

(1997) 05 GAU CK 0007

In the Gauhati High Court

Case No : Civil Rule No's. 666, 667, 677, 1111, 1273 of 1994

Salam Kora Singh and Others

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 30-05-1997

Acts Referred:

Manipur State Road Transport Corporation Employees Service Rules — Rule 45
Road Transport Corporations Act, 1950 — Section 5

Citation : (1998) 1 GLT 140

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

Bench : Single Bench

Advocate : Y. Imo Singh, for the Appellant; N. Ibotombi Singh, for the Respondent

Judgement

J.N. Sarma, J.—All these civil rules raise the same question of law and facts and as such as agreed to by learned Counsel for both the sides, these matters are taken up together for hearing.

2. I have heard Shri Y. Imo Singh, Learned Sr. Advocate for the Petitioners and Shri N. Ibotombi Singh, Learned Advocate for the Respondents.

3. In Civil Rule No. 666/94, 9 persons were allowed to undergo security training for a period of 6(six) months until further orders vide order dated 3rd November, 1993. Thereafter vide Annexure -A/2 on 9th November, 1993 the Security Inspector issued an order that the security training shall start from 9.11.93 for a period of six months. On the completion of the training of six months, these persons who took training were appointed as Security man it was specifically stated that all these appointments are against the existing vacancy. It was stated that there was the necessity to make these appointments because of the demand of the situation vide order dated 4th May, 1994. Thereafter, the Managing Director who passed the order of appointment retired on 14.5.94 and on 16th June, 1994 by issuing a cyclostyled blanket general order all the appointments were cancelled. The relevant portion of that order is quoted below:

Now, therefore, the Chairman, M.S.R.T.C. is pleased to order that any alleged appointment orders made by Shri W.Damodar Singh the then Managing Director, M.S.R.T.C. and received after the expiry of his term of contract appointment of 14.5.94 (A.N) shall be deemed to have not been issued and nonest.

4. In Civil Rule No. 677/94 two persons are the Petitioners, one Petitioner is Assistant Security Inspector and other is the Naik in the Corporation. They were appointed first on adhoc basis on 18th September, 1993 and on 9th May, 1994. Sri Oinam Hemanta Singh who was earlier a Naik in the Corporation was appointed as Asstt. Security Inspector and that was the appointment on officiating capacity against an existing vacancy and that order of appointment was also cancelled by the blanket general order part of which has been quoted above.

5. In Civil Rule No. 667/94, there are five Petitioners and these Petitioners were appointed by different orders of appointment. Earlier all of them were working in the corporation either on adhoc basis and/or on officiating basis. All these appointments are of the months of April and May, 1994 and all these appointments were cancelled by the same impugned order.

6. In Civil Rule No. 1273/94 there is only one Petitioner and he was appointed on 27th April, 1994 and his case is the fresh appointment and he was appointed as a conductor.

7. In Civil Rule 1111/94 there are 5 (five) Petitioners and all are security personnels who underwent training as indicated above and thereafter they were appointed. Their appointments were also cancelled by the same order.

8. Sri Y.Imo Singh, Learned Advocate for the Petitioners urges that the cancellations of the appointments by a blanket order is bad and without authority of law. It is submitted that the Petitioners were entitled to notice before the order of appointments are cancelled and in support of this contention, Shrawan Kumar Jha and others Vs. State of Bihar and others, (Shrawan Kumar Jha and Ors. v. State of Bihar and Ors.). In that particular case 175 persons were appointed as Asstt. Teachers by the District Superintendent of Education, Dhanbad by an order dated 28.5.1988. The Appellants joined their respective schools but that fact was denied by the authority.

9. Be that as it may, before the Supreme Court the point which was urged was that the appointments were cancelled because the District Superintendent of Education had no authority to make the appointments and that it was a device of by passing the reservations and that the conditions which are part of the appointment order were not complied with. The contentions raised on behalf of the State of Bihar were resisted by the Advocate for the employees but the Supreme Court did not decide that aspect of the matter and laid down the law that when an order of appointment is sought to be cancelled, the persons concerned is entitled to a reasonable notice to show cause as to why that order of cancellation is to be made. The Supreme Court pointed out that this is the

basis minimum requirement of natural justice, and accordingly the Supreme Court disposed of that matter directing that the Secretary (Education), Govt. of Bihar or to any other persons as may be authorised by him should give an opportunity of hearing to the employees and thereafter give a finding as to the validity of the appointments of the persons. This decision of the Apex Court is based on the Principle of adherence to the minimum requirement of natural justice. By issuing a Cyclostyled blanket order a number of appointments cannot be cancelled, each and every appointment may have a different background and that aspect of the matter must be brought home to the employees whose employment is sought to be cancelled. In this particular case, as it will appear in the order security personnel before appointment, had training for six months and completed training and thereafter in the month of March, the appointments were made and they were receiving their salary for this period. This order of cancellation was passed just after the retirement of the then Managing Director by issuing a cyclostyled order i.e. on 16th June, 1994.

10. On the other hand, learned Counsel for the Respondents Sri N. Ibotombi Singh in support of his contention placed reliance in a decision of the Apex Court reported in *Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others*, (*Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar and Ors.*). That was a case where two persons were appointed temporarily as Junior Managers and the Supreme Court found that the Managing Director was not the competent authority to make appointments inasmuch as it requires the approval of the State Govt. Thereafter, the next Managing Director who succeeded the earlier Managing Director terminated the services of the Respondents. That termination order was challenged before the Bombay High Court and the Bombay High Court quashed the order of termination. As against that there was an appeal before the Supreme Court and the Supreme Court in Paragraphs 5 and 7 laid down the law as follows:

(5) A plain reading of these two orders will go to show that the appointments were made purely on temporary basis and their services were liable to be terminated at any time without notice or assigning any reason. In the case of appointment on temporary basis a servant who is so appointed does not acquire any substantive right to the post, even though the post itself may be permanent and it is an implied term of such appointment that it may be terminable at any time and without notice. A temporary government servant does not become a permanent government servant unless he acquires that capacity by force of any rule or he is declared or appointed as a permanent servant. In the present case there is no rule under which the Respondents may be deemed to have become permanent by force of such rule nor they were so declared by any subsequent order of the Appellant-Company to have acquired that status. On the contrary the Respondents all along continued to be temporary and according to the terms of the order of appointment their services could be terminated at any time without any notice or assigning any reasons. In such a case it is not necessary to follow the formalities contemplated by Article 311 of the Constitution. In these

facts and circumstances the High Court was not right in holding that the Respondents were entitled for being heard before passing the said order of termination of their services and that the order of termination was bad in law on that account.

(7) It may be pointed out here that the Appellant-Corporation is a government company fully financed by the State Government and that being so the Government would be very much concerned to see that any project which is not economically beneficial for the Corporation and which is likely to result in any loss should not be given effect to. The Government, therefore, would be justified in issuing instructions that no appointments of any staff in connection with the said project will be made without the approval of the Board of Directors of M.P.Hasta Shilpa Vikas Nigam Limited and passed the order to that effect which has been filed as Annexure B in this appeal. But it appears that the High Court ignored the said order of the State Government while observing that no materials in support of the contention that the Government has issued instructions not to make appointment was produced by the Appellant.

11. That is not the position in the case in hand. It is not disputed that the Managing Director of the Corporation in the instant case had the authority to make the appointment. u/s 5 of the Road Transport Corporation Act, 1950 which is admitted to have been adopted in the State of Manipur, it is specifically provided that the Managing Director may exercise such powers and do such acts and things as may be exercised or done by the Corporation. The Managing Director is the Executive Head of the Corporation and as such he will have the power to appoint the employees. Rule 45 gives the power to the authority to make regulation and in terms of it, the Manipur State Road Transport Corporation Employees Service Regulations 1977 were made 28th April 1977. It is submitted by the Learned Advocate for the Respondents that it is not adopted as yet.

12. Be that as it may, in the field of service jurisprudence it cannot be conceived of that a blanket order of termination can be passed in the manner done in the instant case.

13. Accordingly, the blanket order of cancellation of appointments, quoted above, dated 16.6.94 vide Annexure A/5 in Civil Rule No. 666/94, Annexure A/4 in Civil Rule No. 1273/94, Annexure A/9 in Civil Rule No. 667/94, Annexure A/7 in Civil Rule No. 1111/94 and Annexure A/5 in Civil Rule No. 677/94 shall stand quashed. All the Petitioners shall be reinstated in service within a period of 2(two) months from the date of receipt of this order.

14. It is submitted by the Learned Advocate for the Respondents that at present there is no vacancy/post. That is the lookout of the Corporation but I cannot allow in justice to persist, whenever any injustice comes to the notice of the writ Court, the Writ Court is bound to wipe out the injustice as far as possible, that is what I tried to do.