
(2018) 10 MAN CK 0003
In the Manipur High Court
Case No : Writ Petition (c) No. 130 Of 2018

Heujinggaing Panmei

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 27-10-2018

Acts Referred:

Constitution Of India, 1950 — Article 12, 16, 162

Citation : (2018) 10 MAN CK 0003

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : Tarunkumar, S. Rupachandr

Final Decision : Disposed Off

Judgement

Kh.Nobin Singh, J

[1] Heard Shri Kh. Tarunkumar, learned Advocate appearing for the petitioner and Shri S. Rupachandra, learned Addl. Advocate General appearing for the respondents.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to regularize the service of the petitioner from the date when he completed 10 years of continues service as Casual/ Contract LDC in the Office of the District Officer, Tamenglong.

[3.1] According to petitioner, he was initially appointed as Casual Chowkidar in the Office of the District Officer (TD), Tamenglong vide order dated 31.12.1991 issued by the Director for Development of Tribals and Backward Classes, Manipur. As per the Recruitment Rules for the post of LDC in the Department under the Government of Manipur other than Manipur Secretariat/ Assembly Secretariat/ Governor's Secretariat/ Judicial Department, Manipur was notified on 16.11.1992, the educational qualification prescribed for direct recruitment is Matriculate/ HSLC. The petitioner passed HSLC in the year 1995 and the

Principal, Industrial Training Institute, Government of Manipur issued the certificate certifying that the petitioner had passed Stenography (English) Course held in the month of July 1995.

[3.2] While the petitioner was serving as Casual Chowkidar, the Director for Department of Tribals and Backward Classes, Manipur issued an order dated 30.10.1997 by which the petitioner was appointed as LDC on Casual basis and his engagement on casual basis was extended from time to time till 31.03.2018.

[3.3] In the meantime, the wife of the petitioner submitted a representation on 23.09.2017 to the Hon'ble Minister, Tribal Affairs & Hills, Government of Manipur with a request to regularize the service for the petitioner, as he has rendered continuous service for more than 20 years as LDC on casual/ contract basis. The comments/ views were called for from the Director (TA & Hills), Manipur. Although no action was taken on the said representation, the Department of Tribals and Hills, Government of Manipur used to issue various order granting administrative approval for payment of the wages of the petitioner from time to time.

[3.4] Being aggrieved by the inaction on the part of the respondents, the petitioner filed the instant writ petition on the inter-alia grounds that in view of decision of the Hon'ble Supreme Court rendered in the case of State of Karnataka Vs. Uma Devi, (2006) 4 SCC 1, the petitioner's case ought to have been treated as a case of irregular appointment and ought to have been regularized within a stipulated period and that the issued involved herein is squarely covered by the decision rendered by the Hon'ble Supreme Court in the case of Amarkant Rai Vs. State of Bihar and Others, (2015) 8 SCC 265.

[4] Despite enough opportunities being given by this Court for filing counter by the respondents, no counter was filed on their behalf and since the averments made in the writ petition have not been denied, the same shall be deemed to have been admitted by them in terms of a catena of decisions rendered by the Hon'ble Supreme Court. During the course of hearing, the learned Addl. Advocate General has submitted that the service of petitioner appears to have not been extended from 31-03-2018, to which the learned counsel appearing for the petitioner did produce before this Court a copy of the letter dated 31-07-2018 issued by the Joint Secretary (TA & Hills), Government of Manipur which shows that the petitioner's service has been extended till 31-03-2019.

[5] It has been emphatically submitted by Shri Kh. Tarunkumar, learned counsel appearing for the petitioner that the instant writ petition can be disposed of in terms of the law laid down by the Hon'ble Supreme Court in Amarkant Rai case (supra). The facts of the said case, in brief, are that the appellant was appointed temporarily in Class IV post of Night Guard on daily wages vide order dated 04-06-1983 issued by the Principal, Ramashray Baleshwar College. The University to which the said college is affiliated, vide its letter dated 04-07-1985 took a decision to regularize the persons who worked for more than 240 days.

Moreover, the Addl. Commissioner cum Secretary, Bihar passed a settlement dated 11-07-1989 wherein it was stated that the services of the employees working in educational institutions as per staff pattern, can be regularized. The Principal vide its letter dated 07-10-1993 requested the Registrar of the University to regularize the service of the appellant but it passed an order of termination dated 01-03-2001 which came to be challenged before the High Court by way of a writ petition filed by few similarly situated daily wagers. As per the directions of the High Court, they were allowed to resume their job and the appellant also joined his duties. The Principal vide its letter dated 08-01-2002 and 12-07-2004 recommended for absorption of the appellant against two vacant posts. The appellant was given an opportunity to appear before the three members Committee which rejected his case, as it was not in consonance with the recruitment rules laid down by the Hon'ble Supreme Court in State of Karnataka Vs. Uma Devi (supra). The appellant was informed accordingly vide letter dated 25-11-2007 which was challenged by the appellant by way of a writ petition which was dismissed and an appeal preferred by him was also dismissed. That is how the appeal by way of special leave was preferred before the Hon'ble Supreme Court. While deciding the issue involved therein, the Hon'ble Supreme Court referred to its earlier decision rendered in State of Karnataka Vs. Uma Devi wherein it has been held that the appointments made against temporary or ad-hoc are not to be regularized. But the Hon'ble Supreme Court has observed that an exception was carved out in para 53 thereof wherein it has been held that irregular appointment of duly qualified persons in duly sanctioned posts who have worked for 10 years or more can be considered on merits and steps to be taken as a one-time measure to regularize them. While allowing the appeal, the Hon'ble Supreme Court held:

13. In our view, the exception carved out in para 53 of Umadevi

(3) is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or bore any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularisation viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of clerk was regularised w.e.f. 1987. The appellant although initially working against unsanctioned post, the appellant was working continuously since 3-1-2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits to be paid from 1-1-2010.

14. Considering the facts and circumstances of the case that the appellant has served the University for more than 29 years on the post of night guard and that he has served the College on daily wages, in the interest of justice, the authorities are directed to regularise the services of the appellant retrospectively w.e.f. 3-1-2002 (the date on which he rejoined the post as per the direction of

the Registrar)."

As regards the difference between irregular and illegal appointments, the Hon'ble Supreme Court referred to and relied upon its earlier decision rendered in *State of Karnataka Vs. M.L Kesari* wherein it has been held as under:

"7. It is evident from the above that there is an exception to the general principles against regularisation enunciated in *Umadevi (3)*, if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

[6] Article 16 of the Constitution provides for equal opportunity in matters relating to public employment. Article 16 being a fundamental right, any action taken by the Government or its instrumentalists in violation thereof will be rendered illegal. In *Union Public Service Commission Vs. Girish Jayantilal Vaghela & ors.*, (2006) 2 SCC 482 wherein the Hon'ble Supreme Court held:

"12. Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The words "employment or appointment" cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation, etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible

candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution.

What is a constitutional mandate as enshrined in Article 16 of the Constitution has been vividly and candidly explained by a Constitution Bench of the Hon'ble Supreme Court in *Secretary, State of Karnataka & ors. Vs. Uma Devi & ors.*, (2006) 4 SCC 1 wherein the Hon'ble Supreme Court held:

"34. In *A. Umarani v. Registrar, Coop. Societies* a three-Judge Bench made a survey of the authorities and held that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointments would be illegal and cannot be regularised by the State. The State could not invoke its power under Article 162 of the Constitution to regularise such appointments. This Court also held that regularisation is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution or any body or authority governed by a statutory Act or the rules framed thereunder. Regularisation furthermore cannot give permanence to an employee whose services are ad hoc in nature. It was also held that the fact that some persons had been working for a long time would not mean that they had acquired a right for regularisation.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

[7] From the above decisions, it is absolutely clear that the law relating to public employment as mandated in Article 16 of the Constitution of India has been settled by the Hon'ble Supreme Court. The parties involved herein can have no and will have no any dispute in this regard. As has been held by the Hon'ble Supreme Court, an exception has been carved out in the *Uma Devi's* case itself and in particular, para 53 thereof, by which irregular appointment can be regularized in the manner stated therein. The issue involved in *Amkant Rai* case (*supra*), the decision of which has been relied upon by the learned counsel appearing for the petitioner, has been decided by the Hon'ble Supreme Court on

the ground that it falls in the category of exception. In other words, the finding of the Hon'ble Supreme Court was that the appellant was appointed temporarily in Class IV post of Night Guard on daily wages against the stationed post and he being qualified and having worked for more than 10 years, the appellant was entitled to be regularized and accordingly, the University was directed to regularize him with retrospective effect from the date on which he rejoined the post as per the direction of the Registrar. In the present case, the detailed facts are not placed on record and moreover, since counter affidavit has not been filed on behalf of the respondents, it is not possible for this Court to verify as to whether the petitioner has been appointed in accordance with law. Some questions on facts which have arisen for consideration by this Court, are as to whether the post against which the petitioner was appointed, was a sanctioned post; whether an advertisement was issued by the State Government inviting applications from amongst the eligible candidates; whether the appointment of the petitioner was based on a recruitment process etc. These questions remain unanswered for the reason that the answers thereof are not discernable from the materials on record which are insufficient to arrive at a finding by this court as to whether the petitioner's case falls in the exception or not.

[8] In view of the above, the instant writ petition is disposed of with the direction that the respondents shall verify, from their records, as to whether the answers to the questions referred to in the preceding para, are in the affirmative or not and if yes, the service of the petitioner shall be regularized with effect from the date on which he was appointed as Lower Division Clerk on casual basis.