
(1999) 02 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 637 of 1996

School Education Officers Association	Vs	APPELLANT
State of Manipur and Another		RESPONDENT

Date of Decision : 19-02-1999

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 309

Citation : (1999) 3 GLT 327

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : H.S. Paonam, for the Appellant; A. Jagat Chandra Singh, R.K. Sanajaoba Singh and N. Kotishwor Singh, for the Respondent

Final Decision : Allowed

Judgement

N.S. Singh, J.—The government order dated Imphal, the 29th May, 1996 bearing No. 30.10.93-SE(S) DPC-PT. II relating to the upgradation of the lone post of Deputy Inspector of Schools (Physical) in the scale of pay of Rs. 2000-3500/- per month to Deputy Director of Education (Physical) in the scale of pay of Rs. 3000-4500/- per month in the Directorate of Education (Schools), Manipur by abolishing the post of Deputy Inspector of Schools (Physical) with immediate effect and consequent upon such upgradation of the post of Deputy Inspector of Schools (Physical) to the post of Deputy Director of Education (Physical) thus absorbing the services of Shri N.K. Shimray, the 3rd Respondent herein to the post of Deputy Director of Education (Physical) in the scale of pay of Rs. 3000/- Rs. 4500/- per month and other allowances as admissible under rules with immediate effect as in Annexure-A/7 to the writ petition is the subject matter under challenge in this writ petition.

2. The writ Petitioner association, namely, School Education Officer's Association, Manipur through its General Secretary urged and contended through its learned Counsel Mr. H.S. Paonam that the impugned order of 29th May, 1996 (Annexure-A/7) by which the private Respondent No. 3 Mr. N.K. Shirmay has been

appointed to the post of Deputy Director of Education (Physical) is manifestly clear that the State Respondents are adopting the method for the purpose of appointing/affording higher statute to the Respondent No. 3 indirectly which cannot be done directly in the eyes of prevailing laws and rules framed in this regard and as such the impugned order may be struck down as illegal, culmination of colourable exercise of power. According to Mr. H.S. Paonam learned Counsel, the Respondent No. 3 who was initially working as Field Assistant (Physical) was promoted to the post of Assistant Liaison Officer (Hills) on ad-hoc basis in the Education Directorate in the scale of pay of Rs. 400-950/- which is equivalent to Assistant Head Master of Junior High School (Class-III post) and the appointment was for a period of 3 (three) months only with effect from the date of his joining of the duty of till his post is filled up on regular basis whichever is earlier as reflected to the document marked as Annexure-A/3 to the writ petition and thereafter the said post of Assistant Liaison Officer has been redesignated as Deputy Inspector of Schools (Physical) vide government order dated 20th April, 1996 as in Annexure-A/4 to the writ petition and the said redesignated post carries time scale of pay of Rs. 1640-2900/- per month and after about a month from the date of the redesignation of the post of Assistant Liaison Officer as Deputy Inspector of Schools, under a related government order (impugned order) dated 29th May, 1996 as in Annexure-A/7 to the writ petition the said post of Deputy Inspector of Schools (Physical) in the scale of pay of Rs. 2000- 3500/- has been upgraded to the post of Deputy Director of Education (Physical) in the scale of pay of Rs. 3000-4500/- in the Directorate of Education (Schools), Manipur by abolishing the post of the Deputy Inspector of Schools (Physical) with immediate effect and consequent upon such upgradation, the 3rd Respondent whose services have been absorbed in the post of Deputy Director of Education(Physical) in the scale of pay of Rs. 3000-4500/- per month and other allowances as admissible under rules with immediate effect. It is also submitted by Mr. H.S. Paonam, learned Counsel for the Petitioner association that during the pendency of the present case contrary to the stand so taken by the Respondent No. 1 in the related counter affidavit issued an order dated 13th February, 1998 redesignating the post of Joint Director (Physical), as Joint Director (Planning) in the Director of Education thereafter encarding the post of Joint Director (Physical) along with other joint Directors of Education for which the Respondent No. 3 is not eligible for consideration for promotion as seen in the document marked as Annexure-A/13 to the additional affidavit of the Petitioners" Association. The learned Counsel urged that the official Respondents particularly the Deputy Secretary, Education (Shri N. Khomdon Singh) who sworn the affidavit filed on 3rd June, 1997 is liable to be punished for committing perjury for his deliberate and wilful attempt to mislead this Court with unfounded records not supported by any documents with a story which stands contradicted by himself by the subsequent order of redesignation of Joint Director (Physical) as Joint Director of Education (Planning) as seen in the document marked as Annexure-A/13. Mr. Paonam, learned Counsel went on to contend that upgradation of post with the incumbent concerned is highly irregular as there is/

are no supporting posts now existing and it is not expecting that an officer in the rank of Joint Director will carry out all the activities without any subordinate staffs in the field thereby indicating appointed hand in the method of pick and choose policy in granting under favour to Respondent No. 3 arbitrarily and without any proper guidance. The learned Counsel also argued that by virtue of the impugned order many senior and eligible officers who have been rendering their services in the higher grade/grades whose legitimate rights in the matter of promotion have already been deprived of and on the other hand the present incumbent, namely the 3rd Respondent who was holding a class-EI post till April, 1996 whose services have been recognised by the State Respondents thus affording him the appointment to the post of Deputy Director of Education (Physical) and then Joint Director of Education (Physical). Mr. Paonam, learned Counsel at the hearing left all these issues before this Court without urging more in matter further.

3. Mr. A. Jagatchandra Singh, learned Additional Govt. Advocate for the State Respondents argued that the members of the Petitioners' association belong to general staff, dealing with general education and as such they have hierarchy with promotional ladder amongst themselves to which the private Respondents No. 3 has no claim or entitlement as per Recruitment Rules and apart from it they have separate recruitment Rules for separate classes of officers and this Recruitment Rules are not applicable to the private Respondent No. 3 not to his post and, they are strangers to the post held by the Respondent No. 3. It is also contended by the learned Addl. Govt. Advocate that the members of the Petitioner association are not eligible for the post of Deputy Director (Physical) and that those related recruitment Rules for the post of Deputy Inspector of schools equivalent and the Deputy Director of Education as in Annexure-A/6 and A/8 to the writ petition are not applicable to the post of Deputy Director, Education (Physical) but it relates to the post of Deputy Director of schools now redesignated as joint Director Education which belongs to general staff of Education Directorate and as such the members of the Petitioner association has no right rather no locus standi to challenge the validity of the upgradation of the said post to the post of Deputy Director of Education (Physical). Mr. R.K. Sanajaoba Singh, learned senior Counsel appearing for the Respondent No. 3 Mr. N.K. Simray contended that the Respondent No. 3 passed B.A. from Gauhati University in the year 1975 and also passed Diploma Course in Physical Education under the Y.M.C.A. College of Physical Education, affiliated to the University of Madras with second Class and initially he was given appointment as Field Assistant in the year 1976 and in the year 1980 he was given appointment as Assistant Liaison Officer (Hills), N.P. E.D. and after serving for more than 15 years in the grade of Assistant Liaison Officer, his service was regularised in the year 1996 with effect from 5th July, 1980 and that the redesignation of the lone post of Assistant Liaison Officer as Deputy Inspector of Schools (Physical) with retrospective effect from 17th September, 1991 and subsequently the upgradation of the said post to the post of Deputy Director of Education

(Physical) and the absorption of Respondent No. 3 in the said post of Deputy Director of Education (Physical) had not material change as he was the only in a service officer fit for the job and it was a case of lone post with lone officer and none of the members of the Petitioner association is eligible for such post. The contentions so far advanced by the learned Addl. Govt. Advocate have been duly endorsed upon and supported by Mr. R.K. Sanajaoba Singh, learned senior Counsel appearing for the Respondent No. 3. At the hearing Mr. N. Kotishwor Singh, learned Counsel for the newly impleaded Respondent No. 4 also supported the contentions and submissions advanced by the learned Addl. Govt. Advocate as well as Mr. R.K. Sanajaoba Singh, Upon hearing the learned Counsel for the parties this Court is quite astound to hear the statement of the Respondent No. 1 that the said Shri H. Achou Singh has no authority and no locus standi to file the present writ petition. On bare perusal of the miscellaneous application No. 1231 of 1998 filed by the Respondent No. 4 it has been revealed that the Respondent No. 4 is making this application for the personal benefit of the Respondent No. 3 not for the interest of the members of the said association inasmuch as the writ petition has been pending since the year 1996 and on the other hand the 4th Respondent is said to have been elected unanimously as Secretary of the School Education Officers" Association only in the year 1998. In my considered view, the said 4th Respondent did not approach this Court with clean hands. Be that as it may, this Court is of the view that the impugned order dated 29th May, 1996 as in Annexure-A/7 to the writ petition is an illegal order and the same is violative of principles of the related mandates of the Constitution of India laid down under Articles 14 and 16 read with Article 309 of the Constitution of India and also against the norms, rules and convention of "Service jurisprudence" with the following reasons, (1) initially the 3rd Respondent was appointed as Field Assistant and thereafter he was given promotion as Assistant Liaison Officer (Hills) N.P.E.D. in the Education Directorate in the scale of pay of Rs. 400-950/- per month under order dated 5th July, 1980 (Annexure-A/3) on ad-hoc basis for a period of 3 (three) months and by any means he continued to the post of Assistant Liaison officer and ultimately in the month of May, 1996 his ad-hoc services have been regularised vide; government order No. 30.10.93-SE(S) DP dated 2nd February, 1996 with effect from 5th July, 1980 when he was first inducted as ad-hoc Assistant Liaison Officer (Hills) as reflected and marked as Annexure-C/4 to the affidavit in opposition of the Respondent No. 3 and just after about 2(two) months, the said post of Assistant Liaison Officer has been redesignated as Deputy Inspector of Schools (Physical) of the same Directorate carrying the same scale of pay of Rs. 1640-2900/- per month with retrospective effect from 17th September, 1991 in public interest vide; Government order dated 20th April, 1996 as in Annxure-A/4 to the writ petition and to a great astonishment by virtue of the impugned order of 29th May, 1996 as in Annexure-A/7 after the earlier order of 20th April, 1996, the said post of Deputy Inspector of Schools (Physical) in the scale of pay of Rs. 2000-3500/- per month has been upgraded to the post of Deputy Director of Education (Physical) in the scale of pay of Rs. 3000-4500/- per month and consequent upon such upgradation,

Government was very much pleased to absorb the services of the 3rd Respondent to the post of Deputy Director of Education (Physical) in the scale of pay of Rs. 3000-4500/- per month. At this stage I refer once again to Annexure-A/4, i.e., the government order of 20th April, 1996 which speaks about the redesignation of the lone post of Assistant Liaison Officer as Deputy Inspector of Schools (Physical) carrying the same scale of pay of Rs. 1640-2900/- per month (emphasis given) with restrospective effect from 17.9.1991 in the public interest; and now by virtue of the impugned order of 29th, May, 1996 as in Annexure-A/7 to the writ petition, the upgradation of the said lone post of Inspector of Schools (Physical) has been made to the post of Deputy Director of Education (Physical) with the higher scale of pay of Rs. 3000-4500/- per month thus showing the scale of pay of Deputy Inspector of Schools (Physical) in the scale of pay of Rs. 2000-3500/- per month (emphasis given), what is this? Is there any related R.O.P. conferred or affording the scale of pay of the Deputy Inspector of Schools (Physical) in the scale of pay of Rs. 2000-3500/- per month; Apart from it, whether the State Respondents has lost the sight of its. order of 20th April, 1996 as in Annexure-A/4 to the writ petition pertaining to the redesignation of the said lone post of Assistant Liaison Officer in the Directorate of Education (S), Manipur held by the 3rd Respondent as Deputy Inspector of Schools(Physical) of the same Directorate carrying the same scale of pay of Rs. 1640-2900/- per month with retrospective effect from 17.9.1991 in the public interest according to me, it is too much.

4. It is also established fact that by virtue of the redesignation of a post of Assistant Liaison Officer as Deputy Inspector of Schools (Physical) and further upgradation of the post of Deputy Inspector of Schools (Physical) to Deputy Director of Education (Physical) and absorbing the services of the 3rd Respondent to the post of Deputy Director of Education(Physical) consequent upon such upgradation; is highly illegal rather not tenable in the eye of law and the same is against the Principles of Service Jurisprudence and rather it is violative of Articles 14 and 16 of the Constitution of India.

5. If illogical, unfair and unjust then classification is unreasonable; what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involved negation of equality. The doctrine of classification which is evolved by the Courts is not paraphrase of Article 14 nor is it the objective and end of that article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore, there is arbitrariness in State action, whether it be of the legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action strikes down such state action.

6. In the instant case classification so far made by the State Respondents in

favour of the Respondent No. 3 is arbitrary and it violates the mandate of Articles 14 and 16 of the Constitution of India inasmuch as the State Respondents took due care of an individual like Respondents No. 3. Now a question arises in the instant case that whether the State Respondents are going to upgrade the post of Deputy Director of Education (Physical) to the post of Director of Education (Physical) thus removing and abolishing all the subordinate posts like Field Assistant, Assistant Liaison Officer, Deputy Inspector of Schools (Physical) etc. Apart from it, during the pendency of the main Civil Rule the State Respondents issued an order dated 13th February, 1998 redesignation of the post of Joint Director (Physical) as Joint Director (Planning) in the Directorate of Education thereby encroaching the post of Joint Director (Physical) along with other Joint Directors of Education in the Directorate for which the 3rd Respondent is not eligible for consideration for promotion as reflected in the document marked as Annexure-A/13 to the additional affidavit of the Petitioners' Association. It is also astonishing to know that Shri N. Khomdom Singh, Deputy Secretary, Education who sworn the affidavit in opposition on 3rd June, 1997 had made certain misleading statement before this Court under the related original affidavit in opposition of the State Respondents with unfounded records not supported by any document with the story which stands contradicted by means of the subsequent order of redesignation of joint Director (Physical) as Joint Director of Education (Planning) as in Annexure-A/13 mentioned above. This Court at this stage made a liberal approach to the action of these officer thus expressing displeasure with him and such action of him should not be repeated in future.

7. Even assuming Government has the authority to upgrade a particular post to a higher post for administrative reason, the absorption of the Respondent No. 3 to the upgraded post on regular basis is quite illegal and erroneous for the simple reason that there is no Recruitment Rule for the said post. A first class gazetted post which is to be filled up on regular basis has to be regulated under an established rules. However, in the case in hand there is no even a draft recruitment rule for the said post which clearly goes to show that there has been an extraneous consideration in making absorption of the 3rd Respondent to the upgraded post coupled with the facts narrated above, upgradation of post with incumbent is highly irregular as there are no subordinate posts now existing and it is not expected that an officer in the rank of Joint Director will carry out all the activities in connection with physical education in schools without any subordinate staffs in the field thereby indicating a pointed hand in the method of pick and choose policy in granting under favour to Respondent No. 3 arbitrarily and without any proper guidance.

8. It is also well settled that every form of arbitrariness or irrationality is anathema in our constitutional scheme. It is now a basic requirement of Article 14 that the exercise of discretion must always be guided by some standard or norms so that it does not degenerate into arbitrariness and operate unequally on persons similarly situated. Where unguided and unfettered discretion is conferred on any authority whether it be the executive or the judiciary, it can be exercised

arbitrarily or capriciously by such authority. Where can be no equal protection without equal principles in exercise of discretion whether vested in the executive or in the judiciary.

This Court hereby recall the words of Lord Halsbury who said:

It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first.

Again,

Nobody, of course, can dispute that the Government or the Board had a discretion in the matter. But it was not an arbitrary discretion, as Pring J. Seems to think. It was a discretion to be exercise reasonably, fairly, and justly.

Further Lord Wrenbury laid down the law as follows:

A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by the use of his reason, ascertain and follow the course which reason directs. He must act reasonably.

9. In the instant case the State Respondents did not act reasonably while exercising its discretion and while passing the impugned order and as such the impugned order deserved to be quashed.

10. It is also alleged that vigilance Department is investigating about the genuineness and validity of the Matriculation Certificate and B.A. Certificate of the 3rd Respondent as the names appearing in the Matriculation Certificate and B.A. Certificate are not tallied with, for which the writ Petitioners' association sought for a direction to the authority concerned to take appropriate action in the matter. In my considered view the State Vigilance Department shall do the needful in the matter for which the copy of the writ petition and the related counter affidavit and re-joinder affidavit should be communicated by the Registry of this Court to the State Vigilance Department for doing the needful in the matter according to law.

11. Public employment is the National Wealth to which each and every citizen who is/are eligible to such employment are equally entitled. Herein, in the instant case the 3rd Respondent who was initially appointed as Field Assistant, a class-III post has been allowed to hold a higher post of Assistant Liaison Officer on ad-hoc basis for the period of 3 (three) months only and then such appointment has been extended from time to time and thereafter such post has been redesignated as Deputy Inspector of Schools (Physical) and thereafter

upgraded the said post as Deputy Director of Education (Physical) etc. and subsequently, under a related government order of 13th February, 1998 as in Annexure-A/13 to the additional affidavit of the Petitioner, the post of Joint Director of (Physical) has been redesignated as Joint Director of Education (Physical) in the Directorate of Education (Schools) which in my considered view it is nothing but for affording promotion or. for accommodation of the private Respondent No. 3 in the instant case by any means and as such this government order of 13th February, 1998 was not issued by the State Respondents in consonance with the service Jurisprudence and accordingly it is quashed.

12. For the reasons, observations and discussions made above this impugned order of 29th May, 1996 as in Annexure-A/7 to the writ petition is also quashed. However, it is made clear that this Court required the State Respondents to frame the related Recruitment Rules for the post of Deputy Director of Education (Physical) as early as possible and to fill up the said post on regular basis according to the related Recruitment Rules to meet the ends of justice. The writ petition is accordingly allowed, but not costs.