
(2009) 01 GAU CK 0062
In the Gauhati High Court
Case No : WA No. 49 of 2008

Kh. Tomchou Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Constitution of India, 1950 — Article 309, 320

Government of Manipur (Superintendent) Recruitment Rules, 1981 — Rule 7

Citation : (2010) 3 GLR 119 : (2009) 2 GLT 731

Hon'ble Judges : T. Nandakumar Singh, J; Mutum B.K. Singh, J

Bench : Division Bench

Advocate : Kh. Chonjohn, for the Appellant; R.S. Reisang, for the Respondent

Final Decision : Allowed

Judgement

T. Nandkumaer Singh, J.—The unsuccessful writ petitioner filed the present writ appeal challenging the judgment and order of the learned Single Judge dated 22.2.2008 dismissing the writ petition, being WP(C) No. 476 of 2002. wherein the appellant/writ petitioner sought for issuance of a writ of certiorari for quashing the proceedings of the DPC meeting held on 5.6.2000 rejecting the case of the appellant/writ petitioner for regular appointment to the post of office Superintendent in the office of the Controller of Technical Education, Education Department, Government of Manipur which he held for 14 years and 9 months on ad hoc/ officiating basis till his retirement on superannuation from service as Superintendent w.e.f. 25.2.1999 and the letter dated 24.4.2002 issued by the Dy. Secretary (Hr. & Technical Edn.) Government of Manipur and also for a direction to the respondents to regularize the service of the appellant/writ petitioner to the post of office Superintendent in the office of the Controller of Technical Education, Government of Manipur w.e.f. 1.3.1985 by treating the service of the appellant/writ petitioner as absorbed in the office of the Controller of Technical Education and thereby granting all the consequential benefits including the enhanced pay scale and enhanced pensionary benefits w.e.f.

1.3.1985.

2. Heard Mr. Kh. Chonjohn, learned Counsel appearing for the appellant/writ petitioner and Mr. R.S. Reisang, learned G.A. appealing for the respondents.

3. A short factual matrix, which would suffice for deciding the present appeal, is recapitulated: The appellant/writ petitioner joined service as Lower Division Clerk (L.D.C.) in the Department of Education in the year 1960 and promoted to the post of Upper Division Clerk (U.D.C.) in 1972; and he passed Accounts examination under order No. 8/1/74-HF dated 8.10.1975 of the Finance Department, Manipur. Thereafter, he was promoted to the post of Accountant in the office of the Directorate of Education(s) Manipur on ad hoc basis on 31.3.1991. Subsequently, his ad hoc service as Accountant, on the recommendation of the duly constituted DPC, was regularized w.e.f. 31.1.1991 vide Government order No. 2/20/66-EI(1) dated 12.10.1992.

4. A post of Accountant became available in the office of the Government Polytechnic, Imphal in 1984 and as there was no eligible person in the office of the Government Polytechnic as well as in the office of the Controller of Technical Education for appointment to that post of the Accountant at that time the appellant/writ petitioner, with his consent and on the request of the Government polytechnic, was deputed to the post of Government polytechnic vide order No. 2/20/66-ED(ii) dated 16.6.1984 issued by the Director of Education(s). Government of Manipur. The tripartite consent of the lending authority, i.e., the Directorate of Education(s), the appellant/writ petitioner and borrowing Department, i.e., Controller of Technical Education, which was essential for sending the appellant/writ petitioner on deputation to the borrowing department, i.e., to the office of the Controller of Technical Department, Government of Manipur, was fulfilled at the time of sending the appellant/writ petitioner on deputation as Accountant in the office of the Principal, Government Polytechnic which is under the control of the Controller of Technical Education for a period of 12 months w.e.f. the date of his joining duty. While the petitioner was on deputation as Accountant in the office of the Principal, Government Polytechnic, he was promoted to the post of office Superintendent in the office of the Controller of Technical Education in the scale of Rs. 762-1540 p.m. with allowances as admissible under the rules on ad hoc basis for a period of 6 months or till the post is filled up on regular basis whichever is earlier vide order of the Government of Manipur being No. 3/77/76-S/SC(Tech)(Pt.) Imphal the 18th February, 1985. Again the requirement of tripartite consent of the lending department, appellant/writ petitioner and the borrowing department was also fulfilled at the time of promoting the appellant/writ petitioner to the post of office Superintendent in the office of the Controller of Technical Education by the said order of the Government of Manipur dated 18.2.1985.

5. Later on by the order of the Government of Manipur No. 3/7/76-S/SC(Tech(Pt.)) dated 26.4.1986 the ad hoc appointment of the appellant/ writ petitioner to the post of office Superintendent in the office of the Controller of

Technical Education, Manipur was treated as officiating appointment w.e.f. 1.3.1985 and the appellant/writ petitioner also enjoyed the pay scale for the post of office Superintendent in the office of the Controller of Technical Education from 1.3.1985 (date of joining as office Superintendent up to 31.3.1992) till he had to draw only the substantive pay scale of Accountant, i.e., from 1.4.1992 even though the appellant/writ petitioner had served as office Superintendent up to the date of his superannuation w.e.f. 28.2.1999. As such the appellant/ writ petitioner had served a considerable length of time, i.e., for 14 years and 9 months as office superintendent of the office of the Controller of Technical Education without any break till his retirement on superannuation as office Superintendent.

6. The Governor of Manipur also makes rules called, "Department/offices under the Government of Manipur (Superintendent) Recruitment Rules, 1981" in exercise of powers conferred by the proviso to Article 309 of the Constitution of India vide notification No. 1/60/80(RR)/DP dated Imphal the 18th December, 1991. As per the said Recruitment Rules for the post of office Superintendent, it is cent percent promotional post and the Superintendent (or by whatever designation it may be called) in the scale of Rs. 470-750 with 3 years service in the grade or Head clerk/Head Assistant/Office Superintendent/Accountant (or by whichever designation it may be called) in the scale of Rs. 405-675 with 5 years regular service are eligible for promotion. The appellant/ writ petitioner was admittedly eligible for appointment by promotion to the post of office Superintendent in the office of the Controller of Technical Education.

7. The Controller of Technical Education, Manipur under his letter No. 4/20/84-CTE/2661 Imphal the 14.11.1984 requested the Commissioner (Education) Government of Manipur to fill up the post of office Superintendent in the office of the Controller of Technical Education, Manipur on regular basis, and it was also mentioned in that letter that the appellant/writ petitioner was eligible for appointment by promotion as office superintendent. But due to administrative lapses on the part of the Education Department, Government of Manipur, prompt action was not taken for filling up the post of office superintendent in the office of the Controller of Technical Education and as a consequence thereof, the appellant/ writ petitioner had continued to serve as office superintendent in the office of the Controller of Technical Education on ad hoc/officiating basis till his retirement on superannuation.

8. The parent department/parent office of the appellant/writ petitioner had already given no objection to the regular appointment of the appellant/writ petitioner as office Superintendent in the office of the Controller of Technical Education on a number of time, one of which is the letter of the Directorate of Education(s) being No. 2/25/67-ED(2) Imphal the 25.11.1986 to the Commissioner of Education(s) Government of Manipur that the Directorate of Education(s) had no objection to the regular appointment of the appellant/writ petitioner as Superintendent in the office of the Controller of Technical Education,

Manipur in response to the letter of the Commissioner of Education dated 17.11.1986. The said letter of the Directorate of Education(s), Manipur dated 25.11.1986 is quoted hereunder:

GOVERNMENT OF MANIPUR OFFICE OF THE DIRECTOR OF EDUCATION (S) No. 2/25/67-ED(H) Imphal, the 25th November, 1996

To The Commissioner (Education) Government of Manipur.

Subject: Regularisation of Office Superintendent.

Sir, I am to refer to your letter No. 3/7/76 S/Sc(Tech) pt. dated 17.11.1986 on the above subject and to say that this office has no objection to the regular appointment of Shri Kh. Tomchou Singh as Superintendent in the office of the Controller of Technical Education, Manipur.

Yours faithfully,

Sd/- (Th. Bira Singh) Director of Education, Government of Manipur

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9. The Controller of Technical Education, as borrowing department, had requested the Directorate of Education to give consent, i.e., no objection to the appointment of the appellant/writ petitioner to the post of office Superintendent in the office of the Controller of Technical Education and the parent department, i.e., Directorate of Education(s), who had given consent to the appointment of the appellant/writ petitioner to the post of office Superintendent in the office of the Technical Education, Government of Manipur on officiating/ad hoc basis and accordingly the said appointment order for appointing the appellant/writ petitioner to the post of office superintendent in the office of the Controller of Technical Education on ad hoc/officiating was issued.

10. The Government of Manipur also took the policy decision for regularization of the ad hoc appointment both direct recruit as well as promotion in respect of all the Class-I, II, III and IV ad hoc employees, both for direct and promotion quota in respect of ad hoc employee, who held the post on ad hoc/officiating basis for the last 5 years or more as on 1.8.1992 vide Office Memorandum No. 12/13/92-AO/DP(Pt.) Imphal dated 9.10.1992. The said office memorandum dated 9.10.1992 was also followed by the notification No. 12/13/92-AO(DP)Pt.(a) Imphal 9.10.1992 for amendment of the Manipur Public Service Commission (Exemption from Consultation) Regulation, 1972 in exercise of the powers conferred by proviso to Clause (iii) of Article 320 of Constitution of India to the effect that, it shall not be necessary to consult the Commission in regard to regularization of ad hoc/officiating Class-I and Class-II employees, both direct recruit as well as promotion quota against those posts held on ad hoc/officiating basis for more than 5 years as on 1.8.1992. Had there been no inaction on the part of the State in taking up steps in regularizing the ad hoc/officiating appointment of the appellant/writ petitioner as office Superintendent in the office

of the Controller of Technical Education under the said Office Memorandum dated 8.10.1992, the ad hoc/officiating appointment of the petitioner as office superintendent in the office of the Controller of Technical Education would have been regularized before his retirement on superannuation w.e.f. 28.2.1999 as office Superintendent inasmuch as the appellant/writ petitioner had fulfilled the criteria for regularization of the ad hoc or officiating appointment in both direct and promotion quota prescribed in the office Memorandum dated 9.10.1992. Therefore, non-regularization of the officiating/ad hoc appointment of the appellant/writ petitioner as office Superintendent in the office of the Controller of Technical Education before his retirement on superannuation was only because of the inaction on the part of the State Government, i.e., the concerned department.

11. The appellant/writ petitioner also approached the concerned authority by filing a number of representations for regularizing his officiating/ad hoc appointment as office Superintendent in the office of the Controller of Technical Education. As the concerned authority did not pay any heed to the said representation, the writ petitioner had earlier approached this Court by filing writ petition, i.e., WP(C) No. 1522 of 2000, which had been disposed of on the information furnished by the learned Government Advocate that the proposal for regularization of the appellant/writ petitioner as office Superintendent had been sent to the Government by sending official letter on the basis of the comments received from the Controller of Technical Education under whom the petitioner had been serving as office Superintendent vide judgment and order dated 21.12.2001 with the direction that the exercise regarding the regularization of the service of the petitioner as Office Superintendent in the office of the Controller of Technical Education Government of Manipur shall be completed within a period of three months from 21.12.2001.

12. Pursuant to the said direction of this Court in the judgment and order dated 21.12.2001 passed in WP(C) No. 1522/2000, the Controller of Technical Education, Manipur under his letter No. 3/5/02/OTE dated 24.4.2002 intimated the appellant/writ petitioner that the DPC in its meeting held on 5.6.2000 could not consider regular appointment of the appellant/writ petitioner as office Superintendent in the office of the Controller of Technical Education for the service of the appellant/ writ petitioner was not absorbed in any grade in the department of Controller of Technical Education, i.e., office of the Controller of Technical Education. A copy of the proceeding of the said DPC held on 5.6.2000 was also furnished to the appellant/writ petitioner. Hence, this present writ petition, i.e., WP(C) No. 476/2000. The learned Single Judge by the impugned order dated 22.2.2008 had rejected the WP(C) No. 476 of 2000 only on the ground that the service of the appellant/writ petitioner was not absorbed in the office of the Controller of Technical Education, i.e., department of technical education.

13. It is admitted fact that the appellant/writ petitioner was sent on deputation to another department, i.e., office of the Controller of Technical Education with

tripartite consent, i.e., the lending department, viz Directorate of Education(s), the appellant/writ petitioner and the borrowing department, viz., office of the Controller of Technical Education, i.e., department of technical education. Manipur and with no objection from the lending department under the letter mentioned above in response to the letter of the borrowing department to the appointment of the appellant/writ petitioner to the post of office Superintendent in the office of the Controller of Technical Education. Government of Manipur, the appellant/writ petitioner was promoted to the post of office Superintendent in the office of the Controller of Technical Education on ad hoc basis and later on officiating basis and allowed to continue as office Superintendent in the office of the Controller of Technical Education till his retirement on superannuation w.e.f. 28.2.1999.

14. In the affidavit in-opposition filed by the State respondents, it is stated that the said DPC in its meeting held on 5.6.2000 did not consider the case of the petitioner for regular appointment to the post of office Superintendent in the office of the Controller of Technical Education only on the ground that his service was not absorbed in the borrowing department, i.e., office of the controller of technical education.

15. The learned Counsel appearing for the appellant contends that in the given case of the appellant/writ petitioner, the service of the appellant/writ petitioner shall stand absorbed. In support of his contention he relied on the decision of the Division Bench of the Central Administrative Department (CAT) Gauhati (1) in Taranath Deka v. Union of India and Ors. 1986 (4) SLR, (2) the decision of this Court (Division Bench) in Suresh Prasad Singh v. Union of India and Ors. 1996 (3) GLT 198 , (3) the decision of the Apex Court in Umapati Choudhary Vs. State of Bihar and Another, , (4) the decision of the Apex Court in Indu Shekhar Singh and Others Vs. State of U.P. and Others, and (5) the decision of the Apex Court in Uttar Pradesh Gram Panchayat Adhikari Sangh and Others Vs. Daya Ram Saroj and Others, . The petitioner, in Taranath's case (supra), was sent on deputation from the Education Department, Government of Assam to the SSB department on 17.7.1963 and he continued to serve in the SSB on deputation, and he was even promoted to the next higher post after 12 years of service in the year, 1975. He also conveyed his willingness to be absorbed in the SSB. Ultimately he got the impugned Memorandum dated 3.6.1982 for repatriation to the parent department under the State Government in that case, it was held that the appropriate course for the borrowing authority, i.e., SSB, was to send him back on completion of the deputation period; but the appellant was promoted to the next higher grade after twelve years of service in the borrowing department. Learned CAT, in such circumstances, taking into consideration of the fairly long period of service in the borrowing department, in all fairness, held that the appellant should be permanently absorbed in the service and accordingly order of repatriation was set aside.

16. In Suresh Prasad's case (supra) the writ appellant was on deputation in CAT,

Gauhati Bench, and he was even allowed to work on promotion as Dy. Registrar. The Division Bench of this Court in Suresh Prasad's case (supra) held that the appellant shall be deemed to have been absorbed in the service of the CAT, Gauhati Bench, as the appellant had along been taken and treated as absorbed. The appellant/writ petitioner will be entitled to regularization as Dy. Registrar and the respondents were directed to regularize him in service as Dy. Registrar by extending and paying all the consequential benefits accruing to him as per rule. Paras 32, 42 and 43 in Suresh Prasad's case (supra) read as follows:

32. The Supreme Court in *State of Tamil Nadu v. V.S. Balakrishnan* 1994 Suppl. (4) SCC 204, has recognized the theory of deemed option being given by government servants on deputation even in cases those who decline to exercise such option. In the instant case, the petitioner was all along taken and treated as absorbed in the post of a senior Grade Stenographer. It was only at the promotional stage that the confusion was created, that too, not because of the petitioner but solely due to non-submission of his ACRs.

42. Having absorbed the petitioner as Senior Grade Stenographer, his case was considered for promotion as Dy. Registrar, he was in fact appointed as Dy. Registrar, so much so, the condition of possessing a law degree was also relaxed, as contemplated by Rule 7, really speaking it is a matter of regularization, of petitioner's promotion as Deputy Registrar, which could not be done for non-submission of ACRs by the Vice-Chairman, it was that stage the impugned order dated 17.11.1994, Annexure-24, was passed, which is not supportable either on facts or in law.

43. In view of the foregoing discussion the release order dated 17.11.1993, Annexure-24, passed by the Vice-Chairman, respondent No. 4, is liable to be quashed, it is accordingly quashed. Consequently, the petitioner is reinstated in the post from which he was relieved. The petitioner is held to be entitled to regularization, as Deputy Registrar and the respondents are directed to regularize him in service as Deputy Registrar, extending and paying all consequential benefits, accruing to him as per Rules. Considering the time gap, if required, a supernumerary post of Deputy Registrar be created.

17. In *Umapati Choudhury's* case (supra), the appellant was sent on deputation after fulfilling all the conditions for deputation, i.e., consent of the parent department or/lending authority, borrowing authority and the appellant and the appellant had also given his consent for his absorption in the establishment of the borrowing authority. Apex Court held that appellant stood permanently absorbed in the borrowing department and he could not be repatriated thereafter. Para 8 of the SCC in *Umapati's* case (supra) reads as follows:

8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organization (commonly referred to as the parent department or lending authority) to another department or cadre or organization (commonly referred to

as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled. The University, the parent department or lending authority, the Board, the borrowing authority and the appellant, the deputationist, had already given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing authority. There is no material to show that the deputation of the appellant was not in public interest or it was vitiated by favoritism or mala fide. The learned Single Judge in the previous writ petition had neither quashed the deputation order nor issued any direction for its termination. Indeed the learned Single Judge had dismissed the writ petition. No material has been placed before us to show that between November, 1987 when the judgment of the Single Judge was rendered and December, 1991 when the Division Bench disposed of the writ petition filed by the appellant the petitioners of the previous case had raised any grievance or made any complaint regarding non-compliance with the directions made in the judgment of the learned Single Judge. In these circumstances the Division Bench was clearly in error in declining to grant relief to the appellant. Further, the appellant has, in the meantime, retired from service, and therefore, the decision in the case is relevant only for the purpose of calculating his retrial benefits.

18. The Apex Court in Indu Shekhar's case (supra) held that once the deputationist accepted the offer for absorption in the borrowing department without any demur and continued to serve in the borrowing department, he cannot be allowed to turn around and contends that the said absorption was illegal.

19. In the instant case also the borrowing department, i.e., Controller of Technical Education had sought for no objection to the appointment of the appellant/writ petitioner to the post of office Superintendent on ad hoc/officiating basis from the lending department, i.e., Directorate of Education(s), who had given no objection under the said letter and allowed the petitioner to serve as office Superintendent on ad hoc/ officiating basis on a considerable length of time, i.e., 14 years 9 months and in such circumstances, both the lending and the borrowing departments cannot turn around and contend that the service of the petitioner, even to the lower post of Accountant in the office of the Controller of Technical Education, was not absorbed. The Apex Court in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, held that what is given by one hand should be taken away by the other.

20. For the reasons discussed above, we are of the firm view that the DPC held on 5.6.2000 for not regularizing the appointment of the appellant/writ petitioner as office Superintendent in the office of the Controller of Technical Education only

on the ground that the appellant/writ petitioner was not absorbed in the borrowing department, i.e., Controller of Technical Education, is called for interference. Accordingly, the proceeding of the DPC dated 5.6.2000 is set aside. Consequently, the impugned letter dated 24.4.2002 is also set aside. We also further add that it is well settled that action of the State must satisfy the test of the reasonableness and public interest. Ref. Kasturi Lal Lakshmi Reddy, represented by its partner Shri Kasturi Lal, Ward No. 4, Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, . In the instant case, the action of the State respondents in the given case of the appellant/writ petitioner is utterly failed to pass the test of reasonableness and public interest.

21. Over and above, the arm of the High Court is long enough to reach injustice wherever it is found. Ref. Air India Statutory Corporation v. United Labour Union 1997 (2) Supreme 165 . It is also fairly well settled that if there are administrative lapses, the concerned employee should not be victimized. Ref. Shri. Amrik Singh and Others Vs. Union of India (UOI) and Others, . In the present case, because of the inaction/ administrative lapses of the State respondents, the service of the appellant/writ petitioner as office superintendent in the office of the Controller of Technical Education on ad hoc/officiating basis was not regularized under the said policy decision of the Government of Manipur for regularization of the ad hoc/officiating appointment both in direct recruit as well as in promotion under the said Memorandum dated 9.10.1992 and the said notification dated 9.10.1992 and, therefore, the appellant/writ petitioner shall not suffer because of the administrative lapses of the State respondents.

22. For the reasons discussed above, we set aside the impugned judgment and order of the learned Single Judge dated 22.2.2008 passed in WP(C) No. 476 of 2002 and the State respondents are directed to treat the service of the appellant/writ petitioner as office Superintendent in the office of the Controller of Technical Education Manipur, i.e., the borrowing department absorbed w.e.f. 1.3.1985 by extending and paying all the consequential benefits accruing to him including the enhanced pay and the enhanced pensionary benefits w.e.f. 1.3.1985. Further, it is made clear that the State respondents shall complete the whole exercise for compliance with these directions within three months from the date of receipt of certified copy of the judgment and order.

The writ appeal is allowed.