
(2006) 03 GAU CK 0008
In the Gauhati High Court

Hopichem Sangtam

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 03-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 4 GLR 394 : (2006) GLT 563 Supp

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—As sought for by the parties to the present writ petition, this writ petition is taken up for final disposal.

2. I have heard Mr. C.T. Jamir, learned Counsel for the petitioner and Mrs. Y. Longkumer, learned Govt. Advocate appearing on behalf of the respondents.

3. The petitioner was, vide Notification, dated 5.9.2000, appointed, on contract basis, to the post of Child Development Project Officer (commonly known as "CDPO"), Class-II Gazetted, against leave vacancy of its incumbent, namely, Smt. Chubainla Jamir, CDPO, Akuluto, for a period of 2 years or when Smt. Chubainla rejoins her service. The petitioner, accordingly, joined the post of CDPO at Akuluto. On completion of her studies, Smt. Chubainla Jamir rejoined her post; but, in the meanwhile, the period of contractual appointment of the petitioner was, vide Notification, dated 18.12.2003, extended for a further period of 1(one) year with effect from 6.9.2003 to 5.9.2004 as CDPO, Noksen. While the petitioner was working as CDPO, Noksen, his contractual appointment was, once again, vide Notification, dated 12.10.2004, extended for a further period of 1(one) year with effect from 7.9.2004 to 6.9.2005 or till the date, when recruitment to the post of CDPO is made through the Nagaland Public Service Commission ("NPSC"), whichever is earlier. By the said order, dated 12.10.2004, aforementioned, the petitioner was posted as CDPO, Thonoknyu. Thereafter, the NPSC issued an advertisement, on 7.11.2004, inviting applications for appointment to the post of CDPO. By an addendum issued, on 18.11.2004, the

NPSC made it clear that the advertisement was meant for recruitment to 5(five) posts of CDPO under the Directorate of Social Welfare, Nagaland.

4. In the backdrop of the above facts, the petitioner has come to this Court with the present writ application, made under Article 226 of the Constitution, contending, inter alia, that the Addendum, dated 18.11.2004, aforementioned did not include the post of CDPO, at Thonoknyu, which the petitioner is holding on the basis of his contractual appointment, and that pursuant to the selection that may be made following the advertisement, dated 7.11.2004, as well as the addendum, dated 18.11.2004, the post, which the petitioner is presently occupying, cannot be filled up. The petitioner accordingly prayed for issuance of appropriate writ or writs commanding the respondents to allow the petitioner to continue to remain in the post of CDPO, at Thonoknyu, till the said post is filled up through the process of regular selection.

5. While issuing, notice of motion, on 1.9.2005, in this writ petition, an interim direction was passed to the effect that the petitioner may be allowed to continue in the post, which he was holding, till the same was filled up by regular selection. After passing of the interim order aforementioned, the petitioner's contractual appointment has been extended, vide Notification dated 4.10.2005, for a period of 6(six) months with effect from 7.9.2005 to 6.3.2006 or till the post is filled by direct recruitment through the NPSC, whichever is earlier.

6. The respondents have submitted their affidavit-in-opposition, wherein they have stated to the effect, inter alia, that the NPSC had published the advertisement for filling up of 5(five) posts of CDPO and the 5 posts of CDPO Would not necessarily mean that the post of CDPO, Thonoknyu, was not included therein. It is also contended by the respondents that, since 5 posts of CDPO were advertised and the selection has already been made, the respondents may be allowed to fill up those 5 posts of CDPO and the petitioner, who was a mere contractual appointee, has no right to object to the filling up of the vacancy in the post of CDPO at Thonoknyu, by regular process of recruitment.

7. While considering the present writ petition, what is of paramount importance to note is that there exists Recruitment Rule, viz., the Nagaland Social Security and Welfare Service (Revised) Rules, 1997, which contains the provisions for appointment to the post of CDPO. These Rules do not conceive of any contractual appointment being made to the post of CDPO. There can, therefore, be no doubt that the appointment of the petitioner is ex facie de hors the Rules. The petitioner, thus, had no legal right to continue to hold the post of CDPO, at Thonoknyu, beyond 6.9.2005.. Despite such a clear position of law, the petitioner has continued, initially, on the strength of the interim direction passed by this Court on 1.9.2005, and, later on, on the basis of the Notification, dated 4.10.2005, whereby the petitioner's contractual appointment stands extended up to 6.3.2006 or till the time the post is filled up by direct recruitment through NPSC, whichever is earlier.

8. In the face of the facts of the present case, and the law relevant thereto, it clearly follows that the petitioner has no legal right to resist selection or appointment to the 5(five) posts of CDPO and these 5 posts would not exclude the post of CDPO, which the petitioner is presently occupying. What is also of immense importance to note is that the Notification, dated 12.10.2004, whereby the petitioner's contractual appointment was extended up to 6.9.2005, reveals that, by the said Notification, the petitioner's contractual appointment stood extended up to 6.9.2005, and after granting him extension, the petitioner was posted at Thonoknyu. It cannot, therefore, be held that the petitioner was appointed as CDPO only for Thonoknyu; rather, the order, dated 12.10.2004, signifies that on extension of his contractual appointment to the post of CDPO for one year with effect from 7.9.2004, the petitioner was posted as CDPO, Thonoknyu. What the NPSC advertised was the post of CDPO and a posting order made in favour of the petitioner does not create a right in favour of the petitioner to challenge the appointment to the post of CDPO irrespective of the fact whether the appointment is in respect of the post of CDPO at Thonoknyu or elsewhere.

9. Because of what have been pointed out above, it is abundantly clear that the petitioner has no legal right to continue, on the basis of his contractual appointment, as CDPO after regular selection for filling up of 5 posts of CDPO has been completed and when the State Government has decided to fill up the 5 posts by making regular appointments. The effect of making of the appointment may result in termination of the petitioner's contractual appointment; but this was one of the conditions stipulated in the Notification, whereby the petitioner was appointed on contractual basis.

10. For what have been discussed and pointed out above, I find absolutely no merit in this writ petition. The writ petition, therefore, fails and the same shall accordingly stand dismissed.

11. Before parting with this writ petition, it is, however, made clear that if and when regular selection process for making direct recruitment to the post of CDPO, on regular basis, is, in future, resorted to, the petitioner, shall, if he is, otherwise, eligible, be entitled to apply for selection and if to make the petitioner eligible to make such an application, the petitioner's bar in age needs to be condoned, the respondents/authorities concerned shall do the needful, in this regard, in accordance with law.

12. With the above observations and directions, this writ petition shall stand disposed of.

13. No order as to the costs.