
(2015) 09 MAN CK 0010
In the Manipur High Court
Case No : Writ Petition (C) No. 266 of 2012

L. Jayentakumar Singh and Others	Vs	APPELLANT
The State of Manipur and Others		RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 166, 226

Citation : (2015) 09 MAN CK 0010

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : N. Jotendro, for the Appellant; Samarjit Hawaibam, GA, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Kh. Nobin Singh, J—Heard Shri N. Jotendro, learned counsel appearing for the petitioners and Shri Samarjit Hawaibam, learned Govt. Advocate appearing for all the respondents.

2. By the present writ petition, the petitioners have questioned the legality and correctness of the order dated 10-01-2011 issued by the Commissioner (Science & Technology), Government of Manipur.

3.1. According to the petitioners, the petitioner Nos. 1 and 2 were initially appointed as Project Officers vide orders dated 01-10-1993 and 04-10-1996 issued by the Director, Directorate of Science, Technology and Environment, Government of Manipur on contract basis for a period of 6 (six) months under the block level IREP programme of the Department. Similarly, the petitioner Nos. 3 and 4 were initially appointed as LDCs vide order dated 04-10-1996 on contract basis for a period upto 31-03-1997 under the IREP programme of the Department. The petitioner's services were extended, from time to time, till the date of filing the present writ petition, as claimed by the petitioners.

3.2. The Government of Manipur vide its order dated 02-06-1999 transferred all

the Schemes under the Non-Conventional Energy Sources and IREP, implemented by the Department of Science & Technology, Manipur to the newly established "MANIPUR RENEWABLE ENERGY DEVELOPMENT AGENCY (MANIREDA)" along with the existing staff of the National Programme of Biogas Development (NPBD), State Level and Block Level IREP cell as detailed therein with effect from 01-06-1999. The para 2 of the said order provided that the services of the NPED and IREP staff should be protected in the newly established MANIREDA and they should not be put to their disadvantages. Due to non-implementation of the said order dated 02-06-1999, the All Manipur Block Level IREP Association of which petitioners are also the members, filed a writ petition being W.P. (C) No. 1135 of 1999 which was disposed of by the Hon''ble Gauhati High Court, Imphal Bench on 22-01-2001 directing the respondents therein to implement the said Government order dated 02-06-1999 within a period of 6 (six) months from the date of receipt of a copy of the order.

3.3. On 27-10-2006, the Director (Science & Tech.), Government of Manipur addressed a letter to the Commissioner (Science & Tech.) to accord approval to the proposal that the 2 (two) schemes of IREP and National Biogas and Manure Management Project (NBMMP) be placed under the administrative control of Rural Development and Panchayati Raj Department, Government of Manipur with effect from 01-04-2007 or after resolving the pending matters of IREP staff in case of IREP Scheme and also to accord sanction not exceeding the amount of 90 lakhs for releasing it to the Deputy Commissioners of nine districts for implementation of IREP Scheme.

3.4. Since the problems of the petitioners not being attended to by the respondents, they submitted representations dated 04-09-2010 to the Commissioner (Science & Tech.), Government of Manipur for consideration of absorption/regularisation of their services to suitable posts in view of the proposal for transferring the IREP Scheme to the Rural Development Department and also in view of the judgment and order dated 22-01-2001 passed by the Hon''ble Gauhati High Court, Imphal Bench in W.P. (C) No. 1135 of 1999. Thereafter, the petitioner Nos. 1, 2 and 3 filed a writ petition being W.P. (C) No. 719 of 2010 praying for direction to the respondents therein to consider and dispose of the said representations, which was disposed by the Hon''ble Gauhati High Court, Imphal Bench on 11-11-2010 with the direction that the Commissioner (Science & Technology), Government of Manipur shall consider and dispose of the said representations on merit within a period of 3 (three) months from the date of receipt of a copy of the order. In compliance of the said judgment and order dated 11-11-2010, the said representations were considered and disposed of by the State of Manipur holding that there was no scope or fund to absorb or engage the services of the petitioners in MANIREDA. Being aggrieved by the impugned order dated 10-01-2011, the present writ petition has been filed by the petitioners.

4. It is submitted by Shri N. Jotendro, the learned counsel appearing for the

petitioners that the petitioners were appointed as Project Officers and LDCs on contract basis on the recommendation of a Selection Committee. The judgment and order dated 22-01-2001 passed by the Hon''ble Gauhati High Court, Imphal Bench in W.P. (C) No. 1135 of 1999 had attained finality and the respondents ought to comply with the directions contained therein. Since the petitioners have rendered more than 20 (twenty) years of service on contract basis, they are entitled to be absorbed or regularised to any of the posts in the Line Departments. It is further submitted by the learned counsel appearing for the petitioners that the Government of Manipur has issued various orders for regularising the ad-hoc/contract employees, one of which being the order dated 05-01-2011 by which the Govt. of Manipur has appointed as many as 43 (forty-three) contract employees of the Environment and Ecology Wing, Department of Forests and Environment on regular basis and non-appointment of the petitioners on regular basis is violative of the Article 14 of the Constitution of India.

5. Shri. Samarjit Hawaibam, learned Government Advocate appearing for the respondents, relying upon the affidavit-in-opposition filed on behalf of the respondent Nos. 1 and 3 has submitted that the petitioners were appointed on contract basis and their services were continued upto February, 2004 and no further extension of their contract appointment was made thereafter either by the MANIREDA or the Director of Science and Technology, Government of Manipur. The IREP Scheme has been discontinued by the Ministry of New and Renewable Energy, Government of India with effect from 2007 - 2008 vide its letter dated 15-01-2008 and in view thereof, there was no fund or scope for absorbing/regularising the services of the petitioners in MANIREDA.

6. There is no dispute on facts and the question of law involved herein is also no longer re-integra. The law in regard to the absorption/regularisation of contract employees has been settled by the Hon''ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 , the relevant paras of which are reproduced herein below:

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could

not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even

that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution."

7. Since the law having been settled as stated above, the petitioners are not entitled to absorption/regularisation of their contract services. Moreover, the scheme of IREP which was being sponsored by the Union of India and for the implementation of which the petitioners were appointed, has been discontinued with effect from the financial year 2007-2008. The learned counsel appearing for the petitioners has heavily relied upon the judgment and order dated 22-01-2001 passed by the Hon'ble Gauhati High Court, Imphal Bench in W.P. (C) No. 1135 of 1999 to contend that the respondents had been directed to implement the Government order dated 02-06-1999 which provided that the services of the petitioners should be protected and they should not be put to their disadvantages. Since the said judgment and order having attained finality, the respondents ought not to have disturbed the contract services of the petitioners. The learned counsel for the petitioners has placed reliance on the decision of the Hon'ble Supreme Court in the case of State of Bihar and Another Vs. Sunny Prakash and Others, (2013) 2 AD 438 : (2013) 1 JT 608 : (2013) 1 SCALE 451 : (2013) 3 SCC 561 : (2013) 3 SCC 559 : (2013) 2 SCC(L&S) 567 : (2013) 1 SCT 738 : (2013) 2 SLJ 150 : (2013) AIRSCW 766 wherein it has been observed that merely because of the change of elected Government and the decision of the previous Government not expressed in terms of Article 166 of the Constitution, valid decisions cannot be ignored and it is not open to the State to contend that those decisions do not bind them. There is no doubt about the said decision but the same is not applicable to the facts of the present case and the contention of the learned counsel for the petitioners is not acceptable to this court for the reason that the said Government order was issued while the scheme of IREP along with the contract staff including the petitioners were being transferred to MANIREDA. The idea was that the service conditions including the

status, position, salary etc. of the petitioners while in the Directorate of Science & Technology, Government of Manipur should be protected by the MANIREDA. It may be noted that the said scheme of IREP along with contract staff were repatriated from MANIREDA to the Directorate of Science & Technology, Government of Manipur with effect from 03-06-2005 vide Government order dated 03-06-2005. Since the Government order dated 02-06-1999 having been implemented during that period of about 6 years, it has no value now and is rendered redundant. It appears that the Government order dated 03-06-2005 was not challenged by the petitioners. Another submission which the counsel appearing for the petitioners has emphasised is that the State Government has, by way of policy decisions, regularised the ad-hoc/contract services of many employees for which he has relied upon the Government order dated 05-01-2011 by which as many as 43 contract employees were appointed on regular basis in the Environment and Ecology Wing, Department of Forest & Environment and that non-regularisation of the contract services of the petitioners is violative of Article 14 of the Constitution. It is no doubt true that if the petitioners were similarly situated with that of the said 43 contract employees, non-regularisation of the petitioners would be violative of Article 14 of the Constitution. But there is no materials on record to examine whether they were similarly situated or not specially in regard to whether the said 43 employees were, at the time of their initial contract appointment, appointed on contract basis under a centrally sponsored scheme or not and if yes, whether the scheme had been discontinued by the Centre or whether they were appointed on contract basis against the vacant posts etc. In the absence of such information as regards the said issues and circumstances, it is not possible for this court to accept the contention of the learned counsel appearing for the petitioners and to come to the conclusion that there is a violation of Article 14 of the Constitution.

8. To substantiate his contention, the learned Government Advocate appearing for the respondents has relied upon many decisions rendered by the Hon"ble Supreme Court. But since this court is unable to agree with the arguments advanced by the learned counsel appearing for the petitioners, there is no point of referring to those decisions and the decisions in the case of Union of India (UOI) and Another Vs. Kartick Chandra Mondal and Another, AIR 2010 SC 3455 : (2010) 124 FLR 574 : (2010) 1 JT 206 : (2010) 2 LLJ 581 : (2010) 158 PLR 710 : (2010) 1 SCALE 454 : (2010) 2 SCC 422 : (2010) 1 SCC(L&S) 385 : (2010) 2 SCR 1099 : (2010) 2 SLJ 81 : (2010) 1 SLR 554 : (2010) 2 UJ 767 : (2010) AIRSCW 743 : (2010) AIRSCW 5725 : (2010) 6 Supreme 532 : (2010) 1 Supreme 217 , Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., (2007) 112 FLR 474 : (2006) 10 JT 216 : (2006) 12 SCALE 1 : (2007) 1 SCC 408 : (2007) 1 SCC(L&S) 270 : (2006) 9 SCR 73 Supp : (2007) 2 SLJ 467 & Union of India (UOI) and Others Vs. Vartak Labour Union, (2011) 129 FLR 500 : (2011) 3 JT 110 : (2011) 2 LLJ 295 : (2011) LLR 337 : (2011) 3 SCALE 246 : (2011) 4 SCC 200 : (2011) 4 SCR 509 : (2011) 2 UJ 943 : (2011) AIRSCW 1786 : (2011) AIRSCW 2685 : (2011) 2 Supreme 238 ,

relied upon by him, are rendered based on the decision of Uma Devi's case (supra). Moreover, other decisions are not relevant as regards the issues involved in the present case.

9. Having heard the learned counsels appearing for the parties, this court is of the view that the petitioners have no good case. But there is one aspect which requires consideration by this court keeping in mind the peculiar facts and circumstances of the present case and in particular, the subsequent events that have taken place after the impugned order was issued by the Commissioner (Science & Tech.), Government of Manipur. Admittedly the petitioners were appointed on contract basis on the basis of the recommendation of a Selection Committee and have rendered more than 15 years of service. Since they being aged barred, are not eligible for fresh appointment in any Department of the State Government. On the marginal note of the Hon"ble Chief Minister, Manipur in the representation of the IREP staff "please examine and process and put up with detailed report for further necessary action either by absorption or regularisation as a special case without further delay", the Directorate of Science & Technology, Government of Manipur collected information as regards absorption of IREP staff in the neighbouring States and submitted a proposal vide its letter dated 16-12-2013 from which it is evident in respect of other States that either the IREP staff are absorbed in the Department of the State Government or the IREP Scheme is being implemented by the State Government. At this juncture, the decision rendered by the Hon"ble Supreme Court in the case of Union of India (UOI) and Others Vs. Vartak Labour Union, (2011) 129 FLR 500 : (2011) 3 JT 110 : (2011) 2 LLJ 295 : (2011) LLR 337 : (2011) 3 SCALE 246 : (2011) 4 SCC 200 : (2011) 4 SCR 509 : (2011) 2 UJ 943 : (2011) AIRSCW 1786 : (2011) AIRSCW 2685 : (2011) 2 Supreme 238 is relevant to be noted. In fact, the facts of the present case are not exactly the same with that of the above referred case but the circumstances in which the Hon"ble Supreme Court made its observation at para 22 of the judgment and order, are similar to that of the present case. The para 22 of the said case is given below:

"22. Therefore, in the facts and circumstances of the instant case, where members of the respondent union have been employed in terms of the Regulations and have been consistently engaged in service for the past thirty to forty years, of course with short breaks, we feel, the Union of India would consider enacting an appropriate regulation/scheme for absorption and regularisation of the services of the casual workers engaged by the BRO for execution of its on going projects."

It may be noted that the aforesaid observation has been made by the Hon"ble Supreme Court despite the law being laid down by the Hon"ble Supreme Court in Uma Devi's case (supra) as regards the absorption/regularisation of casual workers/contract appointments etc. There are instances of the State of Manipur having taken the policy decisions, from time to time, for regularisation of ad-hoc

employees or for appointment of contract employees on regular basis. Moreover, from the perusal of the Notification dated 31-03-1999 issued by the Secretary (Science & Tech.), Government of Manipur, it is quite clear that the purpose of setting up the MANIREDA is to implement all the renewable energy schemes/ programme in the State as the State Nodal Agency. Therefore, this court is of the view that the respondents being the institutions are expected to act fairly and reasonably and consider the cases of the petitioners for absorption/regularisation in view of the circumstances as aforesaid above.

10. With the above observations, the present writ petition is disposed of with the direction that the respondents shall consider the cases of the petitioners for absorption/regularisation by enacting appropriate regulation/scheme within a period of three months from the date of receipt of a copy of the order & issue an appropriate order, immediately thereafter, in respect thereof.