

(2014) 02 MAN CK 0005
In the Manipur High Court
Case No : Writ Petition (C) No. 195 of 2012

Shri Sanasam Bimol

APPELLANT

Vs

The State of Manipur(Through its Commissioner,Education
(U) and The Director (Hr. Education and University) Govt. of
Manipur

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Citation : (2014) 02 MAN CK 0005

Hon'ble Judges : Laxmi Kanta Mohapatra, Acting C.J.

Bench : Single Bench

Advocate : R.K. Manikanta Singh, Advocate for the Appellant; L. Manomala,
Addl. G.A, Advocate for the Respondent

Judgement

L.K. Mohapatra, A.C.J.

1. The writ petitioner, in this writ application, prays for a direction to the respondents not to oust him from service till M.P.S.C. (Manipur Public Service Commission) calls for fresh advertisement and a select list for appointment as Lecturer is published.

2. The brief facts leading to filing of the writ petition are that the M.P.S.C. in partial modification of the earlier advertisement No. 9/2006 dated 18.10.2006 issued another advertisement on 30.12.2006 inviting applications for appointment of lecturers in Government Colleges in different streams including Computer Science. The closing date of issuance and receipt of the application forms and for determining the age of candidates was fixed for 14.3.2007. In pursuance of the said advertisement the petitioner had submitted an application for being appointed as lecturer in Computer Science. He was selected for such appointment. Challenging his appointment and appointment of some others, it appears, three writ petitions were filed by different persons. One Akoijam Ashakumar Singh filed Writ Petition(C) No. 4/09, one Shri Th. Ojenkumar Singh filed W.P. (C) No. 91/09. Another writ application was filed by Dr. Th. Meghajit

Meitei and 4 Others vide W.P. (C) No. 10/09. In W.P. (C) No. 10/09 all the selected candidates appear to have been made parties. When the matter came before the learned Single Judge, by order dated 12.1.2009 in the said writ petition, notice was issued and as an interim measure, it was directed that the respondents- 17, 38, 108 therein shall not be appointed to the post of Lecturer on the basis of the recommended list dated 15.12.2008 without leave of the Court. Since no interim order was passed prohibiting the appointment of the petitioner in the said writ application or in other two writ petitions such as W.P. (C) No. 4/09 and WP(C) No. 91/09 the petitioner was issued with an appointment letter on 20.11.2009. The letter of appointment clearly shows that such appointment was on temporary basis in the scale of 8000 - 13500 per month and was subject to - (a) satisfactory police verification report and medical fitness report of the candidates concerned and (b) outcome of the writ petition, i.e. W.P. (C) No. 685/07 and other relevant court cases.

3. It also appears that at the stage of initial appointment it was directed that the petitioner shall be on probation for a period of two years. The petitioner in pursuance of the said appointment order joined the College in which he was posted and while continuing as such, out of the three writ petitions filed challenging the selection, 2(two) writ petitions were taken up for hearing. It appears that the learned Single Judge took up W.P. (C) No. 4/09 and W.P. (C) No. 91/09 for hearing and dismissed both the writ petitions in a common judgment and order dated 16.11.2009. From the cause title of both the writ petitions, it is clear that the present petitioner was respondent No. 5 in W.P. (C) No. 4/09 and was also respondent No. 4 in W.P. (C) No. 91/09.

4. After disposal of both the writ petitions by the learned Single Judge, the writ petitioner of W.P. (C) No. 91/09 filed Writ Appeal No. 87 of 2009. The said writ appeal No. 87 of 2009 was allowed by judgment and order dated 28.5.2010. Operative part of the judgment in paragraph 19 is quoted below:

19. Resultantly, the impugned judgment and order dated 16.11.2009 passed in W.P. (C) No. 91 of 2009 is interfered with and accordingly the notification dated 15.12.2008 issued by the M.P.S.C. relating to the recommendation of the private respondents 3, 4 & 5 is hereby set aside. Consequently the appointment of the private respondents 3, 4 & 5 as Lecturers of Government College in Computer Science is quashed. The State Government is at liberty to requisition for fresh recruitment process for filling up the post of Lecturers in Government Colleges in Computer Science, if so advised. The appeal is allowed. No order as to costs.

It is evident from the concluding paragraph that the notification dated 15.12.2008 issued by the M.P.S.C. relating to recommendation of the petitioner and two others was set aside and accordingly appointment of the petitioner as Lecturer in a Govt. College in Computer Science was quashed.

5. Challenging the above order passed in the writ appeal, the petitioner filed Special Leave of Appeal (Civil) No. 19324 of 2010 and the other two selected

candidates whose appointment has also been quashed, filed SLP No. 16833 of 2010 and SLP No. 26141/2010. In the case of the petitioner, the Apex Court by order dated 26.10.2010, as an interim measure, had directed that operation of the judgment in the writ appeal would be kept in abeyance, but subsequently all the three Special Leave Petitions filed by the three Lecturers including the petitioner appointed in pursuance of the recommendation of the M.P.S.C. were taken up together and all the three SLPs were dismissed by order dated 14.10.2011. After disposal of the SLP filed by the petitioner and the two other Lecturers on 4.10.2011, in compliance of the order passed by the Division Bench in Writ Appeal, the service of the petitioner was terminated by order dt. 12.3.2012.

6. Shri R.K. Manikant, learned counsel for the petitioner submitted that the appointment of the petitioner was a regular appointment on the basis of recommendation made by the M.P.S.C. and therefore his service could not be terminated without affording an opportunity of hearing. It was also contended by the learned counsel that during pendency of the writ petition without taking leave of the Court, the service of the petitioner could not be terminated. The last submission of the learned counsel was that if the M.P.S.C. is required to issue fresh advertisement and undertake selection process for selection of candidates to be appointed as lecturers in Computer Science in respect of the posts held by the petitioner and two others, the petitioner should have been allowed to continue till such selection process is undertaken and completed by the M.P.S.C.

7. Ms L. Manomala, learned Addl. G.A. submitted that the appointment of the petitioner was conditional one and his appointment being subject to result of the writ petition which had been filed relating to the selection process undertaken by the M.P.S.C., it cannot be said that the petitioner was a regular employee and could not be terminated without affording an opportunity of hearing. Since selection of the petitioner was set aside by the Division Bench in the Writ Appeal and the said order passed in the writ appeal was not interfered with by the Supreme Court, in absence of any prohibition from any Court, it was open for the State respondents to terminate service of the petitioner in compliance with the judgment delivered in the writ appeal and there is no illegality in such order.

8. After hearing learned counsel for the parties at length, I find that the writ petition suffers from a technical defect. The writ application was filed on 16.4.2012 and prayer in the writ application is for a direction to the State respondents not to oust the petitioner from service till M.P.S.C. issues a fresh advertisement and undertakes selection process. No interim order was passed by the court in the writ application permitting the petitioner to continue in the post.

The order of termination was passed on 12.3.2012. Though the writ application was filed on 16.4.2012, the petitioner did not challenge the order of termination passed on 12.3.2012 and only prayed for his continuance in service till newly selected candidates are directed to join. Therefore, the submission of the learned counsel for the petitioner that the order of termination was passed during

pendency of the writ petition is not born out of the record. The writ application was filed on 16.4.2012 whereas the order of termination was passed on 12.3.2012. The writ petitioner, having not challenged the order of termination in the writ application, it is not open for him to make any submission on legality of the order of termination.

9. Even on consideration of different orders passed by the learned Single Judge, Division Bench and the Apex Court, it appears that selection of the petitioner was the subject matter of challenge in three writ applications. In two writ petitions, i.e. W.P. (C) Nos. 4/2004 and 91/09 the petitioner was one of the respondents. Though both the writ petitions were dismissed by the learned Single Judge in a common judgment and order, the said judgment of the learned Single Judge was set aside in W.A. No. 87 of 2009 and consequently, as is evident from the concluding paragraph of the judgment in the writ appeal quoted earlier, the appointment of the petitioner was quashed. The above order of the Division Bench in the W.A. No. 87 of 2009 was challenged by the petitioner before the Apex Court and the said SLP was also dismissed. Since the appointment of the petitioner was subject to outcome of W.P. (C) No. 685 of 2007 and other relevant court cases the order of termination could be passed on the basis of the said judgment without affording any opportunity of hearing to the petitioner. Therefore, on merit also though the order of termination has not been challenged, I find no justification to set aside the same as it has been passed in compliance with the judgment of this Court in W.A. No. 87 of 2009.

10. So far as the question of continuance of service of the petitioner till fresh selection is completed, I am of the view that the judgments relied upon by the petitioner in this regard have no application to the facts of this case. Though the learned counsel for the petitioner has submitted a list of 21(twenty one) reported judgments, he referred to only two judgments, i.e. the case of (i) K.M. Nanavati Vs. The State of Bombay, and (ii) State of Orissa Vs. Dr. Sivasankar Lal Bajoria and Another, On reading of the above two judgments, I find that factually they are completely different and have no application to the facts of the present case. The question as to whether the prayer for direction to the respondents to permit the petitioner to continue in service till fresh selection is made is also not tenable considering the fact that Division Bench in W.A. No. 87 of 2009 quashed the appointment of the petitioner. Neither the Division Bench while quashing the appointment of the petitioner directed his continuance till fresh selection is made nor the Apex Court while dismissing the SLP filed by the petitioner allowed the petitioner to continue. Therefore, there is no scope at this stage to permit the petitioner to continue in the post any further.

11. For the reasons stated above, I do not find any merit in the writ application and accordingly same is dismissed.