
(2018) 09 MAN CK 0001
In the Manipur High Court
Case No : Writ Petition (c) No. 599 Of 2016

Irungbam Shyam Singh And Others

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 28-09-2018

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2018) 09 MAN CK 0001

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : L. Raju, Niranjana Sanasam

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J

[1] Heard Shri L. Raju, learned counsel appearing for the petitioners and Shri Niranjana Sanasam, learned Addl. GA for the State respondents.

[2] By this instant writ petition, the petitioners have prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to regularise them to the post of LDCs.

[3.1] Facts and circumstances of the case as narrated in the writ petition, are that the petitioners were initially appointed as LDCs vide order dated 05.11.1999 issued by the Director (RD & RD), Manipur on the recommendation of a screening committee in its meeting held on 31.10.1999. Although the appointment was made on temporary basis/ capacity, it was specifically mentioned in the appointment order that the appointees including the petitioners, should be adjusted against future regular/ substantive vacancies which will arise from time to time in order of serial number as reflected therein and until then, their services should not be disturbed. In view of the said conditions contained in the appointment order dated 05.11.1999, as many as 15 (fifteen) temporary LDCs who were above the petitioners in the recommended

list, were adjusted vide order dated 11.12.2006 issued by the Director (RD & PR), Manipur including 2(two) temporary LDCs, namely T. Noni Devi and K. Sangeeta Devi.

[3.2] In tune with the said conditions of appointment, the Director (RD & PR), Government of Manipur submitted a proposal to the Administrative Department vide its office letter dated 24.06.2008 for adjustment and regularisation of the remaining temporary LDCs including the petitioners. On receipt of the said letter and considering the genuine problems of the petitioners, the Principal Secretary (RD & PR), Government of Manipur prepared a memorandum for cabinet for regularisation/ adjustment of the petitioners to the existing clear vacant posts of LDCs but no decision was taken by the Cabinet to adjust or regularise the petitioners against the existing posts of LDCs. Being aggrieved by the inaction on the part of the respondents, one of the petitioners submitted some representations dated 06.04.2011, 15.9.2011 and 07.06.2012 to ventilate his grievance.

[3.3] The State Government initiated a process of regularisation in respect of ad-hoc employees and contract employees/ Part time Lecturers working in different Departments. But ignoring the genuine grievance of the petitioners, the respondents are trying to appoint 28 (twenty-eight) LDCs now re-designated as Office Assistants-cum-Computer Operators vide Notification dated 04.08.2016 issued by the Director (RD & PR), Manipur and hence, the instant writ petition has been filed by the petitioners.

[4] An affidavit-in-opposition has been filed on behalf of the respondent Nos. 1 & 3 wherein it has been stated that 23 (twenty three) candidates were recommended by the DPC/ Screening Committee in its meeting held on 31-10-1999 and 15 (fifteen) were kept in the panel for appointment as Lower Division Clerks against deputation vacancies. The said 15(fifteen) persons were adjusted against regular vacancies of LDCs vide order dated 11.12.2006 issued by the Director (RD & PR), Manipur. As per the decision of the government vide its letter dated 05-11-1999, the LDCs appointed against deputation vacancies may be adjusted against future regular/ substantive vacancies which will arise from time to time in order of serial number maintained in the proceedings of the screening committee. However, since there is a ban on recruitment for existing vacancies, these adjustments cannot be done at present. It has further been stated that 28 (twenty-eight) new posts of LDCs have been created by the State Government for 28 Block Offices for direct recruitment but not for adjustment of LDCs appointed against deputation vacancies vide Government letter dated 04.08.2016.

[5] During the pendency of the instant writ petition, an application being M.C No.182 of 2017 was filed by the State of Government praying for withdrawal of the said affidavit in opposition on the ground that the stand taken by it is contrary to the stand taken by it in some other proceedings to the effect that the petitioners therein were not entitled to claim regularisation, as their services

were to be terminated as and when deputationists returned to their original posts. This ground was rejected by this court for the reason that in the appointment order dated 05-11-1999, it is specifically stipulated that the employees appointed against the deputation vacancies ought to be adjusted against future/ substantive vacancies which will arise from time to time and 15 persons have been undisputedly adjusted against the regular vacancies vide order dated 11-12-2006 issued by the Director (RD & PR), Manipur and therefore, there was no reason to deny such benefit to the petitioners, otherwise it would be violative of Article 14 of the Constitution of India. The said application was accordingly rejected by this court.

[6] When the matter was taken for consideration, Shri L. Raju, the learned counsel appearing for the petitioners has submitted that the instant writ petition can be disposed of in terms of various decisions rendered by this court and other courts. His contention has some force and merit.

[7] It is not in dispute that the petitioners were appointed as LDCs against the deputation vacancies vide order dated 05-11-1999 issued by the Director (RD & PR), Manipur with the conditions that they would be adjusted against future regular / substantive vacancies and until then, their services should not be disturbed, the relevant portion of which is as under:

"Further, it is ordered that keeping in view the instructions contained in the Guide lines on DRDA-Administration issued by the Govt. of India, Ministry of Rural Development and its staffing pattern of DRDA therein, whenever any official(s) on deputation is/are repatriated to the parents Department against original post(s), other(s) holding the post of LDCs shall be sent to DRDA on deputation. These employees appointed on deputation vacancies shall be adjusted against future regular/substantive vacancies which will arise from time to time in order of serial number of their appointment orders. Until then their services shall not be disturbed."

Acting upon and in terms of the said conditions contained in the said order dated 05-11-1999, 15 persons who are the senior most in the / recommended/ select list, were adjusted against the regular vacancies vide order dated 11-12-2006 issued by the Director (RD & PR), Manipur and that too, with the approval of the Government vide its letters dated 05- 11-1999 and 08-12-2006. In the meantime, in a writ petition being WP(C) No. 442 of 2000 filed by some of the PAs and LDCs, the Hon'ble Gauhati High Court vide its order dated 22-05-2000 directed that they should not be ousted from their services pending disposal thereof or until further orders and in view thereof, the Director (RD & PR), Manipur addressed a letter dated 24-06-2008 to the Under Secretary (RD & PR), Government of Manipur requesting it to examines their cases. Thereafter, a proposal which was prepared for adjustment of 12 LDCs against the existing vacancies, was placed before the Cabinet for consideration. No approval appears to have been granted by the Cabinet. But by way of a policy decision, the State Government issued a Office Memorandum dated 03- 10-2013 for regularisation

of direct recruit ad-hoc employees and pursuant thereto, the Under Secretary (SCERT), Manipur issued an order dated 31- 12-2013 regularising as many as 18 ad-hoc employees. The grievance of the petitioners is that despite the said policy decision being taken by the State Government, their cases were not considered and on the contrary, the Director (RD & PR), Manipur issued a Notification dated 04-08-2016 inviting applications for fresh appointment to various posts including that of LDCs.

[8] In a writ petition being WP(C) No.611 of 2016 filed by one person who is similarly situated with the petitioners, this court passed a consensus order dated 23-09-2016 disposing of it and the same is as under:

"Shri Kh. Tarunkumar, the learned counsel appearing for the petitioner and Shri K. Rabei, the learned counsel appearing for the State respondents fairly submit that the instant writ petition can be disposed of with the direction that the respondents shall issue an appropriate order adjusting the petitioner against the regular and vacant posts available as on date within a period of two months from today."

A review petition came to be filed against the said order dated 23-09-2016 which was disposed of on the basis of the letter dated 24-10- 2016 issued by the Under Secretary (RD & PR), Government of Manipur.

The said letter dated 24-10-2016 is reproduced herein below:

"No.12/11/2016-RD PR (P)

GOVERNMENT OF MANIPUR

SECRETARIAT: RURAL DEVELOPMENT & PANCHAYATI RAJ DEPARTMENT

.....

Imphal, the 24th October, 2016

To

The Director (RD&PR),

Manipur.

Subject: Proposal for filling up of 92(ninety-two) different Category vacancies of the existing sanctioned posts in RD & PR Department by direct recruitment.

Sir,

With reference to your letter No.1/113/77-RD/XV/2016 dated 04/10/2016, on the above subject, I am directed to state that the State Cabinet in its meeting held on 13/10/2016 has approved the following:

(i) Filling up of 92 (ninety-two) different category vacancies out of the existing sanctioned posts (21 Progress Assistants, 16 LDCs, 6 Road Muhorri, 7 Drivers

and 42 Grade-IVs in RD & PR Department by direct recruitment.

(ii) Reservation/ Adjustment for 3(three) posts of PA for the petitioners namely, Shri Soraisham Robin Singh, Yambem Shyam Chandra Singh and Smt. Mayanglambam Kheroda Devi from these 21 (twenty-one) new recruitment for PA as directed by the Hon'ble

High Court. The Administrative Department may accordingly ensure compliance in consultation with Law Deptt;

(iii) The recruitment for these 92(ninety-two) different category vacancies may be clubbed together with the ongoing recruitment of 224 (two hundred twenty-four) posts for 28 newly created Block Offices for cost effectiveness of the recruitment process for which more than 15000 candidates have applied.

You are, therefore, requested to take up appropriate necessary action in compliance of the said Cabinet decisions indicated above.

Yours faithfully

Sd/-

(Valentina Arambam)

Deputy Secretary (RD&PR),

Government of Manipur."

Being aggrieved by it, the State Government preferred an appeal being WA No.35 of 2017 which was not interfered by this court vide its order dated 21-2-2018 on the ground that the learned Single Judge did dispose of the review petition on the basis of the said letter dated 24-10- 2016 without passing any order. It may be noted that in the meantime, some more LDCs had approached this court by way of a writ petition being WP(C) No.986 of 2008 which was disposed by this court vide its order dated 20-10-2016, the operative portions of which are as under:

"8. In the present case, it is evident that the authorities have adjusted as many as 15 LDCs who were appointed along with the petitioners against regular vacancies. Though the respondents have contended that the said adjustment was done as one time measure and at present, there are no regular vacancies, this Court is of the view that similar benefits may be extended considering the fact that the petitioners have been serving since 1999 and that they have also been recommended by the Screening Committee, provided regular vacancies are available.

9. After hearing both the parties and on perusal of the records, this Court is of the view that the petitioners would be entitled to the similar benefits of adjustment against regular vacancies as had been done in case of 15 other LDCs if regular vacancies of the posts of LDCs exist as on today. This writ petition is accordingly disposed of with a direction to the respondents to consider

adjustment of the petitioners against existing regular vacancies of LDCs, if available which exercises will be undertaken within a period of 6(six) months from today."

[9] From what has been stated above, it is absolutely clear that it is the State Government which has appointed the petitioners with certain conditions as aforesaid and it is the State Government which has acted upon the said conditions by issuing an order dated 11-12-2006 adjusting 15 LDCs against the regular vacancies who were appointed along with the petitioners. The fact that the said conditions have been incorporated in the appointment order, cannot be said to be attributable to the petitioners. The approval thereof was consciously granted by the State Government. This court has already held in the above case that persons who are similarly situated with the petitioners should be adjusted as had been done in the case of 15 other LDCs and this order appears to have not been challenged by anyone before the appellate forum and therefore, I am bound by it. On top of that, the State Government being an institution, ought to act fairly and reasonably. It may further be noted that it will not make any difference to the State Government whether the petitioners are adjusted against the regular vacancies in terms of the conditions stipulated in their order of appointment or some other persons are appointed by way of direct recruitment against the regular vacancies and all that the State Government needs, is that it must have sufficient staff to man the department. Equal treatment cannot be denied to the petitioners; to do so by the State Government is violative of Article 14 of the Constitution of India and therefore, the stand of the State Government that there is a ban on direct recruitment, is not sustainable in law in the facts and circumstances of the present case.

[10] In view of the above and for the reasons stated hereinabove, the instant writ petition is allowed with the direction that the petitioners shall be adjusted and regularised against the existing regular vacancies of LDCs within a period of three months from the date of receipt of a copy of this judgment and order. There shall be no order as to costs.