
(2001) 02 GAU CK 0021

In the Gauhati High Court

Case No : Writ Petition (C) No's. 976 and 977 of 2001

Union of India (UOI) and Others

APPELLANT

Vs

Gurucharanjit Kaur

RESPONDENT

Date of Decision : 19-02-2001

Acts Referred:

Citation : (2001) 1 GLT 334

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

Bench : Division Bench

Advocate : B.P. Todi and P. Baruah, for the Appellant; B.K. Sharma, P.K. Tiwari and D.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

H.K. Sema, J.—Heard Dr. B.P. Todi, learned counsel for the writ petitioners and Mr. P.K. Tiwari, learned counsel for the Caveator-respondent. The Caveat is discharged.

2. Factual matrix that emerged is that the petitioners were appointed as teachers in Kendriya Vidyalaya Sangathan at Tezpur on ad hoc basis from 1991. The appointment on ad hoc basis in favour of the petitioners carries stipulation that the appointment was purely on temporary basis for a period of six months or regular incumbent joins the post whichever is earlier. Despite the appointment for a period of six months expires, the petitioners continued in the post on ad hoc basis pursuant to the interim order dated 23.12.1994 obtained by the petitioners/respondent in Civil Rule No. 5188/94. In the interregnum, an advertisement was issued calling applications for appointment on regular basis and pursuant to the aforesaid advertisement, petitioners also applied for the post and appeared in the written test conducted some time in the month of June 1999" but failed to be selected. Consequently the petitioners also filed another writ petition registered as W.P.(C) No. 4707/99 and also filed Misc. Case No. 40/2000 with the prayer for interim order to allow the petitioners to continue in the same post. This was done under linking apprehension that since the

petitioner has failed in the written test, their services may be discontinued by the authority. Civil Rule No. 4707/99 alongwith Misc. Case No. 40/2000 has been disposed of by this court on 12.1.2000 rejecting the prayer of the petitioner and also directed that regularly selected candidates be appointed by terminating the services of the petitioner/respondent. Pursuant to the aforesaid observations and on the basis of the select list, the ad hoc services of the petitioners were terminated on 11.4.2000 by appointing the regularly selected candidates. This order of termination has been challenged by filing application before the Central Administrative Tribunal, Guwahati Bench with a prayer for quashing or setting aside the order of termination dated 11.4.2000 and also prayed for regularisation of the services. Learned Vice-Chairman. Central Administrative Tribunal, after hearing the counsel for both sides quashed the impugned order of termination dated 11.4.2000 as according to him the petitioners have been continuing in the post on ad hoc basis for almost nine years and although the petitioners stated to have failed in the written test held in the month of June 1999 considering the length of their services rendered by the applicants on ad hoc basis, the learned Vice-Chairman was of the view that their services may be allowed to continue with the direction to take back the petitioners in service without back wages. Feeling aggrieved, the aforesaid petitions have been filed.

3. Before we advert to the other point, at this stage, we must make it clear that by now it must be taken to be the law that ad hoc appointment is made subject to the regular selection and as and when the post is advertised for regular selection and if the ad hoc appointee is successful in the test conducted by the committee it is well and good and in that case he/she should be appointed in the post held by them. If however the ad hoc appointee fails in the regular selection, then they must also give way to the regularly selected candidates. In the present case the interim order passed on 23.12.1994 ha allowed the petitioners to continue in the ad hoc post culminated in the final order passed by the learned Single Judge of this Court on 15.9.1998. While disposing of the Civil Rule No. 5188/94 filed by the petitioners and other analogous matters this court held as follows:-

"In view of the above discussion and also considering the facts and circumstances of the case, I direct the respondents to consider the case of the petitioners and allow them to appear in any interview that may be held for future appointment. Though the special advertisement in question was only a one time action as stated by the respondents, In my opinion, that cannot prevent the authority to consider the case of the petitioners in allowing them to appear in the interview, if they are otherwise qualified."

4. It would appear from the argument advanced before us that even before the direction issued by this court as quoted above has been Implemented the petitioners were allowed to face the written test examination in June 1999 and failed. As already observed if they are selected it is well and good but if hey have failed in the test held for regular appointment, they must give way to the

selected candidates, it is exactly what has happened in the present case. Regularly selected candidates were appointed on 11.4.2000 and they also joined and on that day the ad hoc appointment of the petitioners stand terminated. To this extent no grievances can be raised by the petitioners/respondent as they failed to qualify themselves.

5. In service jurisdictional direction for appointment/regularisation to a post is always against the existing vacancy. Since the posts held by the petitioners/respondent on ad hoc basis were occupied by the regularly selected candidates, there was no post in existence in the instant case. Therefore, no writ of Mandamus can be issued for taking them back to a post. Writ of Mandamus can not also be issued for creation of post for those persons who have no legally enforceable right. To this extent the judgment and order directing the authority to take the respondent/petitioner in service was clearly erroneous.

6. In the result, the judgment and order dated 5.12.2000 passed by the learned Vice-Chairman, Central Administrative Tribunal, Guwahati Bench in Original Application No. 135/2000 and original application No. 138/2000 are hereby quashed and set aside.

7. We, however, direct the respondent to consider the case of the petitioners in terms of direction issued by this Court on 15.9.1998 in Civil Rule No. 5188/94 afresh. We said so because from the memorandum dated 27.7.2000 (Annexure-6) issued by the Assistant Commissioner (Admn.) it clearly appears that the operative portion of the direction issued by this Court is sought to be implemented by the aforesaid memorandum, the aforesaid memorandum has been issued subsequently after the services of the petitioners were terminated on 11.4.2000. Such considerations shall be made strictly in terms of the said memorandum with particular reference to the conditions stipulated in paragraph 3 of the memorandum reads:

"3. Whereas in order to comply with the said judgment it has been decided to consider the case of the petitioners before the High Court that all the petitioners be advised to apply for the post as and when vacancies are advertised in the newspaper after which their candidature will be considered for the post in accordance with the rules, giving due weightage to age relaxation to the extent of his/ her adhoc service rendered in the Vidyalaya subject to a maximum limit of 5 years, provided the candidate fulfils the essential qualifications as prescribed in the Recruitment Rules. Also he/ she has to qualify in the written test and to appear for the Interview for the post for being found selected and appointed to the post after being empanelled for the post."

8. A reading of para 3 of the memorandum referred to above, would clearly shows that it was in compliance with the direction issued by this court while disposing of the Civil Rule No. 5188/94.

9. Before parting with the record we are constrained to observe that very often this court is floated with the litigation concerning appointment of teachers in

Kendriya Vidyalaya Sangathan. There is a multiplicity of litigations floating this court and enormous court time is being lost in entertaining and disposing some of them not genuine and unnecessary litigation. The concerned authority is therefore advised to formulate a permanent policy so as to make selection of a teacher through advertisement of the post once for all instead of adhering to ad hoc appointment which creates more problem than solving it. We say so because the authority concerned is well known well ahead of time the likelihood of the occurrence of any vacancy in a particular school and therefore we expected of them to take steps well ahead of time so that the post can be advertised and regularly selected and better candidate is appointed to public service, instead of appointing on ad hoc basis by adopting backdoor policy method, which may be detrimental to the public interest.

10. With the aforesaid observations and direction both the Writ Petitions stand allowed.