
(1999) 09 GAU CK 0017
In the Gauhati High Court
Case No : Civil Rule No. 47 of 1994

Low Veikhui

APPELLANT

Vs

State of Manipur and Another

RESPONDENT

Date of Decision : 17-09-1999

Acts Referred:

Citation : (2000) 1 GLT 492

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : R. Daniel, for the Appellant; R. Raisang, for the Respondent

Final Decision : Allowed

Judgement

H.K. Sema, J.—The facts of this case are rather unfortunate and pity, the circumstances narated hereunder will support this contention.

2. I have heard Mr. R. Daniel, learned Counsel for the Petitioner as well as Mr. R. Raisang, Ld. Govt. Advocate for the Respondents.

3. The Petitioner alongwith 13 others were appointed as Rural Labour Inspector on adhoc basis for a period of 6 months or till the posts are filled up on regular basis, whichever is earlier by an order dated 7th February, 1991. The said appointment has been extended from time to time.

4. In the interregnum the Petitioner has formed as association called All Manipur Adhoc Rural Labour Inspectors Welfare Association. A Writ petition namely Civil Rule No. 178(a) of 1992 has been filed under the name and style of the association represented by the President. This Court disposed of the aforesaid Civil Rule by an order dated 12.12.92 with the direction to the Respondents to constitute a special DPC exclusively for them. The order is in brief and it is extracted:

In the Gauhati High Court,

(The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram & Arunachal Pradesh).

Imphal Bench Civil Rule No. 178(a) of 1992

All Manipur Adhoc Rural Labour Inspectors Welfare Association, represented by its President Laishram Priyokumar Singh, having its temporary office here at the residence of U.K. Thekhu, Mojikhul, Thangmeiband, District, Imphal, Manipur and Ors.

... Petitioners

v.

The State of Manipur and Ors.

... Respondents

Present

The Hon'ble Mr. Justice S.N. Phukan

For the Petitioners : Mr. N. Surjamani Singh Advocate

For the Respondents : Mr. K. Irabot Singh, Ld. Govt. Advocate (HC).

12.12.92

ORDER

Heard Mr. N. Surjamani Singh, learned Counsel for the Petitioner and Mr. K. Irabot Singh, learned Govt. Advocate.

The writ Petitioners are working for about 2 years and in view of the law laid down in the case reported in AIR 1981 SC 2088 a special DPC shall be held only for the writ Petitioners. If any other DPC is held the result of the DPC shall be announced only after the result of the special DPC is announced.

Sd/- S.N. Phukan, Judge.

5. Pursuant to the aforesaid direction a special DPC has been constituted on 5.7.93 at 11.00 a.m. for regularisation of the adhoc appointment of all the 14th Rural Labour Inspectors in which the case of all the candidates including the Petitioner's case were considered on 5.7.93 itself and recommended 13 (thirteen) candidates (adhoc appointees) for regularisation. The case of the Petitioner was not recommended on the ground that she has resigned from the service with effect from 1.3.93. It is the case of the Petitioner that she has never tendered resignation on the other hand the General Secretary of the association demanded Rs. 30,000/- from her in connection with the regularisation of service which she refused thereupon she was directed to put signature on the paper on the ground that she refused to pay an amount of Rs. 30,000/- and accordingly she has put her signature. On 24th August, '93 (Annexure-C/2 to the rejoinder

affidavit) she has filed a representation to the Hon"ble Minister (Labour), Govt. of Manipur denying that she has tendered resignation. She has also reiterated that unable to pay a sum of Rs. 30,000/- as demanded by the General Secretary of the association for regularisation of the services of the adhoc appointees her name has been dropped in the guise of tender resignation with effect from 1st March, 1993.

6. Counter on behalf of the Respondents has been filed. Respondents has also produced the proceedings of the DPC held on 5.7.93 and the alleged resignation letter dated 28th Feb."93 in original. According to the Respondents that since the Petitioner has resigned with effect from 1st March "93 there is no question for regularisation of her service in the special DPC meeting held on 5.7.93.

7. In the facts and circumstances stated above, the whole controversy revolving around in this civil rule is that whether the Petitioner has tendered her resignation with effect from 1.3.93 and if so whether such resignation has been done voluntary or on duress and if so whether such resignation has been accepted by the competent authority and if not the case to thereof.

8. To answer the aforesaid question it would be necessary to examine the statement made by the Petitioner in paragraph No. 4 of the rejoinder affidavit.

Paragraph: "4 That it is also submitted that in the month of February, "93, the General Secretary of the Association demanded a sum of Rs. 30,000/- (Rupees thirty thousand) only from me in connection with the regularisation of my service for which I openly denied and thereby I was directed to put my signature upon one paper on the ground of being denied/refusal for paying the said sum amount of Rs. 30,000/- and accordingly, I have put my signature upon the said paper but not in connection with of my resignation.

9. The Petitioner by its petition dated 24th August "93 explained the position under what circumstances Petitioner has put her signature on a piece of paper. It is categorically stated in the petition dated 24th August "93 that the General Secretary of the Association demanded Rs. 30,000/- for regularisation of their services failing which the Petitioner must tender resignation and accordingly she has put her signature without reading the contents as the Petitioner was not in a position to pay the amount as demanded by the General Secretary. If this so, assuming, the Petitioner was in fact tendered her resignation with effect from 1.3.93 it can not be said to be a voluntary action. It is definitely, in the facts and circumstances as stated above, under duress and coerced. By now it is well settled principle of law that the tendering of resignation by the Government servant must be voluntary, unambiguous and in clear terms.

10. At the time of hearing of this writ petition, this Court repeatedly enquired from the Govt. Advocate whether assuming the letter dated 28th Feb. "93 filed by the Petitioner allegedly resigning with effect from 1st March "93, has been accepted or not by any authority, without any result. Government Advocate could not produce any letter of acceptance by any authority of the alleged resignation

tendered by the Petitioner.

11. This apart, undisputed the special DPC sat on 5.7.93. It that DPC Petitioner was allowed to appear. In the letter dated 28th Feb. '93 Petitioner was supposed to have resigned w.e.f. 1.3.93 and if it is admitted as correct the Petitioner ought not have been called in the special DPC held on 5.7.93. This fact would also show that despite of the petition dated 28th Feb. '93 allegedly tendering the resignation w.e.f. 1.3.93 the competent authority did not treated as resignation letter and allowed the Petitioner to appear before the special DPC on 5.7.93. Assuming, the letter dated 28th Feb. '93 is treated as resignation letter, it has been automatically waived by the act of the competent authority in allowing the Petitioner to appear before the special DPC held on 5.7.93. In the service jurisprudence the offer of resignation must necessarily be followed by an acceptance. In the absence of acceptance of resignation the Govt. servant shall be presumed to be in service. The petition dated 24th August '93 has been written by the Petitioner explaining the position well in advance of the order dated 10th Nov. '93 appointing the 13th adhoc appointees on regular basis, on the recommendation of special DPC held on 5.7.93.

12. In the facts and circumstances of the case as recited above, I am clearly of the view that there was no resignation in the eyes of law in absence of acceptance and since Petitioner was allowed to appear in the DPC held on 5.7.93 specially convened for regularisation of adhoc services, this petition succeeds.

13. In the result, the petition is allowed with the direction to the Respondents to appoint the Petitioner to the post of Rural Labour Inspector for which special DPC has been convened exclusively for them on 5.7.93, within a period of one month from today.

14. In another C.R. No. 1266/98, the same Petitioner has assailed the impugned order dated 19th October '98 appointing the 5th Respondent as Rural Labour Inspector in the vacancy meant for the Petitioner which was considered by the special DPC in its meeting held on 5.7.93. Mention may be made that this special DPC was exclusively convened for regularisation of 14 adhoc appointees including the Petitioner pursuant to the direction of the High Court. The impugned order dated 19th Oct. '98 appointing the 5th Respondent challenged by the Petitioner in C.R. No. -1266/98 has been quashed by this Court in separate judgment. Therefore, there will be no difficulties in appointing the Petitioner as Rural labour Inspector in the existing vacancy caused by the Respondent No. 5 in C.R. No. 1266/98.

15. The appointment of the Respondent No. 5 by an order dated 19th Oct. '98 was also a conditional order. For the convenience of the competent authority the relevant portion of order of appointment dated 19th Oct '98 is extracted:

The appointment is subject to the outcome of the decision of the Hon"ble Gauhati High Court under the Civil Rule No. 47 of 1994.

(Emphasis supplied)

16. In view of the last portion of the order there will be no more difficulties in appointing the Petitioner in the existing vacancy within the stipulated time as directed by this Court.

This petition is accordingly allowed. No costs.