
(2015) 05 MAN CK 0024
In the Manipur High Court
Case No : Writ Petition (C) No. 310 of 2010

Law Veikhui

APPELLANT

Vs

The State of Manipur and Others

RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 05 MAN CK 0024

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : Tarunkumar, for the Appellant; Th. Sobhana, Govt. Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J.—Heard Shri Kh. Tarunkumar, learned counsel appearing for the petitioner and Smt. Th. Sobhana, learned Government Advocate appearing for the respondents.

2. The present writ petition has been filed by the petitioner praying that her appointment to the post of Rural Labour Inspector be made effective from 10-11-1993 on which 13 (thirteen) others, similarly situated, were given regular appointment to the said post in pursuance of the special D.P.C held on 05-07-1993.

3.1 According to the petitioner, she was initially appointed along with 13 others as Rural Labour Inspectors on ad-hoc basis on 07-02-1991 against the regular vacant posts created vide order dated 16-10-1989. The ad-hoc service of the petitioner, along with 13 others, was extended from time to time and in the meanwhile, they formed an association called the All Manipur Ad-hoc Rural Labour Inspectors' Welfare Association.

3.2 A writ petition being C.R. No. 178(a) of 1992 was filed by the said association before the Hon'ble Gauhati High Court praying for regularisation of

their ad-hoc services which was disposed of on 12-12-1992 with the direction that a special D.P.C be held only for its members. As the respondents therein failed to comply with the order dated 12-12-1992, a Contempt Case being C.C. No. 144 of 1993 was also filed.

3.3 A special D.P.C was convened by the State Government on 05-07-1993 exclusively for the petitioner only with the 13 others for the purpose of regularisation of their ad-hoc services wherein the petitioner also appeared before the D.P.C and on the recommendation of the said special D.P.C, all the 13 similarly situated Rural Labour Inspectors except the petitioner, were regularised on 10-11-1993.

3.4 Being aggrieved by the non-regularisation of her ad-hoc service, the petitioner filed a writ petition being C.R. No. 47 of 1994 praying for a direction to give her a regular appointment as Rural Labour Inspector and treat her equally with the said 13 others Rural Labour Inspectors. In their counter affidavit, the respondents therein took the stand that since the petitioner had tendered her resignation, there was no question of her being regularised as Rural Labour Inspector. While the said writ petition being C.R. No. 47 of 1994 was pending, the post held by the petitioner was notified through an Employment Exchange on 19-09-1998 and on the basis of the recommendation of a D.P.C held on 28-09-1998, one Miss Achong Haokip was appointed with the condition that her appointment would be subject to the outcome of the writ petition being C.R. No. 47 of 1994. The petitioner filed another writ petition being W.P. (C) No. 1266 of 1998 challenging the said notification dated 19-09-1998 and its consequential actions. Both the writ petitions being C.R. No. 47 of 1994 and W.P. (C) No. 1266 of 1998 were heard together and were disposed of on 17-09-1999 whereby the C.R. No. 47 of 1994 was allowed with the direction that the respondents should appoint the petitioner to the post of Rural Labour Inspector for which D.P.C was convened exclusively for them on 05-07-1993 within a period of one month from that day and as regards the writ petition being W.P. (C) No. 1266 of 1998, the impugned order dated 19-10-1998 appointing Ms. Achong Haokip was quashed.

3.5 Being aggrieved by the judgment and order dated 17-09-1999, Miss Achong Haokip preferred an appeal being W.A. No. 362 of 1999 which was later transferred to the Imphal Bench as W.A. No. 12 of 2000 and was dismissed on 31-08-2005 with the direction that the respondents therein should adjust the appellant against the vacancy which would arise with effect from 30-09-2005. A Revision Petition being C.R.P. No. 5 of 2007 was filed by the State Government on the ground that the vacant post of Rural Labour Inspector which would arise with effect from 30-09-2005, was included within the purview of downsizing. However, the Hon"ble High Court was pleased to pass an order setting aside the para No. 20 of the judgment and order dated 31-08-2005 passed in W.A. No. 12 of 2000. Due to non-compliance of the judgment and order dated 31-08-2005, a Contempt Petition being C.C. No. 193 of 2005 was filed and during the pendency of the said Contempt Petition, the respondents issued an order dated 27-08-2007

terminating the service of Miss Achong Haokip as Rural Labour Inspector.

3.6 As the respondents did not implement various orders as stated above, the petitioner filed another writ petition being W.P. (C) No. 649 of 2007 praying for implementation of the order dated 17-09-1999 passed in C.R. No. 47 of 1994 which was disposed of on 10-02-2009 with the direction that the respondents should appoint the petitioner to the post of Rural Labour Inspector in terms of the direction given by this court in the order dated 17-09-1999 passed in C.R. No. 47 of 1994 within a period of three months. Due to non-compliance of the order dated 10-02-2009, the petitioner filed a Contempt Petition being C.C. No. 90 of 2009 and at the same time, the State respondents preferred an appeal being W.A. No. 54 of 2009 challenging the said order dated 10-02-2009. While the said writ appeal being W.A. No. 54 of 2009 was pending, a conditional appointment order was issued appointing the petitioner to the post of Rural Labour Inspector temporarily with effect from the date of her joining duty subject to the outcome of the said writ appeal. Subsequently, the said writ appeal being W.A. No. 54 of 2009 was dismissed on 08-09-2009 and consequently, the Contempt Case being C.C. No. 90 of 2009 was closed.

4. Shri Kh. Tarunkumar Singh, learned counsel appearing for the petitioner has submitted that the petitioner was not regularised along with the said 13 Rural Labour Inspector only on the erroneous ground that the petitioner had tendered resignation vide her letter dated 28-02-1993; that the learned Single Judge vide its judgment and order dated 17-09-1999 passed in C.R. No. 47 of 1994 had already held that there was no resignation in the eye of law and that the petitioner was entitled to be regularised with effect from the date on which the other 13, similarly situated, were regularised Rural Labour Inspectors. On the other hand, the learned Government Advocate, relying upon the affidavit-in-opposition filed on behalf of the respondents, has submitted that the Hon"ble High Court has not given any direction that the petitioner be appointed with effect from the date on which 13 other incumbents were given regular appointment and that such appointment has been discouraged by the Hon"ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 . It is further submitted that to allow the prayer of the petitioner will be harmful and will have far reaching consequences.

5. The issue involved herein relates to the interpretation of the judgment and order dated 17-09-1999, attained finality, which will be required to be examined in the light of the subsequent judgment and orders passed by the Hon"ble Gauhati High Court including the judgment and order dated 10-02-2009.

6. As has been stated in the petition and not rebutted in the affidavit-in-opposition, the prayer of the petitioner in her writ petition being C.R. No. 47 of 1994 is that a direction be issued to give her a regular appointment as Rural

Labour Inspector and to treat her equally with the said 13 others, similarly situated, Rural Labour Inspectors. The stand of the State Government that her name was not recommended because she had resigned from the service with effect from 01-03-1993, was rejected by the learned Single Judge. Having held that there was no resignation in the eye of law, the learned Single Judge vide its judgment and order dated 17-09-1999 allowed the writ petition and directed the State Government to appoint the petitioner to the post of Rural Labour Inspector for which special DPC was convened exclusively for them on 05-07-1993. Since the State Government has not preferred any appeal against the judgment and order dated 17-09-1999 nor has it sought any clarification thereof, it has attained finality. The learned Single Judge of the Hon''ble Gauhati High Court, Imphal Bench vide its judgment and order dated 10-02-2009 passed in W.P. (C) No. 649 of 2007, has directed the State Government to appoint the petitioner to the post of Rural Labour Inspector in terms of the court's order dated 17-09-1999 and even the writ appeal being W.A. No. 54 of 2009 preferred by the State Government against the judgment and order dated 10-02-2009 has been dismissed 08-09-2009.

7. There is no any ambiguity at all in the judgment and order dated 17-09-1999 when the learned Single Judge directed the State Government to appoint the petitioner to the post of Rural Labour Inspector for which special DPC was convened exclusively for them on 05-07-1993. The post to which the petitioner is to be appointed is specified in the court's order and in other words, the petitioner is to be appointed on the basis of the recommendation of the DPC held on 05-07-1993 as if she was also recommended for the reason that her name was not recommended only on the erroneous ground that she had resigned which had been rejected by the Hon''ble High Court. Moreover, it is not the case of the State Government that she did not appear before the DPC nor was she found unqualified for her recommendation. Even if the State Government had any doubt about the direction to be implemented, it could have sought for a clarification from the Hon''ble High Court which it failed to do so or it could have applied its mind and could have drawn inference by a conjoined reading of the prayers in the writ petition allowed by the Hon''ble High Court and the direction of the Hon''ble High Court. It appears that the State Government has chosen not to do so. It is only the Hon''ble High Court, which has issued the direction, that can explain what was intended in its order. Therefore, it is incorrect on the part of the State Government to contend that the Hon''ble High Court has not given any direction to appoint the petitioner from the date on which the other 13 incumbents, similarly situated, were given regular appointment. If such contention is to be accepted, it can be easily held that there is no order also of the Hon''ble High Court directing that the State Government shall issue appointment order only on 01-08-2009 when the first direction was issued by the Hon''ble High Court on 17-09-1999.

8. The other contention of the learned counsel appearing for the petitioner is that denial of her right to be regularised from the date on which 13 other incumbents,

similarly situated, were given regular appointment, is discriminatory being violative Article 14 of the Constitution. There is some force in his contention. There is no reason why the petitioner shall be denied the benefits which have been given to the 13 incumbents, similarly situated, without her fault at all and she was compelled to approach the Hon"ble High Court again and again to redress her grievance because of the lapses on the part of the State Government. If the State Government applied it judicious mind, the present problem could have been avoided at the beginning itself but for the mistake committed by the State Government, the petitioner has suffered mentally for all these years and in terms of money as well. It is unfortunate that the State Government, being an institution, continued to take its stand that the petitioner had resigned, despite the fact that its stand had already been rejected by the learned Single Judge in its judgment and order dated 17-09-1999 which had attained finality because of no appeal being preferred by the State Government against it.

9. The learned Government Advocate has submitted that in view of the law laid down in the case of Uma Devi (supra), the retrospective regularisation has been discouraged and is not permissible. There is no doubt about the law laid down by the Hon"ble Supreme Court in Uma Devi's case (supra) but it would not apply to the facts of the present case wherein the issue is as to whether the petitioner can be denied the benefit of regular appointment from the day on which 13 other incumbents, similarly situated, were given regular appointment, which the petitioner ought to have got on 10-11-1993 itself but had not got that because of the mistake on the part of the State Government, without her fault. The problem created by the respondents, cannot be attributed to the petitioner and therefore, there is no reason why the petitioner be penalised for it.

10. With the above observations, the present writ petition is allowed and it is directed that the Government order dated 01-08-2009 issued by the Commissioner (Lab. and Emp.), Government of Manipur, appointing the petitioner to the post of Rural Labour Inspector, be given effective from 10-11-1993 on which 13 other, similarly situated, were regular appointment to the posts of Rural Labour Inspector. There shall be no order as to costs.