

(2003) 08 GAU CK 0007

In the Gauhati High Court

Case No : Writ Petition (C) No. 365 (AP) of 2001

Sang Dakpa

APPELLANT

Vs

State of Arunachal Pradesh and Another

RESPONDENT

Date of Decision : 12-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 GLR 273 : (2005) GLT 519 Supp

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : T. Son, for the Appellant; B.L. Singh, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Whether the service of a person, who is appointed in any Government department on adhoc basis and de hors the recruitment rules can be terminated to appoint a person selected following due recruitment process is the moot question, which this writ petition has raised.

2. By making this application under Article 226 of the Constitution of India, the petitioner has approached this Court seeking issuance of appropriate writ/writs commanding the respondents to regularise the petitioner's service against the post of Tourist Information Assistant at Tawang under the Directorate of Tourism, Govt. of Arunachal Pradesh.

3. In a nutshell, the case of the petitioner may be described as follows :

The petitioner, who was eligible for appointment to the vacant post of Tourist Information Assistant in the Directorate of Tourism, Govt. of Arunachal Pradesh, applied for the post on coming to know about the existence of such a vacancy and following an interview, the petitioner was, on 17.7.1996, appointed on ad hoc basis as Tourist Information Assistant in the Director of Tourism, Govt. of Arunachal Pradesh, and posted at Tawang. While the petitioner was so serving, the petitioner under mistaken advice of the officials of the office of Respondent

No. 2, namely, Director of Tourism, Govt. of Arunachal Pradesh, Itanagar, applied for regular appointment in pursuance of an advertisement, dated 4.9.1997, published in this regard. The petitioner was not really required to appear in such selection process. In fact, the petitioner had already made representation dated 20.8.1997, addressed to the Secretary, Tourism, Govt. of Arunachal Pradesh, seeking regularisation of his service. The petitioner has not been served with any notice of termination and his service cannot be terminated without giving him notice of termination.

4. The respondents have contested this case by filing their affidavit-in-opposition, their case being, briefly stated, thus : In the year 1996, two posts of Tourist Information Assistant in the Directorate of Tourism, Govt. of Arunachal Pradesh, were created, one post being for Tawang and the other one being for Ziro. As the appointment of regular candidates would have taken some time, it was decided by the Directorate concerned to appoint some candidates on adhoc basis to man the said posts until regular selections, as per the relevant recruitment rules, were made. The name of the petitioner was forwarded to the Directorate by the then Minister, (Tourism) for appointment on adhoc basis against the said newly created post at Tawang. On the basis of the recommendation so made by the then Minister, (Tourism), the petitioner was appointed purely on adhoc basis against the said newly created post meant for Tawang. In order to fill up the said post by regular recruitment process, an advertisement, dated 4.9.1997, was published. The petitioner participated in the selection process but failed to qualify. In order to appoint persons selected following the requisite selection process, an order dated 12.5.1996 (Annexure A to the affidavit-in-reply filed by the petitioner) was issued by the Respondent No. 2 terminating the service of the petitioner with effect from 1.6.1996, The petitioner, then, approached this Court, though he is not entitled to any relief.

5. I have perused the materials on record. I have heard Mr. T. Son, learned counsel for the petitioner, and Mr. B.L. Singh, learned Sr. Govt. Advocate, appearing on behalf of the respondents.

6. What is of immense importance to note is that at the time of hearing, it has not been agitated, on behalf of the petitioner, that his appointment as Tourist Information Assistant was following any specific recruitment rules. In fact, to a pointed query made by this Court. Mr. Son has not disputed the fact that there was an advertisement for filling up of the said post and no regular selection process took place, when the initial appointment of the petitioner was made on 17.7.1996. Though the petitioner, in his writ petition, has claimed that he had applied for the post on coming to know about the existence of the post and following an interview, he was appointed, the fact remains that the petitioner has not converted the assertions of the respondents that the petitioner's name was forwarded by the then Minister (Tourism), Govt. of Arunachal Pradesh. It is, thus, not in dispute before me that the appointment of the petitioner was purely on adhoc basis and de hors the rule. No wonder, therefore, that the order of

appointment of the petitioner as Tourist Information Assistant was on purely adhoc basis making it clear that the period spent on adhoc basis would be counted for seniority.

7. What, thus, emerges from the above discussion is that in the year 1996, two posts of Tourism Information Assistant in the Directorate of Tourism, Govt. of Arunachal Pradesh, were created, one post being for Tawang and the other one being for Ziro. As the making of regular appointments in respect of the said two posts would have taken time, the Directorate concerned decided to appoint some candidates on adhoc basis to fill up the said posts until regular selections were made as per the relevant recruitment rules. The petitioner's name was forwarded to the Directorate concerned by the then Minister (Tourism) for appointment on adhoc basis against the newly created post available at Tawang. Acting on this recommendation, the petitioner was appointed, on 17.7.1996, on purely adhoc basis as Tourist Information Assistant at Tawang. When the process for regular selection was set in motion by publication of the advertisement, dated 4.7.1997, aforementioned, the petitioner did participate in the selection process, but failed to qualify. In order to appoint persons selected following the said selection process, the order, dated 12.5.1998, aforementioned was issued by the Respondent No. 2 terminating the petitioner's service with effect from 1.6.1998. The petitioner, then, approached this Court seeking protection of his service stating that he had not been served with any termination order. On 19.5.1998, this Court passed an interim order directing the respondents not to disturb the petitioner's service. As the service of the petitioner already stood terminated before the interim direction, dated 19.5.1998, was passed by this Court, the petitioner did not rejoin the service nor did he approach this Court for enforcing the said interim directions.

8. What, thus, logically follows from the above discussion is that the petitioner's appointment as Tourist Information Assistant was de hors the rules of recruitment. Hence, the petitioner's appointment was made on adhoc basis and his appointment was obviously subject to regular appointment(s) that may be made. This is evident from the fact that the very appointment order, dated 17.6.1996, reveals that it had been clarified in the order of appointment itself that the service rendered by the petitioner shall not be counted for the purpose of seniority. This apart, when the necessary selection process was commenced, the petitioner had taken part in the said selection process but he failed to qualify. The fact that he so appeared in the selection process and failed are not in dispute. What is contended by the petitioner is that he had appeared in this selection process on mistaken advice given by the officials of the Directorate concerned. Since the petitioner's selection and appointment was de hors the rules and the process for a regular selection had been commenced, the petitioner, if he wanted to be duly appointed, ought to have applied and participated in the selection process and this is precisely what he did. The petitioner cannot, therefore, now, claim that he had participated in the selection process under any mistaken advice. Since the petitioner failed to qualify in the

due selection process, he cannot demand continuance/regularisation of his said adhoc appointment. The petitioner is, thus, not entitled to any relief.

9. It is, now, well-settled that while the conditions of service may be relaxed, there can be no relaxation of the basic or fundamental rules of recruitment. Reference may be made in this regard to the case of Suraj Parkash Gupta and Others Vs. State of Jammu & Kashmir Others, wherein the Apex Court has held thus :

"28. The decisions of this Court have recently been requiring strict conformity with the Recruitment Rules for both direct recruits and promotees. The view is that there can be no relaxation of the basic or fundamental rules of recruitment. In Keshav Chandra Joshi V. Union of India, the Rule permitted relaxation of the conditions of service and it was held by the three judge Bench that the Rule did not permit relaxation of Recruitment Rules. The words "may consult PSC" were, it was observed, to be read as "shall consult PSC" and the Rule was treated as mandatory. In Syed Khalid Rizvi v. Union of India (SCC P. 603) decided by a three Judge Bench, a similar strict principle was laid down. The relevant rule-Rule 3 of the Residuary Rules in that case did permit relaxation of the "Rules". Even so this Court refused to imply relaxation of Recruitment Rule and observed :

"The condition precedent, therefore, is that there should be an appointment to the service in accordance with rules and by operation of the rule, undue hardship has been caused, It is already held that conditions of recruitment and conditions of service are distinct and the latter is preceded by an appointment according to rules. The former cannot be relaxed." (emphasis is supplied)

10. That the conditions of recruitment cannot be relaxed is also clear from the decision of the Division Bench in Anand Ram Borah and Ors. v. State of Assam, reported in 2003(2) GLT 78.

11. In the case at hand, the appointment of the petitioner, if I may reiterate, was on adhoc basis, which was obviously subject to regular selection. In the regular selection set in motion, the petitioner did participate but could not qualify. In order to enable the authorities concerned to appoint the persons selected following due recruitment process, service of the petitioner was required to be terminated and this is precisely what has been done vide impugned order, dated 8.5.1998, aforementioned.

12. On a dispassionate analysis of the facts of the present case and the law relevant thereto, I am firmly of the view that the termination of the services of the petitioner vide order, dated 8.5.1998, is wholly consistent with law and the same cannot be interfered with. Viewed from this angle, I find no merit in this writ petition and the same deserves to be dismissed.

13. It has been agitated, on behalf of the petitioner, that before issuing the termination order, dated 8.5.1998, no notice had been given to him. I find no force in this submission inasmuch as the petitioner knew, on the very day of his

appointment, that his appointment was purely on adhoc basis and the same was subject to regular recruitment. In conformity with the recruitment rules and within knowledge of the petitioner, due selection process was commenced, the petitioner participated therein and failed to qualify and when he so failed to qualify, his service was terminated vide order, dated 8.5.1998, in order to enable the Directorate concerned to give regular appointment to the persons selected. In such circumstances, no additional notice before issuing the order of termination was at all essential, particularly, when the adhoc appointment in the face of the materials on record did not create any indefeasible right in the petitioner,

14. Coupled with the above, it is pertinent to note that the petitioner's services already stood terminated vide order, dated 8.5.1998, yet the petitioner, while approaching this Court, with the help of the present writ application, gave no indication at all that his service stood already terminated. The petitioner merely stated in his writ petition that he had not received any notice of termination of his service; he has, however, nowhere denied the knowledge of the termination order, dated 8.5.1998. Thus, the petitioner suppressed the material facts from the Court and did not approach this Court with clean hands. Similarly, the petitioner also suppressed the fact that he had failed to qualify in the selection process, which was commenced in pursuance of the advertisement, dated 4.9.1997, aforementioned inasmuch as he has not denied the fact that he had failed to qualify in the said selection process and he has merely stated in the writ petition that he was not required to sit in the interview. Thus, with regard to what had happened in the regular selection process also, the petitioner suppressed the material facts. This position is, in fact, not seriously disputed.

15. It needs to be borne in mind that a Court, while exercising Writ jurisdiction, is really a Court of equity and a person, who seeks equity, must approach the Court with clean hands. If the person does not come with clean hand, a Court of equity may not grant any relief. Be that as it may, turning even to the merit of the present writ petition, what becomes crystal clear from the discussions held hereinbefore is that the present writ petition is wholly without merit and deserves to be dismissed.

16. In the result and for the reasons discussed above, this writ petition fails and the same is dismissed.

17. No order as to costs.