
(2009) 04 GAU CK 0035
In the Gauhati High Court

H. Palaw and Others

APPELLANT

Vs

Mara Autonomous District Council and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (2009) 5 GLR 89

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Musahary, J.—Heard Mr. C. Lalramzanuva, learned Counsel for the petitioners as well as Mr. N. Sailo, learned Counsel for respondent Nos. 1 and 2 and Mrs. Dinari T. Azyu, learned GA for respondent No. 3.

2. These writ petitions involve similar facts and disputes and, therefore, heard together and proposed to dispose of by this common judgment and order.

WP(C) 12/2008

3. In this petition, the petitioners numbering six, were appointed as Peon/Sweeper/Primary School Teacher by the Executive Committee of the Mara Autonomous District Council during the period between 15.1.2007 and 22.2.2007 on a monthly fixed salary. The petitioners joined their duties and while discharging their duties, they were terminated from service by an Order dated 24.8.2007 issued by the Local Administration Officer, MADC. According to the petitioners, the termination order was issued due to change of leadership in the District Council which is attributable to No confidence motion to be moved on 28.11.2006 against the ruling MNF led Council. However, the No confidence motion was not moved due to resignation of Council members belonging to MNF and the Chief Executive Member who belonged to Independent Group. After resignation of the CEM aforesaid, a fresh election was held in the month of May 2007 in which an Executive Committee of the MADC was formed by the congress

and MDF as united Legislature party. On assumption of power in the district council, the impugned order was issued terminating the services of the petitioners.

WP(C) 7/2008

4. In this writ petition there are 16 (sixteen) petitioners who were appointed as SI/ASI/Cultural Instructress/Sport Instructor/House Guard/LDC/Sweeper/Head Sirdar/Com. Operator/Account Assistant, etc., by the Mara Autonomous TBUE District Council between 10.1.2007 and 2.2.2007 on a fixed salary. On the basis of the said appointments, the petitioners Superintendent joined their duties and had been discharging their duties till they were terminated by the impugned order dated 31.8.2007 (Annexure-4).

WP(C) 8/2008

5. In this writ petition there are 5 (five) petitioners who were appointed as Middle School Teacher/Chowkidar and Primary School Teacher by the Mara Autonomous District Council between 30.11.2006 and 2.3.2007 on a monthly fixed salary. On the basis of the said appointment letters the petitioners joined their duties and had been discharging their duties till they were terminated by the impugned order dated 3.9.2007 (Annexure-4).

WP(C) 11/2008

6. The petitioners numbering six were appointed as Primary School Teachers by the Mara Autonomous District Council between 25.1.2007 and 15.2.2007 on a monthly fixed salary of Rs. 4,500 only. The petitioners joined their duties and had been working as Primary School Teachers till termination, of their service vide impugned order dated 7.5.2007 (Annexure-3).

7. Mr. C. Lalramzauva, learned Counsel for the petitioners submits that the impugned termination orders have been issued in violation of the principles of natural justice and in violation of the provisions under Articles 14 and 16 read with Article 21 of the Constitution of India inasmuch as no notice was issued prior to termination of their services. Moreover, before termination of the petitioners' services, a cut off date as on 28.11.2006 was fixed by the MADC for removal of the petitioners from service on political consideration which is not permissible under the law. According to Mr. C. Lalramzauva, there are sanctioned posts to retain the petitioners in the respective posts and this Court may, in exercise of power under Article 226 of the Constitution of India, interfere with the illegal orders terminating the petitioners from their services and issue appropriate direction to reinstate them in their respective posts forthwith. However, Mr. C. Lalramzauva, learned Counsel for the petitioners, drawing the attention of this Court to the Minutes of the Meeting of the District Council Affairs Department held on 22.6.2007 submits that the total sanctioned strength of various employees of MADC is 805 and the total number of employees appointed/engaged by the made is 827; which means, there is an excess appointment of

22(twenty two) only.

8. Countering the submission made by the learned Counsel for the petitioners, Mr. N. Sailo learned Counsel for the respondent Nos. 1 and 2 submits that the petitioners were appointed as a stop-gap arrangement against non-existent posts without any budgetary provisions for retaining the posts against which the petitioners were appointed. No post of Peon/Chowkidar/Sweeper/Computer Operator/Primary School Teacher/Middle School Teacher etc. has been created/sanctioned by the Government to retain the petitioners in the post against which they were appointed for a temporary period on stop-gap arrangement. In this regard, the respondent Nos. 1 and 2, in Paragraph 8 of the counter affidavit made specific averments which is quoted below:

8 That with regard to the statements made in paragraph Nos. 8 and 9 of the writ petition, I say that the same speaks for itself and calls for no further clarification. In this regard, the deponent would like to reiterate that the post in which the petitioners were appointed are non-existent post. That no such new posts were created in the Budget of the MADC for 2006-07 to support such appointments. That in this connection, I am constrained to point out that the petitioner along with some one hundred others were appointed by the previous 8th Term Executive Committee hurriedly at the fag end of their term and just before the General Election held on 3.5.2007 in furtherance of their electoral gains. The then Executive Committee threw all recruitment procedures to the wind without bothering to find out whether such posts were backed up with budgetary provisions. I have no hesitation to say that the then Executive Committee had indulged in self-help to recruit the petitioners and some hundred others to suit their election purposes with the result that the new Executive Committee is already burdened with huge financial liabilities. The District Council thus had to spend a large sum from the developmental fund for payment of salaries to the petitioners and some one hundred others from the date of their unauthorized appointment to the date of termination of their appointment.

9. Mr. N. Sailo, learned Counsel for the respondent Nos. 1 and 2 further submits that the appointment of the petitioners are bad inasmuch as there is no budgetary backup/provision for retaining the said posts and the petitioners were appointed without resorting to recruitment process. In support of his submission Mr. N. Sailo refers to Ashwani Kumar and Others Vs. State of Bihar and Others, and Nazira Begum Lashkar and Ors. v. State of Assam and Ors. (2001) 1 SCC 143, wherein it has been held that the posts or vacancies must be backed up by budgetary provisions so as to be included within the permissible infrastructure of the Scheme and any posting which is de hors the budgetary grant and on a non-existing vacancy would be outside the sanctioned scheme and would remain totally unauthorized. It is held further that no right would accrue to the incumbent of such an imaginary or shadow vacancy.

10. The petitioners have not filed any rejoinder to the affidavit-in-opposition filed by the respondent Nos. 1 and 2 and no document has been filed to show that

there are sanctioned post to accommodate the petitioners in the posts held by them earlier. Thus, it has become an admitted position that the posts in question are not sanctioned ones. They are neither sanctioned nor backed by any budgetary provisions.

11. This Court is not concerned with whether the MADC had made any excess appointments as reflected in the aforesaid minutes of the meeting. However, the fact remains that the posts against which the petitioners were appointed, are non-existent posts without any backing of the budgetary provisions and the respondent authorities cannot make any appointment in the manner they have done in the case of the present petitioners. It is an undisputed fact that no recruitment process was initiated by the respondent authorities for appointment of the petitioners and they were appointed dehors the established procedure and that too against non-existent posts. The petitioners, under such circumstances, do not accrue any indefeasible right of appointment on the basis of appointment made by the respondent-authorities on a stopgap arrangement and no relief can be granted to the petitioners for their reinstatement in service.

12. In view of the above, I find these writ petitions are devoid of any merit and the same are liable to be dismissed and, accordingly, the same are dismissed.

13. No order as to costs.

14. However, the respondent authorities are directed to initiate recruitment process under the existing established rules and procedure for recruitment to any sanctioned posts in future, if the same are sought to be filled up.