
(2014) 10 MEG CK 0004

In the Meghalaya High Court

Case No : WP (C) No. 144, 145, 146, 147/2012

Silseng Marak

APPELLANT

Vs

State of Meghalaya

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 16

Citation : (2014) 5 GLT 141 : (2015) LabIC 18

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Judgement

T. Nandakumar Singh, J.—These four writ petitions involving the similar questions of facts and laws seeking similar prayers for quashing the impugned orders for terminating their services as Grade-VI employees in the Education Department, Govt. of Meghalaya for appointing the private respondents, said to have been recommended by the District Selection Committee (for short "DSC") against the posts held by the writ petitioners are taken up for joint hearing for disposal by a common judgment and order.

2. Heard Mr. HR Nath, learned counsel for the writ petitioners and Mr. AH Hazarika, learned counsel for the State respondents. Notice issued to the respondents No. 5 & 6 of WP(C) No. 144/2012 by registered post with AD shall deem to have been effected properly. Also Notice issued to the respondents No. 5 of WP(C) No. 145/2012, respondent No. 5 of WP(C) No. 146/2012 and the respondent No. 5 of WP(C) No. 147/2012 by registered post with AD shall deem to have been effected properly. None appears for the private respondents without showing any cause inspite of proper service of notice of the writ petitions to them.

3. In order to avoid repetition of the fact leading to the filing of the present writ petitions, which are similar, in this common judgment and order, only the brief fact leading to the filing of WP(C) No. 144/2012 is recapitulated. However, the initial appointments of the writ petitioners of the other three writ petitions are

mentioned in the appropriate paras.

4. Shri. Silseng Marak, writ petitioner of WP(C) No. 144/2012 was initially appointed to act as an office Peon for a period of 89 days w.e.f. 01.02.2005 in the office of the Principal, Government Higher Secondary School, Resubelpara, East Garo Hills vide order dated 31.01.2005 issued by the Inspector of Schools, East Garo Hills, Williamnagar. In pursuance of the initial order dated 31.01.2005, the petitioner joined his service as an office Peon in the office of the Principal, Government Higher Secondary School, Resubelpara, East Garo Hills. It is also admitted by both the parties i.e. the writ petitioner and the official respondents that terms of the ad-hoc/contract appointment of the petitioner had been extended from time to time by issuing different extension orders and the last extension order dated 17.11.2011 was issued by the District School Education Officer, East Garo Hills, Williamnagar for extending the terms of the contract/officiating appointment of the petitioner for a period of 59 days w.e.f. 28.10.2011 to 25.12.2011. However, at the time of issuing the different extension orders for extending the terms of the contract/officiating appointment of the petitioner, there was a break of one or two days. The break of one or two days in extending the terms of contract/officiating appointment of the employee had been depreciated and held arbitrary by the Apex Court in (i) Sri Rabinarayan Mohapatra Vs. State of Orissa and others, and; (ii) Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others, of the SCC in Rabinarayan Mohapatra's case (Supra) reads as follows:-

"6. The Validation Act has been enacted by the Orissa legislature with the obvious object of granting relief to those members of teaching community who are being exploited for years together by keeping them in short spell appointments like 89 day-appointments as here with one day break and in the process denying them their rightful dues and other service benefits. In spite of repeated deprecations by this Court the practice continues to be followed by various State Governments in the country. Under the Constitution the State is committed to secure right to education for all citizens. Bulk of our population is yet illiterate. Till the time illiteracy is effaced from the country the resolution enshrined in the Preamble cannot be fulfilled. Education is the dire need of the country. There are neither enough schools nor teachers to teach. Insecurity is writ large on the face of the teaching community because of nebulous and unsatisfactory conditions of service. In order to make the existing educational set up effective it is necessary to do away with ad hocism in teaching appointments. An appointment on 89 days basis with one day break which deprives a teacher of his salary for the period of summer vacation and other service benefits, is wholly arbitrary and suffers from the vice of discrimination. The Validation Act covers the field up to December 31, 1984. The State of Orissa will do well to consider the cases of all those who have completed one year or more as ad hoc teachers after December 31, 1984 and come out with a scheme or any other appropriate measure to regularize their services."

5. Learned counsel appearing for the petitioners by referring to the ratio laid down by the Apex Court in the aforesaid cases contended that the State respondents illegally and whimsically created one or two days break in extending the terms of the contract/officiating appointment of the petitioner as Grade-IV employee. By the impugned order dated 14.02.2012, the service of the petitioner i.e. WP(C) No. 144/2012 (Shri. Silseng Marak) had been terminated and released from service w.e.f. 14.02.2012 as private respondent No. 5 Smti. Magdalin S. Marak, who had been recommended by the Chairman, DSC, East Garo Hills, Williamnagar under letter No. EGH/DSC/PT-V/2010-11/49, dated 04.01.2012 had been appointed as Peon against the post held by the petitioner in the office of the Principal, Government Higher Secondary School, Resubelpara, East Garo Hills. In Paras 8 & 9 of the writ petition i.e. WP(C) No. 144/2012, the petitioner pleaded that the post of Peon held by him against which the private respondent No. 5 said to have been recommended by the DSC as mentioned in the impugned termination/released order dated 14.02.2012 was not advertised by the DSC or by the concerned authority of the Govt. of Meghalaya nor there was any selection process. For easy reference, Paras 8 & 9 of the writ petition i.e. WP(C) No. 144/2012 are quoted hereunder:-

"8. That the petitioner states that during his period of service since 2005 no District Selection Committee examination were ever held for the post he was holding and as such he did not get any opportunity to appear before the District Selection Committee to get the clearance and the recommendation for his service regulation.

9. That the petitioner states that the respondent No. 5 appointed on termination of the petitioner's service in the post of office peon on being recommended by the District Selection Committee as mentioned in the termination or release order dated 14.02.2012 was in fact not correct as no advertisement was made by the District Selection Committee for the same post nor there was any demand or requisition for filling up the post of peon were ever made to the District Committee by the school authorities."

6. The State respondents filed joint affidavit-in-opposition wherein vide Para 8 of the joint affidavit-in-opposition stated that all regular appointments in Grade-IV post are made on the recommendation of the DSC whereas, the appointment of the writ petitioner was purely ad-hoc basis and also that the DSC after following all the prescribed procedures and norms, recommended the candidates for appointment to the post held by the writ petitioner. Para 8 of the joint affidavit-in-opposition filed by the State respondents read as follows:-

"8. That with regard to the statements made in paragraph 7, 8 and 9 of the writ petition, the deponent state that all regular appointments in Grade-IV post are made on the recommendation of the District Selection Committee whereas the appointment of the writ petitioner was purely on ad hoc basis. It is categorically stated that the District Selection Committee after following all the prescribed procedures and norms recommended the candidate for appointment to the post

held by the writ petitioner. Contentions contrary to the above are incorrect and hence denied. It is further stated that merely because the writ petitioner was appointed on ad hoc basis with particular salary he will not have a right to be regularized in the said post nor to continue indefinitely. It is settled position of law that once the regularly selected candidates are available the ad hoc appointees are to make way for the selected candidates. It is also stated that all the vacancy position including Grade-IV post under the respondent No. 4 was duly intimated to the District Selection Committee."

7. This Court in the connected writ petition i.e. WP(C) No. 147/2012 passed an order dated 09.04.2013 that this Court required to know what is meant by prescribed procedures and the norms for recommendation followed by the District Selection Committee for recommendation of the candidates to the said posts and accordingly, respondents are directed to file additional affidavit for clarifying that stand as followed by the Selection Committee for recommendation of the candidates and also shall produce the connected file before this Court on the next date. The order of this Court dated 09.04.2013 passed in WP(C) No. 147/2012 reads as follows:-

"09.04.2013

After perusal of the available material on records as well as hearing the submissions of the learned counsel appearing for the petitioner, it appears that the present writ petitioner has assailed the impugned order dated 14.02.2013 on the main ground that Smti Magdalin S. Marak and Smti Tema M Sangma have been appointed as Peon and Chowkidar respectively in the Office of the Principal Resubelpara, Govt. Higher Secondary School, East Garo Hills without following the prescribed procedures for appointment to the said posts, one of which held by the writ petitioner.

The respondents filed a joint affidavit stating therein that the District Selection Committee after following all the prescribed procedures and the norms recommended the candidates for appointment to the said posts.

On perusal of the affidavit-in-opposition filed by the respondents, this Court cannot spell out what is meant by the prescribed procedures and the norms for recommendation of the candidate for appointment to the said post, inasmuch as, the respondents in their joint affidavit vide paragraph 8 simply stated "it is categorically stated that the District Selection Committee after following all the prescribed procedures and the norms recommended the candidate for appointment to the post held by the writ petitioner".

For just decision of the present writ petition, this Court is required to know what is meant by prescribed procedures and the norms for recommendation followed by the District Selection Committee for recommendation of the candidates to the said posts. Accordingly, the respondents are directed to file additional affidavit for clarifying that stand as followed by the District Selection Committee for recommendation of the candidate and also shall produce the connected file

before this Court on the next date fixed i.e. 08.05.2013.

This case shall not be treated as part heard.

Registry is directed to furnish copies of this order to the learned counsel appearing for the parties in the course of the day."

8. In spite of the directions of this Court vide order dated 09.04.2013, the State respondents did not file the additional affidavit. Mr. AH Hazarika, learned GA appearing for the State respondents placed before this Court an advertisement dated 01.09.2009 claiming that under that advertisement, the posts held by the writ petitioners had been advertised. The said advertisement dated 01.09.2009 is carefully perused and on such perusal, it is clear that the Grade-IV posts held by the writ petitioners in the Education Department are not included in the posts advertised under the said advertisement dated 01.09.2009. For easy reference, the advertisement dated 01.09.2009 placed before this Court by Mr. AH Hazarika, learned GA appearing for the State respondents is quoted hereunder:-

"GOVERNMENT OF MEGHALAYA OFFICE OF THE DEPUTY COMMISSIONER, EAST GARO HILLS DISTRICT WILLIAMNAGAR

NO. EGH/DSC/69/99/Dated Williamnagar 1st September 2009

ADVERTISEMENT

Application in standard form are invited from the permanent residents of Meghalaya for the under mentioned posts. The posts carry the Scale of pay besides usual allowances as admissible under the rules issued by the Govt. from time to time.

Application should be submitted in standard form of application as prescribed in part-IX of the Gazette of Meghalaya along with attested copies of certificates relating to age, qualification, caste, Citizenship and 3(three) copies of attested passport size photographs so as to reach the undersigned on or before 30/9/2009.

Candidate already in Govt. service/other statutory Bodies should apply directly to the undersigned with a copy of "No Objection Certificate" from their Employee/ Authority.

AGE LIMIT:

Candidate must not be less than 18 years of age and more than 27 years of age as on 1st September/2009.

The age is relaxable up to 5 years for Schedule Tribes/Schedule Caste candidates. There will be no age bar for those already in Meghalaya Govt. Service provided the entertained service within prescribed age limit.

Candidate applying for the under mentioned post have to take written test/Viva Voce at their own expenses. A panel of names will be drawn up for appointment

in order of merit. Such panel will be subject to the job reservation policy of Government of Meghalaya and will be Valid for one year.

3% reservation shall be made to handicapped persons with (a) Blindness or low vision (b) hearing impaired and (c) Locomotion disability or cerebral palsy.

APPLICATION FEE :

Application should be accompanied by IPO of Rs. 4/-, 12/- for Schedule Tribes/ Schedule Caste and Ex-Servicemen and Examination Fees of Rs. 14/-, Rs. 17/- for Schedule Tribes/Schedule Caste, Ex-Servicemen and to be deposited to the Govt. account of the Secretary/District Selection Committee, East Garo Hills District, Williamnagar.

No other mode of payment will be accepted. Fees are not refundable.

Application found incomplete/defective in any manner or received after the last date shall summarily be rejected and no further correspondence will be entertained.

Canvassing either directly or indirectly will lead to disqualification of the candidate. The candidates are to submit self-addressed envelope (size 9" x 4") with adequate postal stamps.

Sd/- Member Secretary District Selection Committee East Garo Hills Williamnagar"

9. The Apex Court in *A. Umarani Vs. Registrar, Cooperative Societies and Others*, laid down the principles to be followed in the matter of public employment. In that case, in the State of Tamil Nadu, a large number of employees of cooperative societies were appointed without notifying the vacancies to the employment exchange and without following the other mandatory provisions of the Act and the Rules framed thereunder relevant to recruitment. A large number of appointees furthermore did not have the requisite educational qualification or other qualification like cooperative training, etc. The reservation policy of the State was not followed by the cooperative societies. The recruitments were made beyond the permissible cadre strength. The Apex Court in *M.P. State Coop. Bank Ltd., Bhopal Vs. Nanuram Yadav and Others*, reiterated that the appointment to the post without advertisement or inviting applications from the open market would amount to breach of Articles 14 & 16 of the Constitution of India, regularization cannot be a mode of appointment and those who come by back door should go through that door.

10. In the present case, it is the case of the writ petitioners that the private respondents had been appointed to the posts held by the writ petitioners without any advertisement and also that the writ petitioners were not given any chance to face the selection process for the posts of Grade-IV, which had been continuously held by the writ petitioners for a number of years. From the above factual matrix, it is crystal clear that the posts held by the writ petitioners had

not been advertised and the private respondents are said to have been recommended by the DSC against the posts held by the writ petitioners. However, it well settled law that the regularization cannot be a mode of appointment and the writ petitioners, who had served on contract/officiating basis in the posts held by them for a number of years, should have given a chance to face the selection process for regular appointment to the posts held by them. The Apex Court in *Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others*, held that:

"36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order, which would be in contravention of a statutory provision."

11. For the foregoing discussions, this Court has no alternative but to interfere with the impugned termination/released order dated 14.02.2012 in the WP(C) No. 144/2012 for releasing the petitioner from his contract employment for appointing the private respondent No. 5 (Smti. Magdalin S. Marak), said to have been recommended against the post held by the petitioner by the DSC without any advertisement for recruitment. Accordingly, the impugned termination/released order dated 14.02.2012 is hereby quashed; and the State respondents are directed to take up steps for filling up the said post held by the petitioner by following the principles for regular appointment laid down by the Apex Court in the aforesaid cases and the petitioners shall be allowed to appear in the selection process. The maximum age limit of the candidates for the said post shall be relaxed so far as the petitioner is concerned. The whole exercise for filling up the post held by the petitioner on regular basis by following the prescribed procedures for public employment or constitutional scheme for public employment should be completed within a period of 5(five) months from the date of receipt of a certified copy of this common judgment and order.

12. Writ petitioner of WP(C) No. 145/2012 was appointed on ad-hoc basis as office Peon in the Office of the Inspector of Schools, East Garo Hills, Williamnagar for 59 days w.e.f. 07.11.2007 and terms of the ad hoc appointment of the petitioner had been extended from time to time with a break of one or two days and the last extension order was issued on 28.09.2011. By the impugned order dated 14.02.2012 issued by the District School Education Officer, East Garo Hills, Williamnagar, the petitioner had been released from service for accommodating the private respondent No. 5, who was said to have been recommended by the DSC without following the prescribed procedures for regular appointment and without any advertisement.

13. Writ petitioner of WP(C) No. 146/2012 was initially appointed as officiating Sweeper of Rongrenggiri Govt. Higher Secondary School for a period of 59 days w.e.f. 27.04.2010 to 24.06.2010 vice Smt. Samkesia Basfore retired on

superannuation vide order dated 28.04.2010 issued by the Inspector of Schools, East Garo Hills, Williamnagar and terms of the officiating appointment of the petitioner had been extended from time to time and continued till 14.02.2012. By the impugned order dated 14.02.2012, the petitioner had been released from his service as Sweeper for accommodating the private respondent No. 5 (Smt. Krenostha D. Shira), who was said to have been recommended by the DSC without any advertisement and without following the prescribed procedure for regular appointment.

14. Writ petitioner of WP(C) No. 147/2012 was initially appointed as officiating Chowkidar in Resubelpara Govt. Higher Secondary School for a period of 59 days w.e.f. 03.03.2010 to 30.04.2010 vice Shri. Newilson G. Momin retired on superannuation vide order dated 02.03.2010 issued by the Inspector of Schools, East Garo Hills, Williamnagar and terms of the officiating/ad hoc appointment of the petitioner had been extended from time to time with a break of one or two days and the last extension order was issued on 17.11.2011 by the District School Education Officer, East Garo Hills, Williamnagar for extending the officiating service of the petitioner as Chowkidar in Resubelpara Govt. Higher Secondary School to 31.12.2011. By the impugned order dated 14.02.2012, the petitioner was released from service w.e.f. 14.02.2012 for accommodating the private respondent No. 5, who was said to have been recommended by the DSC without following the prescribed procedures for regular appointment and without any advertisement of the post.

15. For the foregoing reasons, the impugned orders, in WP(C) No. 145/2012 dated 14.02.2012, WP(C) No. 146/2012 dated 14.02.2012 and WP(C) No. 147/2012 are hereby quashed and the benefits of the order passed in this common judgment and order in respect of WP(C) No. 144/2012 in the aforesaid Para 11 of this common judgment and order, shall also extend to the writ petitioners of WP(C) No. 145/2012, WP(C) No. 146/2012 and WP(C) No. 147/2012. In other words, the State respondents are directed to take up steps for filling up the said post held by the petitioners by following the principles for regular appointment laid down by the Apex Court in the aforesaid cases and the petitioners shall be allowed to appear in the selection process. The maximum age limit of the candidates for the said post shall be relaxed so far as the petitioners are concerned. The whole exercise for filling up the post held by the petitioners on regular basis by following the prescribed procedures for public employment or constitutional scheme for public employment should be completed within a period of 5(five) months from the date of receipt of a certified copy of this common judgment and order.

16. Writ petitions are allowed to the extent indicated above.