

(2015) 09 GAU CK 0020

In the Gauhati High Court

Case No : W.P. (C) No. 4749, 5149, 5888 of 2012 and 2921, 3196 of 2015

Mobidur Hussain and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Citation : (2015) 4 GLT 749

Hon'ble Judges : Tinlianhang Vaiphei, J.

Bench : Single Bench

Advocate : K. Devi, Advocate, for the Appellant; U.K. Goswami, Standing Counsel and N. Baruah, Advocate, for the Respondent

Judgement

Tinlianhang Vaiphei, J.—Aggrieved by the decision of the respondent authorities to advertise for recruitment seven posts of Laboratory Bearer (Grade-III) and 137 posts of Grade-IV at various Secondary Schools of Sivsagar District, which have hitherto been held by them on ad-hoc basis, by overlooking their cases for regularization, the petitioners are now approaching this Court for appropriate reliefs by filing these writ petitions separately. As they involve a common question of law, they were heard together, and now being disposed of by a common judgment. In WP(C) No. 2921 of 2015, there are 31 petitioners, whose names and particulars are given as under:

2. The petitioners are Grade-IV employees of different High and Higher Secondary Schools of Sivasagar District and were appointed on different dates between 1993 and 1995 by the Inspector of Schools, Sivsagar District (respondent 5) on ad-hoc basis initially for a period of three months. As their services were extended from time to time, they have now rendered more than 15 years of continuous service. It is the case of the petitioners that they were appointed against sanctioned vacant posts so much so that they have also been allowed to open their service books and GPF accounts. They were paid their salaries up to June, 1996 whereafter no salary was paid to them. This prompted them to approach this Court against the non-payment of their salaries. This

Court disposed of the writ petition by directing the respondent authorities to refer their cases before the Expert Committee to examination. Ultimately, the respondent No. 1 vide W.T. Messages dated 16.12.2005 and 17.12.2005 instructed the Inspectors of Schools of all the districts to submit their reports before the Joint Secretary, Government of Assam, Education Department on the detailed information about the Grade-III and Grade-IV employees appointed during 1991-96 showing their respective dates of appointment and their respective places of posting, the vacancies against which they were appointed, the post creation orders and their retention numbers, whether they were appointed after undergoing due selection process, etc. In the meantime, the Deputy Secretary, Govt. of Assam, Education Department by the communication dated 8.11.2007 instructed the respondent No. 2 to fill up 23 posts of Grade-III (LDA) and 145 posts of Grade-IV by due process of selection among eligible candidates and give due weightage to the experiences earned by the working persons and also relax the age bar if they were found to be overage. It was also directed therein that due remuneration be paid to these incumbents regularly as their services had been extracted, by the Education Department A Selection Committee was thereafter constituted by the respondent No. 2 comprising of four members. The petitioners duly appeared, before the Selection Committee on the dates fixed for verification of their appointments, which took place during 1991-1996. The Selection Committee in their proceeding dated 21.2.2000 recommended the cases of the employees shown in their report for regularization of their services in view of the long services rendered by each of them. The names of all the petitioners found a place in that report.

3. However, to the dismay of the petitioners, instead of regularizing their services, the respondent No. 2 by the communication dated 12.9.2009 directed, the respondent No. 5 to commence the process for recruitment of Grade-IV staff in the provincialized High and Higher Secondary Schools in their districts. Aggrieved by this, the petitioners filed another writ petition being WP(C) No. 4749/2012 before this Court, which passed the interim order dated 4.10.2012 by directing that the petitioners should be allowed to continue in their posts if they were still working. In the meantime, the Deputy Secretary to the Government of Assam, Education Department by his letter dated 22.8.2013 asked the respondent No. 5 to examine the eligibility of the employees (list enclosed) for regularization in terms of the Office Memorandum dated 27.6.2013 issued by the Finance (EC-II) Department, Govt. of Assam, concerning regularization of services in respect of Grade-III and IV staff appointed in excess of the sanctioned strength. On the basis of the instructions contained in the said Office memorandum of the Finance Department, the respondent No. 1 by his letter dated 17.4.2015 directed the respondent No. 2 to fill up the said vacant posts strictly in compliance with the order dated 22.8.1996 of the Apex Court in Civil Appeal No. A7646-11724 of 1996 and Secretary, State of Karnataka and Others Vs. Umadevi and Others, by following reservation rules and compassionate appointment scheme. This was followed by the WT message sent by the

respondent No. 2 to the respondent No. 5 on 30.4.2015 for filling up the 143 Grade-IV posts in various provincialized High and Higher Secondary Schools. Consequently, the respondent No. 5 issued the circular dated 5.5.2015 to all the Principals/Headmasters of Higher Secondary/Higher Secondary & Multipurpose Schools conveying the approval of the Government for filling up the vacancies of seven Laboratory Bearer and 130 Grade-IV posts in various Secondary Schools of Sivasagar district during 2015 and requesting them to take steps for filling up the said vacancies in accordance with Rule 4 of the Assam Secondary Education (Provincialized) Service Rules, 2003. Aggrieved by this, the petitioners are now initiating this third round of litigation by way of this writ petition for quashing the said circular and for regularizing their services.

4. An affidavit-in-opposition is filed by the State-respondents through the Joint Director of Secondary Education, Assam. It is pointed out by the answering respondent that ad hoc system of appointment had been prevailing in the years 1993, 1994 and 1995, and the petitioners were appointed by the Inspector of Schools in their respective schools on that basis. The Government of Assam constituted an Expert Committee to look into the appointments which were made without following due selection process and which are doubtful. It is further stated that steps were being taken by the Government for adjustment of services of the persons appointed against Grade-III and Grade-IV posts during the years 1991-96: those appointments were made without following proper recruitment procedure and were appointed on ad hoc basis. According to the answering respondents, as the services of the petitioners have been extracted by the Government, they took lenient view by recommending that their services be regularized along with similarly situated employees: correspondences have been exchanged between the Finance Department and the Judicial Department on many occasions to that effect. As a part of the drive that was undertaken for adjustment of the services of the excess appointees, who had been appointed without following proper recruitment policies, the Government constituted a Screening Committee for verification. The Screening Committee so constituted held interview, verified testimonials and submitted their report to the Government. The answering respondents admit that the Government in the Finance Department issued the said Office memorandum dated 27.6.2013 to the effect that the Grade-III and Grade-IV appointees which were made in excess during the years 1991-96 be regularized against existing vacancies. The respondent No. 5 was asked to submit a report to the Government to that effect. The Government in the Secondary Department thereafter took a policy decision to fill up all the vacant posts in the cadre of Grade-III and Grade-IV. The respondent No. 5 was directed to submit the vacancy position-along with the requisite Format I and II of the Finance SIU Department for approval: he accordingly submitted 143 vacant posts of Grade-IV including the posts against which the petitioners claimed to have been working regularly without pay since July, 1996. It is open to the petitioners to take part in the interview that was held at the behest (?) of the Selection Committee of the concerned schools. Since the

petitioners are more experienced, they could have got selection in their respective schools over the fresh applicants if they took part in the interview. It is also the case of the answering respondents that the earlier process that was adopted by the Government for regularization of services of the petitioners did not yield any fruitful result. As part of the new policy decision of the Government, the present recruitment drive undertaken by the Government is proper, just and fair. It is, therefore, submitted by the answering respondents that the prayers of the petitioner are not tenable and are, therefore, liable to be dismissed.

5. The question to be considered in this writ petition is whether the cases of the petitioners can be said to fall within the exception which the Apex Court has carved out in paragraph 53 of the decision in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, by permitting a one-time exception for regularizing their services? Mrs. K. Devi, the learned counsel for the petitioners, submits that when the State-respondents had already initiated the proposal for regularizing the services of the petitioners as early as 29.10.2013, it is absolutely unfair and unreasonable at this stage to abandon such proposal and take an entirely new decision for recruitment of new candidates notwithstanding the permission granted to the petitioners to participate in such recruitment process: their chances of selection in such recruitment will become undoubtedly much smaller. According to the learned counsel, the petitioners have been rendering more than ten years of continuous service, gaining enough experiences by now in their job and have even become overage without any further prospect for applying fresh Government jobs. It is also contended by the learned counsel that the services of similarly situated employees like one Kanteswar Katita, who was appointed in the year 1994, had already been adjusted at Tihu High School in the year 2011. She, therefore, strenuously urges this Court to quash the impugned circular dated 5.5.2015 issued by the respondent No. 4 (Annexure-13) and direct the respondent authorities to regularize the services of the petitioners, who are working in Sivasagar District against the vacant posts of Grade-IV in their respective schools in terms of the Government proposal contained in the Office Memorandum dated 27.6.2013 of the Finance (EC-II) Department, Govt. of Assam (Annexure-12), without further loss of time. Mr. U.K. Goswami, the learned standing counsel for the Education (Secondary) Department, Assam, supports the impugned decisions of the respondent authorities and submits that the petitioners have no legitimate grievance to make inasmuch as they are not prohibited from participating in the recruitment process, and if they do so, the State-respondents are prepared to condone their overage and give weightage to the past services rendered by them in their respective posts. He, therefore, contends that there is no merit in this writ petition, which is liable to be dismissed with costs.

6. In the instant case, a comparative reading of the pleadings of the parties will reveal that there is no dispute about the rendering of services by the petitioners in the posts of Grade-IV by way of ad hoc appointments for more than 15 years.

There is also no dispute between the parties that the petitioners were appointed on ad-hoc basis against the sanctioned vacant posts as in those days, the system of ad hoc appointment was prevalent. There is also no dispute that the petitioners are qualified for the post of Grade-IV. The legal position regarding regularization of service of irregular appointee enunciated in Uma Devi case (supra) was referred to and clarified by the Apex Court in Amarendra Kumar Mohapatra and Others Vs. State of Orissa and Others, . Paras 43 and 44 of the report are relevant and read thus:

"42. The decision in Janba (Dead) Through Lrs. Vs. Smt. Gopikabai, , as noticed earlier, permitted regularization of regular (irregular?) appointments and not illegal appointments. Question, however, is whether the appointments in the instant case could be described as illegal and if they were not, whether the State could be directed to regularize the services of the degree-holder Junior Engineers who have worked as ad hoc Assistant Engineers for such a long period, not only on the analogy of the legislative enactment for regularization but also on the principle underlying para 53 of the decision in Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

43. As to what would constitute an irregular appointment is no longer res integra. The decision of this Court in State of Karnataka and Others Vs. M.L. Kesari and Others, , has examined that question and explained the principle regarding regularization as enunciated in Secretary, State of Karnataka and Others Vs. Umadevi and Others, . The decision in that case summed up the following three essentials for regularization: (1) the employees have worked for ten years or more, (2) that they have so worked in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal, and (3) they should have possessed the minimum qualification stipulated for the appointment. Subject to these three requirements being satisfied, even if the appointment process did not involve open competitive selection, the appointment would be treated irregular and not illegal and thereby qualify for regularization. Para 7 in this regard, is apposite and may be extracted at this stage: (State of Karnataka and Others Vs. M.L. Kesari and Others,)

"7. It is evident from the above that there is an exception to the general principles against "regularization" enunciated in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued, him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum

qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are, considered to be irregular."

44. It is nobody's case that the degree-holder Junior Engineers were not qualified for appointment as Assistant Engineers as even they possess degrees from recognized institutions. It is also nobody's case that they were not appointed against the sanctioned post. There was some debate as to the actual number of vacancies available from time to time but we have no hesitation in holding that the appointments made were at all relevant points of time against sanctioned posts. The information provided by Mr. Nageswara Rao, learned Additional Solicitor General, appearing for the State of Orissa, in fact, suggests that the number of vacancies was at all points of time more than the number of appointments made on ad hoc basis. It is also clear that each one of the degree-holders has worked for more than 10 years ever since his appointment as ad hoc Assistant Engineer. It is in that view difficult to describe these appointments of the Stipendiary Engineers on ad hoc basis to be illegal so as to fall beyond the purview of the scheme envisaged in Secretary, State of Karnataka and Others Vs. Umadevi and Others, ."

7. In the case at hand also, the petitioners were initially appointed against vacant posts of Grade-IV on ad hoc basis in various High and Higher Secondary Schools of Sivasagar district. It is not the case of the respondent authorities that they are not qualified for the posts. The petitioners have also rendered more than ten years of continuous service in their respective posts without the benefit or protection of the interim order of any court or tribunal except after 4.10.2012 (by which time they had already completed more than years of continuous service). Under the circumstances, in my judgment the time has now come for the State respondents to take a one time measure to regularize the services of the petitioners against the posts in they are hitherto working. In the view that I have taken, the impugned decision contained in the circular dated 5.5.2015 cannot be sustained in law. In fact, the Government of Assam in the Finance Department has issued the Office memorandum dated 27.6.2013 with the following instructions consistent with the decisions of the Apex Court:

"2. The State Government will now like to take the "One time measure" the regularization of those workers as referred to in paragraph 53 of the orders in Uma Devi's case read with Kesari's case, whereby exception was carved out to regularize all Employees who full the following three conditions:-

(i) Who have been working continuously for 10 years or more as on 10-04-06 i.e. the date of passing of the judgment in Uma Devi's case without the benefit or protection of the interim order of any Court or Tribunal.

(ii) Who have been engaged against sanctioned vacant posts.

(iii) Who have requisite qualification to hold the post.

3. It is therefore necessary to undertake One time exercise to regularize those W.C.M.R. and similarly placed workers who have fulfilled all the above three conditions for due compliance of the direction passed by the Hon''ble Supreme Court of India in the above mentioned cases.

4. In view of above, all the Departments shall undertake One time exercise for regularization of services of those employees who fulfill all the three conditions as mentioned at para 2 strictly in compliance of the orders of the Hon''ble Supreme Court of India and then place the proposal before the Cabinet towards regularization of services of those employees who were engaged against vacant sanctioned posts in which they are continuing since their appointment."

8. The offshoot of the foregoing discussion is that this writ petition succeeds. The impugned circular dated 5.5.2015 (Annexure-13) issued by the respondent No. 5 is, therefore, quashed. Consequently, the respondent authorities are directed to consider regularization of the services of the petitioners against the posts of Grade-IV in the various High and Higher Secondary Schools of Sivasagar District with regular time scale of pay. The entire exercise shall be completed within a period of three months from the date of receipt of this judgment.

2. W.P. (C) No. 4749 of 2012

9. In this writ petition, there are 38 petitioners, who belong to different districts of Assam such as Barpeta district, Kamrup district, Nagaon district, Dhemaji district, Sivasagar district and Nalbari district. As in the previous writ petition, they were appointed as Grade-IV employees on ad hoc basis in different High and Higher Secondary Schools by the Director of Secondary Education, Assam during the period of 1993 to 1995. The names of the petitioners, their places of posting and dates of their appointments are as follows:

10. The petitioners are aggrieved by the circular dated 10.9.2012 issued by the respondent No. 2 for Recruitment of Grade-IV staff in the provincialized High and Higher Secondary Schools; the School Managing Committees were asked to give advertisement seeking application from intending candidates. The contention of the petitioners is that the posts sought to be advertised by the impugned circular are the posts which they have been holding since 1993-95 and cannot be filled up without regularizing their services. As in the previous case, they have rendered more than 15 years of continuous service without the benefit or protection of an interim order of this Court except for the period after 4.10.2012 (but then, by that time, they had already completed more than 15 of years of continuous service), are otherwise qualified for the posts, and were appointed against sanctioned vacant posts. The impugned circular dated 10.9.2012 (Annexure-M) issued by the respondent No. 2 is liable to be quashed. As in the previous writ petition, the petitioners are entitled to regularization of their services against the vacant posts of Grade-IV.

11. The respondent authorities are therefore, directed to consider regularization of the services of the petitioners against the posts of Grade-IV in various High

and Higher Secondary Schools of Barpeta district, Kamrup district, Dhemaji district, Sivasagr district and Nalbari district of Assam with regular time scale of pay. The entire exercise shall be carried out within a period of three months from date of receipt of this judgment Resultantly, the impugned circular dated 10.9.2012 is quashed.

3. W.P. (C) No. 5149 of 2012

12. There are fourteen petitioners in this writ petition and they belong to different districts of Assam such as North Lakhimpur district, Sivasagar district, Dhemaji district and Golaghat district. All these petitioners were appointed as Grade-IV employees on ad hoc basis by the Director of Secondary Education, Assam on various dates between 1993 and 1995. They have been continuously working in their posts for at least the last 15 years without the benefit or protection of any interim order from Court or Tribunal except after 23.11.2012 (but by that time, they had already completed at least 15 years of continuous service), are otherwise qualified for the post of Grade-IV and were appointed against sanctioned posts. The names of the petitioners with their detail particulars are reproduced below:

13. The petitioners are aggrieved by the 10.9.2012 issued by the respondent No. 3 directing the concerned Inspectors of Schools to initiate recruitment process for filling up Grade-IV staff in their respective districts against sanctioned posts for which approval of the Finance Department had been obtained. As in the previous writ petition, the petitioners are entitled to the same relief. The impugned circular dated 10.9.2012 (Annexure-M) is hereby quashed. The respondent authorities are, therefore, directed to consider regularization of the services of the petitioners against the posts of Grade-IV in various High and Higher Secondary Schools with the regular time scale of pay. The entire exercise shall be carried out within a period of three months from the date of receipt of this judgment.

4. W.P. (C) No. 5888 of 2012

14. In this writ petition, the petitioners numbering five of them, are challenging the same circular dated 12.9.2012 issued by the Director of Secondary Education, Assam (respondent 3) initiating the recruitment process for filling up the vacant sanctioned posts of Grade-III and Grade-IV posts under the Directorate of Secondary Education, Assam. As in the previous writ petition, the petitioners were appointed as Grade-IV employee on ad hoc basis by the respondent No. 3 on different dates between 1992 and 1995. They were also paid their salaries till 1996. The petitioners belong to different districts such as Golaghat district, Kamrup district, Sonitpur district and Sivasagar district of Assam. They have been continuously working in their posts for at least the last 15 years without the after 23.11.2012 (but by that time, they had already completed at least 15 years of continuous service), are otherwise qualified for the post of Grade-IV and were appointed against sanctioned posts. The names of

the petitioners with their detail particulars are reproduced below:

15. As in the previous writ petition, the impugned circular dated 12.9.2012 is hereby quashed. Consequently, the respondent authorities are directed to consider the regularization of the services of the petitioners against the posts of Grade-IV with regular time scale of pay. The exercise shall be completed within a period of three months from the date of receipt of this judgment.

5. W.P. (C) No. 3196 of 2015

16. This writ petition is filed by three petitioners, who were appointed by as Grade-IV employees on ad hoc basis in High and Higher Secondary Schools on different dates between 1992 and 1995 and were their salaries up to 1996. Their particular details are as follows:

17. As in WP (C) No. 2921 of 2015, they are also aggrieved by the circular dated 5.5.2015 issued by the Inspector of Schools, Sivasagar district directing all the Principals/Headmasters of provincialized High and Higher Secondary Schools to initiate recruitment for filling up seven post of Laboratory Bearer and one hundred and thirty-six Grade-IV posts in their schools. In the case at hand also, the petitioners were initially appointed against vacant posts of Grade-IV on ad hoc basis in various High and Higher Secondary Schools of Sivasagar district. It is not the case of the respondent authorities that they are not qualified for the posts. The petitioners have also rendered more than ten years of continuous service in their respective posts without the benefit or protection of the interim order of any court or tribunal except after 4.10.2012 (by which time they had already completed more than years of continuous service). Under the circumstances, as in the previous cases, the time has come for the State respondents to take a one time measure to regularize the services of the petitioners against the posts against which they are hitherto working. In the view that I have taken, the impugned decision contained in the circular dated 5.5.2015 cannot be sustained in law. The offshoot of the foregoing discussion is that this writ petition succeeds. The impugned circular dated 5.5.2015 (Annexure-13) issued by the respondent No. 5 is, therefore, quashed. Consequently, the respondent authorities are directed to consider regularization of the services of the petitioners against the posts of Grade-IV with regular time scale of pay in the various High and Higher Secondary Schools of Sivasagar District. The entire exercise shall be completed within a period of three months from the date of receipt of this judgment.