

(2005) 03 GAU CK 0035
In the Gauhati High Court

R.K.Rani Devi

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:

Citation : (2005) 03 GAU CK 0035

Hon'ble Judges : T.Nanda Kumar Singh, J

Bench : Single Bench

Advocate : S.Suresh, N.Kumajit Singh, Ashok Potsangbam, Advocates appearing for Parties

Judgement

1. Heard Mr. N. Kumarjit, learned counsel for the petitioner as well as Mr. Asok Potsangbam, learned Advocate General, assisted by Mr. S. Suresh, learned counsel for the respondents.

2. By this petition, the petitioner is seeking for a direction to the respondents to regularize the service of the petitioner as Health Educator w.e.f. the date of her appointment on adhoc basis on 25.10.1984.

3. The succinet fact of the petitioner"s is that the petitioner"s educational qualification is PUC and she passed the said examination in the year 1971 and thereafter, she had undergone Diploma course for Health Visitors and successfully completed the same in the year, 1976 from Lady Hardings Health School, New Delhi. On the recommendation of the duly constituted DPC the petitioner was appointed as Health Visitor on regular basis by an order dated 9.11.1976 issued by then Director of Medical Health and Family Welfare, Manipur. The petitioner also completed the Intensive Refresher Course in S.T.D. (Sexually Transmitted Disease) in the year, 1983 from the STD Training & Demonstration Centre, Safdarjung Hospital, New Delhi on deputation.

4. The next higher promotional from the post of lady Health Visitor is the post of Health Educator/Extension Educator. The Governor of Manipur also in exercise of the power conferred by the proviso to Article 309 of the Constitution of India

framed the Rules called Recruitment Rules for the post of Health Educator, Medical Department, Manipur. (a copy of the said Recruitment Rule is available at AnnexureA/1 to the writ petition). According to the said R.R. the methods of appointment to the post of Health Educator are: 50% by promotion and 50% by direct recruitment and Health Visitor having five years regular service in the Grade are eligible for promotion to the post of Health Educator. The petitioner on completion of five years regular in the Grade of Health Visitor on 9.11.1981 she became eligible for promotion to the post of Health Educator according to the said R.R. Regarding the promotion to the post of Health Educator, the petitioner has a very chequered history. At the first instance the petitioner was appointed on adhoc basis to the post of Health Educator on 25.10.1984(AnnexureA/2 to the writ petition) and thereafter she was reverted from the post of health Educator to her parent post of Health Visitor by an order of the Government of Manipur dated 20.8.1986 with effect from 24.5.1986. The petitioner filed a petition being CR No.364/88 for challenging the order of Government of Manipur dated 28.8.1986 before this Court. The said Civil Rule No.364/88 was finally disposed of by this Court by passing a final judgment & order dated 12.1.1989 (AnnexureA/3 to the writ petition). In the said order dated 12.1.1989 it is mentioned very clearly that if the petitioner's case can be regularized under any scheme of a relevant Rule, her case may be considered, if not already has been done. Till her case is considered, she shall not be reverted. In this regard, the case of the State respondents is that her case had already been considered by a DPC held on 8.2.1988 and such being the position, the Government of Manipur passed another order dated 18.2.1989 for reverting her from the post of Health Educator to her substantive post of Health Visitor. Again, the petitioner also filed another Civil Rule No.288/89 before this Court for challenging the said reversion order. The said C.R. No.288/89 was also disposed of by this Court by passing final judgment & order dated 28.2.92 (AnnexureA/4 to the writ petition) with the observation and direction that the department should consider the case of promotion of the petitioner in the promotion quota before any other appointment is made by direct recruitment. Thereafter, the petitioner again approached this Court by filing C.R.No.681/92 against the present respondents for a direction the State respondents to consider her case for regularization. This Court disposed of the said C.R.No.681/92 by passing final judgment & order dated 26.6.92 with the observation and direction that "According to the learned counsel for the petitioner in spite of the decision of this Court, the respondents have not considered the case for regularization of the present petitioner and have taken steps to hold the meeting of the DPC. We direct until further orders, one post of Health Educator/Extension Educator shall be kept reserved.?"

5. When the matter for consideration for regularization of the petitioner's adhoc appointment to the post of Extension Educator was pending the Government of Manipur took a policy decision under Office Memorandum No.12/13/92AQ/DP(Pt) dt. 9.10.92 for adhoc regularization in respect of the ClassI, II, III and IV adhoc employees both for direct and promotion quota. Two conditions are mentioned in

the policy decision are the adhoc employee who are eligible under the relevant Recruitment Rules and completed five years or more adhoc service as on 1.9.1992 will be regularized on the recommendation of the Internal Departmental Promotion Committee/Selection Committee and the second condition reads as follows: "the regularization of such adhoc/officiating employee shall be one time and should be completed on or before 31.3.1993 and no retrospective effect will be allowed. In case of those cases, which would be completed on or before 31.3.1993 their case will be considered according to the normal procedure." Therefore, according to the said policy decision of the Government of Manipur dated 9.10.92 the order for regularization of the adhoc employee under the said office memorandum could be effective only from 1.9.92. In pursuance of the said office memorandum of the Govt. of Manipur dated 9.10.92 and also in compliance of the order of this Court mentioned above, a DPC meeting was held on 3.3.1993 for considering the case of the petitioner and other for appointment by promotion to the post of Health Educator in the Health Department, Government of Manipur. The proceeding of the said DPC held on 3.3.93 is available at AnnexureD/5 to the affidavit in opposition of the State respondents. On perusal of the proceeding of the said DPC held on 3.3.93 it is clearly seen that the petitioner's case was considered under the said office memorandum dated 9.10.92 for appointment by promotion to the post of Health Educator and she had been recommended for appointment to the post of Health Educator on the promotion quota. On the recommendation of the said DPC held on 31.3.1993, she was appointed on promotion to the post of Health Educator vide order of the Director, Health Services, Government of Manipur being No.G(12)/77DHS, Imphal the 24.5.1993 with immediate effect (AnnexureD/6 to the affidavit in opposition of the respondents).

6. From the above admitted facts it is clear that the petitioner's service as Health Educator had been regularized under the office memorandum dated 9.10.92. On recommendation of the said DPC held on 3.3.93. According to the settled position of law under the service jurisprudence, the effective date for appointment either by direct recruitment or by promotion would be from the date of holding Selection Test or DPC. Therefore, effective date for regular appointment of the petitioner to the post of Health Educator would be from 3.3.93.

7. Considering the factual position, as well as the law, the writ petition is disposed of with the direction to the respondents to issue necessary order for regularization of the service of the petitioner in the post of Health Educator w.e.f. 3.3.93. The petitioner should be entitled to all the consequential benefits.

With the above observation and direction this writ petition is allowed.