

(2018) 02 MAN CK 0002

In the Manipur High Court

Case No : (W P (C)) No 182 of 2017 (Ref:- W P (C) No 599 of 2016)

The State of Manipur

APPELLANT

Vs

Irungbam Shyam Singh

RESPONDENT

Date of Decision : 13-02-2018

Acts Referred:

Constitution of India, Article 14 -
Appointment of Commission to inquire into and report on the administration of
autonomous districts and autonomous regions

Citation : (2018) 02 MAN CK 0002

Hon'ble Judges : Kh. Nobin Singh

Bench : Single Bench

Advocate : Y. Nirmolchand, L. Raju, Niranjana Sanasam

Judgement

1. Heard Shri Y. Nirmolchand, the learned Sr. Advocate assisted by Shri L. Raju, the learned counsel appearing for the respondents/ petitioners

and Shri Niranjana Sanasam, the learned Addl. Government Advocate appearing for the applicants/ respondents.

2. The instant application has been filed by the State Government namely, the applicant/ respondent Nos.1 and 3 praying for allowing them to

withdraw the affidavit-in-opposition by Shri Lamabam Kirankumar Singh, Under Secretary (RD & PR), Government of Manipur on their behalf

and to file a fresh affidavit-in-opposition. The grounds on which the application has been filed, are that the averments made in para 3 and 4 of the

said affidavit-in-opposition are contrary to the stand taken by the State Government in the earlier proceedings before this Hon'ble Court and that

the stand taken by the State Government in the present affidavit-in-opposition is through bonafide mistake and without proper consulting the

records of the earlier proceedings of the Hon"ble High Court.

3. Denying the averments made in the application, an objection has been filed on behalf of the respondents/ petitioners contending that the

statements made by the Under Secretary (RD & PR) on behalf of the applicant/ respondent Nos.1 and 3 in the present case might be contrary to

the statements made by them in their earlier affidavit-in-opposition but the same are based on the conditions mentioned in the approval letter dated

05-11-1999 of the State Government and the appointment order dated 05-11-1999 issued by the Director (DR & PR). It has also been stated

that the prayers made in the writ petitions being WP(C) No.409 of 2000 and WP(C) No.474 of 2006 are different from that of the present case.

4. 1. Before advertng to the rival contentions, this court deems it appropriate to refer to the backgrounds or the circumstances on the basis of

which various writ petitions including the present writ petition, have been filed. In the present case, the respondents/ petitioners along with others

were initially appointed as the Lower Division Clerks (hereinafter referred to as ""LDCs"") vide order dated 05-11-1999 with the following

conditions:

Keeping in view the instructions contained in the Guidelines on DRDA- Administration issued by the Govt. of India, Ministry of Rural

Development and its staffing pattern of DRDA therein, whenever any official (s) on deputation is/ are repatriated to the parent Department against

original post (s), other (s) holding the post of LDCs shall be sent to DRDA on deputation. These employees appointed on deputation vacancies

shall be adjusted against future regular/ substantive vacancies which will arise from time to time in order of serial number of their appointment

orders. Until then their services shall be disturbed.

In view of the said conditions and the approval of the State Government being conveyed vide its letter dated 08-12-2006, the Director (DR &

PR), Government of Manipur issued an order dated 11-12-2006 adjusting and regularising as many as 13 LDCs whose names were being shown

above the petitioners in the appointment order. In respect of the remaining persons including the petitioners, the Director (RD & PR) made a

proposal vide its letter dated 24-06-2008 that the petitioner's cases also be examined and considered at the Government level for taking

appropriate action on the ground that in terms of an order passed by the Hon''ble High Court in WP(C) No.442 of 2000, their services could not

be terminated by it. Probably, on the strength of the said proposal, a Cabinet Memorandum was prepared and after the same being approved by

the concerned Hon''ble Minister (RD & PR), the Hon''ble Chief Minister agreed to place it before the Cabinet. However, it appears that no

decision had been taken by the Cabinet for their adjustment.

4.2. Being aggrieved by the inaction on the part of the State Government, one of the petitioners submitted a representation dated 06-04-2011

followed by two other representations dated 15-09-2011 and 07-06-2012 addressed to the Hon''ble Chief Minister, Manipur. In the year 2013,

the State Government took a policy decision vide Office Memorandum dated 03-10-2013 for regularisation of 288 ad-hoc employees subject to

the conditions mentioned therein. In respect of the Directorate of SCERT, 18 ad-hoc employees were regularised, for which an order dated 31-

12-2013 was issued by the Under Secretary (SCERT), Government of Manipur. Instead of an appropriate action being taken for consideration of

the cases of the petitioners, the State Government issued a Notification dated 04-08-2016 inviting applications from amongst the eligible persons

for appointment to various posts in the Department of RD & PR including the post of 28 LDCs. Being aggrieved by it, the petitioners have filed the

instant writ petition wherein an affidavit-in-opposition has been filed on behalf of the applicant/ respondent Nos.1 & 3 and the stand of the State

Government as reflected in para 3 and 4 thereof, is given as under:

3the LDCs appointed against the deputation vacancies in order of the proceedings may be adjusted against future regular / substantive

vacancies which may arise from time to time.

4. ...The LDCs appointed against deputation vacancies shall be adjusted against future regular substantive vacancies which arise from time to time

in order of serial number of the appointment vide approval of the Government letter dated 5-11-1999 as stated at Annexure R/2 above. However,

since there is a ban on direct recruitment for existing vacancies, these adjustments cannot be done at present.

The main ground which prompted the State Government to file the instant application, is that the stand taken herein, is contrary to that of the one

taken by it in W.P.(C) No.409 of 2000 and W.P.(C) No.474 of 2006 which, as seen from the averments made in the application, appears to be

that since the petitioners therein have been appointed against the deputation vacancies, they are not entitled to claim regularization and their

services are to be terminated as and when the deputationists return to their original posts. In order to substantiate the contention of the State

Government, Shri Niranjana Sanasam, the learned Government Advocate has relied upon the decisions rendered by the Hon'ble Supreme Court in

J.P. Bansal Vs. State of Rajasthan, (2003) 5 SCC 134 ; Sushil Kumar Jain Vs. Manoj Kumar, (2009) 14 SCC 38 and Ram Niranjana Kajaria Vs.

Sheo Prakash Kajaria, (2015) 10 SCC 203 while Shri Y. Nirmolchand, the learner Senior Advocate appearing for the respondents/ petitioners

did rely on the decisions of the Hon'ble High Court passed in other cases.

5. It is well settled that a person who is appointed against a deputation vacancy, cannot be regularized against it and he has to make way for the

deputationist as and when he is repatriated to his parent department. There can be no dispute on the said principle. In the present case, the said

principle will have no applicability for the reasons that in the appointment order dated 05-11-1999 itself, it is specifically stipulated that the

employees appointed on deputation vacancies shall be adjusted against future / substantive vacancies which will arise from time to time in order of

serial number of their appointment orders and in terms of the said appointment order dated 05-11-1999 and in particular, the conditions of

adjustment against future / substantive vacancies, 13 persons who were above the petitioners, have been undisputedly adjusted against the regular

vacancies vide order dated 11-12-2006 issued by the Director (RD & PR), Manipur. This clearly shows that the State Government has acted

upon the said conditions in respect of them. It may be noted that the petitioners and the said 13 persons are similarly situated and therefore, there is

no reason as to why the same benefit shall not be extended to them and the denial of such benefit to the petitioners may amount to violation of the

principles of equality as guaranteed under the provisions of Article 14 of the Constitution of India. It is the State Government which has prescribed

the said conditions and there is no material on record to show that the said conditions have subsequently been withdrawn by the State

Government. On perusal of the appointment order dated 05-11-1999 wherein the said conditions have been prescribed, it is seen that the stand

taken by the State Government in the affidavit-in-opposition filed on its behalf in the present case, is in tune with the said conditions. Therefore, in

the writ petition being W.P.(C) No.611 of 2016 filed by a person who was appointed along with the petitioners herein, an affidavit-in-opposition

has been filed by the Director (RD & PR), Manipur taking a similar stand as that of the State Government in the present case. This writ petition

being W.P.(C) No.611 of 2016 was disposed of on 23-09-2016 by this court on the joint submission of the learned counsels appearing for the

petitioner therein and the State Government with the direction that the petitioner therein be adjusted against the regular and vacant post. Another

10 persons who were also appointed along with the petitioners herein, filed a writ petition being WP(C) No.724 of 2016 with a prayer that they

be absorbed/ regularized in the Department of Rural development and Panchayati Raj which came to be disposed of in terms of the order dated

23-09-2016 passed in W.P.(C) No.611 of 2016. The learned Government Advocate has submitted that an appeal being W.A. No.35 of 2017

has been preferred against the order dated 23-09-2016 only which is still pending for disposal by this court. It appears that no order staying the

operation of the said order dated 23-09-2016 has been passed in the appeal nor has any document been placed on record to show that any action

has been taken against the advocate who has made the submission as recorded in the order dated 23-09-2016. By the said orders dated 23-09-

2016 and 07-10-2016 passed by this court, certain rights have accrued to the petitioners therein which cannot be disturbed and infringed as long

as the said orders are not interfered by this court in the appeal and any order passed by this court, at this juncture, allowing the State Government

to withdraw its affidavit-in-opposition, will have a bearing on the appeal being W.A. No.35 of 2017. There can be no dispute as regards the

principles laid down by the Hon"ble Supreme Court in the said cases relied upon by the Government Advocate but the same will have no

application, as their facts and circumstances are different from that of the present case and therefore, the details thereof are not being referred to

herein. Having heard the learned counsels appearing for the parties and perused the materials on record, this court is of the view that the

application is devoid of any merit warranting any interference by this court.

6. One aspect which needs to be considered by this court while deciding the issue involved in the application, is that the Under Secretary (RD &

PR), Government of Manipur who has filed the affidavit-in-opposition on behalf of the respondent Nos.1 & 3, is not a party in the writ petition and

moreover, the instant writ petition is not a public interest litigation where any officer who is conversant with the facts and circumstances of the case,

can file an affidavit on behalf of the State Government. It appears to be a common practice in the State of Manipur that the affidavit-in-opposition

on behalf of the State Government is always filed by the Under Secretary or the Deputy Secretary of the concerned Department and such affidavit

is hardly or never filed by the Head of the Department who is a party in the writ petition. It further appears that before filing an affidavit-in-

opposition in any matter pertaining to the State Government, the concerned Head of the Department does not apply its mind and the approval for

filing affidavit is granted in the file in a routine manner and sometimes, affidavits are filed on behalf of the State Government without referring to any

document, order, office memorandum or note available in the relevant file, because of which any problem may have arisen. It has been made clear,

time and again, to the counsel appearing for the State Government that an affidavit, not based on records or in other words, not referring to

documents, is not acceptable to this court. A similar prayer for withdrawal and filing a fresh affidavit has been made by the State Government in

another case as well being W.P. (C) No. 789 of 2011 disposed of on 31-01-2017, which has been allowed by this court as a special case

keeping in mind the facts of that case and the grant of such permission cannot be taken for granted and cannot be expected in all the cases. The

State Government being an institution, its affidavit is always to be based on the records and not on the personal knowledge of the officer

concerned or on the basis of his desire. In order to avoid such problem in future, it is the right time for the State Government to issue appropriate

instruction to all the heads of the Departments and for that purpose, the Chief Secretary, Manipur is requested to look into it and do the needful.

7. In view of the above, the instant application being M.C.(W.P.(C)) No.182 of 2017 is rejected. A copy of this order shall be sent to the Chief

Secretary, Manipur for his doing the needful.