
(2009) 01 GAU CK 0037
In the Gauhati High Court
Case No : Writ Petition (C) No. 84 of 2006

Lalhmingthangi Sailo

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Citation : (2010) 1 GLR 711 : (2009) 3 GLT 202

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : Ricky Gurung, for the Appellant; Dinari T. Azyu, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Musahary, J.—Heard Mr. Ricky Gurung, Learned Counsel for the petitioner as well as Mr. S. Dinari T. Azyu, learned GA for the State respondents.

2. This application has been filed praying for regularization of service of the petitioner with retrospective effect with all consequential benefits such as seniority, promotion, gratuity and back wages from 8.5.1986, i.e., the date on which the petitioner's colleagues were given fresh appointment on regular basis. The petitioner claims that she was appointed as a substitute Hindi teacher on 31.1.1981 for a period of 45 days w.e.f. 3.2.1981 to 20.3.1981 against leave vacancy in Republic Middle School, Aizawl. Thereafter, she was appointed against various leave vacancies from time to time and also against vacancy caused due to training of some teachers and she continued to serve as Hindi teacher till 1986 and thereafter, she was not allowed to continue in service. At that stage, the petitioner felt aggrieved as she was terminated from service without any written order and submitted a representation on 2.4.1988 before the hon"ble Minister, Education followed by several representations dated 25.5.1996 before the hon"ble Agriculture Minister, 8.11.1996 before the hon"ble Minister, Education, 14.10.2004 before the hon"ble Chief Minister and 1.2.2005 before the hon"ble Education Minister. Ultimately by a letter dated 10.2.2005 the Joint Director of

School Education asked the petitioner to furnish necessary documents. The documents having been submitted and the respondent No. 3 submitted a proposal on 14.4.2005 to the respondent No. 1. On receipt of the proposal, the Under Secretary to the Government of Mizoram, Education and Human Resource Development, School Education vide his letter dated 27.4.2005 asked the petitioner to come to his chamber for discussion about the matter. After the discussion, the respondent No. 3 sent a letter dated 9.1.2006 to the respondent No. 1 furnishing the vacancy position and according to the aforesaid letter there were as many as 44 vacant posts of Middle School Hindi Teachers. But in the meantime, the petitioner has crossed the age bar. However the petitioner claims that the age-bar was condoned by the Government and after condoning the age-bar, a fresh appointment was issued on 10.5.2006 to the petitioner as Middle School Hindi Teacher and she was posted at Tanhril Government Middle School-1 and she has been working there since 10.5.2006 till this date.

3. Mr. Ricky Gurung, Learned Counsel for the petitioner submits that the petitioner should get the benefits of service from 8.5.1986 as she was terminated without issuing any valid written order and she has been appointed again on 10.5.2006. According to Mr. Gurung, as many as 10(ten) candidates were appointed as Hindi teachers by the Director of School Education on the basis of selection made in the year 1986, but petitioner was denied appointment although she was selected in the selection made in the year 1981.

4. Mr. S. Dinari T. Azyu, learned GA, on the other hand, submits that the petitioner's name found place at Sl. No. 16 in the selection list of 1981 and as such, she was given chance to serve against the leave and training vacancies from time to time. The aforesaid selection list of 1981 stood cancelled due to efflux of time and a new selection process was initiated in 1986. In the said 1986 recruitment, the petitioner did not participate and as such, her name did not appear in the select list. The petitioner, according to Mr. S. Dinari, learned GA, cannot claim appointment or regularization of her service on the basis of selection list of 1981, the life of which has already expired. Moreover, it is submitted by Mr. S. Dinari that the petitioner was allowed to serve during 1981-86 against the leave and training vacancies which are mentioned in the appointment letters themselves and as such, it is an admitted position that the petitioner was never appointed as a temporary or regular Hindi teacher at any point of time. This stand has been taken in para 12 of the counter affidavit filed by the State respondents which is quoted below:

12. That with regard to the statements made in paragraph No. 16 of the writ petition, I say that there is neither a question of reinstatement in this case nor an illegal removal from service. As stated earlier, all the petitioner's previous services were simply engagements against leave vacancies. When such a leave vacancy was no longer available, the petitioner's service automatically came to an end. In such circumstances, no termination order can be issued nor called for and the question for reinstatement also does not arise.

All the previous petitions of the petitioners were all examined with due regard to her service rendered as above to the Government. The issue of reinstatement being not in question, what the Government finally came up with was the fresh appointment given to her. Under the given circumstances, the petitioners should have gladly accepted the appointment instead of seeking redressal of her grievances in the High Court. What the Government did in giving her fresh appointment can even be considered fairly gratuitous.

5. I have considered the pleadings of the parties and also the documents made available at the time of hearing. The appointment letters, photo copies of which have been annexed to this petition clearly mention that the petitioner was appointed from time to time against leave and training vacancies only. The petitioner has not been able to produce any document to show that she was appointed as Hindi teacher on temporary basis on the basis of selection made in the year 1981 and it is not the case of the petitioner that she appeared again in the selection of 1986 and got selected by the selection committee. As she did not, admittedly appear in the recruitment of 1986, the question of consideration of her appointment on regular basis in the year 1986 does not arise. The petitioner accrued no right of being considered on the basis of selection of 1981 as the life of the aforesaid selection has already expired, nor on the basis of 1956 selection as she did not participate in the aforesaid recruitment process. Admittedly, the petitioner crossed her age bar and she was appointed afresh on 10.5.2006, after condoning her age bar, against a post of Hindi teacher created in the year 1993. The authorities have already considered the petitioner's case sympathetically although, she crossed her age bar and that too without her being selected in any selection made subsequent to 1981.

6. In the aforesaid facts and circumstances, I do not find any reason to grant relief to the extent of providing service or financial benefits from 8.5.1986 as prayed for by the petitioner and accordingly, the instant writ petition stands dismissed without any order as to cost.