
(2016) 09 MAN CK 0006

In the Manipur High Court

Case No : Writ Petition (C) No. 854 & 942 of 2015

E. Sujatadevi

APPELLANT

Vs

State of Manipur

RESPONDENT

Date of Decision : 14-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 GauLT 480

Hon'ble Judges : Kh. Nobin Singh, J.

Bench : Single Bench

Advocate : Mr. L. Anand, Advocate, for the Petitioners; Mr. K. Jagat, GA, for the Respondents

Final Decision : Disposed Off

Judgement

Kh. Nobin Singh, J. - Heard Shri L. Anand, the learned counsel appearing for the petitioners and Shri K. Jagat, the learned Government Advocate appearing for the respondents.

2. By the present writ petitions, the petitioners have prayed for issuing an appropriate writ or direction directing to the respondents to consider the cases of the petitioners, within a specified period of time, for appointment as Primary Teachers against 5% quota reserved for the sports persons in relax of the existing procedure for recruitment through Employment Exchange. Since the writ petitions have arisen out of a similar set of facts, the same are disposed of by common judgement and order.

3.1. According to the petitioners, they are all Graduates in Arts/Commerce from the Manipur University and are outstanding sports persons in their respective disciplines. They belong to OBC category. They had participated in various National/International Sports Championships in their respective disciplines representing the State of Manipur/India. The Government of Manipur issued an O.M. dated 17.10.1998, with a view to provide incentives to the meritorious

sports persons for providing employment under the State Government, wherein it is provided that the meritorious sports persons may be considered for appointment to Class-III and IV posts in relaxation of the procedure for recruitment through the Employment Exchange subject to the conditions mentioned therein. The petitioners are eligible for appointment to Class-III posts or any suitable post available in the Department of Education (S) in terms of the said O.M. A Screening Committee consisting of the Commissioner/Secretary (Education/S) as the Chairman came to be constituted vide order dated 07.04.1999 to examine for appointment of sports persons to Class-III and IV in the Department of Education (S) under the scheme "Recruitment of Meritorious Sports persons" and the petitioners came to know that an order dated 08.04.1999 was also issued by the Department of Education(S) for holding a DPC on 12.04.1999 which was postponed and was later held on 29.04.1999 and 30.04.1999. The DPC whose meeting was held on 29.04.1999 and 30.04.1999 recommended a list of eligible and qualified candidates including the petitioners for appointment against the posts indicated against them.

3.2. A writ petition being W.P. (C) No. 1475 of 1999 came to be filed by some of the successful candidates whose names were recommended along with the petitioners wherein the Hon''ble Gauhati High Court passed an interim order dated 29.11.1999 with the direction that the State respondents should not cancel the proceedings of the DPC held on 29.04.1999 and 30.04.1999. However, to the shock and surprise of the petitioners and contrary to the said interim order dated 29.11.1999, the State Government issued an order dated 25.03.2000 cancelling the recommendation of the said DPC. Being aggrieved by the said order dated 25.3.2000, a contempt petition being Cont. Case (C) No. 58 of 2000 was filed and in compliance with the order passed by the Hon''ble Gauhati High Court, the State Government issued another order dated 07.02.2003 revoking the cancellation order dated 25.03.2000. Ultimately, the said writ petition being W.P. (C) No. 1475 of 1999 was disposed of on 12.09.2003 holding that there would be no bar for the State Government to accommodate the petitioners by lifting the existing ban on direct recruitment in respect of the petitioners.

3.3. Instead of taking appropriate steps for appointment of the petitioners, the respondent No. 2 addressed a letter dated 8.9.2006 requesting the Director of Employment, Government of Manipur for sponsoring the names of eligible candidates for appointment of 1423 Primary Teachers which led to the filing of various petitions before the High Court and pursuant to the direction given by the Hon''ble High Court to keep certain posts reserved for the petitioners, a Notification dated 13.4.2010 came to be issued by the Government of Manipur inviting applications from amongst the meritorious sports persons for appointment against 20 vacant posts of Primary Teachers in the Department of Education (S), Government of Manipur. By way of abundant caution, the petitioners applied for appointment against the said 20 vacant posts of Primary Teachers and on receipt of the said applications, the Government of Manipur issued the names of short listed candidates including the petitioners on

01.06.2010. In the meantime, various writ petitions came to be filed by the recommended candidates including the one being W.P. (C) No. 789 of 2007 for appointment against the 5% quota reserved for the sports persons, which was disposed of by the Hon''ble High Court on 6.2.2013 directing the authorities concerned to consider the claim of the petitioners along with the eligible sports persons and other writ petitions also were later disposed of in terms of the said order dated 06.02.2013. However, the State Government has failed to act upon and implement the said court's order dated 06.02.2013 despite various requests being made by the petitioners, as a result of which the aforesaid 20 posts of Primary Teachers are still lying vacant Being aggrieved by the inaction on the part of the respondents, the petitioners have filed the present writ petitions.

4. Notice was issued in the matter on 12.10.2015 and despite a number of opportunities being granted to the State respondents, they have failed to file their affidavit-in-opposition and since they have chosen not to contest the writ petition, the averments made in the writ petition shall be deemed to have been admitted by them in view of the law laid down by the Hon''ble Supreme Court in a catena of decisions.

5. From the various documents filed along with the writ petitions, it is seen that the State Government issued a Notification dated 13.04.2010, which was duly published in a local newspaper, inviting applications from amongst the eligible sports persons for appointment against the said 20 vacant post of Primary Teachers in the Department of Education (S), Government of Manipur. In response to the said Notification, the petitioners duly applied for it. Another Notification dated 01.06.2010 was issued notifying the names of short listed candidates including the names of the petitioners. In the writ petition being W.P. (C) No. 789 of 2007, the Gauhati High Court, Imphal Bench passed an order dated 06.02.2013 with the direction that the authorities concerned should consider the claim of the petitioners along with other eligible sportspersons for appointment under 5% quota to various posts available to the State Government under the recruitment rules in accordance with law. In the same line, this court vide its order dated 04.09.2013 directed the respondents to consider the cases of the petitioners along with other eligible candidates for appointment to the post of Graduate Teachers against the posts reserved for the sports persons in terms of the O.M. dated 17.10.1998. The main grievance of the petitioners is that despite the said orders being passed by the Hon''ble Gauhati High Court and this court, the respondents have not bothered at all to implement them and moreover, the proceedings of the DPC are said to be kept in abeyance till date without the same being cancelled by the respondents. Shri L. Anand, the learned counsel appearing for the petitioners has submitted that the inaction on the part of the respondents has infringed rights guaranteed under Article 14, 16 and 21 of the Constitution of India and to substantiate his contention, he has relied upon the decision rendered by the Hon''ble Supreme Court of India in the case of Chandgi Ram v. University of Rajasthan reported in (2001) 10 SCC 556 wherein the appellant was initially appointed as Director, Students Advisory Bureau,

Rajasthan University on ad-hoc basis for three months which was extended for another six months. However, his appointment was terminated on 06.06.1997 on the ground that his appointment was illegal which came to be challenged by him before the Hon"ble High Court by way of a writ petition and during the pendency thereof, the authorities initiated process for regular recruitment. However, the writ petition was dismissed, against which an appeal was preferred in the Supreme Court. Deprecating the practise of ad-hoc appointment and delay in regular appointment, the Hon"ble Supreme Court held that although the post was advertised in the year 1998, the process did not progress further and directed the Rajasthan University to conclude the process by or before the end of February, 2001 and that the MOU could not be any impediment to fill up the post. The Hon"ble Supreme Court made it very clear that the appellant would be entitled to participate in the selection process and a fresh advertisement be made entitling fresh candidates also to apply for the same. Reliance has also been placed in East Coast Railway & Anr. v. Mahadev Appa Rao & Ors., reported in (2010) 7 SCC 678 wherein a departmental examination conducted for filling up posts of Chief Typists was cancelled and a fresh test was ordered to be conducted. Although the Administrative Tribunal held that the cancellation was justified, the Hon"ble High Court set aside the tribunal's order. Disposing of the appeal, the Hon"ble Supreme Court held:

"14. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.

16. Applying these principles to the case at hand there is no gainsaying that while the candidates who appeared in the typewriting test had no indefeasible or absolute right to seek an appointment, yet the same did not give a licence to the competent authority to cancel the examination and the result thereof in an arbitrary manner. The least which the candidates who were otherwise eligible for appointment and who had appeared in the examination that constituted a step-in-aid of a possible appointment in their favour, were entitled to is to ensure that the selection process was not allowed to be scuttled for mala fide reasons or in an arbitrary manner."

6. The facts of the said two cases, referred to herein above, are not exactly identical with that of the present writ petitions but the decisions rendered therein are relevant for two reasons - one, the Hon"ble supreme Court has held that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the

State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process and two, deprecating the delay in regular appointment, the Hon''ble Supreme Court, having regard to the fact that the post is a sanctioned post for which advertisement was issued in 1998, directed the Rajasthan University to complete the process of recruitment within a specified period. In the present cases also, the Department of Education (S), in pursuance of its order dated 07.04.1999 constituting a DPC, issued a notice informing that a DPC meeting be held on 12.04.1999 for appointment of meritorious sports persons but in fact, its meeting was held on 29.04.1999 and 30.04.1999 recommending names of many sports persons including the petitioners. Although the recommendation was cancelled vide order dated 25.03.2000, the same was revived vide order dated 7.2.2003 with the intervention of the Hon''ble High Court. Instead of considering for making appointments on the basis on the said recommendation, the respondent No. 2 addressed a letter dated 08.09.2006 to the Director of Employment requesting him to furnish a list of sponsored candidates for appointment of 1423 Primary Teachers with no 5% seats being reserved for the sports persons in terms of the O.M. dated 17.10.1998. But pursuant to the directions given by the Hon''ble High Court to keep posts reserved for the petitioners, the Directorate of Education issued an Advertisement vide Notification dated 13.04.2010 for appointment of 20 Primary Teachers from amongst the eligible sports persons and in response thereto and by way of abundant caution, the petitioners applied for it. The Directorate of Education issued a Notification dated 01.06.2010 notifying short listed names including that of the petitioners which remains unconsidered by the respondents till date. It may be noted that the Hon''ble High Court while disposing of the writ petition being W.P. (C) No. 789 of 2007, directed the authorities to consider the claim of the petitioners along with eligible sports persons for appointment against the 5% quota in various posts in accordance with law. Despite a number of requests being made by the petitioners, the respondents have not acted upon and implemented the court's order date 06.02.2013. The State Government being an institution, is expected to act fairly and reasonably and ought to have considered the cases of the petitioners by completing the process of selection. In fact, since the selection process had already been initiated, the respondents ought to see that the same is completed in time and is brought to a logical conclusion. The petitioners may not have the enforceable right to appointment but have the right to know the outcome of the selection process. The respondents have utterly failed to discharge its duties as a model employer and it is the State Government which has issued the O.M. dated 17.10.1998 by way of a policy decision which will be rendered meaningless, if the same need not be implemented by itself. Thus, the inaction on the part of the respondents is highly unfair and unreasonable being violative of Article 14 of the Constitution of India.

7. For the reasons stated herein above, the writ petitions are disposed of with

the direction that the respondents shall complete the process of selection initiated pursuant to the Notification dated 13.04.2010, issued by them, within a period of three months from the date of receipt of a copy of this judgment and order and consider the cases of the petitioners accordingly.