
(2017) 01 MAN CK 0021
In the Manipur High Court
Case No : 789 of 2011

Dr. M. Achoubi Singh

APPELLANT

Vs

The State of Manipur & anr.

RESPONDENT

Date of Decision : 31-01-2017

Acts Referred:

Citation : (2017) 01 MAN CK 0021

Hon'ble Judges : Kh. Nobin Singh

Bench : Single Bench

Advocate : Kh. Tarukumar, H. Debendra, I. Denning

Judgement

1. Heard Shri Kh. Tarunkumar, the learned counsel appearing for the petitioner; Shri H. Debendra, the learned Government Advocate appearing for the State respondents and Shri I. Denning, the learned counsel appearing for the MPSC, the respondent No. 3.

2. The instant writ petition has been filed by the petitioner praying for a direction to the respondents to promote FR/NFR him to the post of Principal, Hindi Teachers' Training College, Imphal. 3. 1. According to the petitioner, he was initially appointed as Lecturer of the Government College in Hindi on ad-hoc basis on 01-09-1984 and his ad-hoc service was later regularized and placed in the Grade of Sr. Lecturer with effect from 07-08-1995. On 07-10-1998, the Under Secretary (Higher Education), Government of Manipur issued an order by which one Dr. Markendeya Rai was appointed on promotion to the post of Principal, Hindi Teachers' Training College, Imphal on regular basis.

3.2. On 07-07-2003, the Deputy Secretary (Higher Edn.), Government of Manipur issued an order by which the Final Seniority List of the Lecturers of Hindi Teachers' Training College, Government of Manipur was notified wherein the petitioner appeared at Sl. No. 2. On 25-05-2007, fifteen Selection Grade Lecturers including the petitioner were placed in the Grade of Readers and so far as the petitioner is concerned, he was placed in the Grade of Reader with effect

from 02-04-2002.

3.3. Dr. Markendeya Rai, the Principal, Hindi Teachers' Training College, Imphal retired from service on attaining the age of superannuation on 31-07-2009 and thereafter, the post of Principal of the said College remained vacant till when the petitioner was allowed to look after it vide order dated 01-08-2009 issued by the Under Secretary (Higher Education), Government of Manipur. The petitioner being the senior most and eligible lecturer of the said Hindi College submitted a representation dated 24-05-2011 praying for consideration of his case for appointment on promotion to the post of the Principal on regular basis. Since the respondents did not pay any attention to the said representation, the petitioner got a legal notice served upon the respondents and in response thereto, the Additional Director of University & Higher Education, Government of Manipur addressed a letter dated 17-10-2011 to the Advocate of the petitioner wherein it was informed that the post of Principal, Hindi Teachers' Training College, Imphal would be filled up by way of direct recruitment as per the qualifications prescribed in the UGC Regulation, 2010 as adopted by the Government of Manipur. Being aggrieved by the inaction on the part of the respondents, the petitioner did file the instant writ petition.

4. Contesting the said writ petition, an affidavit-inopposition on behalf of the respondent Nos. 1 and 2 was filed wherein it is stated that the State Government was on the process of filling up the post of Principal, Hindi Teachers' Training College on regular basis after the relevant rules being amended as per the UGC Guidelines and in this regard, the Additional Director of University & Higher Education, Government of Manipur vide its letter dated 17-10-2011 informed that the post of Principal, Hindi Teachers' Training College, Imphal would be filled up by direct recruitment as per the UGC Guidelines, 2010 and steps had been taken for amendment of the Recruitment Rules. It is further stated that the petitioner became ineligible for promotion to the post of Principal, Hindi Teachers' Training College, Imphal on the ground that there had been subsequent changes in the recruitment rules as per the UGC Guidelines, 2010 being adopted by the State Government vide order dated 12-08-2011.

5. The said writ petition was disposed of by the learned Single Judge vide its judgment and order dated 10-07-2012 by which the respondents therein were directed to consider the cases of the petitioner and other eligible lecturers for filling up the post of Principal, Hindi Teachers' Training College, Imphal under the Recruitment Rules, 1993 by promotion. While disposing of the said writ petition, the learned Single Judge came to the conclusion that since the substantive vacancy for the post of Principal, Hindi Teachers' Training College arose on 01-08-2009 before the adoption of the UGC Regulation, 2010, it should be filled up in accordance with the relevant rules prevalent at the time when the vacancy arose i.e. the Education (U) Department, Manipur (Principal, Hindi Teachers' Training College) Recruitment Rules, 1993 (hereinafter referred to as "the Recruitment Rules, 1993"). Being aggrieved by the said judgment and order of

the learned Single Judge, a writ appeal being W.A. No. 17 of 2013 came to be preferred by the State Government on the ground that the said Recruitment Rules, 1993 was no longer in force, as the same had been superseded by the rules called the Education (U), Department, Manipur, Principal of Government Colleges (Professor's Grade) (Except Principal in Law College, D.M. College of Teachers" Education and Government College of Technology, Recruitment Rules, 2002 (hereinafter referred to as "the Recruitment Rules, 2002"). When the writ appeal came up for consideration before the Division Bench on 24-02-2015, the learned Government Advocate submitted that the Recruitment Rules, 2002 would cover the case of the petitioner which could not brought to the notice of the learned Single Judge through bonafide mistake because of which that aspect was not considered by the learned Single Judge while passing the judgment and order dated 10-07-2012 in writ petition being . To counter the submission of the learned Government Advocate, the learned counsel appearing for the respondents therein submitted that the said Recruitment Rules, 2002 was not applicable in the present case. After hearing the learned counsels appearing for the parties, the Division Bench came to the conclusion that it would be appropriate if that aspect was reconsidered by the learned Single Judge and accordingly, the matter was remitted to the learned Single Judge for rehearing on the issue of applicability of the Recruitment Rules, 2002.

6. On 02-12-2015, when the above matter was listed before the Single Judge, an application being M.C.(W.P.(C)) No. 233 of 2015 filed on behalf of the State Government, came up for consideration and by the said application, the State Government prayed for allowing it to withdraw the earlier affidavit-inopposition filed before the learned Single Judge. After having heard the learned counsels appearing for the parties, this court allowed the State Government to file an exhaustive affidavit explaining as to how the mistake had occurred in the said affidavit-in-opposition and the bonafide of the officers which ought to be filed by the Secretary/ Commissioner, Department of Higher Education, Government of Manipur. It was also directed by this court that the Secretary/Commissioner should explain the details based on the records making its stand clear and that any averment made by the State respondents without referring to the records, would not be entertained at all. On 09-09-2016, the learned Government Advocate submitted that the Recruitment Rules, 2002 would apply to the facts and circumstances of the present case while the learned counsel appearing for the petitioner submitted that as per the information furnished vide letter dated 24-08-2013 of the Department of Personnel & Administrative Reforms, Government of Manipur in response to an application moved under the RTI Act, the Recruitment Rules, 1993 had never been superseded nor had it been amended by it. On perusal of the Notification dated 04-09-2002 notifying the Recruitment Rules, 2002, it is not clear as to whether the Recruitment Rules, 1993 has been really superseded or not and the words "in supersession of all previous rules issued in this regard" being used therein, are not unambiguous for the reason that the titles of these two recruitment rules do not appear to be the

same. In view of the said rival contention of the learned counsels appearing for the parties, this court was of the view that it would be necessary for this court to examine the records as regards the decision taken by the State Government for framing the Recruitment Rules, 2002 and accordingly, the learned Government Advocate was directed to produce the relevant file. In compliance with the direction given by this court, the learned Government Advocate produced the relevant file for perusal by this court and on perusal of the relevant notes in the file, it is seen that at Note 81, the title of the recruitment rules as proposed by the Administrative Department is "Principal of Government Colleges (Reader's Grade and Professor's Grade) (Except Principal in Law College, D.M College of Teachers" Education and H.T.T. College) but the title of the recruitment rules conveyed by the MPSC as reproduced at Note 83 is "Principal of Government Colleges (Professor's Grade) Except Principal in Law College, D.M. College of Teachers" Education and Government College of Technology". The MPSC does not appear to have assigned any reason as to why the name of H.T.T. College shall stand deleted from being in the exception along with Law College, D.M. College of Teachers" Education etc. However, the Under Secretary (DP) while observing at Note 83 itself that the proposal of the Administrative Department is without any reason, submitted the file before the Commissioner (DP) who in turn, placed the same before the Chief Secretary with the proposal that the amendment of Recruitment Rules as concurred by the MPSC be approved so that the same be published in the Gazette. Ultimately, after examining whether there is separate recruitment rules for the colleges which are in the exception, the amendment of recruitment rules as concurred by the MPSC was approved at various levels upto the Chief Minister, Manipur and on 21-08-2002, the Chief Secretary, Manipur ordered that the same be notified in the Gazette. Although there was no much discussion in the file as to whether the H.T.T. College should be kept in the exception or not, it cannot be said that it was not a conscious decision of the State Government for the reason as aforesaid. Therefore, the stand of the State Government that the Recruitment Rules, 1993 has been superseded by the Recruitment Rules, 2002 appears to be correct and in view thereof, there is no merit in the writ petition. Therefore, the Recruitment Rules, 2002 will apply to the facts of the present case and in other words, the appointment of the Principal, Hindi Teachers" Training College, Imphal will have to be made in terms of the Recruitment Rules, 2002 which were prevalent at the time when the vacancy arose in the year, 2009.

7. The issue as the regards the applicability of the Recruitment Rules, 2002 to the facts and circumstances of the present case, could have been decided in the year 2012 itself provided the State Government was sincere in its dealing with the court matters. In other words, the instant writ petition has been unnecessary kept pending for more than five years on account of the callous attitude being shown to by the State Government towards filing its affidavit. Had the affidavit-inopposition on behalf of the State Government been filed after going through its own records, the inconvenience caused to the petitioner could have been

avoided. Therefore, when the State Government prayed before this court for allowing it to withdraw its earlier affidavit-in-opposition, this court keeping in mind the fact that it is an institution, permitted the State Government to file an exhaustive affidavit explaining as to how the mistake had occurred and directed that the affidavit be filed by the Secretary/ Commissioner concerned based on the records making its stand clear. This court further made it very clear that any averment made in the affidavit, without referring to a document or based on records, would not be accepted by this court. This court had to resort to this approach because of the negligence on the part of the officers dealing with the matter. The problem became aggravated, when the officer of the Department of Personnel & Administrative Reforms, Government of Manipur furnished information under the RTI Act to the effect that the Recruitment Rules, 1993 had never been superseded nor had it been amended by the State Government. This information, similar to the one averred in the earlier affidavit-in-opposition and furnished without looking into the file, was totally contrary to the stand taken by the State Government in the writ appeal that the Recruitment Rules, 1993 had been superseded by the Recruitment Rules, 2002. The State Government being an institution, ought to act fairly and reasonably and assist the court with correct information based on its own records and only then, the court will be in a position to deliver justice. The State Government through its officers shall restrain itself from indulging in such activities so as to avoid any adverse order from the court. To bring it to the knowledge of the Chief Secretary, Manipur as to what has happened in the present case, a copy of this judgment and order shall be forwarded to him by the Registry with the request that necessary instruction be issued to all concerned so as to avoid such incident in future.

8. For the reasons stated hereinabove, the instant writ petition fails and is accordingly dismissed.