22, 1992, passed by the respondent No. 2, substitute/ad-hoc/officiating appointment of 74 LDC including the petitioner was extended upto the end of December, 1992. Again by the order dated February 22, 1993, passed by the respondent No. 2 the term of substitute appointment of the petitioner and 20

others Grade-III and Grade-IV employees were extended upto March 31, 1993.

3. In Civil Rule No. 764/93, the petitioner Shri Rajkumar Kabiraj Singh came to be appointed as Section Officer by order dated February 5, 1991 passed by the respondent No. 2, the Director of Horticulture and Soil Conservation, Govt. of Manipur on ad-hoc basis for a period of 6 months or till the post would be filled up by regular appointment, whichever was earlier. By subsequent order dated August 31, 1991 respondent No. 2 extended the appointment of the petitioner for a further period of 6 months. Thereafter by order dated October 20, 1992 passed by the respondent No. 2, the term of ad-hoc/officiating/substitute appointment of the 45 incumbents including the petitioner were extended for the period shown against their names by way of giving 2 days gap period between the term of initial ad-hoc appointment and the period to be extended, under the condition that no further extension would be entertained thereafter. Again by order dated February 2, 1993 passed by the respondent No. 2 the term of ad-hoc appointment of 39 number of Grade-III and Grade-IV staff, including the petitioner were extended upto March 31, 1993. No further extension appears to have been made thereafter.

4. Prayer of both the writ petitions is for issue of Writ or direction commanding the respondents to regularise the appointments of the writ petitioners. The petitioners have placed reliance on the order of the Hon"ble Supreme Court passed in the case of All Manipur Regular Posts Vacancies Substitute Teachers" Association v. State of Manipur, reported in AIR 1991 SC 2088. The petitioners have also placed reliance on order dated November 22, 1990 passed by this Court in Civil Rule No. 646/90 as well as the judgment and order dated September 16, 1991 passed in Civil Rule No. 200 of 1991 and others, falling in line with the order of the Hon"ble Supreme Court rendered in All Manipur Regular Posts Vacancies Substitute Teachers" Association (supra).

5. I have heard Mr.K. Bipinchandra Sarma, learned counsel for the petitioner in Civil Rule No. 738/93, Mr. Kh. Binoykumar Singh, learned counsel for the petitioner in Civil Rule No. 764/93 and learned Advocate General, Manipur assisted by Mr. A. Jagatchandra Singh, learned Addl. Govt. Advocate.

6. Admittedly both the petitioners were appointed on ad-hoc basis without being selected by the DPC and as such the claim of the petitioners for regularisation of their services is not well founded. Hon"ble Supreme Court in the case of Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, amongst other held:

"Where the appointment is purely on ad-hoc basis and is contractual and by efflux of time, the appointment comes to an end, the person holding such post can have no right to continue in the post. This is so even if the person is continued from time to time on "ad-hoc" basis for more than a year. He cannot claim regularisation in service on basis that he was appointed on ad-hoc basis for more than an year."

In the case of All Manipur Regular Posts Vacancies Substitute Teachers' Association (supra), the Hon'ble Supreme Court with a view to resolving the vexed problem of regularisation of services of ad-hoc/substituted appointed teachers for long 10 years-numbering few thousands-rendered the order with certain directions. The extra- ordinary problem was solved in an extraordinary method. The Hon'ble Supreme Court also directed that that order would govern all those who were in service as substituted/ad-hoc teachers. It should also govern all pending litigations before the High Court or any other Tribunal. Learned Advocate General has rightly submitted that direction issued in para 6 of the judgment in the case of All Manipur Regular Posts Vacancies Substitute Teachers' Association (supra) was issued on the peculiar facts of the case and that order cannot be pressed into service in respect of all ad-hoc/substitute appointments, namely, consideration of their case for regularisation by constituting DPC exclusively for the ad-hoc/substituted appointees.

7. Appointments on ad-hoc/substitute/officiating basis are made in exceptional cases by way of stop-gap arrangement against fortuitous vacancies purely for a temporary period. Although appointment on ad- hoc/substituted basis is temporary but all temporary appointments are not ad-hoc/substitute/officiating. From the appointment orders of both the petitioners it appears that they were appointed against regular vacant posts, in as much as the appointment letters stipulate that their initial appointments were for 6 months or till the posts would be filled up on regular basis. Admittedly there are service rules regulating the appointments of the Grade-III and Grade-IV employees in the establishment of the respondents of the writ petitions. When the vacancies were not fortuitous but regular, the appointment on ad- hoc/substitute basis was not at all warranted. Respondents ought to have filled up the posts by making appointment as per provisions of the Rules, at least by making selection amongst the candidates sponsored by the Employment Exchange or amongst the candidates who offered their candidature in response to open advertisement calling for application. This sort of back-door appointment should be and must be discouraged. From the orders dated October 24, 1992 and December 22, 1992 and February 22, 1993 (Annexure-A/4 to Civil Rule No. 738/93), I find that not only the petitioner but there are more than 80 posts in the cadre of Grade-III and Grade-IV in the establishment of the Director of Education (s) came to be filled up by appointing incumbents on ad-hoc/substitute basis. Similarly, it also appears from the orders dated October 20, 1992, February 2, 1993 more than 40 posts in the cadre of Grade-III and Grade-IV in the establishment of the Director of Horticulture and Soil Conservation, Manipur were filled up by ad-hoc/substitute appointments. All these disclose that filling up of vacant posts by making appointment on ad-hoc/substitute basis is the general rule and filling up the posts according to Rules by selecting either from the candidates sponsored by the Employment Exchange or from the candidates who offered their candidature in response to open advertisement, is the exception. This sort of practice in filling up vacant posts by making irregular appointments or in other words through back door entry is

arbitrary and violative of Articles 14 and 16 of the Constitution, in as much as hundreds of qualified unemployed citizens are deprived of the opportunities of being considered for appointment against the vacant posts. Besides such large scale irregular appointments through back door entry opens the flood gate of nepotism and favouritism. Direction to regularise such irregular appointments to the exclusion of others. would only encourage such unhealthy practice. It is appropriate to refer to the observation of the Hon"ble Supreme Court in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., In para 25(e) of the judgement, the Hon"ble Supreme court has observed: (p. 948)

"(e) Many appointments may have been made irregularly -as in this case-in the sense that the candidates were neither sponsored by the Employment Exchange nor were they appointed after issuing a proper advertisement calling for applications. In short, it may be a back door entry. A direction to regularize such appointments would only result in encouragement to such unhealthy practice."

8. Posts which are sanctioned temporarily should also be filled up by selection amongst the candidates available as per requisition from the Employment Exchange or on the basis of open advertisement. For filling up such temporary posts resorting to appointment on ad-hoc/substitute basis is not called for. If the temporary posts are not made permanent and subsequently abolished, the incumbents who have been appointed temporarily through selection may be retrenched, but they will have a claim for absorption against future available vacant posts in the cadre.

9. The order dated November 22, 1990 in Civil Rule No. 646/90 and the judgment and order dated September 16, 1991 in Civil Rule No. 200 of 1991 and others were rendered by this Court on the facts of those cases and these order and judgment cannot help the petitioners of these petitions who came to be appointed on ad-hoc/substitute basis in the year 1991. In this connection I have taken note of the Govt. of Manipur, Department of Personnel and Administrative Reform's Office Memorandum No. 12/13/92-AG/DP(Pt) dated October 9, 1992, by which the Govt. of Manipur took the policy decision of regularisation of all classes of ad-hoc appointments in Class-I,II,III and IV cadre, both from the direct as well as promotion quotas. But that policy decision does not help the petitioners, in as much as. that policy decision is applicable in respect of the incumbents who have been holding the posts for 5 years or more on adhoc/substitute basis.

10. For filling up the vacant posts, including a temporary one, in the cadre of Grade-III and Grade-IV in the establishment of the respondents appointment on ad-hoc/substitute basis is not warranted, in as much as the vacant posts can be filled up without loss of time by making selection from amongst the candidates available through requisition from the Employment Exchange or through open advertisement inviting application from the eligible candidates. When appointments in the posts of Grade-I and Grade-II cadre are required to be made on the basis of the selection by the Public Service Commission, immediate

filling up of the vacant posts may not be possible. Even then, temporary appointments against the vacant post till selection by Public Service Commission, in all fairness, should be made by selection amongst the candidates sponsored by the Employment Exchange or from those who offered their candidature in response to open advertisement. Back door entry to the vacant posts which breeds nepotism, favouritism and corruption, should and must be avoided as far as practicable.

11. For the reasons stated above, the petitions are disposed of with the following directions:

(1) The Secretary to the Govt. of Manipur, Education Deptt. as well as the Director of Education (s), Manipur, the respondents in Civil Rule No. 738/93, are directed to fill up all the vacant posts, both permanent and temporary, occupied by ad-hoc/substitute appointees within a period of 3 months from the date of receipt of this order according to the procedure prescribed by the Recruitment Rules. The petitioner and other incumbents who were appointed against the vacant posts on substitute/ad-hoc basis should also be given opportunity to appear before the DPC to be constituted for that purpose.

(2) The Secretary to the Govt. of Manipur, Horticulture and Soil Conservation Deptt. and the Director of Horticulture and Soil Conservation, the respondents in Civil Rule No. 764/93, are directed to fill up all the vacant posts, permanent and temporary, occupied by ad-hoc substitute appointees within a period of 3 months from the date of receipt of this order according to the procedure prescribed by the Recruitment Rules. The petitioner and other incumbents who were appointed against the vacant posts on substitute ad-hoc basis should also be given opportunity to appear before the DPC constituted for that purpose.

(3) In the absence of any Recruitment Rules, the vacant posts of particular cadre shall be filled up by making selection amongst the candidates available through requisition from the Employment Exchange or through open advertisement inviting applications.

(4) The services of the incumbents who are holding the posts on substitute/ad-hoc/officiating basis may be extended for a period of 3 months or for the period till regular appointments are made as per the aforesaid direction, whichever is earlier, if their services are required and no outsider shall be appointed against the vacant posts on ad-hoc/substitute/officiating basis during the interim period.