
(2002) 01 GAU CK 0015

In the Gauhati High Court

Case No : Writ Appeal No's. 542, 543 and 544 of 2001

Munglem Phom and Others

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:

Citation : (2002) 1 GLT 273

Hon'ble Judges : R.S. Mongia, C.J.;A.K. Patnaik, J

Bench : Division Bench

Advocate : O.P. Bhati, J.C. Gaur and A. Biswas, for the Appellant; A.R. Barthakur, A.G. and N.M. Jamir, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Mongia, C.J.—This judgment and order of ours will dispose of Writ Appeal Nos. 542/2001, 543/2001 and 544/2001 which arise out of one common judgment of the learned Single Judge dated 11.10.2001 passed in Writ Petition (Civil) Nos. 101(K)/2001, 102(K)/2001 and 149(K)/2001 disposing of the said three writ petitions.

2. Writ Petitioners, now Appellants, had been serving as graduate teachers on ad- hoc/contract basis for a period ranging from less than 5 years to more than 10 years as on 14.5.2001. The Cabinet of Nagaland in its meeting held on 14.5.2001 took a decision to regularise the services of ad-hoc graduate teachers as one time exercise who had put in service for certain number of years on ad-hoc basis. On the basis of that Cabinet decision dated 14.5.2001, the Governor of Nagaland issued a notification on 5.6.2001 adopting the recruitment policy to enable the School Education Department to regularise the services Of ad-hoc graduate teachers and to make fresh recruitment. In nutshell, the policy decision carved out 3 categories of ad-hoc/contract graduate teachers, viz.,:

(i) Those who had served as such for 10 years or more as on 14.5.2001;

(ii) Ad-hoc/contract teachers who had been serving as such for 5 to 10 years as

on 14.5.2001; and

(iii) Ad-hoc/contract graduate teachers having served for less than 5 years as on 14.5.2001.

The decision further provided that so far as category-(i) is concerned, they would be regularised subject to possessing the requisite educational qualification at the time of their initial appointment and fulfilling of other criteria. So far as category-(ii) is concerned, it was provided that such graduate teachers would appear for a screening test, both written and oral, to be conducted by the Nagaland Public Service Commission to ascertain their suitability. Apart from that such teachers were required to fulfil other essential criteria, such as, requisite academic qualification, age limit, etc. at the time of their initial appointment on ad-hoc/contract basis. They were required to obtain minimum 40% marks from both the written and oral performances. There was inter-se competition of the candidates belonging to this category and those who obtained 40% or above marks in the written and oral performance, subject to their fulfilling other criteria of educational qualification, etc. were to be regularised. If a candidate failed to obtain 40% marks, he would surrender that post which would be advertised.

3. So far as category-(iii) is concerned, i.e., teachers who had served for less than 5 years on ad-hoc/contract basis as on 14.5.2001, they were required to appear for regular open selection test and interview along with other fresh candidates and appointments were to be offered based on merit of the marks obtained in the selection examination and interview.

4. Learned Single Judge disposed of the writ petitions in the following terms:

(1) The State Respondents shall regularise the services of the Petitioners in line with the said Cabinet decision and Notification No. EDS-A(2)/2000(Pt) dated 5th June, 2001. This shall be done within a period of three months from the date a copy of this order is served on Respondents No. 1 and 2, the Commissioner & Secretary to the Government of Nagaland, Education Department and the Director of School Education, Government of Nagaland.

(2) Till regularisation of the services of the Petitioners who have completed 5 years or more of service as per the said Cabinet decision, no fresh recruitment be made;

(3) The substitute teachers have not been considered by the Government in the said Cabinet decision, and therefore, their services cannot be considered in terms of the said Cabinet decision. It is made clear that the substitute teachers are appointed against the temporary absence of the original employees and their services exists only during the period of substitution, and therefore, they have no right to claim for regularisation;

(4) Those teachers who were appointed through selection need not appear in the screening test.

With the above directions, the petitions are disposed of. No Costs.

These writ appeals have been filed primarily on the ground - (i) that there cannot be any screening test for the purpose of regularisation; and (ii) if at all there can be such a test then as regards teachers of category(iii), the test should be confined only to ad-hoc/contract teachers who had served less than 5 years without these posts being thrown open to fresh candidates.

5. We have heard Mr. O.P. Bhati, learned Counsel appearing for the Appellants, and Mr. A.R. Barthakur, learned Advocate General, Nagaland.

6. There is no law that the State Government must provide by some piece of legislation or executive instructions/policy that if a particular employee has completed a particular number of years of ad-hoc/contract service, he must be regularised. In other words, regularisation cannot be claimed as a matter of right. It is for the State Government to consider whether an ad-hoc employee having put in a particular number of years of service on ad-hoc basis may be regularised or not and, if so, on what terms and conditions. Unless the terms and conditions are so arbitrary or discriminatory that it shocks the conscience of the Court, the policy as a whole must be upheld and implemented. The Cabinet in its wisdom thought that persons who had put in 10 years or more service as ad-hoc/contract teachers need not be put to test to judge their suitability inasmuch as 10 years or more experience was thought to be good enough regarding suitability. However, it was not thought so, so far as ad-hoc/contract teachers who had put in 5 to 10 years of service and they were subjected to screening test to judge their suitability. As observed above, a person cannot claim regularisation as a matter of right. Regularisation if provided has to be based on the suitability of the person also. So far as category-(iii) is concerned, it was thought that they must compete in the open competition. However, since some of them may have become over-aged by the time the test was to be held along with the candidates from the open market, the age of such teachers has been provided to be relaxed. We find nothing wrong in the Cabinet decision as well as the directions given by the learned Single Judge in the judgment dated 11.10.2001.

7. For the foregoing reasons, we find no merit in these writ appeals, which are hereby dismissed. We make no order as to costs.