
(2002) 06 GAU CK 0004

In the Gauhati High Court

Case No : Writ Petition (C) No. 115 (K) of 2001

T. Shahoto Vimchunger

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 19-06-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2002) 2 GLT 513

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : C.T. Jamir and L.T. Sangtam, for the Appellant; Lucy, G.A., for the Respondent

Final Decision : Allowed

Judgement

P.C. Phukan, J.—By this application under Article 226 of the Constitution, the Petitioner prays for issuing an appropriate writ directing the Respondents to regularise the service of the Petitioner as under graduate teacher in terms of Cabinet decision dated 14.5.01 (Annexure-D to the writ petition).

2. I have heard Mr. C.T. Jamir, learned Counsel assisted by Mr. L.T. Sangtam, learned Counsel for the Petitioner and Mrs. Lucy, learned Govt. Advocate for the State Respondents.

3. The Petitioner who belongs to a backward tribe was initially appointed as Substitute Assistant Teacher by an order dated 15.2.90. While he was serving as such, he appeared HSLC examination and passed out successfully in the year 1993. After passing HSLC examination, he was granted matriculate scale of pay with effect from 25.5.93. Thereafter, by an order dated 18.9.2000 (Annexure-C) the Petitioner's appointment was ordered to be treated as ad hoc appointment in his own grade and same time scale of pay vice late Ahukiu, Primary teacher, expired on 13.6.90. The School Education Department came out with a policy for directly regularising the service of ad hoc teachers who have put in 10 years and

above continues service as on 14.5.01. The said policy was approved by the Cabinet in its meeting held on 14.5.2001 and such approval was communicated vide office memorandum No. CAB-1/2001 dated 16.5.2001 (Annexure-D to the writ petition). By circular dated 1.5.01 (Annexure-E) the Petitioner was directed to appear in under graduate teacher interview on 8.6.2001 for regularisation of his service. The Petitioner appeared in the said interview. It is submitted that the Petitioner was unnecessarily subjected to the interview held on 8.6.2001 in defiance of the policy decision of the Government with regard to regularisation of the ad hoc teachers without requiring them to face any interview. It has further been alleged that persons similarly situated to the Petitioner were regularised without subjecting them to any interview. This amounts to violation of Article 14 and 16 of the Constitution. While admitting this writ petition and issuing a rule, this Court by an interim order dated 13.7.2001 directed the Respondents not to oust the Petitioner from service. That is how the Petitioner is still serving as Assistant Teacher.

4. In the affidavit-in-opposition filed on behalf of the Respondents 1, 2, 3 and 4, it is stated that recruitment policy framed and adopted by the State Government on 14.5.2001 covers only the graduate teachers and not the under graduate teachers like the Petitioner. In paragraph 7, it has been stated that the Deptt. have not made any stipulation that the interview would be for regularisation of service but it was for selection of the best candidates.

5. The Government recruitment policy for Graduate Teachers (Annexure-D to the writ petition) reads as follows:

The Cabinet approved the School Education Department's proposal as follows:

(a) To regularise ad hoc teachers who have put in 10 years and above of continuous service on the day of this approval in accordance with the High Court's recent decision and Cabinet's decision of 1996 in this regard.

(b) To conduct screening test through NPSC of those ad hoc teachers who have put in 5 to 10 years of continuous service on the day of this Cabinet decision and regularise those found successful.

(c) To request NPSC to conduct open selection examination against those vacancies occupied for less than 5 years by ad hoc teachers...

6. It is true that this recruitment policy is for graduate teachers only. Mrs. Lucy, learned Govt. Adv. however could not show me as to what is the recruitment policy for under graduate teachers. In the absence of any such policy as regards under graduate teachers and in view of the fact that the above recruitment policy refers to the Cabinet decision of 1996, it is necessary to refer to the said Cabinet decision to see whether that decision covers the cases of the under graduate teachers. The Cabinet decision dated 30.10.96 has been reproduced in this Court's judgment & order dated 11.4.2001 passed in W.P.(C) No. 105(K)/2000 as under:

The Cabinet discussed in detail the issue of contract appointment for Government service. In this particular case where 51 teachers have gone to the Court and the court has given a time-bound ruling within which the Department has also not appealed. However, the policy of the Government is quite clear in respect of contract appointees that cases for regularisation of contract appointees can be taken up only after completion of 10 years or more. Among the 51 teachers listed in Annexure "A" by the Department, except 4 teachers all have completed 10 years of contract service. The direction of the Court is hereby accepted as there is no time for appeal and the direction has become absolute.

However, in respect of the 587 teachers listed in Annexure "C" the Cabinet has been pleased to decide, keeping in view of the existing Govt. policy on contract appointment, that all those teachers who have completed 10 years or more on the date of Cabinet sitting will be regularised and the remaining teachers will be terminated from service.

The Cabinet further observed that the Govt. Departments do not seem to follow the Government policy in respect of contract services. A fresh direction may be therefore issued to all the Department by P&AR Deptt.

7. Mr. C.T. Jamir, learned Counsel for e Petitioner has drawn my attention to the fact that the Cabinet direction (b) was sued to all the Departments and contends tat it necessarily means that the said cabinet decsion covers all the similarly mated Government employees including (sic) under graduate teachers and in the (sic) of any recruitment policy for the (sic) graduate teachers unlike graduate teachers, the Cabinet decision still occupies the field as regards under (sic) teachers and it therefore follows tat the under graduate teachers who have completed 10 years or more shall be regularized and only those who have put I 5 to 10 years of continuous service will have to face screening test and those who have put in less than 5 years of service will have to face selection examination. Mr C.T. Jamir, learned Counsel has pointed out to the notification dated 16.8.79 which prescribed the educational qualification for the candidates belonging to the backward tribes for Junior Class-III post as matric standard. Mr. C.T. Jamir is very fair to reveal that educational qualification was made PU passed for Junior Class III post with effect from 15.1.2001 by subsequent notification. Mr. C.T. Jamir however, submitted that at the time of ad hoc appointment of the Petitioner, the minimum qualification was matric standard and hence the Petitioner cannot be said not to possess the minimum qualification on the date of his appointment. Mr. C.T. Jamir relied upon the decision in Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, wherein it has been held:

But once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualifications as was done by Sub-rule (e). Such an approach alone would be consistent with the constitutional philosophy adverted to earlier. Even otherwise, the rule must be so interpreted, if the language of the rule permits, as will advance this philosophy of the Constitution. If the rule is so interpreted it seems clear to us that employees who

have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment must be allowed to continue on their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences. The family of the employee which has settled down and accommodated its needs to the emoluments received by the bread winner will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered "age barred" for securing a job elsewhere.

8. Admittedly, the present Petitioner belongs to backward tribe of Nagaland. It is also not disputed that before the minimum qualification for the under graduate teacher was made a PU passed with effect from 15.1.2001, the Petitioner acquired the minimum qualification by passing matriculation examination in the meantime.

9. In the facts and circumstances of this case and in view of the above Supreme Court decision and the policy decision of the Cabinet dated 30.10.96 and in view of the admitted fact that the Petitioner has put in more than 10 years of service against the regular vacancy, he is entitled to be regularised in service.

10. In the result, the State Respondents, more particularly the Respondent No. 1, Principal Secretary to the Govt. of Nagaland, Education Deptt. and the Respondent No. 2, the Addl. Director, School Education, Nagaland are directed to regularise the service of the Petitioner without requiring him to face any examination, interview or screening test.

The Petitioner shall furnish a certified copy of this order along with a copy of the writ petition and the Annexures to the above named Respondents who shall comply with the above direction of the Court within a period of 2 (two) month from the date of receipt of the same. In the meantime, the Petitioner shall continue as Assistant Teacher, Govt. Primary School.

This writ petition is allowed accordingly. No costs.