

(1996) 11 GAU CK 0006
In the Gauhati High Court
Case No : Writ Appeal No. 102 of 1995

State of Manipur

APPELLANT

Vs

Ksh. Ibohal Singh

RESPONDENT

Date of Decision : 29-11-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (1997) 2 GLR 64

Hon'ble Judges : P.K. Ghosh, J;H.K. Sema, J

Bench : Division Bench

Advocate : T. Nandakuumar, for the Appellant; S. Jayanta, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Sema, J.—These two writ appeals are directed against the judgment and Order dated 21.2.95 passed by the learned Single Judge in Civil Rules 434/90 and Civil Rules 418/90. In these two writ appeals, common question of law and facts has been raised and as such, they are being disposed by this common order.

2. We have heard Mr. T. Nandakumar, learned Counsel for the Appellants as well as Mr. S. Jayanta, learned Counsel for the Respondent at length.

3. The facts given rise to the filing of the present appeal may be summarily recited. The writ Petitioner in Civil Rules 434/90 was appointed as Casual Artists Grade-II in the department of Drama Unit of the Publicity department by an order dated 30th Nov. 1967. Thereafter, by an order dated 30th August, 1969 he was appointed Artist Grade-I. From the order dated 1.12.75 at Annexure-3, it clearly appeared that on the recommendation of the D.P.C. held on 27.11.75, Gradation list grade-I Artist has been prepared in order of merit. In the said list name of the Petitioner appeared in serial No. 1. By Anr. order dated 22.11.78 Annexure-4, it appears that on the recommendation of the Screening Committee and on the terms and conditions laid down in the contract and on his acceptance of the terms and conditions of the contract, the writ Petitioner was again

appointed as Artist Grade-I with usual allowances as permissible under the rules.

4. Petitioner in Civil Rules 418/90 was appointed as Casual Artist Grade-II in the departmental Drama Unit of Publicity, Government of Manipur at a consolidated fee of Rs. 120/- by an order dated 21.9.65. By Anr. order dated 26.10.66, he was appointed as Artist Grade-I. Thereafter, by Anr. order dated 1st December, 1975, on the recommendation of D.P.C. meeting held on 27.11.75 the Gradation list of Artiste Grade-I has been prepared in order of merit and the name of the Petitioner appeared in serial No. 4 of the Gradation list of Grade-I Artiste.

5. The aforesaid two writ Petitioners continued in the post from 30.11.67 and 21.9.65 respectively till their services were terminated on attaining tire age of superannuation w.e.f. 28.2.95 and 28.2.94 by an order dated 31.7.95. By the time their services were terminated on attaining the age of superannuation, Petitioner in Civil Rules 434/90 had put in about 28 years of service and Petitioner in Civil Rules 418/90 had put in about 29 years of service as Grade-I Artiste.

6. Petitioners filed the aforesaid Civil Rule with a prayer inter alia to regularise their services as Artist Grade-I in the Directorate of Information and Public Relation Manipur. While issuing a rule, this Court on 20.8.90 directed the Respondents not to oust the Petitioners from the post they are holding. The learned Single Judge after hearing the parties disposed of two writ petitions by an order date 21.2.95 with a direction to regularise the services of the two Petitioners Within a period of two months from the date of this order. The learned Single Judge further directed that their services shall be regularised so as to enable them to receive pension and other retiral benefits. Being aggrieved, the present two appeals have been preferred by the State.

7. Three contentions have been urged before us by Mr. T. Nandakumar.

(a) Petitioners/Respondents has not approached the Court with a clean hand inasmuch as that they were serving on contract agreement has not been disclosed in the writ petition, and as such, the petition is liable to be dismissed for suppression of facts.

(b) That the Petitioners are bind by their own agreement and having knowingly accepted the contract appointment on the terms and conditions laid down there under they are estopped from claiming the regularisation of their services.

(c) The Petitioners" services were appointed on contract on the basis of cabinet decision in its meeting held on 12.9.77.

8. In this connection, Mr. T. Nandakumar has referred to Annexurc-B/2 agreement dated 8.1.91 executed between the Appellant and the Respondent/writ Petitioner. This agreement clearly appears to have been executed after this Court passed an interim order on 20.8.90 not to oust the Petitioners when they filed writ petitions for regularisation of their services. Therefore, we are of the view that the agreement dated 8.1.91 is well and after thought to throw a

cobweb to bind the Petitioners from claiming regularisation of their services and depriving pensionary benefits to the writ Petitioners/Respondents. Although it is true that the Cabinet in its meeting held on 12.9.77 appears to have finalised the service condition of personnel of the departmental Drama Unit of Publicity department, no agreement appears to have entered between the Staff and the department prior to 1991. No copies of agreement has been produced before us other than 1991 agreement. The agreement in 1991 has been entered into between the parties after the Petitioners had put in almost 25 years of service. Therefore, the agreement dated 8.1.91 cannot take away the services already rendered by the Petitioners through out their life.

9. On maintainability of the writ petition, learned Counsel for the Appellant has invited our attention to the decision of the Supreme Court in Dr. Vijay Kumar Kathuria Vs. State of Haryana and Others, wherein the Apex Court had depreciated the practice of making false representation and obtaining relief. Reliance has also been placed in G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another, where the Apex Court depreciated the practice of suppression of material facts. While it is true that the litigant runs a high risk when they obtained relief by suppression of facts, in the instant case, disclosure of facts that the Petitioners were on contract service would make no difference in view of the order that we proposed to pass. Therefore, the aforesaid decision is of no help to the Appellant's case.

10. Let us accept that the writ Petitioners were on contract service but the facts remained that they are allowed to work for almost 28 and 29 years respectively till they are retired on attaining the age of superannuation by an order dated 31.7.95, It is in this situation, we are examining the case from Anr. angle. The order dated 31.7.95 retiring the Petitioners/Respondents is extracted:

GOVERNMENT OF MANIPUR DIRECTORATE OF INFORMATION AND PUBLIC RELATIONS

ORDERS Imphal, the 31st July, 1995

No. 5.12.95-DIPR/750: In pursuance of the approval conveyed vide Govt. letter 18.3.90-INFO (Pt) dated the 11th July, 1995, the Contract Services of the following artistes of the Departmental Drama Unit of this Directorate are hereby terminated with immediate effect on attaining the age of their superannuation.

Sl. No. Name and Designation Date of Superannuation

1. 2 3

1. Shri H. Angouba Sharma, Artiste Grade-I 28.02.1994

2. Shri Ksh. Ibohal Singh, Artiste Grade-I 28.02.1995

Shri H. Angouba Sharma, Artiste Grade-I Shri Ksh, Ibohal Singh, Artiste Grade-

The periods of their employment from the date of superannuation till date will be

treated as the periods of re-employment on contract basis. They will be entitled to the ex-gratia gratuity as prescribed in the terms of contract appointment.

Sd/-31.7.95 (P. Bharat Singh) Director, Information and Public Relations, Govt, of Manipur

Memo No. 5/12/95-DIPR Imphal, the 31st July, 1995

Copy to:

1. The Under Secretary (Information), Govt, of Manipur for favour of information and necessary action w.e.f. Govt. letter No. 18.3.90-Info (Pt) dated 11.7.95.
2. The Accountant General, Manipur.
3. The Sub-Treasury Officer, Imphal.
4. The Registrar, Gauhati High Court, Imphal Bench for favour of information /Sr. Govt. Advocate (HC), Govt. of Manipur.
5. The persons concerned.
6. Th Head Clerk/Accountant, DIPR, Manipur.
7. The relevant File.

Sd/- 31.7.95 (P. Bharat Singh) Director, Information and Public Relations, Govt. of Manipur.

11. We are being disturbed that the Petitioners were compelled to go on seperannuation after putting in 28 and 29 years of service respectively without any pensionary and other retiral benefits. In a welfare state like ours committed to a socialistic pattern of society, it is unconscionable that employer compels the employee to go on retirement without any retiral benefits after putting in 28 and 29 years of service on the pretext of contract service. It will be hit by equality clause as enshrined in Article 14 of the Constitution. The Writ Petitioners/ Respondents have spent the entire youthful life to the service of the State rendering valuable services to the State as an Artists. It will be too cruel to allow them to go empty handed when they are aged, old and infirm and incapable of earning by themselves. It is common knowledge that Government servants work for future security. The argument that the writ Petitioners accepted the appointment with full knowledge of the terms and conditions laid down in contract and therefore, their services cannot be regularised and they are not entitled pension and other retiral benefits would amount to exploitation of labour. May be the Petitioners have knowing full well the terms and conditions of contract accepted the employment because of compelling circumstances. State, being a model employer are not permitted to use method of exploitation against the weaker section of people.

12. We, unequivocally of the view that the term "contract appointment" must be terminable at some stage of their service. But if contract appointment continued

uninterruptedly till the age of Superannuation as is happened in the case at hand, the character of the contract appointment automatically changes and the employee has to be treated under the normal Government service rules, entitling them pensionary benefits. In the instant case, the stand taken by the Appellant Government that the Respondents were on contract service and therefore, even if they retire on attaining the age of superannuation they will not be entitled to pension and other retiral benefits is unacceptable. If they are on contract service their services could have been terminated when they are still youthful and they could have gainfully employed in some other avocation. But then, after using their entire services, drained out their energy and when they are aged, old and infirm and incapable of functioning, allowing them to go empty handed is an invasion of mandate of Articles 14 and 21. Right to live has been interpreted as right to live with dignity. Unless citizens have means for sustenance right to live with dignity will have no meaning. The contention of the learned Counsel for the Appellant are therefore rejected as untenable in law.

13. Since we have rejected the contentions of the Appellant as aforestated, we need not go to the arguments advanced by Mr. Jayanta, learned Counsel for the Respondents.

14. For the reasons aforestated, there is no merit in these two writ appeals and they are accordingly dismissed. However, without costs.

15. Before we part with the record, we make it clear that this judgment of ours will be applicable to all the Artists working under the department of Directorate of Information and Public Relation who has served more than 10 years of service on contract as on today, so that unnecessary litigations are thwarted. We say this, because of the high litigation costs in this country, many common people may not afford to approach this Court because of economic desperates, despite of having genuine grievances.

With the aforestated observations and directions, these two Writ Appeals are dismissed. However, without costs.

16. I agree.