

(2003) 02 GAU CK 0059
In the Gauhati High Court
Case No : Writ Appeal No. 538 of 2002

State of Manipur and Others

APPELLANT

Vs

Khaidem Ibopishak Singh and Others

RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:

Citation : (2003) 1 GLT 532

Hon'ble Judges : P.P. Naolekar, C.J.;Ranjan Gogoi, J

Bench : Division Bench

Advocate : A. Potsongbam, S. Napoleon Singh and M.G. Singh, for the Appellant; B.P. Sahu, for the Respondent

Final Decision : Allowed

Judgement

P.P. Naolekar, C.J.—The Respondents/writ Petitioners herein 7 (seven) in number, were appointed on 16th October, 1999 as Assistant Engineers (Civil) in the PWD, Manipur on ad-hoc basis in the scale of pay of Rs. 6500-10500/- with other allowances as admissible against the direct recruit quota for a period of six months or until further orders which ever is earlier. The order of appointment also says that the appointments are made against the resultant ad-hoc vacancies and, therefore, does not confer any right on the appointees for regular appointment. The Respondents/writ Petitioner apprehending that their services shall not be continued has approached this Court by filing a writ petition which was registered as W.P. (C) No. 242/2001. In the meantime four persons have challenged the ad-hoc appointment of the Respondents by filing a writ petition, which was registered as W.P. (C) No. 1469/1999, and order was issued by the Court restraining the Government from making any further ad-hoc appointment to the posts of Assistant Engineer in P.W.D. It was further directed that ad-hoc appointment of the private Respondents as per the related appointment orders shall not be extended by the appropriate authority. On an application moved by the Respondents in connection with the W.P. (C) No. 1463/99 by order dated 12.4.2002 the Court allowed the ad-hoc appointment of the Respondents to

continue until further orders and the matter was fixed for early hearing. On a later date that writ petition was withdrawn and the interim order passed by the Court has not continued with the withdrawal of the writ petition. The Government extended the period of ad-hoc appointment of the Respondents from time to time in pursuance of the order passed by the Court on 12.4.2002 and the last extension of service was made by order dated 22.1.2001 for a period of six months. The learned Single Judge by his impugned order dated 30.9.2002 has held that although the ad-hoc fixed term employees have no legal right to claim for automatic absorption or regularisation in service, but as the ad-hoc employees have continued in service for a long period he has given direction that their services should not be disturbed till the posts are filled up on regular basis in terms of the related Recruitment Rules. It was made clear that the order shall not stand on the way of the authority concerned to regularise the services of the writ Petitioners in terms of the relevant recruitment rules as well as the related Government instructions. It was further directed that the authority concerned shall not consider those writ Petitioners/Respondents as age barred, if the applications are invited for direct recruitment and if those Petitioners/Respondents apply for their regular appointment. Aggrieved by the said order the present appeal has been filed.

2. It is contended by Sri A. Potsongbam, learned Sr. Counsel for the Appellant that the learned Single Judge while issuing directions not to disturb the services of the Respondents/Petitioners on ad-hoc basis has completely failed to see that there is a ban imposed by the State Govt. on regular appointments on account of serious financial crisis faced by the State and also the policy decision taken by the State Govt. for downsizing the employment.

3. It has been brought on record that the Government on consideration of the deteriorating financial condition of the State has put a complete ban on direct recruitment, by its order dated 6.11.99. The State's financial position and its liability and income is indicated as under:

- i) Total number of State employees inclusive of employees appointed on contract, work-charged, muster roll, casual. 84067+8891 92958 in a population of 23 lakhs
- ii) Local annual income from taxable and non-taxable. Rs. 89 crores
- iii) Total expenditure on salaries and pensions in a year. Rs. 857.98 crores
- iv) Public debt outstanding from 31.3.1997 to 31.3.2001 Rs. 1368.32 crores
- v) Repayment of public debt and interest in the year 2000-2001 Rs. 1332.23 crores
- vi) Amount liable to be paid by the State Govt. as guarantor, if the Govt. Companies and Co-operative Societies can not pay the due amount/principal sum with interest. Rs. 160.60 + 54.94 crores

4. The Government as per policy decision on 4.5.2001 discontinued all ad-hoc

appointments after expiry of the period mentioned in the last extension order. The Government took the decision on 11.7.2001 for downsizing/rightsizing of the Government manpower by abolishing 14385 posts. On 18.8.2001 in the Department of PWD, Manipur 108 posts out of total number of 382 posts have been abolished. The posts of Assistant Engineers/Assistant Surveyors numbering 141 have been reduced by 30 posts by way of abolition of those posts. On 15.6.2002 the Government has taken decision whereby the scheme of "Die in harness" has also been abolished. The aforesaid facts clearly indicate that the Government is not in a position to accommodate even the regular workforce and was, therefore, required to take a decision to abolish the regular posts. In such circumstances it is not for the Court to decide and direct the ad-hoc appointments to be continued. If the State has taken and a policy decision to abolish the posts and when there is a ban on regular appointments, the directions given by the Court would result in continuing the ad-hoc appointments till the ban continues, as the Government cannot make regular appointments. When the Government has taken a decision to abolish the posts there is no rhyme or reason to direct continuation of the ad-hoc appointees who have no right over the posts. The learned Single Judge has also committed an error while stating that the Petitioner/Respondents were in service for a long period. In fact, their continuation in service was the result of the interim order passed by the Court and not on account of the fact that the Government has continued their services on its own. Continuation in service cannot be a reason for giving directions to continue the Respondents/Petitioner's service by ad-hoc appointments. However, considering the fact that some of the Respondents might have crossed the age limit during the period they were serving as ad-hoc employee, we direct that if the regular selection of Assistant Engineer is made in recent years they shall be considered for selection relaxing the age limit.

5. For the reasons stated above, we do not agree either with the reasoning or the directions issued by the learned Single Judge. The order passed by the learned Single Judge is set aside.

6. The appeal is allowed. However, there shall be no order as to costs.