

(2008) 06 GAU CK 0019

In the Gauhati High Court

Case No : Writ Petition (Civil) Nos. 88(SH), 89(SH) and 90 (SH) of 2008

Seralin Ann Dkhar and ors.

APPELLANT

Vs

Meghalaya Legislative Assembly and ors.(And another cases)

RESPONDENT

Date of Decision : 16-06-2008

Acts Referred:

Citation : (2008) 5 GLR 553

Hon'ble Judges : B.D.Agarwal, J

Bench : Single Bench

Advocate : N.D.Chullai, P.D.B.Baruah, S.R.Sen, Advocates appearing for Parties

Judgement

1. All the aforesaid three writ petitions are being disposed of by this common order since one and the same question of law is involved and the facts of the three cases are also identical.

2. Heard Shri K.S. Kynjing, learned senior counsel assisted by Shri S.M. Suna, learned counsel for the petitioners. Also heard Shri S.R. Sen, learned senior counsel assisted by Mrs. P.D.B. Baruah, learned counsel for the respondent No. 1, i.e., Meghalaya Legislative Assembly and Shri N.D. Chullai, learned senior GA to the State of Meghalaya.

3. The factual matrix of all the three writ petitions are that the petitioners, 179 in numbers, were appointed in the Meghalaya Legislative Assembly Secretariat on temporary basis in different posts. The appointments were made during the period September 2007 to January 2008. In the month of March 2008, there was a change of political guard inasmuch as, a new political party came into power. The Assembly also got a new Speaker. After the change over, the Assembly in its administrative side terminated the services of as many as 199 temporary employees vide impugned order dated 30.4.2008. Out of these retrenched employees, 179 employees have filed the instant writ petitions in three groups on the same ground. In the writ petitions, the petitioners are seeking issuance of a writ in the nature of certiorari so as to quash the termination orders as well as

in the nature of mandamus to direct the respondent No. 1 to allow the petitioners to continue in their respective services.

4. Shri K.S. Kynjing, learned senior counsel for the petitioners submitted that Meghalaya State Legislative Assembly has not framed Recruitment Rules for appointment of its staff. In other words, it was submitted that the Grade III and IV staff are initially appointed on temporary basis and their services are gradually regularized. The learned counsel also submitted that on the basis of the strength of the staff, a budget is prepared and the State Govt. allots the fund. However, as contended by the learned counsel, despite having sufficient budget, the services of the petitioners have been dispensed with on a flimsy ground of over staff.

5. The impugned termination orders have also been assailed on the ground that the respondent No. 1 has adopted a policy of "Tick and Choose" inasmuch as it has retained the services of two temporary employees, namely, Smt. Auxillium Mery Rapsang and Shri Nicholas Lamare, who were also appointed in similar fashion as the writ petitioners. According to the learned counsel, terminating the services of the petitioners and retaining two casual employees who were also appointed on identical terms and conditions amounts to discrimination and violative of the principles of equality before law. In support of this submission, the learned counsel cited the judgment of the hon'ble Supreme Court rendered in the case of Om Prakash Goel v. Himachal Pradesh Tourism Development Corporation Ltd., AIR 1991 SC 1490, Shri Shridhar son of Rani Dular v. Nagar Palika, Jaunpur, AIR 1990 SC 307 and Shri Ajit Singh v. State of Punjab, AIR 1983 SC 494.

6. Per contra, Shri S.R. Sen, learned senior counsel for the respondent No. 1 submitted that law regarding termination of temporary, ad hoc and casual employees etc. has been crystallized by the hon'ble Supreme Court in the case of Secretary, State of Karnataka v. Uma Devi (3) and others, (2006) 4 SCC 1. Besides this, the learned counsel for the Assembly also relied upon another judgment of the Apex Court rendered in the case of National Fertilizers Ltd. v. Somvir Singh, (2006) 5 SCC 493.

7. To appreciate the merit of the writ petitions, I deem it just and proper to look at the nature of the appointment orders of the writ petitioners. One of such orders is reproduced below, which is considered as model appointment order:

"ORDER

Shri Ryngkatlang Kharmynthong an outsider is hereby appointed temporarily as Driver in the Meghalaya Legislative Assembly on a fixed pay of Rs. 2,900 plus 50% Dearness Allowance with effect from the date of his joining and until further orders.

Sd/ W.M. Rymbai

Secretary

Meghalaya Legislative Assembly."

8. The primary question to be examined by me is as to whether in absence of any Service or Recruitment Rules, the appointment of the writ petitioners can be treated as appointment against substantive posts. This question has been formulated on the basis of the submission of the learned counsel for the petitioners that the services of the petitioners have been terminated without giving any showcause notice.

9. Shri S.R. Sen, learned senior counsel for the Assembly admitted the fact that till date no Recruitment Rules for the Secretarial Staff of the Meghalaya Legislative Assembly has yet been framed as required under Article 187 of the Constitution of India. Despite absence of any Service Rules or Recruitment Rules, the learned counsel for the petitioners failed to produce any document to take a view that the posts against which the petitioners were appointed were duly created by the Legislative Assembly to draw an inference that the petitioners were appointed against substantive posts. Besides this, the petitioners were also appointed on "Tick and Choose" policy without any public notice or adhering to any selection criteria. Situated, thus, I am not in a position to take a view that the case of the petitioners cannot be equated with the employees appointed on the basis of the Recruitment Rules.

10. In the case of Lima Devi (supra), the Constitution Bench of the hon'ble Supreme Court has held that temporary, contractual, casual, daily wage or ad hoc employees have no legal right to claim for regularization or continuation in the service. This law has been laid down while examining the cases of appointment of the employees de hors to the Recruitment Rules and constitutional scheme of public employment. In the cases before me, the petitioners were engaged by the Meghalaya Legislative Assembly and as such, there could be no two views that the appointments of Secretarial staff made by it are by way of public employment. As such, the appointments at least ought to have been made in a transparent manner by way of public advertisement and also adopting certain criteria.

11. In the case of Uma Devi (supra), their Lordships have observed that if it is a contractual appointment, the appointment comes to an end at the end of the contract; if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Their lordships have further observed that the courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of the affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

12. The learned counsel for the petitioners submitted that the ratio of law laid down by the hon'ble Supreme Court in the case of Uma Devi (supra), are not applicable in the instant case inasmuch as, the petitioners were not appointed under any Recruitment Rules. In other words, it was the contention of the

learned counsel that the law laid down by the Apex Court is confined to the employees who are appointed de hors to the Recruitment Rules and not to other categories of employees.

13. The aforesaid submission of the learned counsel does not appear to have much force. The preamble of the judgment of Uma Devi shows that the hon"ble Supreme Court has considered the constitutional scheme of public employment as a whole. Their Lordships have observed that the constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Their lordships have further observed in the judgment that regular appointment is the rule and temporary, ad hoc and casual etc. appointments must only be under certain exigency. Their lordships have further observed that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. In my considered opinion, the State, including Meghalaya Legislative Assembly being a model employer, it must have followed the basic norms of giving public employment. Since the petitioners were not appointed against substantive vacancies, they have not acquired any vested right to challenge their terminations. I find no difficulty to hold that the ratio laid down in the case of Uma Devi is also applicable to temporary employees, who are engaged by the State or its instrumentalities sans any Recruitment Rules with equal force.

14. At or about the same time, the Apex Court had taken a similar view regarding maintaining of probity in public employment. In the case of Union Public Service Commission v. Girish Jayantilal Vaghela, (2006) 2 SCC 482, the hon"ble Supreme Court has held that public employment should be given after giving wide publicity and following the criteria/constitutional scheme of public employment. The relevant observations of the hon"ble Apex Court are reproduced below for guidance:

".... The appointment to any post under the State can only be made after a proper advertisement has been made inviting application from eligible candidates and holding of selection by a body of experts or a Specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under article 16 of the Constitution."

15. In the cases before me, the petitioners have been terminated on the ground

of being "overstaff". The ground of termination indicates that the strength of the Secretarial Staff has been pruned as a matter of fiscal discipline. It is true that in the counter affidavits, the respondents have not justified the termination in so many words, but the High Court in its extraordinary jurisdiction under article 226 of the Constitution cannot make a roving enquiry in such matter. In my opinion, the court cannot enter into the question as to how many employees must be retained by the respondents and how many should be terminated. This apart, I am of the view that some amount of latitude is permissible to the employer to retain few suitable employees, while retrenching excess staff, from the roll of temporary and casual employees.

16. With regard to the allegations of mala fide, Shri Sen, learned senior counsel for the respondent No. 1 submitted that the two persons, namely, Smt. Auxillium Mery Rapsang and Shri Nicholas Lamare have been retained considering the fact that their nature of jobs are different from the writ petitioners and also on the ground that the services of two non retrenched temporary employees are still required in the Assembly Secretarial.

17. From the appointment orders of Smt. Auxillium Mery Rapsang and Shri Nicholas Lamare, I find that they have been appointed as Personal Assistant, attached to the Deputy Secretary (II) and as a driver respectively. On the other hand, the writ petitioners were appointed for different posts. In other words none of the writ petitioners were appointed to such a post which could not be dispensed with. Besides this, Smt. Rapsang and Shri Lamare were appointed in the month of June 2007 whereas the petitioners were appointed during the period September 2007 to January, 2008. Hence, it cannot be said that a temporary employee appointed on a latter date has been retained and senior employees have been retrenched. Consequently, it does not seem to be a clear case of discrimination violating article 16 of the Constitution of India.

18. The authorities cited on behalf of the writ petitioners stand on different footing. In all these cases, the petitioners were appointed against substantive posts. In the case of Ajit Singh (supra), the writ petitioner was dismissed from service on the ground of dissolution of Trust, whereas during the course of hearing, it could be gathered that only the Board of Trustees was dissolved and not the Trust itself. Besides this, the hon'ble Apex Court found that except the writ petitioners, a good numbers of staff were retained. Accordingly, the ground of termination was found to be unsustainable and discriminatory. The other cases also stems out of termination of persona appointed against substantive posts and these are not the cases of temporary appointees. In the writ petitioner before me, the petitioner have failed to show that any person appointed on a latter date has been retained in the service. Hence, the authorities cited on behalf of the petitioners are not applicable.

19. Before parting with the judgment, it is needless to mention that Meghalaya Legislative Assembly is the seat of framing laws for the State. Although Meghalaya Legislative Assembly was constituted in the year 1972, the Assembly

is yet to frame Recruitment Rules for its Secretarial Staff. Had the Assembly framed Recruitment Rules there would have been no scope for whimsical and excess appointment on temporary basis. It is expected that the Assembly will frame proper rules for recruitment of its Secretarial staff at the earliest possible to avoid any such controversy, more particularly leveling of allegations of biasness and mala fide against the Legislative Assembly in near future.

20. For the reasons set out hereinbefore, I do not find any merit in the writ petitions. Consequently, all the three writ petitions are hereby dismissed.