

(2011) 07 GAU CK 0032
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 38 of 2010

Sh.Zosangliana & Ors.

APPELLANT

Vs

State of Mizoram & Ors.

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (2011) 5 GLT 17

Hon'ble Judges : A.K.Goswami, J

Bench : Single Bench

Advocate : Advocates appeared for the Petitioners: Mr. C. Lalramzauva, Sr. Advocate, Mr. A.R. Malhotra, Mr. J. Lalfakawma, Mr. T.J. Lalnunthanga & Mr. K. Ladinliana., Advocates appeared for the Respondents: Mr. N. Sailo, Addl. Advocate General, Mizoram., Advocates appearing for Parties

Judgement

A.K. Goswami, J.—This application under Article 226 of the Constitution of India has been filed by 331 petitioners to challenge the order communicated vide Letter No.E 1206/6/2004Edn/Part dated 20.01.2009 (Annexure17) and alerter No. E/12016/11/06 dated 08.06.09 (Annexure18).

2. By the letter dated 20.01.09, it was informed to the Director, School Education, by the Under Secretary to the Government of Mizoram, School Education Department that the Government had conveyed approval to engage 497 Primary School Hindi Teachers under Central Sponsored Scheme (CSS) up to 31.03.09 and, therefore, instructed him to allow 497 Primary School Hindi Teachers to continue their engagement till 31.03.09 only at the same rate of salary.

3. By the order dated 08.06.09 issued by the Jt. Director of School Education, Mizoram to all the SubDivisional Education Officers, it was informed that the Primary School Hindi Teachers numbering 500 are terminated w.e.f. 31.03.09 because of discontinuation of Central Government fund which was given till 31.03.09. As the Government was not in a position to give engagement beyond

31.03.09, the teachers could not be employed any more and, as such, the engagement of these teachers was terminated with effect from 31.03.2009. By the letter dated 08.06.09, the SubDivisional Education Officers were requested to convey the contents of the letter to all the Primary School Hindi Teachers within their jurisdictional area.

4. The facts as disclosed by the pleadings on behalf of the petitioners are that in consonance with Article 351 of the Constitution of India, the Government of India, in the Second 5year Plan had introduced Schemes of (i) Appointment of Hindi Teachers and (ii) Opening/strengthening of Hindi Teachers" and Training College in NonHindi Speaking States/Union Territories (UT) with a view to assist these States/UT implementing effectively, the three language formula. Under these schemes, financial assistance has been provided to various State Governments/UT Administrators on approved funding pattern for appointments to new posts of Hindi Teachers in Upper Primary, Middle, High and Higher Secondary Schools and for opening/strengthening of Hindi Teachers" Training Colleges for the training of untrained Hindi Teachers available in the States/UT. The scheme provides that financial assistance, on 100% basis, shall be only for one Plan period and the responsibility of maintenance of Hindi Teachers and Hindi Teachers" Training Colleges, after completion of the Plan period, shall rest upon the concerned State Government/UTs Administrators and they would be required to discharge the responsibility out of their own resources in the budget. The Government of Mizoram took a view that teaching of Hindi only from ClassV was not sufficient for proper understanding and learning of Hindi by the students of Mizoram, and therefore, a proposal dated 19.05.2004 was submitted by the Respondent No.2 to the Government of India for introducing teaching of Hindi from ClassHI in all the Government Primary Schools. A letter dated 08.04.2005 in the form of a reminder was also sent to the Government of India, Ministry of Human Resource Development, Department of Secondary and Higher Education (Language Division) for providing necessary fund for 1187 Hindi Teachers against the existing 1425 Primary Schools for introduction of Hindi from ClassIII onwards. The Government of India, by a letter dated 12.08.05, in principle, accorded approval for salary of 500 Primary School Hindi Teachers @ 6900/ P.M. to enable the State Government to start the process of recruiting teachers, subject to the rider that the grant would be released only after the teachers were actually appointed. In view of the aforesaid, process for recruitment of Primary School Hindi Teachers was started by notifying about the same to the Employment Exchange by the Respondent No.3, by a letter dated 29.09.05, prescribing educational qualifications.

5. The writ petitioners have stated that they had undergone written test and personal interview for appointment to the aforesaid 500 posts of Primary School Hindi Teachers and the DPC had made recommendation in favour of 500 candidates including the present petitioners and the same was approved by the Government, vide letter dated 05.07.06. This approval had cleared the deck for their appointment, and, accordingly, the petitioners were appointed by an order

dated 17.07.06 as Primary School Hindi Teachers under the Government of Mizoram, on contract basis at a fixed remuneration of Rs.6900/ p.m. w.e.f. the date of joining duty till 12.12.06, though, as per the advertisement, the appointment should be coterminus with the scheme. It was pleaded by the petitioners that they were allowed to continue in their respective posts till 31.03.09 at the same rate of remuneration of Rs.6900/ p.m. There was further development, when the Government of Mizoram, by an order dated 11.02.09 accorded sanction to the retention of 5682 numbers of temporary posts under School Education Department including 500 posts of Primary School Hindi Teachers for a period of l(one) years w.e.f. 01.03.09 to 28.02.10. By a subsequent order dated 16.02.10, retention of the aforesaid 5682 numbers of temporary posts was made for a further period of one year. The respondents 1,2 and 3 had also taken necessary steps for absorption of 500 Primary School Hindi Teachers by framing a Rule called Mizoram Education and Human Resources Development Department (Group "C" post) Recruitment Rules, 2007, and the same was notified by Notification dated 10.08.07. It is stated by the petitioners that inspite of creation of the aforesaid 500 posts, the petitioners were not absorbed and on the contrary, letters dated 20.01.09 and 08.06.09, which were noted herein before, were issued.

6. The State respondents had filed an affidavit pleading, literally, helplessness because of financial constraints. In unequivocal terms, it stated that the State is not in a position to maintain 500 Primary School Hindi Teachers engaged during the 10th Plan period without financial support from the Central Government. While asserting that the CSS did not include appointment of Primary School Hindi Teachers, the State Government had, time and again, impressed upon the Government of India to introduce Hindi from Primary School level and due to such relentless efforts of the State, the Central Government had agreed to let the State Government engage the petitioners for the duration of the 10th Plan. It has also been stated that though the posts of Primary School Hindi Teachers were filled up on contract basis upto 12.12.06, being the last date of academic session of the year, it was also indicated in the order of engagement that the engagement is coterminus with the scheme. The petitioners were allowed to continue till 31.03.09 on the expectation that the Central Government would release necessary funds for their continuation beyond the 10th Plan period. However, that was not to be. Having no alternative, the State Government had to terminate the services of Primary School Hindi Teachers w.e.f. 31.03.09. It has further been indicated in the said affidavit that the salary of the 500 teachers were made from the fund which was actually meant for engagement of 687 Hindi Teachers as per CSS during the 11 th Plan period. All these were done with bona fide expectation that the State Government would be able to convince the Central Government for retention of the 500 Primary Hindi School Teachers during the 11th Plan period. With regard to the framing of the Rule, it was stated that the same was not meant for the petitioners only and the Rule was framed keeping in mind the future. The 687 teachers were to be engaged under CSS

during 11th Plan period and because of diversion of fund from the salaries meant for these teachers for making payment of remuneration to the 500 Primary School Hindi Teachers, the 687 appointments could not be effected. The affidavit further clarified that, the State Government had also received sanction for engagement of 1305 Hindi Teachers from the Government of India under the CSS and not for Primary School Hindi Teachers, as pleaded by the petitioners. It was also brought on record that Middle School in Mizoram is equivalent to Upper Primary School in Central Government Parlane.

7. By filing reply affidavit, the writ petitioners have basically reiterated the averments and contentions made in the writ petition. They also stated that the State respondents have made proposals and selected 687 candidates for appointment as Primary School Hindi Teachers under the scheme, including in the posts held by the petitioners and this shift in stand is due to the fact that there is change of guard in the Government.

8. I have heard Mr. C. Lalramzauva, learned Sr. Counsel appearing for the writ petitioners. I have also heard Mr. N. Sailo, learned Addl. Advocate General, Mizoram, who has appeared on behalf of respondent Nos. 1 to 3. None has appeared for respondent No.4, Union of India. I have also perused the materials on record.

9. Mr. Lalramzauva, the learned Sr. Counsel for the petitioners has submitted that in the State of Mizoram, there is no distinction between Upper Primary School and Lower Primary School. Though the interpretation of the CSS may not cover Lower Primary School, nevertheless the petitioners had been appointed as Hindi Teachers in Primary Schools on the basis of the scheme. Therefore, the State cannot turn around and say that appointment of Hindi Teachers in Primary Schools is not envisaged under the CSS. He has further contended that the proposal made for appointment of 687 teachers for the 11th 5 year Plan period belies the plea of the State respondents that terms of the CSS do not, at any rate, visualize engagement as Hindi Teachers in Primary Schools. The petitioners having been appointed pursuant to a selection process, the contentions advanced by the State respondents not to continue the engagement of the petitioners beyond 31.03.09 on the plea of lack of financial constraints is wholly impermissible in law. The petitioners having been appointed to propagate Hindi in the State from the level of Primary Schools in consonance with Article 351 of the Constitution of India, the petitioners have legitimate expectation that their services will be continued. In the background of the case, discontinuance of their service after 31.03.09 is wholly arbitrary and violative of Article 14 of the Constitution of India. The State Government has to act as a role model and justice, equity and fair play should be the guiding principles in the scheme of governance of the State and that is what is precisely lacking in the instant case. According to him, the State is trying to take advantage of its own wrong. It has also been argued by the learned Sr. Counsel for the petitioner that the terms and conditions embodied in the engagement orders of the petitioners are not

authorised by the scheme, and, therefore, he submits that the terms and conditions as embodied in the letter dated 28.01.09, whereby the petitioners were allowed to continue from 05.12.08 up to 31.03.09 or until further orders, whichever is earlier, should be suitably modified in order to conform to the terms and conditions of the CSS and also to allow them to continue as Primary School Hindi Teachers under respondents 1,2 and 3 w.e.f. 01.04.09 with all service benefits including pay and allowances, seniority etc. The learned Senior Counsel for the petitioners had also pointed out that the letter dated 28.05.2009 of the Secretary to the Government of Mizoram, School Education Department (Annexure25 to the writ petition) would make it clear that the approval of the Government of India contained in the letter dated 26.11.2009 (Annexure26 to the writ petition) for appointment of 1305 Teachers against new posts during the year 20092010 was meant for Primary School Hindi Teachers and, therefore, the action of the State Government, in issuing order of termination of services of the petitioners, is for reasons other than bonafide.

The learned Sr. Counsel in order to substantiate his arguments, had placed reliance on the following Judgments:

- (1) (2007) 3 SCC 700 (paras 27 and 28) : National Insurance Co. Ltd. Vs. Laxmi Narain Dhut;
- (2) (2006) 4SCC (Paras 6 and 11): Secretary. State of Karnataka & Ors. Vs. Umadevi (3) & Ors.
- (3) 7997 GLT257 (Para 9) : Union of India & Ors. Vs. Kturali Manahar Enterprises;
- (4) 7997 (2) GLT296 (Para 13) : Smt. Niru Hati Baruah Vs. State of Assam & Ors.
- (5) (2006; 8 SCC 399 (Paras 33 and 35) : Confederation of ExServicemen Association & Ors. Vs. Union of India & Ors.
- (6) (2003; 2 SCC 673 (Para 36) : Onkar lal Bajaj & Ors. Vs. Union of India & Anr.
- (7) (7955; 3 SCC 398, (para 26) : Union of India & Ors. Vs. Tulsiram Patel.

10. Mr. N. Sailo, learned AAG, Mizoram, submits that the CSS does not visualise appointment of Hindi Teachers in Primary Schools. In reiteration of the stand taken in the affidavitinopposition filed by the State respondents, the learned AAG submits that at one point of time, it was seriously considered by the State Government that Hindi is needed to be imparted from the primary school level so as to have a meaningful purpose and due to the efforts made by the State Government, the Central Government had also permitted the State respondents to engage Hindi Teachers in primary schools. Because of the parleys and correspondences that had been going on between the State and the Central Government, it was expected by the State respondents that the scheme would be relaxed in its application to the State of Mizoram and that is how the State had continued to entertain the engagement of the petitioners under the 10th Plan period up to 31.30.09. However, when it became clear that the Central

Government financial assistance granted was meant for only one Plan period, the State Government could not continue the engagement of the petitioners as the State respondents were unable to afford to engage Primary Hindi School Teachers from its own budget. The learned AAG has submitted that in the facts and circumstances of the case, the plea set up by the writ petitioners regarding their legitimate expectation to be continued in service is devoid of any merit. He was also at pains to impress upon the Court that the State Government had tried its best to continue with the engagement of the petitioners by making all out efforts at appropriate levels, and, therefore, given the circumstances of the case, it cannot be said that the State acted arbitrarily or discriminatorily. It is also his contention that the petitioners having accepted the engagement order dated 28.01.09, they are estopped to seek modification of the said order, purportedly to conform to terms and conditions of the scheme. Mr. Sailo further submits that though it might have been proposed at one point of time of accord sanction for 1305 Primary School Hindi Teachers, the materials on record would demonstrate that finally, the State had ordered for creation and filling up of 1305 posts of Hindi Teachers under the CSS with the breakup of 389 posts for High School Hindi Teachers and 916 posts for Middle School Hindi Teachers and the process of selection of candidates was also undertaken on that basis and, therefore, petitioners' termination has no relevance or correlation with the process of selection undertaken. In the aforesaid premises, the learned AAG submits that the writ petition, being devoid of merit, is liable to be dismissed.

11. Mr. Salio, in support of his submissions, has placed reliance on the following Judgments:

- (1) (2001) 2 SCC 326 (Para 4) : State of West Bengal & Ors. Vs. Niranjan Singha.
- (2) (2006) 4SCC 1 (Para 19) : Secretary, State of Karnataka & Ors. Vs. Umadevi (3) & Ors.

12. In reply, the learned Sr. Counsel for the petitioners submits that the CSS provides for continuation of services by the State Government, and therefore, the State Government has failed to discharge the obligation in not retaining the services of the petitioners.

13. The CSS contemplates grant of financial assistance to various State Governments/UT Administrators for appointments made to new posts of Hindi Teachers in Upper Primary, Middle, High School and Higher Secondary Schools on the basis of a funding pattern which visualise, financial assistance on 100% basis for one Plan period only in respect of payment of salary for Hindi Teachers, who are appointed against new posts created during the Plan period with prior approval of the Government of India. It has also been made explicit in the CSS that the responsibility of maintenance of Hindi Teachers after completion of the Plan period would rest upon the concerned State Governments/UT Administrators. There is no dispute that the financial assistance under the CSS is not available in connection with appointment of Hindi Teachers in Primary

Schools. The petitioners, in the writ petition, also admits of the same position in paragraphs 21 and 23, while ventilating their grievances. However, it appears that financial assistance was, nevertheless, granted to the Government of Mizoram for the appointment of 500 Primary School Hindi Teachers for the year 2005-2006 under the CSS. It is also an admitted position that no financial assistance would be forthcoming from the Central Government towards maintenance of such Hindi Teachers appointed under the CSS beyond the Plan period.

14. While the 500 Primary School Hindi Teachers were still in service, as would be evident from the letter dated 28.05.2009 (Annexure 25 to the writ petition), recruitment process for 687 nos. of Primary Schools Hindi Teachers was initiated, presupposing that engagement of 500 Primary Schools Hindi Teachers during 10th Plan period and 687 Primary School Hindi Teachers to be engaged during 11th Plan period would be funded by the Central Government. It also appears that 687 selected candidates were not appointed and salary meant for these 687 candidates were utilised for payment of salary of the 500 Primary School Hindi Teachers including the petitioners. It is also evident from the letter dated 28.05.2009 that there are 1157 nos. of Government Primary Schools, 22 nos. of Autonomous Council/Aided Private Schools and 126 nos. of Primary Schools under Sarva Siksha Abhiyan and as of date, there is no Hindi Teacher in any of the aforesaid Primary Schools.

15. It would also appear that the Government of Mizoram had sent another proposal dated 10.07.2009 to the Central Government for financial assistance for appointment of Hindi Teachers in Primary Schools, Middle Schools and High Schools. By letter dated 16.07.2009, the Deputy Secretary to the Government of India, addressed to the Secretary to the Government of Mizoram, Department of School Education, stated that financial assistance for appointment of Hindi Teachers in Primary Schools is not covered under the CSS and, therefore, requested to revise the proposal as per the provisions of the CSS.

16. The order dated 17.07.2006 recited that the engagement as Primary School Hindi Teachers was on contract basis, extendable from time to time subject to satisfactory performance and availability of fund from the Government of India. It was also indicated that as the engagement was coterminus with the CSS, the Engagement Order would stand terminated at the time the scheme phases out even before the expiry of the contract period. It was also stipulated that the engagement shall not bestow upon the incumbent the right to claim regular appointment under any circumstances. The appointees were also to execute Agreement Bond demonstrating acceptance of terms and conditions laid down in the Agreement Bond and the Engagement Order was to take effect only upon such execution of the Agreement Bond.

17. The order dated 28.01.2009, by which the petitioners were allowed to continue as Primary School Hindi Teachers at the rate of Rs.6,900/ P.M. w.e.f. 05.12.2008 up to 31.03.2009 or until further orders, whichever is earlier,

contained the same stipulation as in the order dated 17.07.2006 to the effect that the engagement was purely on contract basis and coterminus with the scheme. It also contained a condition that the engagement shall stand automatically terminated without notice from the date the contract period expires. As in the order dated 17.07.2006, it was also stipulated that the engagement would not bestow upon the incumbents the right to claim regular appointment under any circumstances.

18. The materials on record would demonstrate that save and except the present petitioners who were engaged as Primary Hindi School Teachers in the Schools where they were so engaged, in none of the other Primary Schools in the State, there are Hindi Teachers. The State had, as would appear, taken an ambitious plan to impart Hindi education from the Primary School level, on an I assumption that the Central Government would, apart from funding the 500 Teachers, would also fund Primary School Hindi Teachers to be engaged by the State in all other Primary Schools. When the CSS, *ex facie*, does not visualise any such possibilities, it was certainly a misadventure on the part of the State Government. The Central Government also has to apportion part of the blame for the anomalous situation. There appears to be! a grave communication gap, resulting in the impasse.

19. The reliance placed by the learned Senior counsel for the petitioners on Niru Hati Baruah (*supra*) and M/s Murali Monohar (*supra*) to drive home the proposition that no man can take advantage of his laches and negligence on his failure to perform his duty and that a wrong doer is not to be allowed to make gain out of his own wrong, in the considered opinion of the Court, is not attracted in the facts and circumstances of this case. The materials on record would leave no room for doubt that the State, on its own, cannot, because of the financial implications, afford to engage, the present petitioners, far less, Hindi Teachers in all the Primary Schools. If that be so, no fault can be attributed to the State for the course of action taken by the State by way of termination of the petitioners, in terms of the engagement orders. The contention that the source of the petitioners' engagement was the CSS and, therefore, the terms and conditions mentioned in the engagement orders, being not in sync with the provisions of the scheme, the same should be modified to be in tune with the CSS, is also not tenable in law for the reason that the CSS does not envisage engagement of Primary Schools Hindi Teachers. Learned Senior counsel relied on Tulsiram Patel (*supra*) for the proposition that where a source of power exists, the exercise of such power is referable only to that source and not to some other source under which were the power exercised, the exercise of such power would be invalid and without jurisdiction. This proposition is sought to be canvassed to drive home the point that the source of the petitioners' engagement was the CSS, and therefore, the terms and conditions mentioned in the engagement orders being not in conformity with the provision of the scheme, the order of engagement should be modified to be in tune with the CSS. The CSS visualizes, amongst others, continuation of Hindi Teachers in Upper Primary, Middle, High

and Higher Secondary Schools after one Plan period by the State Government, bearing the requisite expenses towards salary and emoluments of such Teachers from its budget. The Primary School Hindi Teachers, therefore, do not also gain anything out of such submission. The plea of legitimate expectation, as sought to be canvassed on behalf of the petitioners placing reliance on the judgment of the Apex Court in *Confederation of ExServicemen* (supra), in the opinion of the Court is not applicable in the facts of the case. Under the doctrine of legitimate expectation, a person may have reasonable and legitimate expectation of being treated in a certain way by administrative authority even though he has no right in law to receive the benefit. Such expectation may arise either from express practice or from consistent practice which the applicant may reasonably expect to continue. The doctrine is based on the principle that good administration demands observation of reasonableness and in such cases, the Court may not insist an administrative authority to act judicially and may still insist to act fairly. The CSS and the terms and conditions of the engagement order do not validate such a plea. As held by the Apex Court in *Niranjan Singha* (supra), the doctrine of legitimate expectation is only an aspect of Article 14 of the Constitution of India in dealing with the citizens in a nonarbitrary manner and thus, by, itself, does not give rise to an enforceable right but in testing the action taken by the Government authority whether arbitrary or otherwise it would be relevant.

20. *Laxmi Narain Dhut* (supra), is a case where the Supreme Court had dealt with interpretation of statutes and therefore, in the considered opinion of Court, the case cited by the petitioners has no application in the facts of the case.

21. In *Umadevi* (supra), the Apex Court emphasized that public employment in a Sovereign Social Secular Democratic country like ours has to be in terms of the Constitutional scheme, and therefore, regular employment must be the rule. The Apex Court also elaborately discussed the concept of the entire gamut of regularisation in service. It also highlighted that the State is also controlled by economic considerations and financial implications of any public employment and therefore, Courts should not impose on the State a financial burden by insisting on regularisation or permanence in employment, when those employed temporarily or on contract basis are not needed permanently or regularly.

22. *Onkar Lal Bajaj* (supra) had been pressed into service to highlight that the cardinal principle of governance in a civilised society based on rule of law not only has to base on transparency but must create an impression that the decision making was motivated on the consideration of probity. Therefore, the principle of governance has to be decided on the touchstone of justice, equity and fair play. There cannot be any two opinions on the above stated principle.

23. The submission of the learned senior counsel for the petitioners that when the Government of India had, by letter dated 26.11.2009 approved appointment of 1035 Primary School Hindi Teachers against new posts during the year 2009-2010, the termination order issued in respect of the petitioners is on extraneous consideration and malafide, is not founded on correct appreciation of

the materials on record. The position that emerges today is that though earlier there was some thinking in the line suggested by the learned counsel for the petitioners, subsequently the State had ordered for creation and filling up of 1305 posts under the CSS through High School Hindi Teachers and Middle School Hindi Teachers the break up being 389 and 916, respectively. Moreover, letter dated 26.11.2009, does not say that the sanction was accorded for 1305 Primary School Hindi Teachers. It says that financial assistance has been accorded to the Government of Mizoram for appointment of 1305 Hindi Teachers for the year 20092010 under the CSS.

24. In view of the discussions above, in the considered opinion of the Court, the writ; petitioners have failed to make out a case for interference under Article 226 of the Constitution of India and as such, the writ petition is dismissed.

25. No costs.