

(1999) 03 GAU CK 0052

In the Gauhati High Court

Case No : Civil Rule No's. 529, 532 and 1102 of 1994, 156, 310, 380 and 1052 of 1995, 178, 852, 909, 1020 and 1021 of 1996 and 458, 515, 1155 and 1312 of 1998

R.K. Shanti

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 31-03-1999

Acts Referred:

Citation : (2000) 3 GLT 372

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : R.K. Sanatombi, Ch. Joychandra, Y.Z. Shimray, R. Daniel and K. Rabei, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—All these civil rules raise the common question of law and facts and as such they are taken up for hearing together. In some of the cases notice of motion was issued and , the same have been listed for admission, but as agreed to by both the Counsel of the parties, I have taken up these cases for disposal.

2. These writ applications have been filed for enforcement of the Office Memorandum dated 22.8.94 issued by the Commissioner (DP) Govt. of Manipur for regularisation of the ad-hoc appointments who have completed 2(two) years as on 1.1.94 and continue to hold the post till date against clear vacancies. The grievance of the Petitioners is that they have been denied regular appointment in spite of the Office Memorandum mentioned above and in spite of the need and warrant of regular appointment. The appointments were made by the Deputy Commissioner, Ukhrul District as will be evident from Annexures to the writ application and a copy of it was sent to the Secretary (Revenue) Govt, of Manipur, Imphal. Initially it was for a fixed period, but that has been extended from time to time and that also with the knowledge of the Secretary (Revenue),

Govt, of Manipur, Imphal. The Deputy Commissioner again and again wrote to the Secretary (Revenue) for regularisation of their services vide different annexures showing regular vacancy position. Even it was stated vide Annexure-A/4 to writ application being CR No. 1052/95 as follows:

Annexure-A/4

No. I/53/77-E

GOVERNMENT OF MANIPUR

OFFICE OF THE DEPUTY COMMISSIONER: UKHRUL Ukhrul the 26th Aug"94

To: The Commissioner (Rev)

Govt of Manipur, Imphal

Sub: Acute shortage of officials/staffs in Revenue Department in Ukhrul District.

Sir,

With kind reference to the above subject and to this office letter of even number dated 3.2.94, I am to bring your notice regarding acute shortage of SDCs, UDCs and LDCs. The staff posted in this district is highly below the sanction strength. This is affecting the day to day work of the District Administration. It is requested to you to fill up the shortage in view of the increasing workload. The details are given below for your ready reference:

SL. No. Sanctioned Existing Shortage

Post strength

1. SDC 12 4 85
2. UDC 10 5 5
3. LDC 50 13 37

Yours faithfully Sd/- Illegible (Binod Kispotta) Deputy Commissioner, Ukhrul.

3. The authority at one point of time even wanted to oust the ad-hoc appointees, but the Deputy Commissioner vide Annexure-A/5 wrote as follows:

Annexure-A/5

No. 1/8/77-DC Vil (II)

GOVERNMENT OF MANIPUR OFFICE OF THE DEPUTY COMMISSIONER: UKHRUL.

Ukhrul the 17th Dec"94

To: The Commissioner (Rev)

Govt of Manipur, Imphal

Sir,

I am to state that the staff position in the district is also follows:

Sanctioned strength posted Shortfall

SDC 12 4 8

UDC 10" 6 4

LDC 50 13 37

Driver 7 4 3

(recruitment

for DC, ADC, 5 SD Cs)

It may be appreciated that to run revenue establishment with 13 LDC (one is being utilised at Imphal) is extremely difficult. Despite many requests the required number of LDCs have not been posted. If the ad-hoc LDCs are also ousted then the work in the office will be affected very badly.

In the whole district there are only 4 drivers posted. The requirement of drivers is 8. If the adhoc drivers are ousted then the SDCs will become immobile and all works will suffer.

In the circumstances stated above it is requested that the shortfall may kindly be taken care immediately by transferring adequate numbers of LDCs and drivers. Till such transfer the office may be allowed to continue with the 6 adhoc LDCs and 2 adhoc drivers. If the adhoc LDCs and adhoc drivers are terminated the works will suffer and the SDOs may not be able to do election works also.

In this regard various requests have been made for posting of adequate number of staffs in the district (copies of letters written earlier are enclosed for ready reference)

Yours faithfully Sd/- Illegible Deputy Commissioner, Ukhrul.

Annexure-A/6 to the writ application being CR No. 1052/95 is the Office Memorandum dated 22nd August, 1994.

4. Earlier there was a writ application being CR 66/93 (Mr. Maibam Basantakumar Singh v. State of Manipur and Ors.) wherein on 24.2.1995 this Court directed in the case of similarly situated persons to consider the case of the Petitioner for regularisation on the basis of Office Memorandum dated 22.8.94.

5. Affidavit-in-opposition has been filed wherein the only stand taken is that the Deputy Commissioner, Ukhrul District had no authority to appoint them. But this stand of the State Govt, cannot be appreciated in view of the fact that this was known to them and the Petitioners have put up service as follows:

SL. Period of Service No. Civil Rule Name of Petitioner Period of Service

1. CR 156/95 Miss RK Shanti 8Yrs.2months
2. CR 1102/94 Sri S Starring Joymati 7Yrs. 8 months
3. CR 310/95 Miss ZV Joan 8 Yrs. 2 months
4. CR 380/95 Miss S Leishiwon phi 8 Yrs. 2 months 7 Yrs. 9 months
5. CR 1052/95 Sri N. Khuirei- ngam Michael 7 Yrs 4 months
6. CR 178/96 Kumari AS Huimila 7 Yrs. 6 months
7. CR 852/96 Sri David Muivah Muivah 8 Yrs. 2 months 7 Yrs. 8 months
8. CR 515/98 Smti Lanolta Muivah 7 Yrs. 8 months
9. CR 458/98 Sri AS Leishisan 7 Yrs. 2 months
10. CR909/96 Smti K. Voctoria 8 Yrs. 2 months
(subsequently appointed on 28.6.92)
11. CR1155/98 Mrs. L. Change Shri S. Joseph 8 Yrs. 8 Yrs.
12. CR 532/94 Miss L Change 8 Yrs.
13. CR 529/94 Shri S. Joseph 8Yrs.
14. CR 1312/98 Shri Yuirei Chahongnao 7 Yrs.
15. CR 1020/96 Shri Th. Ningthar 6 Yrs.
16. CR1021/96 Shri SW Shimreingam 7 Yrs.

6. I have heard Ms. RK Sanatombi and Mr. Ch. Joychandra learned Counsel for Petitioners in CRs 156/95,1102/94,310/95, 380/95,1052/95,178/96,852/96,909/96,515/ 98,1312/98, Mr. YZ Shimray, learned Counsel for Petitioner in CRs 458/98,1021/96, Mr. K. Rabei, learned Counsel for Petitioner in CRs 1155/98, 532/94, 529/94 and also Mr. Kh. Nimaichand Singh, learned Additional Govt. Advocate appearing on behalf of Respondents.

7. Mr. Kh. Nimaichand, learned Counsel for Respondents places reliance in N. Mohanan Vs. State of Kerala and Others, wherein the Supreme Court pointed out that mere inclusion of name in the list of selected candidates does not confer any right on the candidate to be appointed. This is not the position in hand inasmuch as these Petitioners were appointed. The next question decided is that if a person is appointed to a post by virtue of the interim order of the Court that appointment is subject to outcome of final adjudication. An appointment by interim order does not create any right to be appointed. The Supreme Court further pointed out that appointments are to be made by adhering to the rules and if appointments are made in disregard of the rules and by passing of the Public Service Commission it will open a back door for illegal recruitment without limit. That was a case

wherein certain appointments were made from the waiting list and the Supreme Court pointed out that even if the life of the panel is not prescribed, it must be kept confined to a reasonable time. A long waiting list cannot be kept in infinitum. The Supreme Court pointed out that if a long panel is made and if it is allowed to last indefinitely it will bar future generations for decades for being considered for the vacancies arising much later. In fact future generations would be kept out for a very long period, if the panel is permitted to remain effective till it got exhausted. A panel of that type cannot be equated with a panel which is prepared having correlation to the existing vacancies or anticipated vacancies arising in the near future.

This case does not help the Respondents as because that is not the position in the case in hand. The authority made the appointments and that was known to the State Govt, and the State Govt, slept over the matter creating problem for these Petitioners and now if their services are not regularised and/or thrown out from service after having put up service for such a long period as indicated above, there will be human problem and the Court must look to the human face at the time of doing justice.

8. The learned Counsel for Petitioners places reliance in Arun Kumar Rout and Others Vs. State of Bihar and Others, wherein the Supreme Court pointed out that even if some appointments are irregular, on humanitarian consideration, the Court should look to them with sympathy when the question of regularisation comes for consideration in cases of temporary or ad-hoc appointments, even made improperly, if the incumbents had been allowed to continue for a long time because of the human problem involved in such continued service.

9. That being the position, I allow these writ applications and I direct that the authority within a period of 2(two) months from today, shall regularise the services of these Petitioners in terms of the Office Memorandum mentioned above. It is needless to say that there will not be difficulties to regularise their services as vacancies exist as has been pointed out by the learned Deputy Commissioner, Ukhul District. The Petitioners may obtain a certified copy of this order and shall produce the same before the authority to do the needful in terms of this order.

10. This disposes of all these writ application.