
(2003) 12 GAU CK 0075

In the Gauhati High Court

Case No : Civil Rule No. 4850 of 1998 and W.P. (C) No. 3357 of 1999

Sampa Paul and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 22-12-2003

Acts Referred:

Assam Public Service Commission (Limitation of Functions) Regulations, 1951 — Regulation 3
Constitution of India, 1950 — Article 14, 16, 309

Citation : (2004) 1 GLT 160

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : D.C. Mahanta, S.S. Goswami and P. Bhattacharyya, for the Appellant; B.J. Talukdar, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—Common question of facts and law being involved in both the writ petition, they are taken up together for disposal.

2. I have heard Mr. D.C. Mahanta, learned Senior Counsel appearing for the Petitioners and the learned Govt. Advocate for the Respondents.

3. In Civil Rule No. 4850/98, the four Petitioners who were appointed as Assistant Employment Officer under Regulation 3(f) of the Assam Public Service Commission (L and F) Regulation 1951 by a Notification dated 24.2.95 claimed regularisation of their services. Their further prayer made in the writ petition is to set aside and quash that part of the Notification dated 5.7.97 by which the Petitioner Nos. 1 and 2 were intimated that their services would be terminated if they failed to qualify in the combined competitive Examination of 1996 held by the APSC. While issuing a notice of motion by order dated 22.9.98, this Court provided as an interim measure that the Petitioners should not be ousted from their services. However, it was made clear that such continuance of the Petitioners in their services shall not in any way stand on the way of absorbing

the candidates who were regularly selected by the APSC. It was also provided that the Petitioners would hold only the vacant post other than the notified post.

4. In W.P.(C) No. 3357/99 which has been filed by the Petitioners Nos. 1 and 4 in Civil Rule No. 4850/98 has prayed for setting aside and quashing of the Notification dated 19.6.99 by which the services of the said two Petitioners were terminated. This Court while entertaining the writ petition by its order dated 2.7.99 provided that the said order dated 19.6.99 shall remain suspended until further order.

5. All the Petitioners are continuing in their services as Assistant Employment Officer under Regulation 3(f) of the aforesaid Regulation on the basis of the interim order passed by this Court. The State-Respondent have filed their affidavit in W.P.(C) No. 3357/ 99. In paragraph 7 of the affidavit, it is the stand of the Respondent that during the year 1994 as many as 10 posts of Assistant Employment Officer against direct recruitment quota were notified to the APSC for regular recruitment through combined competitive Examination held in 1995. The Petitioners along with others appeared in the recruitment Examination but could not qualify as such their services were terminated vide Notification dated 23.6.97. However, they have been continuing in their services on the strength of the aforesaid interim order. Further stand of the Respondents in their affidavit is that seven (7) posts of Assistant Employment Officers against direct recruitment quota were notified in the year 1996 and the Petitioners could not qualify in the selection held by the APSC. The Petitioners have been continuing in their services against the vacancies which had fallen Vacant due to promotion. In paragraph 9 of the affidavit the Respondents have stated that there is no more vacant posts of Assistant Employment Officers against the direct recruitment quota which position necessitated termination of services of the Petitioners.

6. Against the said affidavit-in-opposition the Petitioners have filed their affidavit in reply controverting the averments made in the affidavit-in-opposition. Referring to Annexure-10 thereto dated 5.9.2002 which is a letter from the Vice Chairman of the State Planning Board, Assam to the Minister, Labour and Employment, Assam by which a request was made for regularisation of the services of the Petitioners. Mr. Mahanta, learned Senior Counsel for the Petitioners submitted that the services of the Petitioners are required to be regularised as was done in the case of other similarly situated persons and as indicated in the said Annexure-X letter dated 5.9.2002.

7. The learned Govt. Advocate appearing for the State-Respondents on the other hand submitted that the Petitioners cannot claim automatic regularisation. In any case, the Petitioners having continued in their services on the strength of the interim orders passed by this Court, no vested right has accrued to them, it is submitted. As regards Annexure- X recommendation made by the Vice Chairman of the said Planning Board, Assam to the Minister Labour and Employment, Assam urging for regularisation of the services of the Petitioners in reference to such regularisation made in favour of seven (7) others, it is submitted by the

learned State Counsel that the Vice Chairman of the State Planning Board, Assam has got no authority to make such recommendation and that merely because the services of the some other Employment Officers were regularised, the Petitioners cannot claim automatic regularisation of their services.

8. I have given my anxious consideration to the submissions made on behalf of the parties. The admitted position is that the Petitioners were appointed under Regularisation 3(f) of the aforesaid regulation which necessarily meant that their continuation in service and of regularisation thereof was dependant on their clearing and or qualifying in the competitive Examination to be conducted by the APSC. As pointed out in the affidavit they in fact had competed in such Competative Examination, but could not qualify. Law is well settled that an incumbent holding a post on ad-hoc and or temporary post which are required to be filled up through regular process of selection cannot claim automatic regularisation on the strength of their mere continuance in the post. In the instant case barring the period from 1995 to 1998, the Petitioners have been continuing in their respective post on the strength of the interim order passed by this Court. Merely working on a post for a number of years will not give automatic regularisation more particularly when the post is meant to be filled by regular recruitment under the statutory rules.

9. The Supreme Court in the case of Dr M.A. Haque and Others Vs. Union of India (UOI) and Others, has observed as follows:

As against this, however we cannot lose sight of the fact that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and the bypassing of the Public Service Commissions are permitted, it will open a back door for illegal recruitment without limit. In fact this Court has, of late, been witnessing a constant violation of the recruitment rules and a scant respect for the constitutional provisions requiring recruitment to the services through the Public Service Commission. It appears that since this Court has in some cases permitted regularisation of the irregularly recruited employees, some Governments and authorities have been increasingly resorting to irregular recruitments. The result has been that the recruitment rules and the Public Service Commissions have been kept in cold storage and candidates dictated by various considerations are being recruited as a matter of course.

10. The Supreme Court in the case of J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., has held as follows:

The next question is whether the direction given by the High Court to regularise the services of the Respondents is valid in law. It is true that the ad-hoc appointees have been continuing from 1986 onwards but their appointments are dehors the Rules. Rules prescribed only two modes of recruitment, namely, direct recruitment of promotion by selection. As regards the lecturers are concerned, it is only by direct recruitment. The mode of recruitment suggested by the High

Court, namely, regularisation by placing the service record of the Respondents before the PSC and consideration thereof and PSC's recommendation in that behalf is only a hybrid procedure not contemplated by the Rules. Moreover, when the Rules prescribed direct recruitment, every eligible candidate is entitled to be considered and recruitment by open advertisement which is one of the well accepted modes of recruitment. Inviting applications for recruitment to fill in notified vacancies is consistent with the right to apply for, by qualified and eligible persons and consideration of their claim to an office or post under the State is a guaranteed right given under Articles 14 and 16 of the Constitution. The direction, therefore, issued by the Division Bench is in negation of Articles 14 and 16 and in violation to the statutory rules. The PSC cannot be directed to devise a third mode of selection, as directed by the High Court, nor be mandated to disobey the Constitution and the law.

In the case of *State of Uttar Pradesh and Ors. v. Mohd. Waqar Hussain and Ors.* as, 1995 Supp 3 SCC 669 . The Supreme Court has observed as follows:

The post of Assistant Engineer(Civil) being a Class II post was within the purview of the State Public Service Commission. Indisputably, the first Respondent was appointed without the prior approval of the Public Service Commission on purely temporary basis subject to his being liable to be removed on regular candidates approved by the Public Service Commission becoming available. The order of his appointment is quite clear and unambiguous on this point. It, however, appears that the State Government had employed, like the first Respondent, several others without seeking the prior approval of the State Public Service Commission. These ad-hoc employees were clamouring through their service association for continuance in the jobs. Even after the State Public Service Commission did not approve the candidates sent to it at the behest of the service association, an arrangement for a special interview of the said ad hoc employees was made in consultation with the Public Service Commission so that such employees may not be required to go through the rigour of an open competitive test. Even though the stringency of selection was, thus, diluted and the State Public Service Commission agreed to grant approval by interviewing the ad hoc employees, unfortunately the first Respondent failed to secure the approval of the Commission even though three opportunities were given. In the circumstances, when the State Public Service Commission did not accord the necessary approval, the services of the first Respondent had to be terminated as was done in 1974. In the circumstances, it is difficult to say that the termination was invalid.

It clearly emerges from the material on record that the State Government was quite sympathetic to the provisionally appointed Assistant Engineers. It was on account of their sympathy that an arrangement was worked out with the Public Service Commission to interview the candidates with a view to accord approval to their appointments. Even after the Commission agreed to the relaxation, the first Respondent could not successfully complete the diluted test and hence, the

Commission conveyed its disapproval and consequentially the said Respondent's services were terminated in 1974. In the circumstances, we fail to understand how it can be said that the State Government had acted contrary to law or regulations.

In the same tune the Supreme Court in the case of Dr. Arundhati Ajit Pargaonkar Vs. State of Maharashtra and others, dealing with the case of the Appellant who had rendered nine years of uninterrupted service as Lecturer, without however any selection observed as follows:

Nor the claim of the Appellant, that she having worked as Lecturer without break for nine years on the date the advertisement was issued she should be deemed to have been regularised appears to be well founded. Eligibility and continuous working for howsoever long period should not be permitted to overreach the law. Requirement of rules of selection through Commission cannot be substituted by humane considerations. Law must take its course. Consequently the Appellant was not entitled to claim that she should have been deemed to have been regularised as she had been working without break for nine years.

11. The jurisdiction of the High Court, while dealing with the writ petition, is circumscribed by the limitation discussed and declared by the judicial decision, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge. It is true that the High Court is entitled to exercise its judicial discretion in deciding writ petition, but this discretion has to be confined within the limits of law and the High Court cannot grant relief swayed by any sympathetic consideration.

12. In the instant case the admitted position is that the Petitioners were appointed under Regulation 3(f) of the aforesaid regulation with the condition that their services would stand terminated on their failure to qualify in the competitive Examination. The Petitioners have been continuing in their services on the strength of the interim orders passed by this Court, Under these circumstances no direction can be issued to the Respondents to regularise the services of the Petitioners. Admitted position is that the post being held by the Petitioners are required to be filled up through competitive examination. Merely because the Petitioners had the advantage of getting appointment under Regulation 3(f) of the Regulation to the exclusion of other similarly situated persons and that they have been continuing in their services on the strength of the interim order passed by this Court will not cloth them with any legal right of regularisation of their services dehors the rules.

13. Having held that the Petitioners are not entitled to any direction from this Court for regularisation of their services, I leave it to the Respondents authorities to deal with the case of the Petitioners as they may deem fit and proper. In case it is decided that the posts being held by the Petitioners will again be advertised for competitive examination, the Respondent-authorities will consider relaxation of the age bar if any and also to give weightage for the past services rendered by

the Petitioners. The Petitioners may be allowed to continue in their services till such consideration by the Public Service Commission. It however, will not preclude the Respondent-authority to consider regularisation of the service of the Petitioners in relaxation of the normal rules of recruitment as was done in the case of seven(7) other Assistant Employment Officers as reflected in Annexure-X of the affidavit-in-reply filed by the Petitioners.

14. The writ petition stands dismissed subject however to the above observation. No order as to cost.