

(1995) 02 GAU CK 0036

In the Gauhati High Court

Case No : Civil Rule No. 119 of 1992 and Civil Miscellaneous Application No. 196 of 1994, Civil Rule No. 1261 of 1992 and Civil Miscellaneous Application No. 238 of 1994 and Civil Rule No. 878 of 1993 and Civil Miscellaneous Application No. 237 of 1994

Laiphrakpam Dhaneswari Devi and Others

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 01-02-1995

Acts Referred:

Citation : (1995) 3 GLR 120

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : S. Jayanta Singh, for the Appellant; L. Shyamkishore Singh, Additional Government Advocate, for the Respondent

Judgement

A.K. Patnaik, J.—In these three Writ Petitions, the three Petitioners have prayed for directions on the Respondents to allow them to continue in the post of Draftsman Grade-II in the PHE Department, Government of Manipur, till the same arc filled up on regular basis and to consider the case of the Petitioners for regularisation of their appointments as such Draftsman Grade-II in the PHE department, Government of Manipur, forthwith.

2. In Civil Rule No. 119/92, the facts of the case are that pursuant to Govt, order dated 11.7.91 (Annexure-A/1), the Petitioner was appointed as Draftsman Grade-II in the PHE department, Government of Manipur against an existing vacancy on ad hoc basis for a period of six months from the date she joined her duties and posted in the Rural Water Supply Circle No. II by an order dated 7.8.91 of the Chief Engineer, PHE department, Manipur (Annexure-A/2). The Petitioner joined in her duties on 8.8.91 (FN) as such Draftsman Grade-II in Rural Water Supply Circle No. II, PHE, Lamphelpat and continued in the said post upto the end of October, 1992 as would be evident from the office order dated 20.10.92 of the Superintending Engineer, PHE, Rural Water Supply Circle No. 2 (Annexure-A/7).

Her service was extended again from 1.11.92 upto 31.3.93 by order dated 16.3.93 of the Chief Engineer, PHE (Rural), Manipur (Annexure-A/8). Apprehending that she may be removed from service, she filed the present writ petition being Civil Rule No. 119/92 and on 1.4.93, an interim order was passed by the Court directing the Respondents that until further orders the Petitioner shall not be ousted, if she is continuing in service.

3. The facts in Civil Rule No. 1261/92 are that pursuant to Govt, order dated 11.7.91, the Petitioner was appointed as Draftsman Grade-II in the PHE Department, Manipur against an existing vacancy on ad hoc basis for a period of six months from the date she joined her duties and was posted in the Imphal PHE Division by order dated 17.8.91 of the Chief Engineer, PHE Department, Manipur (Annexure-A/1), where she joined. Thereafter by an order dated 14.8.92 of the Chief Engineer, PHE department, Manipur (Annexure - A/2) she was again appointed in the said post upto October, 1992 on ad hoc basis or till the post was filled up on regular basis. She then moved this Court in Civil Rule No. 1261/92 and in a Misc, Case filed in the said Civil Rule, this Court passed an interim order dated 30.10.92 directing the Respondents not to oust the Petitioner till the post was filled up on regular basis.

4. In Civil Rule No. 878/93, the facts of the case are that the Petitioner was appointed as Draftsman Grade-II in the PHE Department, Manipur against an existing vacancy on ad hoc basis for a period of six months from the date of his joining and was posted in the Chandel PHE Division by order dated 7.8.91 of the Chief Engineer, PHE Department, Manipur (Annexure-A/1). Thereafter, his ad hoc appointment was extended upto the end of October, 1992 by order dated 23.10.92 of the said Chief Engineer (Annexure-A/3). The service of the Petitioner as such Draftsman Grade-II was further extended from 1.11.92 to 31.3.93 or till the post was filled up on regular basis whichever was earlier by Order dated 16.3.93 of the Chief Engineer, PHE department, Manipur (Rural) (Annexure-A/5). Thereafter the Petitioner moved this Court in Civil Rule No. 878/93 and by order dated 8.9.93 while issuing Rule this Court directed that in the meanwhile, if the Petitioner was continuing in the service, he shall not be ousted.

5. During the pendency of the aforesaid Civil Rule Nos. 119/92, 1261/92 and 878/93, the Petitioners have filed Civil Misc. Application Nos. 196/94, 238/94 and 237/92 the Petitioners have prayed for a direction on the Respondents to consider the case of the Petitioners for regularisation of their appointments as Draftsman Grade - II in the PHE department, Manipur, by a special DPC. No orders, however, have been passed in the said aforesaid Civil Misc. Applications by this Court and the aforesaid Civil Misc. Applications have been heard along with the Civil Rules.

6. When the matter was heard on 26.7.94 and 29.7.94, Mr. S. Jayanta, learned Counsel for the Petitioners, submitted that in the case of All Manipur Regular Posts Vacancies Substitute Teachers" Association Vs. State of Manipur, the Supreme Court directed in paragraph 6 of the judgment that ad hoc teachers

who have rendered less than 5 years service should be allowed to appear before the DPC for selection to be constituted exclusively for them and contended that similar direction be issued in the present Civil Rules for constitution of Special DPC exclusively for the present Petitioners who had served as adhoc Draftsman Grade - II for three years. Mr. Jayanta also submitted that similar directions have been issued by this Court by order dated 23.11.92 in CR Nos. 392/92 and by order dated 12.12.91 in CR No. 178 of 1992. Mr. Jayanta also relied upon the decision of the Allahabad High Court in the case of Lalaram Kalia v. State of U.P. reported in 1986 (1) SLR 105 ., wherein a Division Bench has held that ad hoc employees would constitute a separate class by themselves for appointment by selection and accordingly should be given preference on the basis of their continuous satisfactory service. Mr. Jayanta also cited the decision of the Supreme Court reported in State of Haryana and others Vs. Piara Singh and others etc. etc., : State of Haryana and others Vs. Piara Singh and others etc. etc., wherein the Supreme Court has held that when ad hoc employees are continued for a fairly long spell the authorities must consider their case for regularisation. Mr. Jayanta also cited the decision of the Apex Court in the case of KSP College Stop-gap Lecturers Association v. State of Karnataka reported in AIR 1997 SC 677. He relied on the decision of the Single Judge of this Court in the case of Ch. Manihar Singh and Ors. v. The Chief Engineer, Irrigation & Flood Control and Ors. 1994 (1) GLR 471, in which directions have been issued for regularisation of ad hoc employees who have served for 2 years if the authorities found that they were duly qualified on the date of appointment to be appointed to the respective posts.

7. Mr. Shyam Kishore Singh, learned additional Govt. Advocate, Manipur, on the other hand, submitted that the terms and conditions of the appointment of the Petitioners would show that their appointments were purely on ad hoc basis and at the time of their appointment, the Petitioners have furnished undertakings agreeing to abide by the said terms and conditions. He further submitted that it has now been settled by the Supreme Court in the case of the Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, that in the case of an ad hoc appointee, the right of an employee to remain in the post comes to an end in the expiry of the period of ad hoc appointment. The Petitioners therefore have no right to continue on the posts after their ad hoc appointments came to an end. Mr. Singh also relied on the decision of the single Judge of this Court in Civil Rule No. 1078/92 rendered on 25.3.94 in the case of Shri Olnam Brojendra Singh and Ors. v. State of Manipur and Ors. to the effect that adhoc appointments do not confer any right on the ad hoc employees to be treated as a separate category of candidates warranting constitution of special DPC for their regularisation. Mr. Singh also pointed out that by office memorandum dated 9.10.92 of the Government of Manipur, Department of Personnel and Administrative Reforms (Personnel Division) the Government framed a scheme for regularisation of ad hoc employees who had completed five years service, but the Petitioners have not completed five years of service.

8. The matter was again taken up for hearing on 8.9.94 when Mr. Jayanta submitted that in the meanwhile, by Office Memorandum dated 22.8.94 the Government of Manipur, Department of Personnel and Administrative Reforms (Personnel Division), a fresh scheme for regularisation through a Special DPC for ad hoc appointees who have completed % years has been framed and the Petitioners who have completed more than 2 years would be entitled to regularisation through a special DPC. Mr. Shyam Kishore Singh however, submitted in reply that since the posts held by the Petitioners had already been advertised for filling up and the process for recruitment had started, it had to be completed as per the said Office Memorandum dated 22.8.94 and hence the Petitioners were not entitled to regularisation through a special DPC as per the aforesaid O.M.

9. Admittedly, the Petitioners were appointed on ad hoc basis and, therefore, they cannot claim any right to continue in the post of Draftsman Grade - II after the period of their ad hoc appointment as has been held by the Apex Court in Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, If however they have completed long spells of ad hoc employment, the authorities must consider the case for regularisation provided they are eligible and qualified according to rules and their service records are satisfactory and their appointment docs not run counter to the reservation policy of the State according to the decision of the Supreme Court in the case of the State of Haryana and others Vs. Piara Singh and others etc. etc., But it is difficult to accent the submission of Mr. S. Jayanta that this Court should give direction for regularisation of the Petitioners through a special DPC for the Petitioners only because similar directions have been given by both the Apex Court as well as this Court in various decisions. In the case of Piara Singh (supra) relied on by Mr. Jayanta, Jeevan Redely J. observed in para 17:

Further, there can be no "rule of thumb" in such matters. Conditions and circumstances of one unit may not be the same as of the other; Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one.

10. In the present case, the State Government of Manipur has been taking steps for regularisation of their ad hoc employees by passing orders from time to time, By office memorandum dated 9.10.92, the Government of Manipur, Department of Personnel and Administrative Reforms (Personnel Division) have sought to regularise all ad hoc employees who have continuously held their respective posts for 5 years as on 1.9.92 subject to the conditions stipulated therein. Since the Petitioners have not held the posts of Draftsman Grade - II continuously for 5

years as on 1.9.92, they are not entitled to be considered for regularisation as per the aforesaid memorandum dated 9.10.92. By the recent office memorandum dated 22.8.94 of the Government of Manipur, Department of Personnel and Administrative Reforms (Personnel Division), the State Government has again decided to regularise all ad hoc employees holding both gazetted and non-gazetted posts against direct recruitment quota for atleast 2 years as on 1.9.92 and who continued to hold the said posts on 22.8.94 through a special DPC by screening the eligibility of the candidates as per the existing recruitment rules for the posts subject to the reservation policy. Paragraphs 2(i) and 2(ii) of the said Office Memorandum dated 22.8.94 are extracted herein below:

2 It has, therefore, been decided to take up the following measures for regularisation of all posts held on ad hoc basis against direct recruitment quota:

(i) All posts held on ad hoc basis against direct recruitment quota which were requisitioned to M.P.S.C. for recruitment may be frozen and withdrawn unless the M.P.S.C. had already issued advertisement. Similarly all non-gazetted posts against direct recruitment quota which are held on ad hoc basis where no advertisements had so far been issued would also be covered. However, in cases where advertisement for filling up such posts, both gazetted and non- gazetted, had been issued, process for such recruitment would be continued and completed in time.

(ii) All ad hoc appointees of both gazetted and non-gazetted posts against direct recruitment quota which were held on ad hoc basis for at least 2 (two) years as on 1.1.1994 and for those who continue to hold their respective posts till date should be regularised through Special D.P.C. by screening the eligibility of the candidates as per the existing R/R of the posts. However, while regularisation of such ad hoc posts, the reservation of SC/ST as per the 100 - point roster is to be strictly followed. Such regularisation should, however, be against clear vacancies only.

It would thus be clear from paragraph 2(1) of the aforesaid Office Memorandum dated 22.8.94 that where the process for regular recruitment to a post held by an ad hoc employees has been initiated by issue of advertisement for filling up the post, it has to be continued and completed in time and to such posts, paragraph 2(ii), of the aforesaid Office Memorandum dated 22.8.94 providing for regularisation of ad hoc employees will not apply. In the present case, it appears that the process for recruitment to 7 posts of Draftsman Grade-II PHE Department had already been initiated as would be evident from the notice dated 2.6.1994 of the Employment Exchange Complex, Lamphelpat, Imphal (Annexure- C/5 to Civil Misc. Application No. 196 of 1994) and the learned Government Advocate. Mr. Shyam Kishore Singh, has in fact produced before me notification dated 16.8.94 which clearly indicates that the DPC for filling up the posts of Draftsman Grade - II in Public Health Engineering Department, Manipur was held during the period 26.7.94 to 30.7.94 and some candidates have already

been selected for appointment to the posts of Draftsman Grade- II. On these facts, it is difficult to hold that the Petitioners were entitled to be regularised through a Special DPC in accordance with the paragraph 2(ii) of the Office Memorandum dated 22.8.94.

11. In *Piara Singh (supra)* relied on by Mr. S. Jayanta, however the Supreme Court observed in paragraph 23:-

23. This is not a case, we must reiterate, where the Government have failed to take any steps for regularisation or their adhoc employees working over the years. Every few years they have been issuing orders providing for regularisation. In such a case, there is no occasion for the Court to issue any directions for regularising such employees more particularly when none of the conditions prescribed in the said orders can be said to be either unreasonable, arbitrary or discriminatory. The Court cannot obviously help those who cannot get regularised under these orders for their failure to satisfy the conditions prescribed therein. Issuing general declaration of indulgence is no part of our jurisdiction. In case of such persons we can only observe that it is for the respective Governments to consider the feasibility of giving them appropriate relief, particularly in cases where persons have been continuing over a long number of years, and were eligible and qualified on the date of their ad hoc appointment and further whose record of service is satisfactory.

Thus, according to the aforesaid observations of the Apex Court, although there is no scope for giving a direction to the Respondents to regularise the Petitioners in the posts through a special DPC as per paragraph 2(ii) of the aforesaid Office Memorandum dated 22.8.94, it is for the Respondents to consider the case of the Petitioners for regular appointment in view of the fact they have been in service for more than 2 years as ad hoc Draftsman Grade - II in the PHE Department if they were eligible and qualified on the date of their ad hoc appointment and their record of service was satisfactory. It is, however, made clear that such consideration will not stand in the way of appointment of persons regularly selected for appointment to the post already advertised for recruitment in accordance with paragraph 2(i) of the Office Memorandum dated 22.8.94.

12. With the aforesaid observations, the Civil Rules and the Civil Misc. Applications are disposed of.