
(2005) 01 GAU CK 0010
In the Gauhati High Court
Case No : Writ Appeal No. 64 of 1998

L. Maichon Devi and Others	Vs	APPELLANT
State of Manipur and Others		RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

Constitution of India, 1950 — Article 16, 226, 311, 311(2)

Citation : (2005) 1 GLT 370

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

Bench : Division Bench

Advocate : S. Jayanta, for the Appellant; Th. Ibohal Singh, for the Respondent

Final Decision : Dismissed

Judgement

T. Nanda Kumar Singh, J.—This writ appeal is directed against the common judgment and order of the learned Single Judge dated 1.4.1998 passed in (1) C.R. No. 392/95 Ms. L. Maichon Devi and Ors. v. State of Manipur and 3 Ors. (2) CR No. 919/95 Shri S. Maitum Singh and Anr. v. State of Manipur and 3 Ors. and (3) C.R. No. 425/95 Miss Khangembam Subadani Devi and Ors. v. State of Manipur and 2 Ors.

2. Heard Mr. S. Jayanta, learned senior counsel for the Appellants and Mr. Th. Ibohal, learned Government Advocate appearing on behalf on the Respondents.

3. For deciding the present writ appeal, following short fact will suffice:

The Appellants had filed C.R. No. 392/95 for quashing the order of the Director of Education (S), Government of Manipur being No. 2/419, 90-ED. Imphal the 26th March, 1992 for cancelling their substitute appointment only on the ground that it was issued in violation of Article 311(2) of the Constitution of India and Principles of Natural Justice. In their writ petition i.e. C.R. No. 392/95 they further prayed for a direction to the Respondents to regularize their substitute service as assistant teachers. In filing the writ petition, the present Appellants stated that they were appointed on substitute basis in the particular schools

mentioned in the appointment orders against the posts created vide order of the Government of Manipur, being No. 3/157/84-SE(S) Pt. (A) dated 30.5.87 on substitute basis until further orders or till the post is filled up on regular basis whichever is earlier vide different orders issued in the month of December, 1989 and January, 1990. It would be pertinent to mention that the said appointment order of the Appellants i.e. (1) No. 46/13/88-ED(V)(1) Imphal the 1st December, 1989, (2) No. 46/ 13/88-ED(V)(1), Imphal the 1st December, 1989 and (3) No. 46/13/88-ED(V)(I), Imphal, the 2nd January, 1990 were all issued by one Shri Th. Modhu Singh, Additional Director of Education (V), Government of Manipur and in all those appointment orders, particulars of the Government order i.e. No. 3/157/84-SE(S) Pt. A dated 30.5.87 for creating the posts of teachers against which they were appointed on substitute basis are mentioned. The Appellants in their writ petition did not mention anything about the procedures followed by Shri Th. Modhu Singh, Addl. Director of Education (V), Govt. of Manipur in issuing the said orders for appointing them as Asstt. Teachers on substitute basis in the schools mentioned in the appointment orders. The main and only ground taken by the Appellants in their writ petitions for quashing the cancellation/ termination order being No. 2/419/90-ED, Imphal the 26th March, 92 issued by the Director of Education (S), Govt. of Manipur for quashing their substitute appointments were that it was issued in violation of natural justice and their right under Article 311(2) of the Constitution of India. In the termination order dated 26.3.92 it is clearly mentioned that the Appellants were appointed against no posts inasmuch as the posts created under the said order of the Government of Manipur being No. 3/157/84-SE(S). Pt. A dated 30.5.87 were not allotted in the schools in which they were appointed as teachers on substitute basis.

4. The Respondents also filed their affidavit-in-opposition in C.R. No. 392/95 specifically mentioning that the Government of Manipur had in pursuance with the eradication of illiteracy had created 144 posts of Matriculate Teachers (84 posts for school-less village 64 posts for single teacher school) vide order No. 3/157/84-SE (S)(Pt)(A) dated 30.5.87. Those posts were meant for a specific school-less village and single teacher schools. All the posts so created had already been filled up. However, it was discovered that appointment orders in respect of substitute teachers of about 600 persons including the Appellants were issued by the then Addl. Director (Th. Modhu) at his fag end of service against the posts so created by the Government of Manipur under the said order dated 30.5.87 and the said posts were not allocated to the schools in which the said 600 persons were appointed on substitute basis and as such, the then Addl. Director of Education (V), Shri Th. Modhu Singh appointed about 600 persons as Asstt. Teachers on substitute basis against no posts. Those appointments were independently issued without processing through the relevant file by the then Addl. Director of Education (V) Shri Th. Modhu Singh. Accordingly, the impugned termination order were issued for canceling the irregular and illegal orders issued by the then Addl. Director of Education (V), Shri Th. Modhu Singh for appointing the Petitioners on substitute basis. The Appellants did not fill any rejoinder / reply

affidavit denying the said specific pleas of the Respondents in their affidavit-in-opposition that they were appointed against no post and they were appointed de hors the rules.

5. The learned Single Judge dismissed C.R. No. 392/95 by passing impugned judgment and order dated 1.4.98 for the reasons mentioned therein. The learned Single Judge in the impugned judgment and order dated 1.4.98 had clearly made a finding that the cancellation/termination order had been issued after making proper verification and it cannot further be faulted in view of the fact that the Petitioners were appointed to the posts which were not in existence. Hence, the present appeal, against the judgment and order of the learned Single Judge dated 1.4.98 for dismissing C.R. No. 392/95.

6. Keeping in view of the admitted fact that the Appellants were appointed as substitute teachers against no posts without following any procedures or rules, it is required to see whether the Principles of Natural Justice would be an "empty formality/" Useless formality theory" for the purpose of issuing the cancellation/termination order. Doctrine of "useless formality/" useless formality theory" had been discussed by the Apex Court, (3 Judges) in S.L. Kapoor Vs. Jagmohan and Others, and held (page No. 395 of SCC) that "In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It will come from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal." Therefore, the Apex Court in S.L. Kapoor (supra) held that the Court may not issue its writ to compel observance of natural justice, not because it is necessary to observe natural justice but because the Court do not issue futile writs on the admitted or undisputable facts. Only one conclusion is possible.

7. The Apex Court followed the ratio laid down in S.K. Kapoor (supra) in M.C. Mehta Vs. Union of India (UOI) and Others, and discussed the doctrine of "useless formality". The Apex Court in M.C. Mehta (supra) held that if on the admitted or undisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there has been a violation of the principles of natural justice. The observation of the Apex Court in Para-20 and 21 of the M.C. Mehta (supra) i.e. (page 245 of the SCC) is quoted hereunder:

20. It is true that in Ridge v. Baldwin it has been held that breach of the principles of natural justice is in itself sufficient to grant relief and that no further

de facto prejudice need be shown. It is also true that the said principles have been followed by this Court in several cases but we might point out that this Court has not laid down any absolute rule. This is clear from the judgment of Chinnappa Reddy, J. in *S.L. Kapoor v. Jagmohan*. After stating (at SCC P. 395, para 24) that:

Principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed.

And that "non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary", Chinnappa Reddy, J. also laid down an important qualification as follows SCC p. 395, para 24)

As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs.

21. It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of the principles of natural justice.

The Apex Court in *Ashwani Kumar and Others Vs. State of Bihar and Others*, discussed the validity of appointment of large number of persons in excess of sanctioned posts without following any procedure and held that such appointments are void and non-observance of natural justice in canceling such illegal appointment shall not vitiate such cancellation order issued by the Government. Observation of the Apex Court in para-17 of the SCC in *Ashwani Kumar* (supra) is quoted hereunder:

17. So far as the principles of natural justice are concerned it has to be stated at the outset that principles of natural justice cannot be subjected to any straitjacket formula. They will vary from case to case, from circumstance to circumstance and from situation to situation. Here is a case in which 6000 employees were found squatting in the Tuberculosis Scheme controlled and monitored by Dr. Mallick for the entire State of Bihar and there was no budgetary sanction for defraying their expenditure. At least out of the 6000 employees a seen earlier 3750 were totally unauthorized and were squatting against non-existing vacancies. A grave situation had arisen which required immediate action for clearing the stables and for eradicating the evil effects of these vitiated recruitments so that the Tuberculosis Eradication Scheme could be put on a sound footing. When such a grave situation had arisen and when matters had gone up to the High Court wherein the State was directed to appoint a Committee to thoroughly investigate the entire matter, the State of Bihar had to appoint a Committee to scrutinize these appointments and to filter them as directed by the High Court of Patna. For undertaking the said exercise public

notices were issued by the Director-in-Chief, Health Services, Bihar, Patna by communication dated 4.7.1992. The said communication which is found at p. 147 of the Paper Book recites that Dr. Mallick, the then Deputy Director (T.B.) on a large scale against the Class III and Class IV posts in the T.B. Eradication Programme under the Directorate of Health Services without following the procedure for appointment/without publication of the advertisement and by openly violating reservation policy in contravention of Article 16. While distributing such appointment letters, Dr. Mallick in many cases did not even care to see whether even posts were sanctioned or not.

8. This Court (Division Bench) in the case of *State of Assam and Ors. v. Margherita Mahakuma Prathamik Brittidhari Shikshak Santha* reported in 1997 (1) GLT 167 by following the ratio laid down by the Apex Court in *Union Territory of Chandigarh Vs. Dilbagh Singh and others*, held that "if a Court of law comes to the conclusion that there has been no exercise under the statutory rules and in violation of the statutory rules, only for the purpose of making personal gain some orders have been fictitiously issued by the authority as in the present case, the Court is not bound to interfere in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India on the principles of natural justice. The law is well settled that while exercising the power under Article 226 of the Constitution where the Court exercises its extra-ordinary jurisdiction, the Court may not even interfere with a void order. However, in the present case, as we have stated, the facts are very shocking for, against 31 posts 368 appointments are made. The Apex Court again discussed the doctrine of "useless formality" in *Aligarh Muslim University and Others Vs. Mansoor Ali Khan*, and it is held that (in paragraph 25 and 26 of the SCC):

25. The "useless formality" theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in *M.C. Mehta*, referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

26. It will be sufficient, for the purpose of the case of *Mr. Mansoor Ali Khan* to show that this case will fall within the exceptions stated by Chinnappa Reddy, J. in *S.L. Kapoor v. Jagmohan*, namely, that on the admitted or indisputable facts,

only one view is possible. In that event no prejudice can be said to have been caused to Mr. Mansoor Ali Khan though notice has not been issued.

The Apex Court (3 Judges) in the case of R. Vishwanatha Pillai Vs. State of Kerala and Others, had discussed the meaning of "the person holding civil post" within the meaning of Article 311 of the Constitution of India and held, "where the appointment in a service has been acquired by practicing fraud or deceit, such appointment is no appointment in law, in service and in such situation. Article 311 of the Constitution is not at all attracted". Therefore, the Apex Court in R. Vishwanatha Pillai (supra) held that "a person illegally appointed is not a person holding civil post, as such, giving of reasonable opportunity contemplated under Article 311(2) of the Constitution shall not be attracted in canceling the illegal appointment. This Court followed the same principles stated above while deciding the writ petition challenging the cancellation order of irregular appointments made dehors the rules in Govinda Sarmah and Ors. v. State of Assam reported in 2001 (3) GLT 112.

9. The learned senior counsel for the Appellants cited decision of the Apex Court (2 Judges) in Shrawan Kumar Jha and others Vs. State of Bihar and others, in support of his case. We have carefully perused the decision of the Apex Court in Shrawan Kumar Jha (supra). But for the reasons above, as well as law laid down by the Apex Court regarding the principles of natural justice, "doctrine of empty formalities" we are of the considered view that the said decision of the Apex Court in Shrawan Kumar Jha (supra) shall not help his case. Learned senior counsel for the Appellants further cited decisions of the Apex Court in the case of All Manipur Regular Posts Vacancies Substitute Teachers" Association Vs. State of Manipur, in support of his case. From perusal of the said judgment i.e. All Manipur Regular Post Vacancies Substitute Teachers Assn. (supra), it has been seen beyond reasonable doubt that the Apex Court had not laid down any law for regularization of adhoc service but the Apex Court passed judgment and order in the peculiar facts and circumstances mentioned in that case for regularizing the service of substitute teachers.

10. For the reasons above said we are of the considered view that in the admitted facts and circumstances of the case of the present case, natural justice would only be an empty formality in issuing the impugned order for canceling the irregular substitute appointments of the Appellants. Therefore, we are of the affirmed view that the impugned judgment and order of the learned Single Judge is not called for inference. Accordingly writ appeal is dismissed. No costs.