
(1997) 08 GAU CK 0044
In the Gauhati High Court
Case No : Writ Appeal No. 66 of 1997

Waiting Hindi Matriculate Teachers Association	APPELLANT
Vs	
State of Manipur and Others	RESPONDENT

Date of Decision : 21-08-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (1998) 2 GLT 319

Hon'ble Judges : P.K. Ghosh, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : B.P. Sahu, N. Bani Kumar, Ch. Rabichandra, R.K. Mohendra, P. Saratchandra and Chitrangada R.K, for the Appellant; A. Potsangbam, General, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—This is an appeal against the judgment and order dated 19.5.97 passed by the learned Single Judge dismissing Civil Rule No. 365/97 filed by the Appellant.

2. The facts briefly are that the Appellant is Association of some candidates who are recommended and placed in the waiting list prepared for appointment to the post of Hindi Matriculate Teachers by a DPC held during 18.10.89 to 26.10.89. The case of the Appellant is that the members of the Appellant Association placed in the waiting list of candidates for appointment to the post of Hindi Matriculate Teachers were not appointed by the State Respondents despite the fact that during the period of one year when the said panel of wait listed candidates were valid vacancies arose in the post of Hindi Matriculate Teachers not only due to death/retirement of existing incumbents but also on account of promotion of Hindi Matriculate Teachers to higher posts. Aggrieved, some of the members of the Appellant Association initially submitted representations to the Director of Education (Schools), Manipur. As no action was taken on the said representations, they filed Civil Rule Nos. 2269/91/171/91, 2965/91/244/91 and

508/92 which was disposed of by this Court with the direction to the Director of Education (Schools) Manipur, to dispose of the representation of the said members of the Appellant Association. Despite the said direction of this Court, the members of the Appellant Association were not appointed to the post of Hindi Matriculate Teachers and the Appellant Association thus moved this Court again in Civil Rule No. 365/97 with a prayer to direct the State Respondents to appoint the members of the Appellant Association against the existing post of Hindi Matriculate Teacher. Since the Director of Education (Schools), Manipur, had sent a fresh requisition to the Director of Employment, Manipur, in his letter dated 28.3.97 for recruitment of the candidates to the post of Hindi Matriculate Teachers, a prayer was also made in the said Civil Rule for quashing the said letter dated 28.3.97 of the Director of Education (Schools) Manipur. The learned Single Judge by the impugned judgment and order dated 19.5.97 dismissed the Civil Rule holding that the members of the Appellant Association having been placed in the waiting list by the DPC had no right to get appointment to the post of Hindi Matriculate Teachers.

3. Mr. B.P. Sahu, learned Counsel for the Appellant, vehemently submitted that the recommendation of the DPC available in the records of the State Government would show that the members of the Appellant Association were recommended for being appointed to the vacancies which would have arisen during the year 1990. He further submitted by referring to the Annexures to Uie Civil Rule as well as Writ Appeal that a large number of vacancies were caused on account of promotion of Hindi Matriculate Teachers to higher posts and according to Appellant as many as 54 such vacancies were caused on account of such promotion on 27.7.90. He further submitted that the Apex Court in the case of State of Bihar and others Vs. The Secretariat Assistant Successful Examinees Union 1986 and others, upheld the judgment of the Patna High Court by which directions were given to fill up vacancies which existed till 31.12.88 on the basis of the candidates selected in an examination held in the year 1987. Mr. Sahu contended that this Court should also following the said judgment of the Apex Court, direct in the peculiar facts and circumstances of the case that the vacancies now existing in the post of Hindi Matriculate Teachers be filled up from amongst the candidates in the waiting list recommended by the DPC in the year 1989. In this context, Mr. Sahu referred to the letter dated 1.10.92 of the Director of Education (Schools) Manipur, addressed to the Commissioner Education, Government of Manipur, wherein he had dealt with the vacancy position and had recommended that the appointment of 31 members of the Appellant Association be made against 31 vacancies in the post of Hindi Matriculate Teachers. The aforesaid recommendation was made by the Director of Education (Schools) Manipur, to the Commissioner Education, Government of Manipur in the context of disposal of the representations of the members of the Appellant Association which were directed to be disposed of by this Court in the earlier three Civil Rules referred to above. Mr. Sahu contended that since the Director of Education (Schools) Manipur had made a recommendation for filing

up 31 vacancies in the post of Hindi Matriculate Teachers from amongst the members of the Appellant Association who were placed in the waiting list in the year 1989, this is a fit case in which this Court should direct the State Respondents to appoint 31 members of the Appellant Association to the post of Hindi Matriculate Teachers.

4. In reply, Mr. A. Potsangbam, learned Advocate General, Manipur, produced before us relevant records which indicated that the DPC which met on 18.10.89 had taken a view that available vacancy in the post of Hindi Matriculate Teachers may arise from retirement/expiry in a year and some of the vacancies may arise from deputation of Hindi Matriculate Teachers to training in a year, therefore, 100 candidates under the mediocre grade may be placed in the waiting list so that they may be appointed against the future vacancies of Hindi Matriculate Teachers in their respective Zone/Districts on regular/officiating/substitute appointment. According to Mr. Potsangbam, learned Advocate General, Manipur, the aforesaid recommendation of the DPC for placing 100 candidates in waiting list was far in excess of the requisition. In this context, he referred to the requisition dated 28.9.89 of the Director of Education (Schools) Manipur, to the Director of Employment, Manipur in which the Director of Education (Schools) Manipur requisitioned only for 150 posts of Hindi Matriculate Teachers which had fallen vacant then. He further pointed out by referring to Annexures to the counter-affidavit filed by the State Respondents in Civil Rule No. 365/97 that as far back as on 4.11.87, the Chief Secretary to the Government of Manipur had issued a memorandum intimating all concerned that the DPC will not under any circumstances recommend candidates to be kept in the waiting list in excess of 10 percent of the total number of vacancies notified and for which DPC is held. He also referred to the subsequent Office Memorandum dated 28.11.95 and the Office Memorandum dated 28.3.95 in which the aforesaid position has been reiterated by the Government of Manipur, Department of Personnel and Administration Reforms (Personnel Division). He submitted that in addition to 150 selected candidates only 10 percent of 150, 15 more candidates for the post of Hindi Matriculate Teachers could be recommended and placed in the waiting list for appointment in case any selected candidates did not join in the post or left the post after joining. Mr. Potsangbam also referred to the Appendix 29 Rule III of the Civil Service Regulations which has been adopted in the State of Manipur and submitted that the aforesaid Rule clearly provides that the panel prepared by the DPC for filling up any post could be kept operative for one year and that after such period of one year, the validity of the panel expires. In this context, he also referred to the Office Memorandum No. 1/25/55-Estt. (D) dated 11.10.1866 of the Department of Personnel and Administrative Reforms (Personnel Division) in which it has been laid down that a select list drawn by the DPC could normally be operative only for one year and in any case it would cease to be in force after 18 months or when the fresh list is prepared whichever is earlier. According to Mr. Potsangbam, since the recommendation of the DPC was made on 29.12.89, the validity of the Panel of selected candidates and the wait

listed candidates expired by 29.12.90. During the aforesaid validity period of panel recommended by the DPC no writ petition was filed by the members of the Appellant Association for a direction for appointment to the post of Hindi Matriculate Teachers and the first Civil Rules were filed only in the years 1991-92. He relied on the judgment of the Supreme Court in the case of *State of U.P. v. Harish Chandra and Ors.* (1996) 9 SCC 300, for his submission that a mandamus cannot be issued to the authorities to appoint any person placed in the select list the validity of which has expired as per the rules as such a mandamus would be contrary to law. He also cited judgment of the Supreme Court in the case of *State of Bihar v. Md. Kalimuddin*, in which the Supreme Court has held that after the validity of the select list expired as per rules framed under Article 309 of the Constitution, the High Court cannot continue the list beyond the period of validity of the list unless the validity of the rule providing for validity period of a select list itself is challenged to be unconstitutional. Mr. Potsangbam also relied on the decision of the Supreme Court in the case of *Shankarsan Dash Vs. Union of India*, for the proposition that inclusion of candidate's name in the select list does not confer any right on him to be appointed unless the relevant rule itself provides for his appointment as selected candidate. He also cited the judgment of the Supreme Court in the case of *Ashok Kumar and Others Vs. Chairman, Banking Service Recruitment Board and Others*, and *Hoshiar Singh Vs. State of Haryana and Others*, for his argument that the recruitment to posts for which requisition has been made by the employer has to be confined to the number requisitioned and any recruitment in excess of such requisition or advertisement is contrary to the right of other candidates to equality in the matters of public employment under Articles 14 and 16 of the Constitution.

5. We find a lot of force in the aforesaid submissions of Mr. A. Potsangbam, learned Advocate General, Manipur. In the present case, it is clear from the requisition made by the Director of Education (Schools) Manipur to the Director of Employment, Manipur in his letter dated 28.9.89 that 150 posts of Hindi Matriculate Teachers were sought to be filled up by the selection process. Thus total number of posts of Hindi Matriculate Teachers which were notified was only 150 and accordingly, the DPC could have recommended only 150 candidates for appointment to the post of Hindi Matriculate Teachers. But the DPC recommended not only 150 candidates, but 100 more candidates to future vacancies for which no requisition had been made. As per the law laid down by the Apex Court in the cases of *Hoshiar Singh v. State of Haryana* (supra) and *Ashok Kumar and Ors. v. Chairman, Banking Service Recruitment Board and Ors.* (supra) no recruitment could be made to more than 150 posts of Hindi Matriculate Teachers as any such recruitment would violate the fundamental rights of different candidates who became eligible to apply for the posts of Hindi Matriculate Teachers after the last date for submission of application for the selection made in the year 1989. That apart, on a reading of Rule III of Appendix 29 of the Civil Service Regulations adopted in the State of Manipur as well as the

circular dated 20.11.82 of the Government of Manipur, Personnel and Administrative Reforms (Personnel Division) in which a reference has been made to the Office Memorandum No. 1/25/55-Estt(D) dated 11.10.66, we find that a select list drawn by the DPC would normally be operative only for one year. Hence as per rules that are in force in the State of Manipur, the panel of selected candidates as well as wait listed candidates recommended by the DPC on 29.12.89 was valid only upto 29.12.90. The earlier three Civil Rules were filed by the members of the Appellant Association after the aforesaid validity period of the panel, i.e. in the years 1991 and 1992 and the Civil Rule out of which the present Writ Appeal arises was filed in the year 1997. In our opinion, no direction can be given by way of mandamus to the State Respondents to appoint the members of the Appellant Association on the basis of the panel of candidates for future vacancies the validity of which has already expired on 29.12.90 as any such direction would be contrary to law as has been laid down by the Apex Court in the cases of State of U.R v. Harish Chandra (supra) and State of Bihar v. Md. Kalimuddin (supra).

6. For the reasons stated above, we are not inclined to interfere with judgment and order dated 19.5.97 passed by the learned Single Judge in Civil Rule No. 365/97 and the Writ Appeal is accordingly dismissed. No costs.