THE HIGH COURT OF MEGHALAYA

WP(C) No. 350 of 2014

Shri. Julian Thongni
S/o Shri. Oldick Wahlang,
R/o New Nongstoin, West Khasi Hills District,
Nongtstoin, Meghalaya.

....**Petitioner**

-Vs-

1. State Government of Meghalaya,
Represented by its Chief Secretary
Govt. of Meghalaya, Shillong.

2. Director of A.H & Vety. Department
Meghalaya, Shillong

3. District A.H & Vety. Officer
West Khasi Hills District,
Nongstoin

4. Shri Starsis Shyrkon
S/o Smti. Bina Shyrkon,
R/o Vety. Quarter, New Nongstoin
West Khasi Hills District,
Nongstoin.

....**Respondents**

BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the petitioner	:	Mr. H.L.Shangreiso, Adv.
For the respondents	:	Ms. N.G.Shylla, GA
Date of hearing	:	27-04-2015
Date of Judgment	:	27-04-2015

JUDGMENT AND ORDER (ORAL)

Heard Mr. H.L.Shangreiso, learned counsel appearing for the petitioner and Ms. N.G.Shylla, learned counsel appearing for the respondent Nos. 1, 2 and 3.

2. Office note dated 12-11-2014 indicates that steps for service of notice of the present writ petition to respondent No.4 by registered post with AD had been taken on 12-11-2014. Till date neither AD nor the registered post returned un-served; accordingly service of notice of the present writ petition to respondent No.4 shall deem to have been effected properly.

3. None appears for the respondent No.4 without showing any cause.

4. The concise fact of the case leading to the filing of the present writ petition is briefly noted. The writ petitioner was appointed on officiating basis in the post of Chowkidar which was lying vacant in the Pig and Poultry Farm, Department of Animal Husbandry and Veterinary, Government of Meghalaya, Mawiaban, West Khasi Hills, Nongstoin, until further orders vide office order dated 29-01-2014, issued by the District Animal Husbandry and Veterinary Officer, West Khasi Hills District, Nongstoin. Pursuant to the said order, the petitioner joined his service as a Chowkidar on officiating basis. The petitioner continued to serve as an officiating Chowkidar till the service of the petitioner was replaced by another ad hoc employee i.e. respondent No.4, vide impugned office order dated 13-03-2014, issued by the District Animal Husbandry

and Veterinary Officer, West Khasi Hills District, Nongstoin (Annexure –C to the writ petition). On conjoint reading of the initial order of the petitioner dated 29-01-2014, and the impugned office order dated 13-03-2014, it appears that the petitioner had rendered his service as officiating Chowkidar little more than 2(two) months. In the writ petition, nothing had been mentioned as to why there is delay in filing the present writ petition for assailing the impugned office order dated 13-03-2015, inasmuch as the present writ petition had been filed after 8(eight) months of passing the impugned office order dated 13-03-2014.

5. In the writ petition, nothing had been mentioned as to the procedure followed by the respondent No.2 before issuing the initial appointment order of the petitioner dated 29-01-2014. On bare perusal of the initial appointment order of the petitioner dated 29-01-2014, it is clear that the terms of the officiating appointment of the petitioner as Chowkidar is more than 3(three) months. It is nobody's dispute that the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, is extended to the State of Meghalaya. Under Section 5 of the said Act, the employer after the commencement of the Act shall furnish the information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in the establishment to such employment exchanges as may be prescribed. For easy reference, Section 5 of the said Act, 1959 is quoted hereunder:

> ***"Section 5 - Employers to furnish information and returns in prescribed form.***
>
> *(1) After the commencement of this Act in any State or area thereof, the employer in every establishment in public sector in that State or area shall furnish such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment, to such employment exchanges as may be prescribed.*
>
> *(2) The appropriate Government may, by notification in the Official Gazette, require that from such date as may be specified in the notification, the employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector shall furnish such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment to such employment exchanges as may be prescribed, and the employer shall thereupon comply with such requisition.*
>
> *(3) The form in which, and the intervals of time at which, such information or return shall be furnished and the particulars which they shall contain shall be such as may be prescribed."*

6. The Compulsory Notification of Vacancies) Act, 1959, will not apply only in the case of employment for a duration which is less than 3(three) months. Section 3 of the said Act read as follows:

> ***"Section 3 - Act not to apply in relation to certain vacancies.***
>
> *(1) This Act shall not apply in relation to vacancies,—*
>
> *(a) in any employment in agriculture (including horticulture) in any establishment in private sector other than employment as agricultural or farm machinery operatives;*

(b) in any employment in domestic service;

(c) in any employment the total duration of which is less than three months;

(d) in any employment to do unskilled office work;

(e) in any employment connected with the staff of Parliament,

(2) Unless the Central Government otherwise directs by notification in the Official Gazette in this behalf, this Act shall not also apply in relation to—

(a) vacancies which are proposed to be filled through promotion or by absorption of surplus staff of any branch or department of the same establishment or on the result of any examination conducted or interview held by, or on the recommendation of, any independent agency, such as the Union or a State Public Service Commission and the like;

(b) vacancies in an employment which carries a remuneration of less than sixty rupees in a month."

7. Upon the submission of learned counsel appearing for the parties and also perusal of the records, it is clear that when appointing the petitioner under the said order dated 29-01-2014 to the post of Chowkidar for the period of more than 3(three) months, the procedure prescribed under the provision of the said Act, 1959, was not followed.

8. Mr. H.L.Shangreiso, learned counsel appearing for the petitioner by placing heavy reliance on the decision of Hon'ble the Apex Court in ***State of Haryana vrs Piara Singh (1992) 4 SCC 118,*** strenuously contended that an ad hoc employee should not be replaced by another ad hoc employee. It is his submission that in the present case, the ad hoc employment of

the petitioner in the post of Chowkidar had been replaced by another ad hoc employee i.e. respondent No.4, vide the impugned office order dated 13-03-2014. Para 46 of the SCC in ***Piara Singh's*** case ***(Supra)*** reads as follows:

> *"**46**. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."*

9. The constitution bench of the Apex Court in Secretary, ***State of Karnataka and Ors vrs. Umadevi (3) and Ors (2006) 4 SCC 1***, held that the absorption, regularization, or permanent continuance of temporary, contractual, casual, dialy-wage or ad hoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public appointment cannot be allowed.

10. In the present case, it is clear that the ad hoc/ officiating appointment of the petitioner to the post of Chowkidar under the office order dated 29-01-2014 was made dehors the constitutional scheme of public employment. Therefore, this Court is of the considered view that the permanent continuance of the officiating appointment of the petitioner under the office order dated 29-01-2014, cannot be allowed. At the same time also ad hoc/officiating employee i.e the petitioner who was appointed on officiating basis under the office order dated 29-01-2014, cannot be replaced by another ad hoc employee i.e. respondent No.4 under the impugned

office order dated 13-03-2014. Para 10, 14 and 43 of the SCC in Umadevi's case read as follows:

> *"**10**. When these matters came up before a Bench of two Judges, the learned Judges referred the cases to a Bench of three Judges. The order of reference is reported in **Secy., State of Karnataka v. Umadevi** (1) (2004) 7 SCC 132: 2004 SCC (L&S) 935: (2003) 9 Scale 187. This Court noticed that in the matter of regularization of ad hoc employees, there were conflicting decisions by three Judge Benches of this Court and by two Judge Benches and hence the question required to be considered by a larger Bench. When the matters came up before a three Judge Bench, the Bench in turn felt that the matter required consideration by a Constitution Bench in view of the conflict and in the light of the arguments raised by the Additional Solicitor General. The order of reference is reported in*
>
> ***Secy., State of Karnataka v. Umadevi** (2) (2006) 4 SCC 44: (2003) 10 Scale 388 It appears to be proper to quote that order of reference at this stage. It reads: (SCC P. 45, paras 1-5)*
>
> > *"1. Apart from the conflicting opinions between the three Judge Bench decisions in **Ashwani Kumar v. State of Bihar** (1997) 2 SCC 1 : 1997 SCC (L&S) 465 : 1996 Supp (10) SCR 120, **State of Haryana v. Piara Singh** (1992) 4 SCC 118: 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826 and **Dharwad Distt. P.W.D. Literate Daily Wage Employees Association** v. **State of Karnataka** (1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544 on the one hand and **State of H.P v Suresh Kumar Verma** (1996) 7 SCC 562 : 1996 SCC (L&S) 645 : (1996) 33 ATC 336 : AIR 1996 SC 1565 : (1996) 1 SCR 972 **State of Punjab v. Surinder Kumar** (1992) 1 SCC 489 : 1992 SCC (L&S) 345 : (1992) 19 ATC 500 : AIR 1992 SC 1593 : 1991 Supp (3) SCR 553 and **B.N. Nagarajan** v. **State of Karnataka** (1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937 on the other, which has been brought out in one of the judgments under appeal of Karnataka High Court in **State of Karnataka v. H. Ganesh Rao** (2001) 4 Kant LJ 466 (DB) decided on 1-6-2001 the learned Additional Solicitor General urged that the scheme for regularization is repugnant to Articles 16(4),*

309, 320 and 335 of the Constitution of India and, therefore, these cases are required to be heard by a Bench of Five learned Judges (Constitution Bench).

2. On the other hand, Mr. M.C. Bhandare, learned senior counsel, appearing for the employees urged that such a scheme for regularization is consistent with the provision of Articles 14 and 21 of the Constitution.

3. Mr. V. Lakshmi Narayan, learned Counsel, appearing in CC Nos. 109-498 of 2003, has filed the G.O. dated 19.7.2002 and submitted that the orders have already been implemented.

4. After having found that there is conflict of opinion between three Judge Bench decisions of this Court, we are of the view that these cases are required to be heard by a Bench of five learned Judges.

5. Let these matters be placed before Hon'ble the Chief Justice for appropriate orders.

We are, therefore, called upon to resolve this issue here. We have to lay down the law. We have to approach the question as a constitutional court should.

***14**. During the course of the arguments, various orders of courts either interim or final were brought to our notice. The purport of those orders more or less was the issue of directions for continuation or absorption without referring to the legal position obtaining. Learned counsel for the State of Karnataka submitted that chaos has been created by such orders without reference to legal principles and it is time that this Court settled the law once and for all so that in case the court finds that such orders should not be made, the courts, especially, the High Courts would be precluded from issuing such directions or passing such orders. The submission of learned Counsel for the respondents based on the various orders passed by the High Court or by the Government pursuant to the directions of Court also highlights the need for settling the law by this Court. The bypassing of the constitutional scheme cannot be perpetuated by the passing of orders without dealing with and deciding the validity of such orders on the touchstone of constitutionality. While approaching the questions falling for our decision, it is necessary to bear this in mind and to bring about certainty in the matter of*

public employment. The argument on behalf of some of the respondents is that this Court having once directed regularization in the ***Dharwad*** *case (1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 (1990) 1 SCR 544 all those appointed temporarily at any point of time would be entitled to be regularized since otherwise it would be discrimination between those similarly situated and in that view, all appointments made on daily wages, temporarily or contractually, must be directed to be regularized. Acceptance of this argument would mean that appointments made otherwise than by a regular process of selection would become the order of the day completely jettisoning the constitutional scheme of appointment. This argument also highlights the need for this Court to formally lay down the law on the question and ensure certainty in dealings relating to public employment. The very divergence in approach in this Court, the so-called equitable approach made in some, as against those decisions which have insisted on the rules being followed, also justifies a firm decision by this Court one way or the other. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily, the law thus laid down.*

43*. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not*

> *made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."*

11. For the foregoing discussion and reasons, the impugned office order dated 13-03-2014, is hereby set aside and at the same time, the officiating appointment of the petitioner under the office order dated 29-01-2014, cannot be allowed to continue permanently inasmuch as the permanent continuance of the officiating appointment dehors constitutional scheme for public employment is not permissible.

12. Ms. N.G.Shylla, learned counsel appearing for the respondent Nos. 1, 2 and 3 submits at the Bar that the respondent Nos. 1, 2 and 3 may be permitted to fill up the

vacancy in the post of Chowkidar against which the petitioner and respondent No. 4 were appointed on officiating basis under the said order dated 29-01-2014 and 13-03-2014. This Court is of the considered view that it is upto the appointing authority to decide as to the requirement of filling up the vacancy in the said post of Chowkidar. Mr. H.L.Shangreiso, learned counsel appearing for the petitioner contended that the service of the Chowkidar as required by respondent No.2, the petitioner and the respondent No.4 were appointed as Chowkidar against the said vacancy under the said orders dated 29-01-2014 and 13-03-2014. In such case, this writ petition is disposed of by directing the respondents to complete the process for appointment to the post of the said Chowkidar by strictly following the constitutional scheme for public appointment if the service of the Chowkidar is required by respondent No.2, within a period of 3(three) months from the date of receipt of certified copy of this judgment and order. It is made clear that in the interregnum, if there be exigency of service of Chowkidar, the case of the petitioner may be considered.

13. Writ petition is disposed of accordingly.

JUDGE

S.Rynjah