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Zaseveyi Venyo Vs State of Nagaland and Others

Civil Rule No''s. 37 (K) and 64 (K) of 1993

Court: Gauhati High Court (Kohima Bench)

Date of Decision: July 30, 1993

Acts Referred:
Constitution of India, 1950 â€" Article 226, 41

Citation: (1993) 2 GLR 312

Hon'ble Judges: S.N. Phukan, J

Bench: Single Bench

Advocate: B.N. Sarma, for the Appellant; J. Jamir, Sr. Govt. Advocate, for the Respondent

Final Decision: Allowed

Judgement

S.N. Phukan, J.
By this common judgment and order, I propose to dispose of two writ petitions filed under Article 226 of the Constitution

and registered as Civil Rule Nos. 37 (K) and 64 (K) of 1993. It may be stated that the Civil Rule No. 37 (K)/93 was filed the Petitioner praying

for regularization of his service as a judicial Magistrate, 2nd Class and by order dated 18.5.93, this Court directed that one post of Judicial

Magistrate, 2nd Class shall be kept vacant. During the pendency of the above petition, the service of the writ Petitioner as Judicial Magistrate was

terminated by order dated 7.7.93 and accordingly the second petition which was registered as Civil Rule No. 64 (K)/93 was moved. The

termination order is available at Annexure-II to this writ petition. When this petition came up before this Court on 21.7.93, it was agreed at the Bar

that both the petitions may be finally disposed of as in the earlier Civil Rule No. 37 (K)/93 counter affidavits have already been filed on behalf of

the Respondent Government. I may add here that by order dated 18.5.93 passed in Civil Rule No. 37 (K)/93, this Court allowed the Nagaland

Public Service Commission to be added as a party, but cause title has not been corrected by the office.

2. The writ Petitioner was appointed as Judicial Magistrate, 2nd Class on contract basis for 2 years vide order dated 17.7.90 (Annexure II to the

writ petition registered as C.R. No. 37(K) of 1993). Thereafter, by order dated 14.7.92 (Annexure III to the writ petition registered as C.R. No.

37(K) of 1993) the service of the writ Petitioner was extended for another period of 6 months, but a new condition was imposed ""or till the

recruitment of an officer or regular basis through Nagaland Public Service Commission whichever is earlier"". By order dated 2-12-92 the service

of the writ Petitioner was again extended for a period of one year or till the post is filled up by regular appointment through Public Service

Commission whichever is earlier vide Annexure-IV.

3. The Government decided to fill up 5 posts of Judicial Magistrates, 2nd Class in the "Nagaland Judicial Service" and accordingly, the Public

Service Commission issued an advertisement on 10.7.92 vide Annexure VIII and qualification was laid down, namely, Degree in Law of a

recognized University with 2 years practice at Bar. It may be stated that the Petitioner is a law graduate from the Bombay University. But when he

was appointed as a Judicial Magistrate, 2nd Class, he did not practice as an Advocate, though according to the said advertisement he was not

qualified, he applied for the post and provisionally he was allowed to sit in the written examination. It is not disputed that the Petitioner attended the

examination Hall, but left immediately thereafter, without even writing his name in the answer script.

4. The Petitioner made a representation to the State Government on 5-11-1992 for regularisation of his service vide Annexure-X wherein, it was

stated specifically that he could not sit in the examination conducted by the Public Service Commission due to his illness and a medical certificate

was also enclosed. The result of the representation was not communicated to the writ Petitioner.

5. In the counter, it has been admitted that as per decision of the Government, 5 posts of Judicial Magistrate, 2nd Class were created and Public

Service Commission was also requested to select candidates for these posts. It is also stand that the written test was held on 10-10-1992,

interview was conducted on 22nd and 23rd of February, 1993 and the names were duly recommended to the Government. It is also not disputed

that the Petitioner applied for the post and presented himself in the Examination Hall but in paragraph 3 of the counter it has been stated ""for

reasons best known to the Petitioner, he left the Examination Hall at about 10.10. A.M. after handing over the answer script to the Invigilator"".

This statement is absolutely incorrect inasmuch as in the representation filed before the State Government, the Petitioner clearly indicated about his

illness. According to the Respondents, as the Petitioner was appointed under contract basis, his service was legally terminated to accommodate

persons selected by the Public Service Commission. It has also been stated that the service of the Petitioner was extended as the selection process

could not be completed by the Public Service Commission. In paragraph 7 of the counter, it has been stated that experience of practice for 2 years

was laid down as the post of Judicial Magistrate, 2nd Class was equated with the post of Assistt. Public Prosecutor.

6. In paragraph 23 of the writ petition, registered as Civil Rule No. 37 (K)/93, the Petitioner was trying to show discrimination by giving some

examples of regularisation of service of some officers without going through the Public Service Commission and this has been replied in paragraph

23 of the counter I shall deal with these allegations and reply at the appropriate place.

7. It may be stated that when the matter came up for hearing on 22.7.93, this Court wanted some clarifications regarding qualification laid down in

the Advertisement and also the allegations of discrimination and accordingly both the Petitioner and on behalf of the State Government additional

affidavits have been filed.

8. Heard Mr. B.N. Sarma, learned Counsel for the writ Petitioner and the learned Govt. Advocate.

9. Mr. Surma has placed reliance in a decision of the Apex Court in Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others,

In that case their Lordships also considered the question of appointment of employee by way of stop-gap arrangement till regular appointments

were made and it was held inter alia, that as employees were appointed by way of stop-gap arrangement and continued for more than 2 years and

possessing requisite qualifications, they are entitled for regularisation of their service. Their Lordships in paragraphs 7 and 8 of the judgment

considered this position of employer and employees before Independence and also after Independence vis-a-vis the provisions of the Constitution

more particularly the Directive Principles. It was held as follows:

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. It is indeed unfair to use him, generate hops and (sic)

feeling of security in him attune his family to live within his earnings and suddenly to throw him out of job. Such behaviour would be an affront to the

concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the

Constitution....

Considering the facts of the case, directions were given including the direction to the Public Service Commission to regularise the services of the

persons who had put in service of one year.

10. In Smt. P.K. Narayani v. State of Kerala (1984) Suppl SCC 212 : AIR 1984 SC 534, the services of the Petitioners in that case who were

serving as employees of the State of Kerala or its public sector undertakings for few years were terminated to make room for candidates selected

by Kerala Public Service Commission and on this fact the Apex Court directed that the above Petitioners and all other similarly placed should be

allowed to appear at the next examination of the Public Service Commission without raising the age bar: till then the Petitioners and others may be

continued in service provided there are vacancies.

11. In Dr. A.K. Jain v. Union of India (1981) Suppl SCC 497 some Assistant Medical Officers were appointed by the Manager of the Zonal

Railways on ad-hoc basis and their services were terminated to accommodate candidates selected by the Union Public Service Commission. The

Petitioners in that case were those ad-hoc appointees who had either failed to avail of the special benefit of selection or had appeared and failed to

qualify and, therefore, it was submitted that they were not entitled for regularisation in service. Notwithstanding with the same, the Apex Court

directed regularisation of services of all the Doctors appointed after a particular date in-consultation with the U.P.S.C. or the evaluation of their

work and conduct based on the confidential report. The above two decisions were also considered in Jacob"s case (supra).

12. In the case in hand, from the advertisement I find that it was mentioned regarding applications to be submitted for the posts of judicial

Magistrate, 2nd Class and that the said posts were in the Nagaland Judicial Service. It is true that there is no separation of the Judiciary from the

Executive in the State. Therefore, I am not expressing any opinion whether such a Judicial service can be constituted without consulting High Court

as required under the Constitution and whether Judicial Magistrates can be appointed by the Government without consulting the High Court. I

leave these two questions open to be considered at the appropriate time.

13. Admittedly, when the writ Petitioner was appointed on contract service in the year 1990, no qualification regarding experience as an Advocate

in the Bar was laid down. In fact from the Recruitment Rules which were placed before this Court at the time of hearing and I find from the said

Recruitment Rules that only for Judicial Magistrate, 1st Class 4 years experience in the Bar was laid down. This experience of 2 years from the

record I find was fixed only on the ground that pay scale of Judicial Magistrate, 2nd class is equal to the pay scale of Asstt. Public Prosecutor. It

was not taken into consideration that the nature of work for these two posts is different and only on the ground of pay scale such fixation of

qualification for Judicial Magistrate, 2nd Class is arbitrary.

14. Be that as it may in any event in case of the present Petitioner, this additional qualification was fixed after he had put in 2 years of service as

Judicial Magistrate. Though he was appointed on contract basis, he has a right to be considered for the post and by fixing the above qualification,

the vested right has been taken away which is not permitted under the law.

15. In paragraph 23 of the writ petition registered as C.R. No. 37(K)/93, the Petitioner has specifically stated that the service of Sri Veprasa,

Judicial Magistrate, 1st Class was regularised without reference to the Public Service Commission. Other cases of such regularisation have also

been mentioned in the said paragraph. But I need not consider as they were not holding the post of Judicial Magistrates. In paragraph 23 of the

counter, it has been stated that Sri Veprasa was appointed as additional Public Prosecutor through Public Service Commission and he was

appointed as Judicial Magistrate. 1st Class on deputation and ultimately his service was regularised in consultation with the Public Service

Commission. In other words, inspite of Recruitment Rules Mr. Veprasa was not appointed in terms of the said Recruitment Rules.

16. In the additional affidavit filed on behalf of the Petitioner, it has been stated that Mr. Khapkona who was a Headmaster of a Government

Middle School after obtaining his Law Degree was appointed on deputation as Asstt. Public Prosecutor and while serving in that capacity he was

appointed a Judicial Magistrate, 2nd Class and it has been stated that he had no experience at the Bar. It has also been stated that Mr. Lanuwalling

now working as Additional Deputy Commissioner (Judicial was serving as U.D.A. Assistant in Dimapur Court and thereafter be was appointed

straight as Judicial Magistrate, 2nd Class though he had no experience as an Advocate. It has also been stated that he was not appointed through

Public Service Commission and the post was never advertised.

17. These cases would clearly indicate that the Government has no fixed policy regarding recruitment of Judicial Magistrates. In case of the writ

Petitioner as he has put in about 3 years of service he has acquired a vested right to be regularised as laid down by the Apex Court in the decisions

stated above.

18. It has been urged by the Government Advocate that as the Petitioner filed an application in pursuance of the advertisement for 5 posts and also

appeared in the Examination Hall he has forfeited his claim for regularisation. On the other hand, Mr. Sarma, learned Counsel for the Petitioner has

urged that even if he would have appeared his case could not have been recommended by the Public Service Commission in view of additional

qualifications laid down by the Government. I find considerable force in the submission of the learned Counsel for the Petitioner. Another point has

been urged in the writ petition that the Petitioner belongs to Chakhesang which is a back-ward Tribe in the Nagaland and there is reservation of

33% of the vacancies for the above Tribe. It is not necessary to consider this aspect of the matter as this was not urged at the Bar.

19. For the reasons stated above, the writ Petitioner is entitled to a direction as given by the Apex Court in the above decisions. Accordingly it is

directed that the service of the writ Petitioner shall be regularised by the Government and for this purpose the Nagaland Public Service

Commission shall be consulted as it was decided by the Government to recruit persons to these posts through Public Service Commission. The

regularisation shall be done as was done in earlier cases on the basis of available records and the qualification regarding experience at the Bar shall

be ignored. The entire process shall be completed as early as possible. As by virtue of the order passed by this Court, one post of Judicial

Magistrate, 2nd Class is still vacant, the Petitioner shall continue in the said post till his service is regularised as stated above.

In the result, both the petitions are allowed and the order of termination of the service of the writ Petitioner passed by the Secretary, Government

of Nagaland on 7.7.93 vide Annexure II to the writ petition registered as Civil Rule No. 64(K)/93 is quashed.

No costs.