
(2018) 06 GAU CK 0138

In the Gauhati High Court

Case No : Civil Writ Petition No. 97, 110 Of 2017

Lilypuii Chhangte and ors

APPELLANT

Vs

State of Mizoram and ors

RESPONDENT

Date of Decision : 28-06-2018

Acts Referred:

Constitution Of India, 1950 — Article 309

Citation : (2018) 06 GAU CK 0138

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : B. Lalramenga, Rosie Malsawmtluangi, Roshan Subedi, J.H. Ramneihmawia, Sheila L. Hnialum, C. Lalhriatpuii, Lalhmingthangi, H. Kristazi, Samuel Vanlalhriat Chhangte, Dinari T. Azyu, C. Lalramzuava, A.R. Malhotra, Emily L. Chhangte, H. Zodinsanga

Final Decision : Disposed Off

Judgement

MICHAEL ZOTHANKHUMA

1. Heard Mr. B. Lalramenga, learned counsel for the petitioners in WP(C) No. 110/2017. Also heard Mr. C. Lalramzauva, learned senior counsel for

the private respondent Nos. 9 to 12 in WP(C) No. 110/2017 and the writ petitioners in WP(C) No. 97/2017. Also heard Mr. Samuel Vanlalhriata

Chhangte and Mrs. Linda L. Fambawl, learned Govt. Advocates for the State respondents in both the writ petitions.

2. The 2 (two) cases are being disposed off by this common judgment & order, as the issues raised by the parties have their genesis in and are

relatable to the judgment & order dated 02.03.2017, passed in WP(C) No. 198/2016, (Smt. Lilypuii Chhangte & Others v. State of Mizoram &

Others).

3. The parties and the facts, as set out in WP(C) No. 110/2017, are being discussed in the present judgment & order for brevity. The petitioners in

WP(C) No. 110/2017 were also the writ petitioners in WP(C) No. 198/2016, wherein they had challenged the absorption of the private respondent

Nos. 9 to 12 as Lecturers (Special Education), under the State Plan in the SCERT. The challenge made by the petitioners against the absorption of the

private respondents into the State Plan was on the apprehension that the service of the private respondents would be regularized, under the

regularization scheme, being applied by the State Government.

4. At the time of hearing of WP(C) No. 198/2016, the learned Govt. Advocate had submitted under instructions that the engagement of the private

respondents as Lecturers (Special Education) in SCERT, was not going to be extended beyond the contractual period, i.e. 28.02.2017. The learned

Govt. Advocate had also stated that the 4 (four) posts of Lecturer (Special Education), in the SCERT was going to be filled up after publishing

advertisement for the said vacant 4 (four) posts. In view of the submissions made by the learned Govt. Advocate, WP(C) No. 198/2016 was disposed

off vide order dated 02.03.2017 as follows:

â??17. In view of the submissions made by the learned counsel for the petitioners and the submissions made by the learned Government Advocate,

this writ petition is dismissed as infructuous. However, it is directed that till the State Government selects 4 Lecturers (Special Education) under the

SCERT after publishing an advertisement for the same and till completion of the said selection process, the engagement of the private respondents as

Lecturers (Special Education) shall be continued so that the interests of the students does not suffer.â??

5. The petitioners counsel submits that subsequent to the judgment & order dated 02.03.2017, passed in WP(C) No. 198/2016, Advertisement No. 5 of

2017 dated 16.05.2017, was issued by the Mizoram Public Service Commission (MPSC), calling for candidates to fill up 4 (four) vacant posts of

Lecturer (Special Education), SCERT on contract basis. The State Government has however not completed the selection process for filling up the 4

(four) vacant posts of Lecturer (Special Education), SCERT, till date and in the meantime, the contractual engagement of the private respondents

have been continued by the State Government vide letter dated 17.04.2017

w.e.f. 01.03.2017 to 28.02.2018. The petitioners counsel submits that the extension of the engagement of the private respondents as Lecturers on contract basis vide letter dated 17.04.2017, should be set aside and the selection process should be completed within a specified time in pursuance to the Advertisement No. 5 of 2017 dated 16.05.2017.

6. Mr. C. Lalramzauva, learned senior counsel for the private respondent Nos. 9 to 12 submits that WP(C) No. 110/2017 should be dismissed as the continuous engagement of the private respondents on contract basis has been made in pursuance to the judgment & order dated 02.03.2017, passed in WP(C) No. 198/2016. He submits that till regular appointments are made to the posts being held by the private respondents, there is no infirmity in the private respondents continuing as Lecturers (Special Education) on contract basis. He also submits that as some of the private respondents could not take part in the selection process in pursuance to the Advertisement No. 5 of 2017 dated 16.05.2017 as they were over age, a prayer for relaxation of their over age had been made to the State respondents, which was however referred by the State respondents to the MPSC. The MPSC had thereafter wrongly rejected the petitioners application for relaxation of their over age on the ground that their appointments as Lecturers (Special Education), SCERT had been quashed in WP(C) No. 198/2016, vide judgment & order dated 02.03.2017.

7. He also submits that the State respondents cannot be allowed to continue with the selection process, as the appointments are going to be made on contract basis as per the Advertisement No. 5 of 2017. He submits that the posts which are being occupied by the private respondents on contractual basis is governed by the Mizoram School Education Department (Group A Gazetted post) Recruitment Rules, 2015, herein after referred to as 2015 Rules, which came into force on 26.06.2015. He submits that as there is a proper recruitment rule made for the 4 (four) posts, which are to be filled up by way of the Advertisement No. 5 of 2017 dated 16.05.2017, the attempt by the State respondents to fill up the posts on contract basis and not on regular basis is in violation of the law laid down by the Apex Court in Secretary, State of Karnataka and Others v. Umadevi (3) and Others, reported in (2006) 4 SCC 1.

8. The learned senior counsel for the private respondents has also produced a

letter dated 03.04.2018, issued by the Under Secretary to the Govt. of Mizoram, School Education Department, which conveys approval of the Government for the continued engagement of the private respondents on contract basis, w.e.f. 01.03.2018 to 28.02.2019

9. Mr. Samuel Vanlalhriata Chhangte and Mrs. Linda L. Fambawl, Govt. Advocates submit that in pursuance to the judgment & order dated

02.03.2017, passed in WP(C) No. 198/2016, the State respondents are going to fill up the 4 (four) vacant posts, which are governed by the 2015 Rules

on contract basis and in this respect, the Advertisement No. 5 of 2017 dated 16.05.2017 has been published. However, the selection process cannot be

completed in view of the interim orders passed by this Court. They also submit that due to economy measures, regular appointments cannot be made

as there is a ban on filling up of vacant post, except in cases of promotion as per the Office Memorandum No. G.17014/4/2002-FEA dated

08.07.2014, issued by the Finance Commissioner to the Government of Mizoram.

10. I have heard the learned counsels for the parties.

11. The ground taken by the State respondents counsels that regular appointment cannot be made to the 4 (four) vacant posts of Lecturer (Special

Education) in pursuance to the Advertisement No. 5 of 2017 due to the Office Memorandum dated 08.07.2014 is not sustainable, inasmuch as, the

continued engagement of the private respondent Nos. 9 to 12 beyond 28.02.2017 vide letters dated 17.04.2017 and 03.04.2018, issued by the Under

Secretary to the Govt. of Mizoram, School Education Department for an extra 2 (two) years period shows that the same has been done with the

approval of the Planning Department and concurrence of the Finance Department. In fact, the extension of the continuous engagement of the private

respondents vide letter dated 03.04.2018, issued by the Under Secretary to the Govt. of Mizoram, School Education Department states that the

continued engagement will be from 01.03.2018 to 28.02.2019 or till completion of the process by selection as per proper procedure, whichever is

earlier. The said letter dated 03.04.2018 had been issued with the concurrence of the Finance Department. The Advertisement for filling up the

regular vacant posts of Lecturer (Special Education) shows that the Pay Scale to be given to the selected persons in pursuance to the Advertisement

No. 5 of 2017, was as per the Pay Scale given in the 2015 Rules. The above

shows that the purpose for making a ban on filling up of vacant post for economy measures, as submitted by the learned Govt. Advocates for the State respondents cannot stand on its own legs. If for economy measures, O.M dated 08.07.2014 was to be applied, then the Advertisement No. 5 of 2017 could not have been issued, as the basis for taking the stand that regular appointments cannot be made to the regular vacant posts of Lecturer (Special Education) is Clause 2.5 of the O.M dated 18.07.2014, which states as follows:

â??2.5 Filling up of vacant posts

There will be a total ban on filling up of vacant posts except in cases of promotion.â??

If Clause 2.5 of the O.M dated 18.07.2014 was to be applied in toto, then the contractual engagements of the private respondents cannot be allowed

to continue also, as the said vacant posts have to be filled up only by promotion.

In view of the reasons stated above, the stand of the counsels for the State respondents that only appointment on contract basis can be made and

regular appointments cannot be made to the 4 posts of Lecturer (Special Education) in pursuance to Advertisement No. 5 of 2017 and the O.M dated

18.07.2014 is arbitrary and accordingly, the same is not sustainable in law. This Court accordingly holds that O.M dated 18.07.2014 cannot be applied

to the selection process to be made in pursuance to the Advertisement No. 5 of 2017.

12. Paragraph Nos. 14 to 17 of the judgment & order dated 02.03.2017, passed in WP(C) No. 198/2016 are reproduced below:

â??14. Mrs. Linda L. Fambawl, learned Government Advocate submits under instructions that the engagement of the private respondents as

Lecturers (Special Education) in SCERT is up to 28.02.2017 and the Government have taken a decision not to extend the contractual engagement of

the private respondents beyond 28.2.2017. The learned Government Advocate also submits that the 4 posts of Lecturers (Special Education) in the

SCERT is going to be filled up afresh after publishing an advertisement for the said 4 vacant posts.

15. In view of the submission of the learned Government Advocate, nothing remains in the writ petition.

16. Mr. B. Lalramenga, learned counsel for the petitioners submits that in view of

the submission of the Government Advocate, he does not wish to press this matter as the matter has become infructuous.

17. In view of the submissions made by the learned counsel for the petitioners and the submissions made by the learned Government Advocate, this writ petition is dismissed as infructuous.

However, it is directed that till the State Government selects 4 Lecturers (Special Education) under the SCERT after publishing an advertisement for

the same and till completion of the said selection process, the engagement of the private respondents as Lecturers (Special Education) shall be

continued so that the interests of the students does not suffer.â??

13. A reading of the above 4 paragraphs clearly shows that this Court had dismissed WP(C) No. 198/2016 as infructuous, due to the decision of the

Government not to extend the contractual engagement of the private respondents beyond 28.02.2017 and as the 4 (four) posts of Lecturer (Special

Education) SCERT was going to be filled up after publication of an advertisement.

14. As the 2015 Rules had been made in exercise of the powers conferred by the proviso of Article 309 of the Constitution, this Court was of the view

that 4 (four) posts of Lecturer (Special Education) was going to be filled up on a regular basis as per 2015 Rules. It was in that context that this Court

had directed that till the selection process was completed, the private respondents should continue as Lecturers (Special Education), SCERT.

15. A perusal of the 2015 Rules shows that there are 4 (four) posts of Lecturer (Special Education), 2 (two) each for Hearing Impairment and Visual

Impairment. The Pay Band and Grade Pay of the post of Lecturer (Special Education) is PB-3, Rs. 15,600 â?? 39,100 + G.P Rs. 5,400/-.

16. A perusal of the Advertisement No. 5 of 2017 dated 16.05.2017 shows that the 4 (four) posts of Lecturers (Special Education) to be filled up is

with regard to 4 (four) posts mentioned in the 2015 Rules, with the same Pay Band and Grade Pay as given in the 2015 Rules. The Educational and

other qualifications required for direct recruitment in the advertisement for the post of Lecturers (Special Education) is the same as required in the

2015 Rules.

17. In the case of Umadevi (3) and Others (Supra), the Apex Court has held that if rules have been made under Article 309 of the Constitution, then

the Government can make appointment only in accordance with the rules. The Apex Court further held that the Court is bound to insist on the State to make regular and proper recruitment and not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. In the present case, the private respondents have been working as Lecturers (Special Education) on contractual basis for a number of years and the Advertisement No. 5 of 2017 aims to replace one set of contractual appointments by another set of contractual appointments. In this regard, it would be profitable to refer to the law laid down by the Apex Court in the State of Haryana v. Piara Singh And others, reported in (1992) 4 SCC 118, wherein, it has been held by the Apex Court that an Adhoc or temporary employee should not be replaced by another Adhoc or temporary employee, he must be replaced by a regularly selected employee. The reason given by the Apex Court for the above law is that the same is necessary to avoid arbitrary action on the part of the appointing authority.

18. The Apex Court in Umadevi (3) and Others (Supra) has further held at para 13 as follows:

13. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in State of Punjab Vs. Jagdip Singh. It was held therein, "In our opinion, where a Government servant has no right to a post or to a particular status, though an authority under the

Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to

have been validly appointed to the post or given the particular status.

19. In view of the law laid down by the Apex Court in *Umadevi (3) and Others (Supra)*, this Court finds that the issuance of the Advertisement No. 5

of 2017 dated 06.05.2017 for filling the 4 regular posts of Lecturer (Special Education) on contract basis as being improper and not consonance with

the law laid down by the Apex Court. The regular vacancies being available for the post of Lecturer (Special Education), SCERT and as the

recruitment rules have been made under Article 309 of the Constitution, the State respondents are bound to fill up the said vacancies as per the 2015

Rules. Accordingly, the words "on contract basis" as reflected in Advertisement No. 5 of 2017 dated 16.05.2017 is set aside and quashed and the

selection and appointment will have to be made on regular basis, in pursuance to the above Advertisement No. 5 of 2017 dated 16.05.2017 as per the

2015 Rules.

20. The challenge made by the learned senior counsel for the private respondents that WP(C) No. 110/2017 was not maintainable in view of para 17

of the judgment & order dated 02.03.2017, passed in WP(C) No. 198/2016, is not sustainable as para 17 of the judgment & order dated 02.03.2017

had been made on the basis of the submission made by the Government Advocate that the engagement of the private respondents would not be

extended beyond their contractual period, i.e., 02.03.2017 and that an advertisement for selection for the 4 (four) vacant posts of Lecturer (Special

Education), SCERT was going to be issued.

21. With regard to the rejection of the prayer for relaxation of over age made by the private respondents, this Court finds that the ground for rejection

by the MPSC is not reflected anywhere in the judgment & order dated 02.03.2017, passed in WP(C) No. 198/2016. The relaxation of the over age of

the private respondents will have to be considered liberally by the State respondents as they have been working for a number of years as Lecturers

(Special Education), SCERT on contract basis. Further, the private respondents were eligible to be considered for regular appointment at the time the

2015 Rules came into force. Just because the State respondents have not filled up the said post on regular basis earlier as per 2015 Rules, the private

respondents cannot be faulted for not being able to take part in the said selection process due to they becoming subsequently over-aged. The need for

Lecturers (Special Education), SCERT is apparent as the private respondents have been working in the said posts for a number of years and

accordingly, their case for relaxation of age would have to be considered afresh by the authorities. In the event the private respondents over-age is

relaxed, no further special consideration can be given to the private respondents during the selection process.

22. As stated in the foregoing paragraph, the Apex Court has frowned upon the engagement of employees in violation of the scheme for regular

appointments. Though the letter dated 03.04.2018, conveying continuance engagement of the private respondents w.e.f. 01.03.2018 to 28.02.2019,

states that the same will also be till completion of the process of selection of Lecturers, the State respondents not having completed the process of

selection even after 1 (one) year of issuing the Advertisement No. 5 of 2017 dated 16.05.2017, this Court is of the view that the selection process for

regular appointment to be made in pursuance of the Advertisement No. 5 of 2017 dated 16.05.2017 should be completed within a period of 3 (three)

months from today and at the latest, by 27.09.2018. The continued engagement of the private respondents shall not be allowed to continue beyond

28.09.2018. Consequently, the letter dated 03.04.2018, issued by the Under Secretary to the Government of Mizoram, School Education Department,

is set aside to the extent where it states that the continued engagement of the private respondents, shall be w.e.f 01.03.2018 to 28.02.2019.

23. The letter dated 03.04.2018, issued by the Under Secretary to the Government of Mizoram, School Education Department, is made a part of the

record and marked as 'Annexure-X'.

24. Writ petitions are accordingly disposed off.