
(2005) 02 GAU CK 0064
In the Gauhati High Court

Konthoujam (N) Nongmaithem (O) Bimola Devi	APPELLANT
Vs	
State of Manipur and Ors.	RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Citation : (2005) 02 GAU CK 0064

Hon'ble Judges : T.Nanda Kumar Singh, J

Bench : Single Bench

Advocate : N.Surendrajit Singh, Ch.Bidyamani Devi, Advocates appearing for Parties

Judgement

1. Heard Mr.N.Surendrajit, learned counsel for the petitioner and Ms.Ch.Bidyamani Devi, learned GA appearing for the respondents.

2. The following short fact in thumbnail will be sufficient for deciding the point in controversy between the parties:

The petitioners (16 in numbers) were appointed as casual/musterroll employees in the department of Command Area Development Authority (for short CADA) in the capacity of Pumpman/Peon/Waterman/Sweeper/Driver etc vide orders at annexuresA/1 to A/8 on 1.10.86, 22.8.90, 31.8.95, 22.10.90, 28.1.91, 3/5/97, 18.10.91, 26.4.90, 4.5.93, 1.9.95, 15.1.91, 5.10.91, 15.6.93, 1.9.96 and 1.4.97 respectively. The Government of Manipur framed a scheme for regularization of service of all the workcharged/casual/musterroll employees of the Engineering Department, i.e. PWD, IFCD, PHED, Minor Irrigation/CADA & Power Department and the said scheme was circulated under the letter of Under Secretary, (DP), Government of Manipur dated 16.4.1997 to 1) The Principal Secretary (Power), Govt. of Manipur, 2) The Commissioner, (Works), Govt. of Manipur, 3) The Commissioner, IFC, Govt. of Manipur, 4) The Commissioner, PHED, Govt. of Manipur and 5) The Secretary (Minor Irrigation)/CADA, Government of Manipur. Under the said scheme the Engineering Department should take up steps in respect of musterroll, casual/workcharged employees in such a manner that:

1. The appointment of the workcharged/casual/muster roll establishment should be banned and their existing numbers frozen except under the modalities which may be laid down more specifically by the Government.

2. Workcharged employees who have served for at least 10(ten) years may be automatically brought to the regular establishment by regularization of their services. However, their services may be regularized with prospective effect.

3. Similarly Muster Roll/Casual employees may also be converted to Workcharged employees on completion of 10 (ten) years service subject to the condition that the conversion will take effect prospectively and in a phased manner, keeping in view the financial position of the State/Departments concerned.

4. The regularization of Workcharged employees as also the conversion of Muster Roll/Casual to Workcharged establishment should be on fulfillment of the following conditions:

(i) A Departmental Screening Committees should be sent up to carry out physical verification and establishment of proper identity of the incumbents.

(ii) Examine testimonials and service records for fulfillment of R/Rs prescribed for the post.

(iii) Obtain duly attested photograph of the incumbents.

5. On regularization of Workcharged staffs, Pension/Family Pension is paid on the basis of length of qualifying service in the regular establishment only under Manipur Civil Services Pension Rules, 1977. Whereas some of the employees (could avail more advantageous benefit of Pension/Family Pension under the existing ?Terminal Benefit Rules? if they wish to continue on the Workcharged establishment.

The position should therefore be made clear to the workcharged employees and clear option obtained in this regard at the time of physical verification by the Screening Committee.

6. On conversion to the regular establishment, the Jobchart and work responsibility of such employees should be as per on the basis of the actual need and recruitment of the concerned Department.?

From bare perusal of the said scheme of Govt. of Manipur dated 16.4.1997 it is clear that appointment on workcharged/casual/musterroll establishments should be banned and musterroll/casual employees shall be converted to workcharged employees on completion of 10 (ten) years service subject to the condition that conversion will take effect prospectively and in a phased manner, keeping in view the financial position of the State/Department concerned.

3. Learned counsel for the petitioners submits the petitioners being the casual/musterroll employees having ten years service or more, their cases are deserved to be considered for regularization under the above said scheme of the

Government of Manipur dated 16.4.1997. Musterroll/casual employees who are similarly situated with the present writ petitioners had approached this Court for protection of their services as well as for regularization of their services under the said scheme dated 16.4.97 by filing a joint writ petition being WP(c) No.1267/99. This Court had disposed of the said WP(c) No.1267/99 finally by order dated 25.9.2000 directing the respondents to consider the case of those writ petitioners by following the procedures prescribed in the scheme dated 16.4.97 within a period of three months from the date, the present ban imposed by the State Government is lifted. It is required to keep in mind that the writ petitioners of the said WP(c) No.1267/99 approached this Court while they were in service in the CADA on musterroll basis. Learned counsel for the petitioner further submits that the All Manipur Command Area Development Authority, musterroll/casual employees Union having its registration No.455/97 through its Secretary had filed a writ petition being WP(c) No.648/2000 against the present respondent and also that the said writ petition was disposed of by this Court by passing a judgment and order dated 9.11.2000 with the direction that "the respondent/authority concerned to afford the benefit of the scheme dated 16.4.1997 to those writ petitioners who are eligible and entitled to the benefit of the said scheme, thus converting their services as workcharged employees by issuing necessary orders. This shall be done within a period of one month from the date of receipt of the judgment & order and further, services of the petitioners shall not be disturbed until their services had been converted to workcharged employees". Further case of the petitioners is that they are similarly situated with the petitioners of the said writ petition, i.e. WP(c) No.1256/99 and WP(c) No.648/2000 and their services as musterroll/casual employees are also to be converted to workcharged employees as they have completed ten years of continuous service as musterroll/casual employees on the date of issuing the said scheme dated 16.4.1997. But surprisingly, the respondents passed impugned order dated 7.1.2003 (AnnexureA/13 to the writ petition) and also for a direction to the State respondents to regularize their services in terms of the scheme dated 16.4.1997.

4. The State respondents had filed their affidavit in opposition stating that the said scheme dated 16.4.1997 was prepared as a one time measure in respect of those musterroll/casual/workcharged employees who were in service at the time of preparing the above said scheme. The respondents also took a specific plea that the Govt. of Manipur had already issued order being No.23/54/89DP(Pt), Imphal the 26.2.2002 for withdrawing the said scheme dated 16.4.1997 and also another scheme under DP's office memorandum No.23/54/89DP(Pt) dated 10.2.1999 regarding the casual employees (appointment and regularization) scheme, 1999. The said order of Govt. of Manipur dated 26.2.2002 is available at AnnexureD/2 to the affidavit in opposition. Further case of the respondents is that the Government of Manipur had already taken a policy decision and the said policy decision had been implemented by issuing order being No.1/15/2000FC, Imphal the 19.3.2000 imposing complete ban on direct recruitment, part time,

contract, adhoc, substitute, casual basis etc and also that all the adhoc appointments since 19.4.1999 whether by way of direct recruitment or promotion shall either be terminated or reverted as the case may be not later than 31.3.2001. Under the said order of the Government of Manipur dated 19.3.2001 it is also clearly mentioned that conversion of casual staff to workcharged staff and workcharged staff to regular establishment notified by the State Government was a onetime measure. However, promotion/appointment under the scheme shall not be extended with immediate effect. Therefore, clear cut case of the State respondents are that the writ petitioners cannot be considered for conversion of their musterroll/casual services to workcharged under the said scheme dated 16.4.1997 inasmuch as: i) the said scheme was only a onetime measure, ii) the said scheme had already been withdrawn and cancelled, iii) there is a policy decision of the Govt. of Manipur for imposing ban on appointment of casual/musterroll employees and iv) the petitioners did not even complete the required length of service for 10 (ten) years except one at the time of framing the said scheme, which is no more in force. The length of service of the petitioners as on 16.4.1997 are mentioned hereunder:

? Name of M.R. Date of Length of service

/casual employees initial enga as on 16th April,
gement. 1997

1.K.Bimola Devi 01.10.1986 10 yrs.

L.D.C.

2. S.Bikram Singh, 22.08.90 6 yrs.

Steno Gr.II.

3. Th.Sunil Singh, 31.8.1995 1 year.

L.D.C.

4. T.Ibemnungshi 22.10.1990 6 yrs.

Devi, LDC.

5. K.Kamalabati 18.1.1991 6 yrs.

Devi, LDC.

6. N.Premkumar 03.05.1997

Singh, LDC.

7. L.Kiranbala Devi 18.10.1991 5 yrs.

Draughtsman Gr.II

8. L.Kwaklei Singh, 26.4.1990 7 yrs

Pump Mech.

9. K.Sujendra Singh, 26.4.1990 7 yrs.

Pump Mech.

10. M.Ganeshwori 04.05.1993 4 yrs.

Devi, Draughtsman

Grade/II.

11. I.Surjit Singh 01.09.1995 1 year.

Peon,

12. Y.Rashi Singh, 05.10.1991 5 yrs.

Peon.

13. O.Ashok Singh, 15.6.1993 4 yrs.

Driver.

14. G.Grajamani Singh, 01.01.1996

15. Y.Rajen Singh 15.1.1991 5 yrs.

16. Ch.Megha Singh 01.04.1997 .?

5. In the above factual background, the case of the petitioners is required to be discussed. In the present case, the writ petitioners are not challenging the said order of the Government of Manipur dated 26.2.2002 (AnnexureD/6 to the affidavit in opposition) for canceling/withdrawing the said scheme of the Government of Manipur dated 16.4.1997 which is only a onetime measure and also the said office memorandum dated 10.2.1999 regarding the casual employees (appointment and regularization) scheme, 1999 as well as the policy decision of the Govt. of Manipur dated 19.3.2001 where it is clearly stated that conversion of casual staff to workcharged staff and workcharged staff to regular establishment notified by the State Government was a onetime measure and while the said orders of the Government of Manipur are in force, services of the petitioners could not be considered for conversion to workcharged employee. The clear distinction between the case of the present petitioners and those of the W.P (c) No.1256/99 and WP(c)No.648/01 are that those writ petitioners of the earlier writ petitions had approached this Court while they were very much in service and also while the said scheme dated 16.4.1997 was in force. In the case of the present writ petition all the petitioners except one were not qualified for conversion of their musterroll/casual service to workcharged at the time of preparation of the scheme dated 16.4.1997 and also the said scheme dated 16.4.1997 had already been withdrawn under the policy decision of the Government of Manipur. As such, case of the said writ petitioners whose services as Musterroll/casual worker had already been discontinued under the order of the

Addl.Chief Engineer (CADA) dated 7.1.2003 and cannot be considered for conversion to workcharged and regularization of their services under the nonexistent scheme. The order of the Addl.Chief Engineer, dated 7.1.2003, which was issued in pursuance of policy decision of the Govt. of Manipur for not extending the terms of any casual/musterroll workers cannot be interfered with for the reasons above.

6. For the reasons discussed above, this writ petition has no merit. Accordingly this writ petition is dismissed. No costs.