
(2006) 05 GAU CK 0066
In the Gauhati High Court

State of Manipur and Anr.

APPELLANT

Vs

Santa Darji and Ors

RESPONDENT

Date of Decision : 12-05-2006

Acts Referred:

Citation : (2006) 05 GAU CK 0066

Hon'ble Judges : M.B.K.Singh, J and T.Nanda Kumar Singh, J

Bench : Division Bench

Advocate : N.G.Kumar, Jayenta, Advocates appearing for Parties

Judgement

1. Heard Mr. N.G.Kumar, learned counsel appearing on behalf of the appellants and Mr. Jayenta, learned Sr. counsel appearing on behalf of the respondents.

2. This appeal is directed against a Single Bench order of this Court dated 27.03.2001 passed in W.P.(C) No.531 of 1999 by which the present appellants were directed, in effect, to regularize the services of the present respondents against the existing vacancies according to their seniority within a period of 3(three) months. As per the said order, the regularization must be made in such a manner so that the present respondents can get some retiral benefits for their long services.

3. It is ascertained that the present respondents were engaged purely as Muster Roll/Casual workers/ Agri Labourer at the Regional Cross Breeding Cattle Farm, Turibari, Senapati on different times by the Project Officer of the Farm. None of them is found to have been appointed against any regular vacant post. There is no dispute that the casual employees (Appointment & Regulation) Scheme, 1991, issued by the Department of Personnel & Administrative Reforms, Manipur vide office Memorandum dated 10.2.1999, is not applicable to any of the present respondents. In fact, Mr. Jayenta, learned Sr. counsel appearing on behalf of the respondents, who are the petitioners in W.P(C) No.531 of 1999, submits that in the said writ petition, the present respondents were not claiming any relief under the above said scheme. It is also ascertained that despite objections made by the

present appellants in their counter affidavit filed in the said writ petition, to the effect that the appointment in respect of Grade IV post was required to be done through regular DPC by inviting candidates from Employment Exchange and that no vacant post of Grade IV was available in the Department at the relevant time, the learned Single Judge passed the impugned order apparently after taking into consideration of the long service of the writ petitioners.

4. Having regards to all the relevant considerations, we are of the considered opinion that the impugned order of the learned Single Judge is not sustainable in the eye of law. It is well settled that adherence to Article 14 and 16 of the Constitution is a must in the process of public employment. Recently a Constitution Bench of the Supreme Court disposing Appeal (Civil) 35953612 of 1999 (Secretary, State of Karnataka & Ors. Vs Uma Devi and Ors. and other related Civil Appeals on 10.4.06 held:

?Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding violation of Art.14 or in ordering the overlooking of the need to comply with the requirements of Art.14 read with Art.16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold 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. 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 wage or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointments, do not acquire any right. High Courts acting under Art.226 of the Constitution of India, should not ordinarily issue direction for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the Constitutional scheme.?

The Constitution Bench in the same judgment held at Para 36 of the judgment:

?36. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in

nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.?

5. In the light of the above decision of the Constitution Bench of the Supreme Court, the impugned order of the learned Single Judge is clearly liable to be quashed. The impugned order is accordingly set aside. This appeal is allowed. No order as to costs. This decision will not, however, stand on the way of the present appellants giving opportunity to the present respondents to get appointment to regular vacant posts of Grade IV as per relevant rules.