

(2014) 12 MAN CK 0017

In the Manipur High Court

Case No : Writ Petition (Civil) Nos. 597 of 2009 and 320 of 2014

Laikangbam Ingotombi Singh

APPELLANT

Vs

The State of Manipur

RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Citation : (2014) 12 MAN CK 0017

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : N. Jotendro, Advocate for the Appellant; Y. Ashang, Govt. Advocate, Advocate for the Respondent

Judgement

Kh. Nobin Singh, J.—Heard Shri N. Jotendro, learned counsel appearing for the petitioner and Shri Y. Ashang, learned Government Advocate appearing for the respondents.

2. By this petition being W.P. (C) No. 597 of 2009, the petitioner herein has challenged the validity and correctness of the order dated 05-06-2009 by which the appointment of the petitioner as Veterinary Officer was cancelled. The writ petition being WP (C) No. 320 of 2014 is filed by three petitioners including the petitioner in writ petition being W.P. (C) No. 597 of 2009 praying for a direction to the respondents for absorption of the services of the petitioners therein. The issues involved in the said two writ petitions are similar and connected and accordingly, both the writ petitions are disposed of by this common judgment and order.

3. The case of the petitioner is that he was initially appointed as Field Assistant in the Veterinary and Animal Husbandry Services Department, Government of Manipur vide order dated 18-09-1979. While serving as Field Assistant, the petitioner was nominated to undergo the B.V. Sc. and Animal Husbandry Degree Course under the sponsorship of the State Government at Assam Agricultural University, Khanapara, Guwahati. The petitioner completed the said course in the

year 1995 and got himself registered as Veterinary Practitioner under the Regd. No. MSVC 29. On completion of his B.V. Sc. and Animal Husbandry Degree Course under the sponsorship of the State Government, the petitioner submitted a representation dated 27-09-1995 to the Director, Veterinary & Animal Husbandry Services, Manipur requesting for his appointment to a suitable post.

4. Being aggrieved by the inaction on the part of the State Government, the petitioner filed a writ petition being W.P. (C) No. 280 of 2003 which was disposed of by the Hon"ble High Court vide order dated 28-03-2007 directing the petitioner to approach the State Government for redressing his grievance by way of a representation which shall be considered and disposed of by the State Government by passing a reasoned order at the earliest. Accordingly, the petitioner submitted a representation dated 16-04-2007 to the Commissioner (Veterinary & Animal Husbandry), Government of Manipur for consideration in terms of the judgment and order dated 28-03-2007. According to the petitioner, the said representation is not yet considered and disposed of. Having no alternative, the petitioner filed another writ petition being W.P. (C) No. 516 of 2008 with the prayer for a direction of implementing the order dated 28-03-2007 passed by the Hon"ble High Court. The Hon"ble High Court disposed of the said writ petition vide order dated 16-01-2009 and in compliance of the said order dated 16-01-2009, the present petitioner was appointed to the post of Veterinary Officer (Grade-IV) in the Veterinary & Animal Husbandry Department, Government of Manipur against the post vacated by Mr. Kh. Shantikumar Singh vide order dated 01-06-2009 issued by the Under Secretary (Veterinary & Animal Husbandry) Government of Manipur. While discharging his duties, the petitioner was served with the order dated 05-06-2009 issued by the Commissioner (Veterinary & Animal Husbandry) only on 24-09-2009 by which the appointment of the petitioner as Veterinary Officer was cancelled without giving an opportunity of being heard. The present writ petition was filed contending inter-alia that the issuance of the said order dated 05-06-2009 is nothing but to flout the court's order dated 16-01-2009 and the same being mala fide and arbitrary in nature is liable to be quashed and set aside. In support of his contention, the counsel for the petitioners relied upon the following decisions rendered by the Hon"ble Supreme Court in the case of Smt. Naseem Bano Vs. State of U.P. and others, ; Union of India and another etc. etc. Vs. A. Sanyasi Rao and other etc. etc., and Centre for Public Interest Litigation Vs. Union of India (UOI), .

It appears that no affidavit-in-opposition has been filed by the respondents in the above writ petition.

5. The writ petition being W.P. (C) No. 320 of 2014 is filed by the 3 (three) petitioners including the petitioner who filed the W.P. (C) No. 597 of 2009, praying for directing to the respondents for absorption of the service of the petitioners. The petitioner Nos. 2 and 3 also, like the petitioner No. 1, completed the training course including internship in the year 1993 and 2000 respectively. As has been done by the petitioner No. 1, the petitioner Nos. 2 and 3 also filed a

writ petition being W.P. (C) No. 102 of 2009 for extending similar benefits granted to the petitioner No. 1. The said writ petition was disposed of on 13-07-2009 directing the petitioner Nos. 2 and 3 to file a representation within a period of 1 (one) week and on receipt of the said representation, the respondents should consider and dispose of the said representation on merit taking into consideration the benefits already extended to the similarly situated persons within a period of 3 (three) months there from. Being aggrieved, the petitioners have filed the above writ petition contending inter-alia that the respondents have failed to extend the benefits, granted in favour of Dr. S. Indra Singh, to the petitioners who are similarly situated and that the sole purpose of sponsoring the in-service candidates, to undergo B.V. Sc. & Animal Husbandry Degree Course, including the petitioners is to provide employment. The petitioners further stated that after 40 (forty) Veterinary Officers (Grade-IV) have been promoted to the post of Veterinary Officer (Grade-III), there are 40 (forty) resultant vacancies in the post of Veterinary Officer (Grade-IV) against which the petitioners can be considered for appointment by relaxation of the relevant rules.

6. The above writ petition is contested by the respondents by filing an affidavit-in-opposition wherein it is stated that it is not mandatory for the State Government to give appointment to the in-service candidates who have undergone B.V. Sc. and Animal Husbandry Degree Course as sponsored by the State Government and they will have to participate in the process of selection along with the eligible persons for appointment. It is further stated that the case of Dr. S. Indra Singh is not similar to that of the petitioners and accordingly the petitioners are not entitled to get the benefit of absorption/appointment.

Three points/issues have emerged out of the said writ petition for consideration by this Hon"ble Court:--

"a) Whether, having regard the fact that the petitioners have undergone B.V. Sc. and Animal Husbandry Degree Course under the sponsorship of the State Government while in service, they are entitled to be appointed/absorbed as Veterinary Officer?

b) Whether the Government Order dated 05-06-2009 by which the appointment of the petitioner in W.P. (C) No. 597 of 2009 as Veterinary Officer was cancelled, is liable to quashed and set aside on the ground that the said order dated 05-06-2009 was issued by the State Government without giving the petitioner an opportunity of being heard?

c) Whether the case of the petitioners is similar to that of Dr. S. Indra Singh for purpose of extending similar benefits, granted to Dr. S. Indra Singh, to the petitioners?"

7. As regards the issue (a), it is contended by the counsel for the petitioner that the competent and eligible employees are nominated by the Department of Veterinary. & Animal Husbandry, Government of Manipur to undergo B.V. Sc. &

Animal Husbandry Degree Course which the petitioners duly completed in the year 1993, 1995 and 2000. It is also contended that the sole purpose of sponsoring in-service candidates for studying in the B.V. Sc. & Animal Husbandry Degree Course is to provide suitable employment as well as to utilize their services for the welfare of the Department because the State Government spent a lot of money towards expenses for sponsoring the in-service candidates to undergo B.V. Sc. & Animal Husbandry Degree Course. The respondents in their affidavit have taken the stand that it is not mandatory for the State Government to give appointment as Veterinary Officer and the purpose of sponsoring the in-service candidates is to provide higher education. The petitioners have not produced any document by which the petitioners will be entitled to be appointed as Veterinary Officers after having undergone B.V. Sc. & Animal Husbandry Degree Course. Moreover, from the judgment and order dated 28-03-2007 passed by the Hon'ble Gauhati High Court in W.P. (C) No. 280 of 2003, it is evident that the counsel appearing for the petitioner therein who was conscious about the recent development of law in the service jurisprudence regarding absorption and up-gradation of the employees who have completed the degree, had fairly submitted that the petitioner was not sticking to the original prayer sought for in the writ petition and that the State Government should exercise their power of relaxation for appointment of the petitioners as Veterinary Officer. It is also to be noted that in the writ petition being W.P. (C) No. 516 of 2008, the Hon'ble Gauhati High Court, Imphal had observed that the petitioner therein had not been able to make out a statutory entitlement for consideration. In the absence of any statutory rules or for that matter, the law laid down by the Supreme Court on the issue, the petitioners cannot claim as of right that they be given appointment as Veterinary Officer. Accordingly, the issue (i) is decided against the petitioners.

8. As regards the issue (b), it is contended by the counsel for the petitioner that the Government Order dated 05-06-2009 by which the appointment of the petitioner in W.P. (C) No. 597 of 2009 as Veterinary Officer was cancelled, is liable to be quashed and set aside on the ground that the said order dated 05-06-2009 was issued by the State Government without giving the petitioner an opportunity of being heard. On the other hand, the counsel for the respondents submitted that the said Government order dated 05-06-2009 was cancelled, as the same had been issued without approval of the competent authority while the ban was in operation. In other words, the said Government order was issued in violation of the Rule 9(1) of the Rules of Business by which it is mandatory for any Department of the State Government to obtain prior approval from the Finance Department before any order involving finance is issued. It is further submitted by the counsel for the respondents that in compliance of a Court's order dated 29-01-2010, a notice dated 24-04-2010 was issued to the petitioner to show cause as to why his appointment should not be cancelled to which the petitioner failed to submit his reply and accordingly, the Commissioner (Veterinary & Animal Husbandry), Government of Manipur issued an order dated

19-07-2010 cancelling the appointment of the petitioner as Veterinary Officer (Grade-IV). Since validity and correctness of this order dated 19-07-2010 is not challenged by the petitioner, it is submitted by the counsel for the respondents that the writ petition being W.P. (C) No. 597 of 2009 has become infructuous and be dismissed accordingly. I find considerable force in his argument for the simple reason that the order dated 01-06-2009 by which the petitioner was appointed as Veterinary Officer, has been cancelled vide order dated 19-07-2010 after due notice being given to the petitioner. Even if the order dated 05-06-2009 is quashed and set aside, it will make no difference as long as the order dated 19-07-2010 is in operation. Had there been no order dated 19-07-2010, the situation would have been different and appropriate order could have been passed in respect of order dated 05-06-2009. The decisions rendered by the Hon'ble Supreme Court in case of Smt. Naseem Bano Vs. State of U.P. and others, ; Union of India and another etc. etc. Vs. A. Sanyasi Rao and other etc. etc., and Centre for Public Interest Litigation Vs. Union of India (UOI), are not applicable to the facts and circumstances of the present case. Moreover, since the petition has become infructuous, the aforesaid decisions of the Hon'ble Supreme Court will have no value at all. Accordingly, I dismiss the W.P. (C) No. 597 of 2009 as infructuous.

9. As regard the issue (c), it is contended by the counsel for the petitioner that the case of the petitioners are similar to that of Dr. S. Indra Singh and therefore, the petitioners be given the benefits which have been granted to Dr. S. Indra Singh. However, It is submitted by the counsel for the respondents that the case of the petitioners were not similar to that of Dr. S. Indra Singh for the reason that so far as Dr. S. Indra Singh was concerned, there was a judicial order dated 06-12-1993 passed by the Hon'ble Gauhati High Court, Imphal Bench whereby the State Government was directed to appoint him as Veterinary Officer and moreover, at the time when the said order dated 06-12-1993 was passed, the Recruitment Rules, 1994 was not yet made. It is further submitted by the counsel for the respondents that in the Recruitment Rules, 1994, the appointment of Veterinary Officer is 100% by direct recruitment and the petitioners cannot be appointed as Veterinary Officer contrary to the said Recruitment Rules, 1994. From the perusal of the materials on record particularly the order dated 06-12-1993 passed by the Hon'ble High Court, it is quite clear that since the petitioners are not similarly situated with that of Dr. S. Indra Singh, the petitioners are not entitled to benefits granted to Dr. S. Indra Singh. Therefore, the issue (iii) is also decided against the petitioners.

10. During the course of hearing, the counsel appearing for the petitioner made a humble and alternative submission that even assuming that the Petitioners are not entitled to be appointed as Veterinary Officer in view of the provisions of the Recruitment Rules, 1994, there is certainly a provision therein which empowers the State Government to relax rules. Keeping in view the peculiar facts and circumstances of the case, particularly the fact that the petitioners have undergone the B.V. Sc. & Animal Husbandry Degree Course while in service; the

State Government has spent a lot of money in sponsoring the petitioners and the benefits granted to Dr. S. Indra Singh, the counsel for the petitioners submitted that the State Government be directed to consider sympathetically to relax the relevant rules so that the petitioners can be accommodated against the existing vacancies. After considering this submission of the counsel for the petitioner, I direct the respondents to consider the case of the petitioners for appointment as Veterinary Officer against the existing vacancies, if necessary, by relaxation of the relevant rules and take an appropriate decision. The writ petition being W.P. (C) No. 320 of 2014 stands disposed of accordingly.