

(2014) 08 GAU CK 0033

In the Gauhati High Court

Case No : WP(C) Nos. 1422 of 2009 and 1010 of 2011

Mukul Saikia and Others

APPELLANT

Vs

Achinta Das and Others

RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 3 GLD 10 : (2014) 5 GLT 594

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : P.K. Roy Choudhury, Advocates for the Appellant; B.K. Sarma, SC and A. Dhar, Advocates for the Respondent

Judgement

Biplab Kumar Sharma, J.—Both the writ petitions pertaining to selection, appointment and regularization of services as Child Development Project Officer (CDPO) have been heard analogously and are being disposed of by this common judgment and order. In both the writ petitions, the prayer of the petitioners numbering 13(10 + 3) is to direct the respondents to appoint them as CDPO pursuant to their selection way back in 2000. Further prayer made in the writ petitions is to set aside and interfere with the appointment/regularization of the services of the private respondents.

2. An advertisement was issued on 19.8.1997 for filling up 27 posts of CDPO. Responding to the same, the petitioners along with others offered candidatures. Pursuant to the selection, that was conducted, a select list was published on 17.7.2000, which contained 64 names as against 27 vacancies including that of the petitioners. Admittedly, the names of the petitioners appeared in the merit list beyond the zone of consideration against 27 vacancies.

3. In the meantime, a cabinet decision was taken as a one-time measure to regularize the services of 18 CDPO, who had failed in the selection. It is on record that the said failed candidates had been serving as CDPO under Regulation 3(f) of the APSC (Limitation of Function) 1951. Pursuant to the said

cabinet decision, the notification dated 16.11.2000 was issued regularizing the services of 18 candidates, who in fact, had participated in the selection but could not qualify. Challenging such regularization of the Regulation 3(f) appointees, a batch of writ petitions including WP(C) No. 4932/2001 was filed. The writ petition was disposed of by judgment and order dated 14.8.2003 holding that since the regularization of service of the incumbents as per cabinet decision was not against 27 vacancies advertised for direct recruitment, the petitioners cannot have any grievance against such regularization. It was also held that the cabinet decision as such being not under challenge, the writ petitions were merit less.

4. Being aggrieved by the said judgment and order of the learned Single Judge, a writ appeal being W.A. No. 471/2003 was preferred, which was also dismissed by judgment and order dated 15.9.2006 upholding the regularization of service of the Regulation 3(f) appointees. Thereafter, the aggrieved parties including the petitioners involved in this proceeding (WP(C) No. 1422/2009) approached the Apex Court by filing SLP (Civil) No. 21315/2006, which was eventually registered and numbered as Civil Appeal 6690/2008. The appeal was also dismissed by judgment and order dated 18.11.2008 upholding the cabinet decision to regularize the services of the Regulation 3(f) appointees. It was held that such regularization being against the promotional quota and the petitioners/appellants being aspirants for direct recruitment, they cannot have any grievance against the same. It was also held that the petitioners' position in the merit list being beyond 27 advertised vacancies cannot make any claim for appointment. It was also observed that mere inclusion of the names in the select list did not cloth the petitioner with any right for appointment

5. After such dismissal of the appeal by the Apex Court, the petitioners filed the present two writ petitions challenging the regularization of services of three other incumbents and also some appointments of Regulation 3(f) appointees. Further prayer made in the writ petitions is to direct the respondents to appoint the petitioners against the existing and available vacancies on the basis of the select list that was published way back in 2000 and to be precise on 17.7.2000. Incidentally, the petitioners involved in WP(C) No. 1422/2009 have also challenged the regularization orders of the private respondents vide notification dated 21.3.2001, 23.7.2003 and 8.7.2004 (Annexure-6, 7 and 8 respectively).

6. I have heard Mr. P.K. Roy Choudhury, learned counsel representing the petitioners in WP(C) No. 1422/2009. None has appeared for the petitioners in WP(C) No. 1010/2011. Also heard Mr. B.K. Sarma, learned Standing Counsel, Social Welfare Department and Mr. A. Dhar, learned counsel representing the private respondents in both the writ petitions. I have also considered the entire materials on record.

7. As regards the prayer of the petitioners for their appointment on the basis of the select list that was published on 17.7.2000, same cannot be granted for the simple reason that the select list has expired long back and that the merit positions of the petitioners did not permit their appointments. As noticed above,

there were 27 vacancies, but the select list was published for 64 candidates and after appointment of 27 candidates in order of merit, the select list automatically stood exhausted. This aspect of the matter has been specifically dealt with by the Apex Court in the above referred judgment. For a ready reference, the relevant portion of the judgment, a copy of which has been annexed to the writ petition is quoted below:

"18.....The State Government appointed 27 persons in order of merits out of the select list prepared by the APSC, as such the appellants being selectees cannot claim appointment as a matter of right in excess to the advertised vacancies. It is well settled law that filling up of the vacancies over and above the number of vacancies advertised would be violative of Articles 14 and 16 of the Constitution of India. Mere inclusion of the appellants in the select list of the direct appointees does not confer any right on them to be appointed against the vacancies reserved for promotes....."

"19. In the facts and circumstances of the present case, we find that the High Court has rightly held that the appellants do not have any enforceable right of being appointed to the post of CDPOs against the quota meant for promotes and more particularly against the decision of the State Government regularizing the services of the private respondents. The cabinet decision was taken as a onetime measure having regard to the special circumstances of the case, the satisfactory performance rendered by the private respondents and their past service record which was found to be unblemished by the Government as well as in the exigencies of the Scheme of the Central Government which were to be operationalised in a time bound manner and also keeping public interest in mind. In these circumstances, the High Court is right in holding that the appellants have no locus standi to challenge the regulation of private respondents against the vacancies meant for the promotional quota the appellants who appeared in the interview held by APSC as direct candidates could not have any grievance against their regularization against 40 per cent promotional posts."

8. Coming to the second prayer of the petitioners to interfere with the orders of regularization of the services of the private respondents including continuation of service of the Regulation 3(f) appointees, the only ground, on which, the challenge has been made is that the private respondents involved in WP(C) No. 1422/2009 having occupied lower merit positions than the petitioners in the merit list, their services could not have been regularized. In the counter affidavit filed by the respondents, it has been stated that they were appointed way back in 1996 and in the cabinet memorandum referred to above, their names were inadvertently not included. The Apex Court in the aforesaid decision having regard to the fact that the incumbents, whose services were regularized through cabinet memorandum had been serving in the department since 1994-95 upheld the decision of the Government. Like that of the said incumbents, the private respondents were also serving in the department since 1996. It is in such circumstances, their services were regularized by the impugned orders in 2001,

2003 and 2004. Although, the petitioners involved in WP(C) No. 1422/2009 and for that matter the petitioners involved in the other writ petitions had been fighting the orders of regularization of the service of those incumbents serving under Regulation 3(f), but could not qualify in the selection, but for the reasons best known to them did not bring on record not to speak of any challenge to the impugned orders, by which, the services of the private respondents had been regularized.

9. Trying to explain the delay in challenging the impugned orders of regularization of 2001, 2003 and 2004 by filing the writ petitions in 2009 and 2011, Mr. Roy Choudhury, learned counsel representing the petitioners submits the cause of action for the petitioners arose after dismissal of the appeal by the Apex Court. In paragraph-16 of the writ petition, the petitioners have stated that by way of an additional affidavit, the petitioners had brought on record the further developments including the fact that the position of the private respondents in the merit list were below the petitioners. However, no reason has been assigned as to why the orders of regularization could not be challenged at an earlier point of time. Law is well settled that a settled position should not be unsettled lightly and that the delay itself defeats relief. That apart in view of the judgment of the Apex Court holding that the orders of regularization being against the promotional posts, the petitioners have no locus standi to challenge the orders of regularizations will also be applicable to the orders of regularization of the private respondents.

10. What has been assailed in the instant proceeding is only by way of projecting a technicality. According to the petitioners, the services of the private respondents could not have been regularized by a stroke of pen without there being any cabinet decision. However, the fact of the matter is that the private respondents are on equal footing like that of the CDPOs whose services have been regularized pursuant to a cabinet decision. As noted above, the delay on the part of the petitioners to make challenge to the orders of regularization also stares on the face of it and there is no explanation as to why the said orders could not be challenged at an earlier point of time or in the earlier round of litigation. The Apex Court having already held that the petitioners do not have any locus standi in the matter cannot be permitted to agitate the same grievance again and again. Above being the position, I do not find any merit in both the writ petitions and accordingly they are dismissed, leaving the parties to bear their own costs.