
(2003) 12 GAU CK 0055
In the Gauhati High Court
Case No : Writ Petition (C) No. 34 (K) of 2002

Mhonthung Odyuo and Others	Vs	APPELLANT
State of Nagaland and Others		RESPONDENT

Date of Decision : 11-12-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 320
Nagaland Secretariat (Civil) Stenographers Service (Amendment) Rules, 1973 — Rule 27(2), 7
Nagaland Secretariat Subordinate Service (Amendment) Rules, 1972 — Rule 6.2

Citation : (2004) GLT 583 Supp

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : T. Koza, Samuel Risom and Ashipri Zho, for the Appellant; I. Jamir and Y. Long Kumer, for the Respondent

Final Decision : Dismissed

Judgement

B. Lamare, J.—Heard Mr. T. Koza, learned Counsel for the Petitioners as well as Mr. I. Jamir, learned Addl. Advocate General assisted by Mrs. Y. Longkumer for the Respondents.

2. The Petitioners 254 in numbers were appointed as LDA, Stenographer Grade III and Typist in the Nagaland Civil Secretariat by different appointment orders issued during the period 1991-2000. The appointment of all the Petitioners were made on contract, substitute or on Adhoc basis. All of them were appointed initially for a specific period mentioned in the appointment orders. However, the services of the Petitioners were extended from time to time.

3. While the Petitioners were serving, a notice dated 8.8.01 was issued by the Government in the Home Department intimating the dates for selection of casual employees in Nagaland Civil Secretariat whose term of appointment has not been extended and those who are on extension of their services. The dates of interview for LDAs, Typist and Stenos were fixed on 24.8.01, 27.8.01 and

28.8.01. The said notice was issued on the basis of the earlier notification dated 13.7.01 by which the Government constituted the Selection Committee. The Selection Committee after completion of the selection process submitted its report dated 10.10.01 whereby 135 LDAs, 52 Stenographers and 110 Typists were selected by the Selection Committee. On the recommendation of the Selection Committee the Government in the Home Department issued appointment orders for LDAs, Stenographers and Typists vide 3 (three) orders dated 16.11.01. By the said 3 orders the LDAs and Stenographers were appointed on fixed pay of Rs. 3,500/- p.m. and the Typists were appointed on fixed pay of Rs. 3,000/- p.m. It is these 3 orders by which the Petitioners were aggrieved in this writ petition.

4. The case of the Petitioners is that they were appointed on regular scale of pay and that they have been continuing in service for many years by virtue of their extension of service from time to time by the competent authority. The Petitioners were in continuous service right from the date of their appointment till the said impugned orders were issued by which their regular scale of pay were converted into a fixed pay. Therefore, according to the Petitioners they were discriminated and no opportunity was afforded to them before reducing their pay to fixed pay. It is also the case of the Petitioners that after they have rendered service for long time and they had high hope that their services would be regularised. But by the impugned orders the Petitioners have been put into great hardship by reducing their pay to a fixed pay.

5. The Respondents contested the claim of the Petitioners and stated that the Petitioners were appointed on contract/substitute basis and had continued in service without sanctioned posts. Their appointments were made without vacancies and their services in no way can be regularised without following the procedure for making appointment as per the rules. It is also stated that no right has accrued to the Petitioners. The Respondents also contended that in order to examine irregular appointments made by the Respondents. High Power Committee was constituted to assess the requirements of posts of various categories in the Secretariat and this Committee had recommended for appointing certain number of employees on fixed pay out of the employees found in excess of the sanctioned posts. The pay of the casual employees was also fixed by the High Power Committee.

6. It is further contended by the Respondents that the Selection Committee for this purpose was appointed and this Selection Committee had selected the employees who were found to be in excess of the sanctioned post and recommended for appointment of the various categories of post on fixed pay. It is also stated that the selection test conducted by the Selection Committee was not for regularisation of the service of the Petitioners but to select suitable candidates for appointment on casual basis. It is also stated that the question of giving opportunity to the Petitioners of being heard does not arise and the appointment of the Petitioners were on contract/substitute basis and their

appointments are purely temporary as can be seen from their appointment order. It is also contended that the appointment to the posts of LDA, Stenographer and Typist in the Secretariat is governed by the rules. The Petitioners were not selected according to the rules therefore they have no right to continue in service. The Respondents also contended that the Petitioners had faced the interview conducted by the Selection Committee without any objection and knowing fully well that the said interview is only to select the candidates whose term of appointment has not been extended and those who are on extension of service. The selection is not for regularisation but for selection of casual employees in the Secretariat.

7. Mr. T. Koza, learned Counsel for the Petitioner submitted that the Petitioners were appointed on regular scale of pay and their services were allowed to be extended from time to time. The Petitioners therefore were in continuous service from the date of their appointments till date. Even the said notification dated 8.8.01 for selection of casual employees was stayed by order of this Court dated 23.8.01. The Petitioners were also not afforded any opportunity of being heard before the appointing on casual basis in the fixed pay. The pay of the Petitioners had been arbitrarily reduced by the Respondents. The counsel also submitted that the Respondents have regularised the service of the similarly situated contract/substitute employees in the grade of LDA, Steno and Typist but the case of the Petitioners were not considered for regularisation. Those employees who were regularised by the Respondents were junior to the Petitioners and regularisation was made without test/interview. The Petitioners therefore, were discriminated by non regularisation of their services by the Respondents. Learned Counsel also submitted that this Court had consistently ruled that the contract employees who had completed 5 years are entitled to be regularised without facing the interview. On the basis of the decision made by this Court many contract/Adhoc employees who have rendered continuous service of 5 years were regularised by the Government without facing interview. The counsel also contended that by virtue of their long service the Petitioners are entitled to be regularised.

8. Mrs. Y. Longkumer, learned Counsel for the Respondents on the other hand contended that out of 254 Petitioners, 112 are LDAs, 42 are Stenographers and 100 are Typists. The LDA and Typist are governed by the Nagaland Secretariat Subordinate Service Rules 1972 as amended from time to time and the Stenographers are governed by the Nagaland Secretariat (Civil) Service Rules, 1973 as amended. According to the Rules the method of recruitment to the post of LDA is cent percent by direct recruitment so also for the post of Typist. The Nagaland (Civil) Stenographer Service Rules, 1973 as amended also provides that the appointment to the post of Grade III Stenographer is by direct recruitment. In all the direct recruitment for the post of LDA, Stenographer and Typist the method of recruitment is on competitive basis to be conducted by the Nagaland Public Service Commission (NPSC). The learned Counsel also contended that in all the appointments made to the Petitioners there was no

selection and they were appointed without vacancies and without sanctioned post and therefore, the Petitioners' appointments were made without following the Rules. The appointment order itself shows that the appointment was made on contract/substitute basis and as such the Petitioners cannot claim regularisation of their services when the appointments were made without following the Rules.

9. In order to appreciate the case in hand we may look into the provision of the Nagaland Secretariat Subordinate Service Rules, 1972 (For short 1972 Rules). Rule 6.2 of the 1972 Rules provides that for recruitment to the post of LDA 50% are by direct recruitment, 30% by promotion from amongst the Typist and 20% from LDA other than the Secretariat. This Rule was effective from 4th July 1972. However, this Rule was amended by the order dated 17.7.93. By this amendment which came into immediate effect the method of recruitment to the post of LD As is 100% by direct recruitment. However, Rule 6.2 provides that the recruitment to the post of LDA shall be made by a Committee in consultation with the NPSC strictly on merits. Rule 6.2(b) of the 1972 Rules also provides that recruitment to the post of Typist shall be by a competitive examination in consultation with the Commission.

10. Rule 7(b) of the Nagaland Secretariat (Civil) Stenographers Service Rules, 1973 (for short the 1973 Rules) provides that the recruitment to Grade III post of Stenographer shall be made by direct recruitment through qualifying competitive test of 80 words per minute conducted by the Commission. From the reading of the Rules it is clear that the recruitment to the post of LDA, Stenographer and Typist are governed by the said Rules and in all the appointments for these three categories of posts the recruitment shall be made in consultation with the NPSC.

11. The question to be decided therefore is as to whether the appointments of the Petitioners without following the rules can be directed to be regularised.

12. The Apex Court in the case of P. Ravindran and Others Vs. Union Territory of Pondicherry and Others, in paragraph 3 of the judgment has held as follows:

The admitted position is that the Commission having been entrusted with the constitutional duty to select suitable candidates by inviting applications from the open market, every candidate has a fundamental right to seek consideration and for selection through open competition. The Petitioners also have that right. At one time, they staked their claims but were not selected. Therefore, the process of recruitment through the Commission as envisaged under the Constitution, cannot be bypassed by issuing direction for regularisation of the services of the Adhoc persons who had come to the service through back-door entry. This Court in a catena of decisions has deprecated this practice of regularisation except in extraordinary cases by directing the Government to frame a scheme and regularise classes III and IV services in accordance with the scheme. Even in subsequent decisions, that leverage is not being insisted upon. This Court in J and K Public Service Commission v. Dr. Narinder Mohan had held that the Court

cannot adopt hybrid process of selection envisaged under the Constitution. This Court has deprecated the Government for exercising the power under Article 320 of the Constitution taking out the posts from the purview of the Commission and to regularise services dehors the Commission. Under those circumstances, we are of the view that the Tribunal has rightly rejected the claim to grant the relief sought for.

13. In the case of Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan, in paragraphs 6 and 8 of the judgment the Apex Court has held as follows:

6. There is no scope of regularisation unless the appointment was on regular basis. Considerable emphasis has been laid down by the Appellant to the position that even for temporary appointment there was a selection. That is really of no consequence. Another plea of the Appellant needs to be noted. With reference to the extension granted it was contended that a presumption of the Service Commission's concurrence can be drawn, when extensions were granted from time to time. This plea is without any substance. As noted above, there is no scope for drawing a presumption about such concurrence in terms of Sub-rule (2) of Rule 27. After one year, currency of appointment is lost. The extension orders operated only during the period of effectiveness.

8. Unless the initial recruitment is regularised through a prescribed agency, there is no scope for a demand for regularisation. It is true that an Adhoc appointee cannot be replaced by another Adhoc appointee; only a legally selected candidate can replace the Adhoc or temporary appointee. In this case it was clearly stipulated in the initial order of appointment that the Appellant was required to make room once a candidate selected by the Service Commission is available.

14. The Division Bench of this Court in the case of The State of Assam and Ors., Appellants v. Smt. Pratima Das and Ors., Respondents reported in 1997 (3) GLT 71 in paragraph 39 of the judgment has held as follows:

39. In face of the above report, which is by and large common with slight variation here or there, but in substance the same so far as the vitiating factors are concerned, the appointments conceived in fraud and delivered in deceit cannot be regularised or validated. There was no selection, no interview, or fake or ghost interviews, tampering with records and fabricating documents. In such circumstances as pointed out by the Supreme Court in Krishan Yadav and another Vs. State of Haryana and others, an inference can be drawn that all was motivated by extraneous considerations. The entire process of making appointments is stinking. Really speaking, the moment posts were allotted to a particular District, it was a free play for all and the net result is these appointments. All norms of procedural fairness had been thrown to winds, the Rules were given a convenient go-bye. Articles 14 and 16 of the Constitution violated with impunity. These petitions are, therefore, liable to be dismissed and accordingly dismissed with no order as to costs.

15. In the case of Mira Roy and Another Vs. State of Tripura and Others, in paragraph 8 of the judgment has held as follows:

8. The learned Counsel for the Petitioners made a strenuous contention that there was no necessity to make a consultation with the Tripura Public Service Commission and the regularisation can be made by the Government even if without such consultation. This contention of the learned Counsel for the Petitioner is to be rejected only on the ground that there is a statutory rule which requires such a consultation. That rule cannot be thrown to the wind by the Government.

16. In the instant case there is Strict provision under the Rules that the appointments of LDA, Stenographers and Typist are to be made in consultation with the Nagaland Public Service Commission. But the Commission was never consulted and the appointments were made dehors the Rule. When the appointments are made floating all norms of fairness to winds, the appointments were issued at the whims of the appointing authority without following the Rules. The Petitioners cannot claim such benefit of the illegal appointments made without following the Rules.

17. When the State is faced with this problem of appointment of 254 employees in absence of the sanctioned posts and without following the Rules, the Rules were trampled with impunity. The series of appointment orders is stinking with favouritism for the fortunate few. Hundreds of unemployed persons who deserves to be considered by competitive examination were deprived of the opportunity to avail the chance of being selected when the appointments were made by back door entry without advertisement and without following the process of selection and interview. The Petitioners were appointed without any interview, fake or ghost as apparent from the appointment orders. The wrong done by the appointing authority cannot be taken advantaged of by the Petitioners to serve their personal gain. The Rules were completely thrown into the winds conveniently by the authority by issuing the appointment orders. The rights of the unemployed youth to apply for such post have been throttled in the manner as was done in this case. If the advertisement were issued before making appointments to these posts hundreds of candidates would apply for the same for which the Petitioners may also do the same but by issuing the appointment orders to the Petitioners without following the Rules and without interview or selection and as such opportunity to other candidates have been deprived. Needless to say that when an advertisement is issued and selection is made through competitive examination, an opportunity is open to all and the best talents could be selected for the posts particularly when the posts relates to the State Civil Secretariat. The Petitioners therefore do not have any right to claim for regularisation where the appointments itself is stinking and dehors the Rules.

18. For the aforesaid reasons I find no merit in this petition and accordingly it is dismissed. The interim order dated 15.3.2002 stands vacated. However, if the

posts are to be advertised in future the Petitioners shall also be allowed to apply and appear in the selection process by relaxing their age. In the facts and circumstances of the case there shall be no order as to costs.