
(2019) 03 MAN CK 0012
In the Manipur High Court
Case No : Writ Petition (c) No. 920 Of 2014

K. Sakathan

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 04-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2019) 03 MAN CK 0012

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : A. Mohendro, K. Jagat, R.K. Deepak

Final Decision : Disposed Of

Judgement

Kh. Nobin Singh, J

[1] Heard Shri A. Mohendro, learned Advocate appearing for the petitioner; Shri K. Jagat, learned Government Advocate appearing for the State Government and Shri R.K. Deepak, learned Advocate appearing for the respondent No.2, the Chief Engineer (PHED).

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of mandamus to direct the respondents to convert the petitioner from Muster Roll to Work-charged establishment with effect from 11-01-1999.

[3.1] Facts and circumstances as narrated in the writ petition, are that the petitioner is a resident of Sihai Khullen Village, Ukhrul District belonging to the schedule tribe community. When a new Water Supply Scheme was installed at Sihai Village, Ukhrul, the petitioner was appointed/ engaged as a line-man on Muster Roll basis vide order dated 15.1.1992 issued by the Executive Engineer, Ukhrul Water Supply Division, Manipur. While the petitioner was serving in that capacity, the Chief Engineer (Rural), PHED, Manipur, pursuant to a letter dated 11-12-1998 of the State Government, issued an office order dated 11.01.1999 converting 888 Muster Roll employees, serving in all the Engineering

Departments as on 31-12-1995, to Work-charged establishment through a Screening Committee.

[3.2] At the time when the said Muster Roll employees were converted into Work-charged establishment, the petitioner being posted at a far flung area didn't have the knowledge of such conversion and thus, unfortunately his name was left out from conversion. Having no alternative, he submitted a representation dated 13.06.2003 to the then Hon'ble Minister, PHED to consider his case for conversion from the date on which their colleagues having been converted into Work-charged establishment. On receipt of the said representation, the concerned Executive Engineer (PHED) wrote a letter dated 23.09.2003 to the Chief Engineer (PHED) requesting him to take necessary action for conversion who, in turn, informed the Secretary (PHED), Government of Manipur vide its letter dated 10-02-2004 that when the Muster Roll employees were converted into Work-charged establishment, the petitioner's name was left out. In continuation of its earlier letter and after about five years, the Chief Engineer (PHED) wrote another letter dated 05-02-2009 to the Principal Secretary (PHED), Government of Manipur requesting him to examine and dispose of the matter relating to the cases of left out Muster Roll employees.

[3.3] In spite of the letter dated 05.02.2009 being addressed to the Principal Secretary (PHED), the respondents failed to consider the case of the petitioner for conversion from Muster Roll to Work-charged establishment. Being aggrieved by the inaction on the part of the respondents, the petitioner approached this Court by way of a writ petition being WP(C) No.123 of 2011 which was disposed of by this Court on 10-05-2013 with the direction that the case of the petitioner be considered along with other eligible employees for conversion to work-charged establishment. Despite the said order being passed by this Court, the respondents failed to consider the petitioner's case which compelled him to approach this court again by way of this writ petition.

[4] Two affidavits-in-opposition have been filed by the same person on behalf of the respondent No.1 & 2 wherein the averments made in the writ petition have been denied and in addition thereto, it has been stated therein that the conversion of the 888 Muster Roll employees into Work-charged establishment was done in terms of and in compliance with the order passed by the Hon'ble Gauhati High Court in WP(C) No.277 of 2003. As per the instructions of the State Government vide order dated 16-04-1997, the conversion of casual and Muster Roll workers into Work-charged establishment was a onetime measure and the opinion sought for from the Department of Finance and Personnel was not in support of the proposal in view of the Government Order dated 26-02-2002 and accordingly, the claim of the petitioner was turn down vide order dated 21-09-2012 issued by the Principal Secretary (PHED), Government of Manipur.

[5] It is not in dispute that the petitioner was engaged as Muster Roll employee vide order dated 15-01-1992 issued by the Executive Engineer and when the Muster Roll employees were considered for being converted into Work-charged

establishment vide order dated 11-01-1999, the petitioner's name was left out as is evident from the letters dated 10-02-2004 and 05-02-2009 of the Chief Engineer (PHED) addressed to the Secretary (PHED) and the Principal Secretary (PHED), Government of Manipur. This fact was admitted by the State Government in its affidavit filed in WP(C) No.123 of 2011 and its stand taken therein was recorded in the order dated 11-05-2013 passed by this court to the effect that the case of the petitioner along with other 163 employees was left out from conversion and that the matter was under active consideration for conversion to Work-charged establishment along with other similarly situated employees. This court, after taking into account the stand of the State Government, disposed of the writ petition being WP(C) No.123 of 2011 with the direction that the State respondents should consider the case of the petitioner along with other eligible employees for conversion to Work-charged establishment as expeditiously as possible, preferably within a period of six months therefrom. A liberty was also given to the State respondents to approach this court, if the extension of time was required in case of any genuine difficulty on their part.

[6] The petitioner appears to have satisfied with the order dated 11-05-2013 by this Court and accordingly, no appeal was preferred against it with the result that the order dated 11-05-2013 had attained finality. On a careful perusal of the order dated 11-05-2013 passed by this court, it is seen that the only direction given by this court was to direct the State respondents to consider the case of the petitioner along with other eligible employees and there was no specific direction that the petitioner be converted into Work-charged establishment. Therefore, this Court, in the present case, cannot issue any direction beyond what had been directed earlier by this court for the simple reason that it had already attained finality and moreover, this court cannot sit or is not sitting in appeal against the order dated 11-05-2013. In other words, this court cannot issue a writ of mandamus directing the respondents to convert the petitioner directly to Work-charged establishment. It is for the respondents to consider the petitioner's case and issue appropriate order. Such a consideration is not a mere formality and is to be done objectively in terms of this court's order. What was the prayer in the writ petition being WP(C) No.123 of 2011 is not known to this court, as a copy thereof has not been filed along with the present writ petition. If the prayer in the said writ petition and the present writ petition remains the same, the present writ petition will be rendered unsustainable and not maintainable in view of the principles of constructive res-judicata.

[7] Be that as it may, the short issue that arises for consideration by this court is as to whether the petitioner's case has been considered by the State respondents in compliance with the earlier order dated 11-05-2013 passed by this court. The stand of the respondents as indicated in their affidavit, is that the case of the petitioner was turned down vide order dated 21-09-2012. On perusal of the order dated 21-09-2012, the same appears to have been issued in the context of Shri M. Shyamsunder Singh in whose writ petition being WP(C) No.277 of 2003,

the Gauhati High Court, Imphal Bench had directed the respondents therein to consider his case. While considering his case, it is not clear as to whether the case of the petitioner has also been considered because the factum of consideration of the case of the petitioner is nowhere referred to in the Government order dated 21-09-2012. It is no doubt true that the cases of the Muster Roll employees in general appear to have been placed before the Cabinet for consideration but were referred to the Department of Finance and Personnel which did not support the proposal in view of the Government order dated 26-02-2002. It may be noted that the case of the petitioner was/ is to be considered in the light of the order dated 10-05-2013 passed by this court keeping in mind the fact that his name was left out when 888 Muster Roll employees were converted into Work-charged establishment which remains undisputed by the respondents. The petitioner being a poor fellow and being posted at a far flung area, did not have the knowledge about it. It is really due to the mistake committed by the respondents which cannot be attributed to him. It is well settled principle of law that the Government cannot take the advantage of its own mistake and the mistake committed by the respondents herein has put him in disadvantaged and discriminated being violative of the provisions of Article 14 of the Constitution of India. For no fault of his, the petitioner is going to lose the benefit of getting himself converted into Work-charged establishment for all the time to come, although the similarly situated Muster Roll employees had enjoyed it which is unfortunate. The State Government appears to have not taken any action against the officials who are responsible for such a mistake and therefore, it cannot be said to have absolved from its responsibility. In view of the above, this court is of the view that the State respondents are duty-bound to consider the case of the petitioner as directed by this Court on 10-05-2013.

[8] For the reasons stated hereinabove, the instant writ petition is disposed with the direction that the case of the petitioner shall be considered for conversion from Muster Roll to Work-charged establishment by the respondents as directed by this Court on 10-05-2013 within a period of two months from today and issue a speaking order in respect thereof with a copy thereof being served upon him.