
(2006) 06 GAU CK 0037
In the Gauhati High Court

Gol Gaijairung

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 30-06-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2007) 2 GLR 74 : (2006) 3 GLT 236

Hon'ble Judges : B. Sudershan Reddy, C.J;B.P. Katakey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—This appeal is directed against the judgment and order dated 4.4.2006 passed by the learned Single Judge in W.P.(C) No. 1283 of 2005 dismissing the writ petition filed by the appellants praying for a direction to the respondents therein to give effect to the select list prepared in the year 1999; to set aside the requisition given by the Director of Education(S) dated 7.11.2005 to the Director of Employment, Government of Manipur to furnish the list of sponsored candidates for the purpose of selection for appointment as teacher both Arts and Science graduate teacher and to appoint the appellants in terms of the select list of 1999.

2. The undisputed facts involved in the present appeal is that on 3.4.1999 a requisition was sent by the Director of Education, Government of Manipur to the Director Employment for sponsoring the candidates to fill up 161 posts of graduate teacher (91 posts for Arts graduate and 70 posts for Science graduate). A written test was conducted on 8.11.1999, wherein fourteen thousand candidates sponsored by the Director, Employment, appeared, result of which was declared on the next day, i.e., on. 9.11.1999 declaring 889 and 694 candidates as successful for Arts and Science graduate teachers, respectively. A second list was also subsequently published on 24.12.1991 containing the names of 1463 and 1103 successful candidates in the said written test, for Arts and Science graduate teachers, respectively and viva voce test was thereafter

conducted by the selection committee, pursuant to which names of candidates were recommended. Such recommendation was made solely on the basis of the marks obtained in the said viva voce test, without taking into account the marks obtained in the written test. Before declaration of the result of the said selection committee, the Government on 6.11.1999 issued an order banning direct recruitment and freezing the result of the selection committee. Thereafter the State Cabinet on 17.2.2001 took a policy decision, which was reflected in the order dated 19.3.2001, to the effect that the result of the DPCs (though it is a misnomer and ought to be selection committee) which have not been announced till then shall be treated as cancelled. Similarly recommendation of the DPCs, which have been notified, but on the basis of which the orders of appointment have not been issued are also treated to be cancelled. A writ petition being W.P. (C) No. 402 of 2001 was thereafter filed by the All Manipur Graduate (Arts & Science) Teachers DPC Faced Candidates Association, 1999 of which present appellant No. 1 is the President and the present appellant No. 8 is the Treasurer, praying for a direction to declare the result of the selection held during the month of December 1999 to January 2000 for the post of graduate Arts and Science teachers and for publication of the select list and to appoint the persons selected against the said 161 vacancies. The said writ petition was, however, dismissed vide order dated 5.2.2004, as the Government took a policy decision not to declare the result of the selection held and not to make any appointment. The said order has not further been challenged and, therefore, attained its finality. The Director of Education (S), Government of Manipur issued the impugned requisition dated 7.11.2005 to the Director of Employment requesting him to sponsor the candidates for selection for appointment as Science and Arts graduate teachers. The appellants, of whom the appellant No. 1 is the President of the All Manipur Graduate (Arts & Science) Teachers DPC Faced Candidates Association, 1999 and the appellant No. 8 the Treasurer of the said Association and the others who are the members of the said association, thereafter filed W.P. (C) No. 1283 of 2005 with the prayer for directing the respondents to appoint them on the basis of the selection made in the year 1999 and to set aside the said requisition dated 7.11.2005, which was dismissed by the learned Single Judge as stated above. Hence, the present appeal.

3. We have heard Mr. N. Dutta, learned senior counsel for the appellant, Mr. Asok Potsangbam, learned Advocate General, Manipur appearing on behalf of the respondents.

4. Mr. Dutta, learned senior counsel for the appellant challenging the judgment and order passed by the learned Single Judge has submitted that once the selection was held for recruitment of Science and Arts graduate teacher, the authority cannot without any reasonable justification decline to publish such select list and to make appointment therefrom. According to the learned Counsel in the instant case ban was no doubt imposed by the State Government for making direct recruitment because of the financial constraint but after lifting of such ban the authority is bound to honour selection made earlier and cannot

subsequently issue another requisition to the Director of Employment to sponsor candidates for selection and appointment as Arts and Science graduate teacher. In any case according to the learned senior counsel the candidates who appear on the selection held in the year 1999 cannot now be asked to appear with the fresh candidates after seven years, as it will amount to treating the unequals as equal thereby violating the fundamental right guaranteed under Article 14 of the Constitution of India, in view of the fact that the candidates like the appellants who appeared in the selection made in the year 1999 cannot compete with fresh graduates in the selection and vacancy against 161 posts having occurred in the year 1999, the candidates who became qualified thereafter cannot be allowed to sit in the selection against those posts. The learned senior counsel, therefore, submits that at least a direction be issued to the State respondents to confine the selection for those 161 posts of graduate Science and Arts teachers to the candidates who were sponsored in the year 1999 by the employment exchange, without allowing fresh graduates to compete with those candidates including the appellants against those vacancies.

5. The learned Advocate General, Manipur on the other hand has submitted that the writ petitioners as they are not entitle to any relief as claimed in the writ petition.

6. The learned Advocate General referring to the records produced before this court has further submitted that in fact selection made in the year 1999-00 was a farce as the result of the written test conducted on 8.11.1999, where fourteen thousand candidates appeared, was declared immediately in the next day, i.e., on 9.11.1999 and thereafter another list was published on 25.12.1999 declaring some other candidates also as successful in the written test. Screening of the fourteen thousand candidates on the same day of holding written test and declaration of such result on the next day is humanly impossible, submitted by the learned Advocate General. Referring to the records, the learned, Advocate General has further contended that it appears from the recommendation made by the selection committee that such recommendation was made on the basis of the marks given in the viva voce test only without taking into account the marks obtained in the written test. Therefore, in any case, according to the learned Advocate General, the learned Single Judge has rightly refused to pass any order directing the respondents to declare the result of such selection and to make appointment. The learned Advocate General in support of his contention has placed reliance on the decisions filed by the present appellants itself is not maintainable, the same being hit by the principle of res judicata as the earlier writ petition being W.P(C) No. 402 of 2001, filed by the Association, of which the present appellant No. 1 is the President and the present appellant No. 8 is the Treasurer and other appellants are the Members, with the same prayer as in the present writ petition, i.e., with a prayer to direct the respondents to published the select list pursuant to the interview conducted in the year 1999 and to make appointment therefrom has already been rejected and against whom no appeal has been preferred. Therefore, the petitioners cannot subsequently be allowed to

raise the same issue. Such prayer of the appellants being hit by the principle of *res judicata*, they also cannot be allowed to challenge the education department's requisition to the Director of Employment to sponsor the names for the purpose of fresh selection. It has further been submitted by the learned Advocate General that the Government's policy decision taken by the cabinet on 7.3.2001, on the basis of which the order dated 19.3.2001 was passed deciding to cancel all the proceeding of the selection committee where no result has been declared and also deciding not to make any appointment, having not been challenged by the appellants, in the writ petition, of the Apex Court in *Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others, ; State of Karnataka and Another Vs. All India Manufacturers Organization and Others*, and *Ludhiana Central Co-operative Bank Ltd. Vs. Amrik Singh and Others*,

7. There is no dispute regarding holding of the selection test on 8.11.1999 wherein fourteen thousand candidates appeared, result of which was declared on the next day, i.e., on 9.11.1999, which is humanly not possible. Such action on the part of the authority indicates how genuinely they have conducted the test, assessed the answer script and declared the result of such written test. Moreover, the recommendation was made by the selection committee on the basis of the marks awarded in the viva voce test only, by ignoring the marks obtained in the written test, though, the result was required to be prepared on the basis of the marks obtained in both written and the viva voce test. It, therefore, appears that no proper selection whatsoever was held in the years 1999 and 2000 and, hence, no direction can be issued to the respondent to declare the result of such selection test and to make appointment from the list so prepared. The Apex Court in *Ludhiana Central Cooperative Bank Ltd. (supra)*, has held that when the whole process of selection is perfunctory, the High Court in exercise of the power under Article 226 of the Constitution of India cannot direct the publication of result on the basis of such selection as the selection itself is not legal and valid. The Apex Court also reiterated the position of law that the selected person has no vested right to get appointment to the post in spite of existence of vacancies but at the same time the appointing authority cannot afford to ignore individual claims at its whim or fancy in making appointments on the basis of the select list by adopting pick and choose policy.

8. That apart as discussed above, the present appellant Nos. 1 and 8, who are Present and Treasurer of the All Manipur Graduate (Arts & Science) Teachers DPC Faced Candidates Association, 1999, also filed the earlier writ petition being W.P. (C) No. 402 of 2001 with the same prayer for declaration of the result of 1999-00 selection and to make appointment thereafter. The said writ petition having been dismissed by the learned Single Judge vide judgment and order dated 5.2.2004, they cannot subsequently file another writ petition, with the same prayer, as it is hit by the principle of *res judicata*. The challenge of the appellants in the present writ petition against the communication issued by Education Department to the Director of Employment for sponsoring candidates

for selection being consequential to the order rejecting the prayer in W.P.(C) No. 402 of 2001 to declare the result of 1999 selection and for appointment, the appellants also cannot challenge the same, the main prayer being hit by the principle of res judicata.

9. A Constitutional Bench of the Apex Court in *Deuilal Modi (supra)* has held that there can be no doubt that the fundamental rights guaranteed to a citizens are a significant feature of our Constitution and the High Courts under Article 226 of the Constitution of India are bound to protect those fundamental rights but the question whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Article 226 cannot be answered merely in the light of the significance and importance of the citizens' fundamental rights. It has further been held that general principle underlying the doctrine of res judicata is ultimately based on consideration of public policy and one important consideration of public policy is that the decision pronounced by the courts of competent jurisdiction should be final, unless they are modified and reversed by the appellate authorities and other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to the consideration of fair play and justice. The Apex Court has further held that entertainment of a second writ petition challenging the same order is opposed to considerations of public policy on which res judicata is based and would mean harassment and hardship to the opponent.

10. In *State of Karnataka and Anr. v. All India Manufacturers Organization and Ors. (supra)* the Apex Court has held that the doctrine of res judicata, which is based on larger public interest and is founded on the maxim *nemo debet bis vexari pro una et eadem causa* and also on the public policy that there must be an end to the same litigation equally applies to the public interest litigation, as long as it is shown that previous litigation was in public interest and not by way of private grievance.

11. In view of what has been discussed above, the second writ petition by the present appellants is not maintainable being hit by the principle of res judicata as the prayer in the earlier writ petition being W.P.(C) No. 402 of 2001 has already been rejected by a learned Single Judge against whom no appeal has been preferred. Moreover, as discussed above the appellant having not challenged the policy decision reflected in the order dated 19.3.2001 cannot pray for a direction for declaration of the result of the selection made in the year 1999-00 and to make appointment pursuant to such selection. The second prayer of the appellant to challenge the requisition dated 7.11.2005 being based on their right as claimed by them to get appointment on the basis of the 1999 selection, also cannot be allowed as the said order requesting the Director Employment to sponsor the candidate for selection for appointment of graduate Arts and Science teacher, does not violate any rights of the petitioners.

12. The contention of the learned senior counsel for the appellant that they being qualified in the year 1999, cannot be asked to appear in the selection with fresh

graduates and also fresh graduate, who were not qualified in the year 1999 when the process of selection against those 161 posts was initiated, also cannot be allowed to compete for selection against those 161 posts and, therefore, the respondent authorities may be directed to fill up those 161 posts by making selection from amongst the fourteen thousand candidates, who appeared in the selection test in the year 1999, also cannot be accepted as admittedly the earlier selection process was cancelled by the Government by taking a policy decision, therefore, the posts available at that point of time are also available for selection now. The persons who have in the meantime qualified also have a fundamental right to seek public employment and in the event the recruitment process of 161 posts was restricted to the persons who qualified in the year 1999 only, that will amount to infringement of the fundamental right of the candidates qualified thereafter as it will amount to depriving equal opportunity in public employment. Moreover, the appellants are seeking selection for appointment as graduate teacher of Arts and Science, who if appointed will be responsible for imparting education to the students who are the future hope of this country. Having regard to the nature of duties performed by the graduate teachers the candidates must either keep updating themselves regularly or concentrate on preparatory studies to appear in such selection test. As because the appellants become qualified in the year 1999, therefore, they should not be allowed to sit in the selection in the year 2005 or 2006 along with fresh graduates cannot be, therefore, be accepted.

13. It appears from the judgment passed by the learned Single Judge that a concession has already been given to the appellants regarding the condonation of the age bar to a reasonable extent subject to satisfying other eligibility conditions so that they can apply for regular appointment in pursuance to the subsequent requisition made by the concerned respondents.

14. In view of the aforesaid discussions, we are of the view that the judgment passed by the learned Single Judge does not suffer from any illegality requiring interference in the hands of this court.

15. The appeal is, therefore, dismissed being devoid of any merit. No cost.