

(2001) 02 GAU CK 0027

In the Gauhati High Court

Case No : Writ Petition (C) No. 96 of 1999 and 5 and 40 of 2000

Lalneihzovi

APPELLANT

Vs

North Eastern Hill University and Others

RESPONDENT

Date of Decision : 09-02-2001

Acts Referred:

Constitution of India, 1950 — Article 41

Citation : (2001) 1 GLT 323

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : Mr. A. Roy, Mr. K.P. Pathak, Mr. M. Singh and Mr. R. Das, for the Appellant; Mr. A.K. Phookan, Mr. V.M. Thomas and Mr. S. Sailo, for the Respondent

Judgement

1. By this common judgment WP(C) No. 96/99, 5/2000 and 40/ 2000 are being disposed of as the issue to be decided in all these writ petitions centres around the question whether the writ petitioners who were appointed on ad hoc basis as Lecturer in the North Eastern Hill University have acquired any vested right for regularisation in service.

2. I have heard Mr. K.P Pathak, the learned senior counsel for the writ petitioners and Mr. S. Sailo, the learned counsel for the respondents.

3. For better appreciation I would like to clear the facts first. It would appear from the averments made in writ petition No. 96/99 that the North Eastern Hill University, hereinafter referred to as NEHU. issued an advertisement on 20th July, 1989 inviting applications for temporary posts of Lecturer in the Mizoram Camps for appointment on ad-hoc basis in the Department of Public Administration, Education and Psychology from candidates having good academic record with at least 55% marks in the Master Degree in the relevant subject. It was further indicated in the said advertisement that preference will be given to the candidates having Research degrees like M.Phil/Ph.D. The petitioner, in response thereof, submitted her application. By order dated 13th September,

1989, in pursuance of the recommendation of the Local Selection Committee, she was appointed as Lecturer in the Department of Public administration purely on temporary basis till the end of the current academic session or till a regular appointment is made, whichever is earlier. The temporary appointment of writ petitioner was extended subsequently by orders dated 24.2.1990, 18.9.1990, 15.4.1991, 11.9.1991, 20.4.1992, 21.9.1992, 22.4.1993, 18.10.1993, 16.12.1993, 29.4.1994 and 22.3.1995. The petitioner also submitted representation in the meantime for consideration of her case for regularisation. While she was awaiting regularisation, the respondent No. 4 informed her on 2.5.1995 that her service would no longer be required by the NEHU and steps are being taken to appoint a candidate, if necessary by fresh advertisement. She approached this Court and filed the writ petition which was admitted on 22.3.1999. Prior to that, on 28.6.1995 while issuing notice, the Court directed that the petitioner shall not be ousted from service.

4. The case of the petitioner in writ petition No. 5/2000 is that he was initially appointed on the recommendation of the Local Selection Board as Lecturer in the Department of Commerce on ad hoc basis for a period of six months by an order dated 30th of May, 1991 by the Principal of Pachhunga University College, Aizawl and since then he has been continuing in service on extension given on different dates each time for a period of six months. He also submitted a representation for regularisation which was forwarded by the Principal to the Vice-Chancellor of NEHU. On 22.5.1995 the Principal of the College informed him that the term of appointment of the writ petitioner would no longer be extended beyond 6th June, 1995. Hence, the petitioner approached this Court. While issuing rule on 31.6.1995, this Court directed the respondents not to disturb the service of the writ petitioner until further orders.

5. The case of the petitioner in writ petition No. 40/2000 is that she was appointed in the similar manner as a Guest Lecturer in the Department of History with effect from 16.2.1990 on payment of honorarium by the Principal of Pachhunga University College. This order issued on 7th of March, 1990 was followed by an order passed on 1st September, 1990 appointing her provisionally as Lecturer on ad-hoc basis on the recommendation of the Selection Committee with effect from 1st of September, 1990 subject to approval by the Vice-Chancellor of NEHU. Thereafter by order dated 25th of July, 1992 the term of her ad-hoc appointment was extended upto 31st August, 1992. By an order issued on 24th September, 1992 her appointment was kept in abeyance. She also filed a representation to the Vice-Chancellor of NEHU for consideration of her case for regularisation. The Deputy Registrar of NEHU by letter dated 4.3.1995 informed that her service could be regularised only through a "Regular Selection Committee. Thereafter the Principal of the College by letter dated 17th of April, 1995 informed the writ petitioner that her appointment would stand terminated with effect from 20.4.1995 as further extension was not permissible beyond two years. While issuing notice, this Court by order dated 9.5.1995 observed that the petitioner shall continue as Lecturer in her present post on consolidated pay until

further orders.

6. It would appear from the averments made in the writ petitions that all the writ petitioners were appointed on ad hoc basis initially for a period of six months and thereafter extended from time to time. Thus they continued in service for about 4/5 years before they approached this Court. The respondents filed affidavit-in-opposition in all the three cases reiterating that the petitioners were selected by Local Selection Committee for ad hoc appointment and not by a Regular Selection Committee. It has been further averred that the advertisement was issued specifically for ad-hoc appointment and, therefore, the petitioners have no legal right vested in them to insist for regularisation as a matter of right. It has further been contended that the petitioners do not possess minimum eligibility criteria as per norms fixed by the University Grants Commission and, as such, they have no cause to vindicate.

7. Shri Pathak, the learned senior counsel referring to the provisions incorporated in the Schedule to the North Eastern Hills University Act, 1973 submitted that Statute 20 provides for constitution of selection committees for selection and appointment to the post of Lecturers and as per provisions of Statute 20(7)(i) the Selection Committee after completion of selection process appointed the writ petitioners. Shri Pathak further submitted that the way the extension has been given to the writ petitioners indicates that the respondents were aware that the posts were likely to continue beyond one academic session and that the Selection Committee constituted for selection of candidates is also similar to a Regular Selection Committee. Therefore, Shri Pathak submitted that regularisation cannot be denied since appointments were made by an appropriate Selection Committee against permanent vacancies.

8. Mr. Sailo, the learned counsel for the respondents, however, opposed the above submission with reference to the advertisement and argued that the petitioners had applied knowing it fully well that the appointments would be made on ad hoc basis for a temporary period. Hence, Shri Sailo argued, that the petitioners are not entitled to regularisation as a matter of right. He further pointed out that the petitioners have not qualified in the national eligibility test as is required as per norms of the University Grants Commission.

9. Statute 20(7) provides for appointment to temporary posts. It reads as follows:-

"(7) Appointments to temporary posts shall be made in the manner indicated below :- (i) If the temporary vacancy is for a duration longer than one academic session, it shall be filled on the advice of the Selection Committee in accordance with the procedure indicated in the foregoing clauses;

Provided that if the Vice-Chancellor is satisfied that in the interests of work it is necessary to fill the vacancy, the appointment may be made on a purely temporary basis by a local Selection Committee referred to in sub-clause (ii) for a period not exceeding six months.

(ii) If the temporary vacancy is for a period less than a year, an appointment to such vacancy shall be made on the recommendation of a Local Selection Committee consisting of the Dean of the School concerned, the Head of the Department and a nominee of the Vice-Chancellor;

Provided that if the same person holds the offices of the Dean and the Head of the Department, the Selection Committee may contain two nominees of the Vice-Chancellor;

Provided further that in case of sudden casual vacancies of teaching posts caused by death or any other reason, the Dean may, In consultation with the Head of the Department concerned, make a temporary appointment for a month and report to the Vice-Chancellor and the Registrar about such appointment.

(iii) No teacher appointed temporarily shall, if he is not recommended by a Regular Selection Committee for appointment under these Statutes, be continued in service on such temporary employment, unless he is subsequently selected by a local Selection Committee or a Regular Selection Committee, for a temporary or permanent appointment, as the case may be."

10. It would appear from above that a temporary vacancy likely to continue for more than one academic session is to be filled on the advice of the Selection Committee and for urgent and immediate appointment, Local Selection Committee has been authorised to make such appointment. The Local Selection Committee is to consist of the Dean of the concerned School, the Head of the Department and a nominee of the Vice-Chancellor. But the constitution of the Regular Selection Committee has to be in accordance with the Table appended to Statute 20. It appears that a regular Selection Committee for the post of Lecturers shall consist of two persons who are not the teachers of the concerned college to be nominated by the Executive Council out of a panel of names recommended by the Academic Council. The composition of Regular Selection Committee substantially differs from that prescribed for the Local Selection Committee. Therefore, the contention of Shri Pathak that the composition of both the committees are basically one and same appears to be not correct. There cannot be any dispute that the writ petitioners were recommended by a Local Selection Committee for appointment on adhoc basis for temporary posts. This has been specifically indicated in the advertisement appended to the writ petition as Annexure-A. Going by the provisions of the rules and the contents of the advertisement it would be difficult to endorse the view that the writ petitioners were selected for regular appointment against permanent vacancies. The argument that that term of appointment of the writ petitioners was extended from time to time beyond two years is adequate enough to hold that they have been appointed on regular basis cannot be conceded to. It is because, the extension given from time to time in violation of the provisions of law cannot vest any legal right on the writ petitioners, especially when it is provided in Statute 7(iii) that no teachers appointed temporarily shall be allowed to continue in service unless he is subsequently selected by a Regular Selection Committee

for permanent appointment. In the instant case, the posts were advertised for temporary appointment on adhoc basis and it was the Local Selection Committee which interviewed and recommended the writ petitioners. Merely because they continued for a longer period exceeding one academic session, they cannot be given the benefit of permanent employee contrary to the provisions of the Statute.

11. It appears that all the petitioners had secured more than 55% of marks in their respective subjects as prescribed in the advertisement itself. But that is not enough. They have to qualify in the national eligibility test also besides being suitable for appointment in all respects. Shri Pathak, at this stage produced a notification to show that the writ petitioners in WP(C) No. 96/99 qualified in the national eligibility test. But this alone cannot salvage the cause of the petitioner since the law requires recommendation by a regular Selection Committee.

12. Shri Sailo also pointed out that the University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of a University and Institutions affiliated to it) Regulation, 1991 which came into force with effect from 19th September, 1991 provides for the qualification for different categories of teachers. For the post of Lecturers, it is provided that, apart from minimum 55% of marks, a candidate is required to have cleared the eligibility test for Lecturers to be conducted by the University Grants Commission, Council of Scientific and Industrial Research or similar test accredited by the University Grants Commission. According to him, the writ petitioners have not been able to clear the test and, as such, they are not eligible for regular appointment as Lecturers. Shri Pathak controverted the argument on the ground that the qualification as was in force when the vacancies were available cannot be changed by a subsequent rule or regulation prescribing higher or additional qualification. According to him, the Regulation of 1991 was not given retrospective effect and, as such, the additional qualification that a candidate for the post of Lecturer has to clear the eligibility test cannot be a bar in considering the case of the writ petitioners for regularisation.

13. Shri Pathak also referred to a number of decisions of the Supreme Court of which mention may be made of the decision in N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, In para 11 of the said judgment, the Supreme Court held as follows :-

"Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature."

In para 13, the Supreme Court observed as follows:-

"13. In *Y.V. Rangaiah v. J. Sreenivasa Rao* similar question arose relating to recruitment by promotion. The question was whether promotion should be made in accordance with the Rules, in force on the date the vacancies occurred or in accordance with the amended Rules. The Court observed as under: (SCC p.289, para 9)

"The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wise basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

The same view was taken in *P. Ganeshwar Rao v. State of Andhra Pradesh*. Similar view was taken in *A.A. Calton v. Director of Education*. It is well accepted principle of construction that a statutory rule or government order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. Where proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing rules and government orders and any amendment of the rules or the government order pending the selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended Rules or the amended government orders, issued in exercise of its statutory power either by express provision or by necessary intendment indicate that amended Rules shall be applicable to the pending selection. See *P. Mahendran v. State of Karnataka*".

14. The Supreme Court in *P. Mahendran and others Vs. State of Karnataka and others*, while dealing with a similar matter held that the rules which are prospective in nature cannot take away or impair the right of candidates holding Diploma in Mechanical Engineering as on the date of making appointment as well as on the date of scrutiny by the Commission they were qualified for selection and appointment. A similar view is also reflected in the decision of the Supreme Court in *Gunaru Karan and Others Vs. Revenue Divisional Commissioner and Others*, *Gunaru Karan and Ors v. Revenue Divisional Commissioner & Ors*.

15. The law as interpreted and laid down by the Supreme Court is reproduced above. There is no doubt that the selection process in the instant case started after the advertisement was issued in 1989 specifying the minimum eligibility criteria which did not provide for national eligibility test clearance certificate. The Regulation of 1991 has not been given retrospective effect. I would, therefore, be not appropriate to say that the additional qualification prescribed in the Regulation of 1991 would also be applicable in respect of selection of candidates

to the posts which fell vacant before the Regulation was brought into force. The selection to the posts which fell vacant prior to 19th September, 1991 and for which selection process was initiated and appointments made in pursuance of recommendation has to be as per qualifications as in force prior to the coming into force of the Regulation, 1991.

16. In *All Manipur Regular Posts Vacancies Substitute Teachers' Association Vs. State of Manipur*, the Supreme Court prescribed certain guidelines for regularisation of adhoc teachers. While directing regularisation of all adhoc teachers who have put in five years of service, the Supreme Court directed others who have rendered less than five years of service to appear before the D.P.C. There cannot be any reason to refuse a similar direction for consideration of the petitioners' case. Here, it would be relevant to quote an observation by the Supreme Court in *Jacob M. Puthuparambil v. Kerala Water Authority & Ors*, AIR 1990 SC 2228:-

"If the rule is so interpreted it seems clear to us that employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment must be allowed to continue on their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences. The family of the employee which has settled down and accommodated its needs to the emoluments received by the bread winner will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered "age barred" for securing a job elsewhere. It is indeed unfair to use him. generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Art.41 of the Constitution. Therefore, if we interpret Rule 9(a)(i) consistently with the spirit and philosophy of the Constitution, which it is permissible to do without doing violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualifications for the Job should not be thrown out but their services should be regularised as far as possible. Since workers belonging to this batch have worked on their posts for reasonable long spells they are entitled to regularisation in service."

17. The petitioners before this Court claimed to have been selected and recommended by a Local Selection Committee as per provisions of the Statute. It is not a case of adhoc appointment dehors the rules. They were appointed by a Local Selection Committee as per provisions of the Statute against available vacancies and allowed to continue in service for a period of 4/5 years without any adverse remark.

18. In view of what is observed above, I am of the considered opinion that this is

a case where directions could be issued for consideration of the case of the writ, petitioners on their respective merit by a Regular Selection Committee for permanent appointment.

19. In the result, the writ petitions stand disposed of with a direction to the respondents to constitute a Regular Selection Committee for consideration of the petitioners' case for regularisation/ permanent appointment as Lecturers in accordance with the observations made above and the provisions of law. Till the Regular Selection Committee sits and decides, the petitioners shall not be ousted from service.