

Dr. Ksh. Basanta Vs. T. Gomti Devi

Dr. Ksh. Basanta Vs. T. Gomti Devi

SooperKanoon Citation : sooperkanoon.com/134115

Court : Guwahati

Decided On : Mar-01-1999

Judge : H.K. Sema and P.K. Sarkar, JJ.

Acts : Manipur Health Service Rule, 1982; Code of Civil Procedure (CPC) (Amendment) Act, 1976

Appeal No. : Writ Appeal Nos. 4, 8, 9 and 178 of 1998

Appellant : Dr. Ksh. Basanta

Respondent : T. Gomti Devi

Advocate for Def. : T. Nandakumar Singh, AG, Mohendro Singh, S. Jayanta Singh, H.N.K. Singh and N. Kotiswor Singh, Advs.

Advocate for Pet/Ap. : Ashok Potsangbam, N. Kerani and I. LalitKumar, Advs.

Judgement :

P. K. Sarkar, J.

1. The present four writ appeals have been directed against the common judgment and order passed by the learned Single Judge on 7.12.1998 in Civil Rule Nos. 1222 of 1998 and 1226 of 1998. The controversy between the Medical Officers appointed in Grade IV of the Manipur Health Services on ad hoc basis in one side and the unemployed Doctors who applied for direct recruitment through Manipur

Public Service Commission (MPSC) leads to the filing of many writ petitions and writ appeals in which conflicting orders have been passed by the High Court. In order to decide all the disputes, it has become imperative to pass a uniform order covering all the cases so that the disputes between these two groups can be settled once for all. Accordingly, these four appeals which involve same question of fact and law are disposed of by this common judgment and order. It has been proposed to dispose of Writ Appeal No. 10/99 and other writ petitions which are now pending in Imphal Bench of the Gauhati High Court. Accordingly all the cases have been listed and the learned counsel of all the parties in these appeals as well as other appeals and connected writ petitions, have been heard. However, Mr. H. S. Paonam who is representing the appellants of W.A. No. 10/99 and other respondents in other appeals and also for petitioners in some writ cases could not be heard because of his absence on various dates of hearing of these cases. In spite of assurance of given by Mr. Paonam, Id. Counsel appearing on behalf of the appellants and respondents in some cases to argue the case, he did not turn up for making his submissions and considering the urgency of the matter we propose to dispose of all the cases in absence of Mr. H.S. Paonam.

2. In the year, 1996 the MPSC was not functioning because of resignation of the Chairman of the Commission. The Manipur Health Services Rules provides that the recruitment in Grade IV of the Manipur Health Services shall be made by direct recruitment through MPSC. As the Commission was not functioning in the year, 1996 and as the Government felt it necessary to appoint some Medical Officers for different Hospitals in the State, the Government issued advertisement on 22.2.1996 (Annexure-B/2) for appointment of 59 Medical Officers in Grade IV of the services and 18 posts of Dental Surgeons on ad hoc basis for a period of 6 months. In pursuance of the aforesaid advertisement, the Govt. by order dated 11.3.1996 appointed 125 Medical Officers against 59 vacancies advertised and 21 Dental Surgeons were appointed against 18 advertised posts. Having felt aggrieved by the appointment of the aforesaid Medical Officers and Dental Surgeons issued on 11.3.1996, the unemployed doctors who were aspirant for appointment in Grade IV of the Manipur Health Service challenged the aforesaid ad hoc appointment of the Medical Officers by filing writ petition which have been registered as C.R. No. 409/96, 456/97 in Imphal Bench of the Gauhati High Court.

3. The present appellants and the respondents were parties in Civil Rule No. 409 of 1996. The Id. Single Judge by order dated 14.3.1997 disposed of C.R. No. 409/96 directing the State Govt. to fill up the vacant post of Manipur Health Services Grade IV under the Manipur Health Services Rules through MPSC. The Court also passed an order directing the Govt. not to extend the term of ad hoc Medical Officers appointed by an order dated 11.3.1996. However, with the permission of the Court the Medical Officers appointed on ad hoc basis were continuing. Having felt aggrieved by the judgment and order passed by the learned Single Judge on 14.3.1997 in C.R. No. 409/96 the 21 ad hoc Dental Surgeons filed an appeal which has been registered as W.A. No. 51/97. The Division Bench of this Court by an order dated 5.5.1997 dismissed the writ appeal and upheld the judgment and order passed by the learned Single Judge and the Division Bench also directed the State Government to fill up the post in Grade-IV of the Manipur Health Services in accordance with the Manipur Health Service Rule, 1982 through MPSC. Thereafter, the State Govt. filed an application which has been registered as C. Misc. 263 of 1997 seeking leave of the Court to extend the terms of ad hoc appointment of the ad hoc Dental Surgeons. This court by an order dated 30.5.1997 granted leave to extend the ad hoc appointment of the ad hoc Dental Surgeons for a period of 3 months, and directed the State Government to sort out the matter in accordance with the direction given in the earlier case. When the State Govt. was satisfied that the ad hoc appointment of the Medical Officers and Dental Surgeons cannot be continued for a long time, the Government requested the MPSC for Selection of Medical Officers for filling up of 175 posts of Junior Medical Officers in Grade IV of the Services and 20 Dental Surgeons. The notification dated 14.7.1997 issued by the MPSC is available in Annexure-B/6. Thereafter, the State Govt. by letter dated 14.7.1997 requested the MPSC to defer the process of recruitment of Medical Officers on the ground that the Government will intimate the actual vacancy after review of the cadre/service.

4. Taking advantage of a Government direction of deferring the recruitment process the ad hoc Dental Surgeons and ad hoc Medical Officers who were respondents in Civil Rule 409 of 1996 and in Civil Rule 456/96 formed an Association under the named and style, 'All Manipur Ad hoc Medical Officers (through DPC/Screening Committee) Association' to press their demand for their

regularisation of their ad hoc services. Shri Kh. Deva Singh, petitioner in C.R. No. 1222/98, General Secy. of the aforesaid Association who was respondent in C.R. No. 409/96 and joint writ appellant in writ Appeal, No. 51/97 along with 2 others filed writ petition which has been registered as Civil Rule No. 751/97 and 753/97 to regularise the services of ad hoc Medical Officers and ad hoc Dental Surgeons.

5. It is alleged by the appellant herein that while filing the aforesaid Civil Rule the ad hoc Medical Officers and ad hoc Dental Surgeons suppressed the earlier orders passed by this court in Civil Rule, No, 409/96 and order passed in Writ Appeal No. 51/97 and by suppressing the aforesaid fact, obtained an interim order on 8.8.1997 in Civil Rule No. 753/97 and in the interim order the MPSC was directed not to proceed with the recruitment of Medical Officers till cadre review is completed by the Government and until further orders of the Court. The present appellant filed an application which has been registered as Misc. Application No. 12/98 in Civil Rule No, 751/97 for impleading them as party respondents. It is also alleged in the said application that interim order has been obtained by suppressing the earlier orders passed by this court. Faced with the situation the petitioners of C.R. No. 751/97 withdraw their case and the learned Single Judge dismissed C.R. No. 751/97 as withdrawn and vacated the interim orders. The order passed by the learned Single Judge in C.R. No. 751/97 is available at Annexure-B/7. The unemployed doctors who were petitioners in C.R. No. 409/96 filed another writ petition which has been registered as C.R. No. 809/97 challenging the validity of the letter dated 14.7.1997 of the Govt. which directed the MPSC to defer the recruitment process for the post of Medical Officers and Dental Surgeons.

6. The learned Single Judge by a common judgment and order dated 20.3.1998 (Annexure-B/8) allowed and disposed of writ petition bearing C.R. Nos. 809/97, 456/97 and dismissed the writ petition bearing C.R. No. 753/97 filed by the ad hoc Medical Officers. The learned Single Judge has also vacated the interim orders and directed the MPSC to proceed with the process of recruitment for Medical Officers in Grade IV of the Manipur Health Services and Dental Surgeons, in pursuance of the notification dated 14.7.1997. Thereafter, the State Government filed an appeal against the common judgment and order passed by the learned Single Judge on 20.3.1998 in Civil Rule Nos. 809/97, 456/97 and C.R. No. 753/97.

The appeal has been registered as W.A. No. 51/ 98. The Division Bench of this High Court by an order dated 8.5.1998 dismissed the appeal and directed the State Govt. to inform the MPSC about the probable number of vacancies after review of the cadre strength. It was, however, made clear by the Division Bench that since the Medical Officers are to be appointed through MPSC the method of recruitment should be through MPSC only. When, the matter was settled by different High Court order as aforesaid, the Govt. issued Office Memorandum dated 19.8.1998 (Annexure-B/12(b)) for regularisation of Class I and Class II ad hoc employees who were appointed during the period from 8.2.1996 to 12.2.1997 on the recommendation of a Screening Committee. The aforesaid memorandum, however, said that ad hoc Class I and II employees should not be regularised in contravention of Court's order or directive. To regularise the Class I and II employees through the committee the Government has amended the MPSC (Exemption and Consultation (Amendment) Regulation, 1989. The unemployed Doctors who applied to the MPSC for their selection as Medical Officers being apprehensive of the aforesaid Office Memorandum dated 19.8.1998 (Annexure-B/13(B)) filed Civil Rule No. 532/98 praying for a direction on the State Government not to disturb the selection process of Medical Officers through MPSC. It is also alleged in these writ appeals that the Govt. by misinterpretation the provisions of Office Memorandum dated 19.8.1998 (Annexure-B/13(B)) made an attempt to regularise the services of the ad hoc Medical Officers violating the orders passed by the High Court in C.R. Nos. 409/96, 809/97, 456/ 97, 754/97, 753/97 and 751/97. The learned Single Judge passed an interim order on 22.6.1998 directing the Govt. and the MPSC for not stalling the process of recruitment to the post of Junior Medical Officers and Dental Surgeons, as mentioned in the notification/advertisement dated 14.7.1997.

7. It is submitted by Mr. Asok Potsangbam learned counsel appearing on behalf of the appellant that the Cabinet decided not to regularise the services of the ad hoc Medical Officers and Dental Surgeons in view of the High Court orders passed in various writ petitions and appeals, and accordingly the cabinet decided to keep away the ad hoc Medical Officers from the purview of the aforesaid office Memorandum dated 19.8.1998. It is also submitted that the MPSC has already conducted the written test of the applicants who applied for the post of Medical

Officers in Grade IV of the Manipur Health Services and for the post of Dental Surgeons in view of the Cabinet decision and the Government order issued under office memorandum dated 19.8.1998 (Annexure-B/13(B)) the Govt. did not regularise the services of the ad hoc Medical Officers and ad hoc Dental Surgeons, and they were kept outside the purview of the aforesaid Office Memorandum in view of the orders passed by the High Court in various cases.

8. When the controversy between the ad hoc Medical Officers and unemployed Doctors were settled by the High Court that the appointment in Grade IV of the Manipur Health Services and Dental Surgeons will be appointed through MPSC, at this stage the ad hoc Medical Officers and ad hoc Dental Surgeons filed two writ petitions. The Dental Surgeons who were respondents in C.R. No. 409/96 and appellants in W.A. No. 51/97 filed Civil Rule No. 1222/98 by concealing the fact that in earlier cases the controversy has been settled that appointment of Dental Surgeons will be made through MPSC only. Similarly the ad hoc Medical officers who were respondents in C. R. No. 456/96 and also petitioners in C.R. No. 753/97 filed another Civil Rule No. 1226/98 for regularisation of their ad hoc services by concealing the fact that High Court has passed order for appointment of Medical Officer in Grade IV of Manipur Health Service through MPSC as per order/direction of this Court. In both the writ petitions filed by the ad hoc Medical Officers and Dental Surgeons, the appellants who are unemployed Doctors and applied for their selection in the MPSC have not been made parties.

9. The case of the ad hoc Medical Officers is that they were appointed on ad hoc basis for the period of 6 (six) months on the recommendation of a Screening Committee and their terms of ad hoc appointment were extended by Govt. from time to time. It is also stated that in C.R. No. 753/97 the Court has allowed them to continue on ad hoc basis till such posts are filled up on regular basis, in the said case, it was further directed that at the time of regular appointment due weightage may be given to the ad hoc Doctors as they have gained certain experience in the service. Though the MPSC has conducted written test on 12.8.1998, the result has not yet been declared. It is further stated by the ad hoc Medical Officers that in the meantime the State Govt. formulated a policy by its Office Memorandum dated 19.8.1998 (Annexure-B/13(B)) for regularisation of Class I and II ad hoc

employees who were appointed between 8.2.1996 and 12.2.1997 and regularisation shall have to be completed before 31.12.1998, It is further contended that even if the services of the ad hoc Medical Officers are regularised in pursuance of the aforesaid Office Memorandum dated 19.8.1998, there will be sufficient number of posts and number of such vacant posts will be more than the number of advertised posts. Since the Govt. was not regularising the services of the ad hoc Medical Officers in pursuance of the Office memorandum dated 19.8.1998, the ad hoc Medical officers filed Civil Rule No. 1222/98 and 1226/98. The Govt. did not file any counter affidavit but from the submission of the learned Advocate General appearing on behalf of the State respondents, it is evident that the stand of the Govt. is that the Govt. has power to make policy regarding regularisation of services of the Govt. employees and Govt. has also power to amend rules. It is the further stand of the Govt. that in pursuance of the Office Memorandum dated 19.8.1998, the Govt. is competent to regularise the services of the ad hoc Medical Officers in spite of the Court's order/direction. The learned Single Judge, after hearing the petitioners and learned Advocate General, allowed both Civil Rule No. 1222/98 and C.R. No. 1226/98 by a common judgment and order dated 7.12.1998. The learned Single Judge has, further, directed the State Govt. to consider the case of the petitioner in terms of the office memorandum dated 19.8.1998 and to regularise their ad hoc services within a period of three months from the date of receipt of the judgment and ad hoc Medical Officers were allowed to continue till regularisation of their services. The appellants herein who were not parties in the aforesaid C.R. No. 1222/98 and 1226/98 subsequently came to know about the judgment passed by the learned Single Judge and having felt aggrieved by the common judgment and order passed in the aforesaid two Civil Rules on 7.12.1998 filed W.A. No. 176/98, W.A. No. 4/98, W.A. No. 8/99 and W.A. No. 9/99. The State Government, after receipt of copy of the judgment dated 7.12.1998 have regularised the services of the ad hoc Medical Officers and Dental Surgeons by an order dated 21.12.1998 (Annexure-B/2 and B/3 of W.A. No. 4/99). The appellant prayed that the judgment of the learned Single Judge dated 7.12.1998 and the order of regularisation of the ad hoc Medical Officers and Dental Surgeons dated 21.12.1998 (Annexure-B/ 2 and B/3) are liable to be quashed in view of the fact that the petitioners obtained an order from the learned

Single Judge by suppressing the earlier orders passed by Single Judge and by Division Bench in various earlier cases. Some of the unemployed Doctors filed writ petition being W.P.C. 21/89 and Writ Petition 37/99 challenging the order of regularisation of service of ad hoc Medical Officers by the Government by an order dated 21.12.1998. Civil Rule Nos. 1297/98, 1298/98 and 1299/98 and C.R. No. 1302/98 have been filed by some ad hoc Medical Officers to extend benefits of the common judgment and order dated 7.12.1998 as they are similarly placed with the petitioners of C.R. No. 1222/98 and 1226/98.

10. Mr, Asok Potsangbam learned counsel appearing on behalf of the appellants submitted that the ad hoc Medical Officers and ad hoc Dental Surgeons are not covered by the Office Memorandum dated 19.8,1998 and therefore the regularisation of the aforesaid ad hoc Medical Officer in pursuance of the aforesaid Office Memorandum is illegal and liable to be cancelled. Mr. Asok Potsangbam, further submitted that in the Office Memorandum dated 19.8.1998 it has been clearly mentioned that the services of Class I and II ad hoc employees can be regularised on the recommendation of the Screening Committee if the regularisation does not contravene any Court's order/directive. Mr. Asok Potsangbam, learned Counsel for the appellant submitted that in the instant case the High Court in a number of cases passed orders and directions not to regularise the services of the ad hoc Medical Officers as they have not been appointed in accordance with rules. It is necessary to examine the various orders passed by this Court and the relevant portion of the judgment passed in various cases are reproduced below. It is needless to mention that the ad hoc Medical Officers and the Unemployed Doctors were parties in all these cases.

(A) In Civil Rule No. 409/96 (Annexure-B/2) this, court directed the State Govt. not to extend the period of ad hoc appointment of respondents 6 to 26 (ad hoc Medical Officers) after the expiry of the present term. The Court further held that the posts may, however, be filled up according to the Manipur Health Services Rules, 1982 through MPSC.

(B) In Writ Appeal No. 51/97 (Annexure-B/4) arising out of the judgment and order of C.R. No. 409/96 the Division Bench held, 'when there are rules made by the

Govt. these appointments should be regulated by the rules only and not by any other method. The Id. Single Judge has taken this aspect and this matter is under consideration and accordingly the Civil Rule was disposed of directing the respondents to fill up the posts as per the Manipur Health Services Rules through MPSC. The learned Single Judge also gave a time that no further extensions are made after expiry of the present term of the services without leave of the Court. We do not find any unreasonableness in the finding of the learned Single Judge and as such we are not inclined to interfere with the order passed by the learned Single Judge.'

11. From the aforesaid finding it is evident that the post of Medical officer in Grade IV of the Manipur Health Service and the post of Dental Surgeons are to be filled up in accordance with the Service rules and not otherwise. The Division Bench also directed that the term of ad hoc Medical Officers should not be extended. C.R. No. 751 of 1997 has been withdrawn by the petitioner (Cad hoc Medical Officers Assn.) and the order of the Court is at Annexure-B/7 which runs as follows :

'This writ petition is accordingly dismissed on withdrawal. Interim order, if any, stands vacated. It is however submitted by Mr. I. Lalitkumar Singh that the petition is not maintainable because on being unsuccessful in the earlier writ petitions, the petitioner has preferred this subsequent writ petition. This submission has been resisted by Mr. H. S. Paonam. Be that as it may, since the petitioner has withdrawn the petition no cause survives.'

12. Mr. Asok Potsangbam, Id. Counsel appearing on behalf of the appellants submitted that the fact of withdrawal of the writ petition by the Association of ad hoc Medical Officers has finally decided their claims. It is also submitted that after amendment of C.P.C. in 1976, withdrawal of cases can be made without the permission of the court or with the permission of the Court. It is further submitted by Mr. Asok that, while withdrawal of C.R. No. 751/97 the Court did not grant any permission to filed case when the writ petition has been dismissed by this Court on withdrawal. It is also submitted that the aforesaid writ petition was filed or regularisation of the services of the ad hoc Medical Officers, and since the petition

has been dismissed and no leave has been granted to file fresh petition, the ad hoc Medical Officers are debarred from instituting any case for regularisation of their services. The judgment passed by this Court in C.R. Nos. 809/97, 456/ 97 and 753/97 are available at Annexure-B/8. The operative part of the judgment runs as follows :

'The MPSC is now directed to proceed with the process of recruitment to the post of Jr. medical Officers Grade IV Manipur Health Service and Dental Surgeons notified by 14.7.1997 notification in accordance with Recruitment Rules. Needless to say that the petitioners in C.R. No. 753/ 97 shall also be allowed to compete along with other eligible candidates. Considering the facts that the petitioners in C.R. 753/97 have by now gained some experience of workable knowledge in the profession, their cases shall be considered favourably. If in the meantime, any of the petitioner in C.R. No. 753/98 has been overaged, the times pent by them in serving on ad hoc service shall be excluded. It is made clear that the petitioner in C.R. No. 753/97 shall be allowed to work and draw their pay and allowances till the process of selection and appointments are completed. Necessary corollary is that if they are selected and appointed is well and good. If however, they are not found suitable by the Commission, they have to give way to other selected candidates.'

13. Referring to the above judgment Mr. Asok Potsangbam submitted that on a plain reading of the aforesaid order passed by this Court, it is clear that the petitioners of C.R. No. 753/97 who are ad hoc Medical Officers and Dental Surgeons were allowed by the Court to compete with other candidates for their selection through MPSC. This court has also passed necessary order to consider experienced ad hoc Medical Officers at the time of selection by the MPSC. These ad hoc Medical Officers were also allowed to continue on ad hoc basis till the process of selection and appointments are completed on regular basis. The High Court also made it clear that if these ad hoc Medical Officers are not selected and appointed in accordance with rules, they shall have to give way to the regularly selected candidates.

14. In Writ Appeal No. 55/98 (Annexure-B/8) arising out of C.R. Nos. 809/97, and 456/97 the Division Bench of this court clearly held that, 'it is well settled principle of law that the State Public Commission is the recommending authority for recruitment of certain employees and the Doctors fall in such category. In view of this, no fault can be found with the view of the learned Single Judge and that there is no question of re-advertising the posts. However, on review of the cadre strength, the State Govt. would be entitled to inform the MPSC as well as the prospective candidates who are wanting recruitment whether the number of vacancies increases or decreased.

15. Mr. Asok Potsangbam, Learned Counsel appearing on behalf of the appellants submitted that the Division Bench of this court by its order dated 8.5.1998 (Annexure-B/9) has confirmed by judgment of the learned Single Judge at Annexure-B/8. Mr. Asok Potsangbam submitted that from the aforesaid two orders of the High Court, it is evident that the ad hoc Doctors can be regularised if they are selected through MPSC and appointed by the Govt. on regular basis. If they fail to get their selection in accordance with law, they must give way to the regularly appointed candidates. Mr. Asok draws our attention to an interim order passed by this Court in C.R. No. 532/98 (Annexure-B/10), the relevant portion is reproduced below :

'The respondents are directed not to take up any action to stall the process of recruitment to the post of Jr. Medical Officers and Dental Surgeons mentioned in notification No. 3/97-98 dated 14.7.1997 in any manner other than in accordance with the direction of this court passed in C.R. No. 809/97, 456/97, 753/97 which were upheld by an order dated 8.5.1998 by a Division Bench of this Court in W.A. No. 51/98 and also by an order dated 14.3.1997 passed in C.R. No. 409/97 and upheld by an order passed in W.A. No. 51/97 on 5.5.1997.'

16. Referring to the aforesaid Mr. Asok Potsangbam submitted that this Court has settled the position that the services of the ad hoc Medical Officers and the Dental Surgeons can not be regularised unless they are selected regularly and appointed in accordance with the Manipur Health Service Rules. Mr. Asok further submitted that the Court has clearly stated that the post of Medical Officers and Dental

Surgeons in Manipur Health Services can only be made in accordance with the Manipur Health Services Rule as per order of this Court passed in various civil rules and writ appeals. Mr. Asok, consequently, submitted that in no other manner the Govt. can regularise the services of the ad hoc Medical Officers and Dental Surgeons except as per provisions of Manipur Health Service Rules.

17. We have gone through the aforesaid judgments passed in various Civil Rules and writ appeals. After going through the aforesaid judgments, we are of the view that only one conclusion can be drawn from the various orders passed by this Court that the posts of Grade IV Manipur Health Service and the posts of Dental Surgeons can be filled up only in accordance with the provisions of Manipur Health Service Rules through MPSC. The High Court has reiterated this proposition in all the aforesaid judgments. After going through the aforesaid judgments we have no hesitation that there is clear direction of the court not to regularise the services of the ad hoc Medical Officers and Dental Surgeons unless they are appointed in accordance with the Manipur Health Services Rules through MPSC. The further direction of the High Court in the aforesaid various case's is that the MPSC should be allowed to select candidates for filling up the posts of Medical Officers as per advertisement dated 14.7.1997.

18. Mr. T. Nandakumar Singh, learned Advocate General appearing on behalf of the State respondents submitted that he was not aware of the earlier orders passed by this court in various writ petitions and writ appeals. Mr, T. Nandakumar Singh, however, submitted that even if there are court's orders for filling up the posts of Medical Officers through MPSC the State Govt. is not debarred from regularising the services of the ad hoc Medical Officers in accordance with the Office Memorandum dated 19.8.1998 (Annexure-B/13(B)). It is submitted by Mr. T. Nandakumar that Govt. will proceed with the recruitment of Medical Officers and Dental Surgeons as per advertisement dated 14.7.1997. Mr, T. Nandakumar submitted that the case of the appellants will be . considered by the MPSC for their selection and Govt. will fill up the posts as per advertisement dated 14.7.1997. Mr. T. Nandakumar further submitted that apart from the posts advertised by the Commission on 14.7.1997, there are large number of vacant posts of Medical Officers and Dental Surgeons in Manipur Health Service and therefore the

services of the ad hoc Medical Officers and Dental, Surgeons can be regularised in accordance with the Office Memorandum dated 19.8.1998 even after complying the Court's order passed in the earlier cases. Mr. Nandakumar also submitted that in spite of the court's order the Govt. is competent to make schemes for regularisation of the services of the Govt. employees and if Govt. makes any such scheme, the Court should not interfere on the executive power of the State in making such schemes. Mr. T. Nandakumar Singh, Ld. A.G. therefore submitted that the appellant should not have any grievance as the Govt. is not going to interfere with the, recruitment through MPSC and the number of posts advertised by the MPSC will be filled up by the Govt. on the recommendation of the Commission, The learned Advocate General also submitted that since other vacant posts are available the Govt. should be allowed to regularise the services of the ad hoc Medical Officers and Dental Surgeons as they are covered by the Office Memorandum dated 19.8.1998.

19. Mr. Asok submitted that the Office Memorandum dated 19.8.1998 has clearly excluded the ad hoc Medical Officers and the Office Memorandum has clearly stated that the services of the ad hoc Class I and II employees cannot be regularised if it contravenes with any court's order or directive. Mr. Asok has also submitted that on plain reading of the earlier orders of this court, it is clear that the High Court repeatedly insisted the State respondents to appoint the Medical Officers and Dental Surgeons only in accordance with the rules through MPSC. These ad hoc Medical Officers and Dental Surgeons filed number of cases including a writ application for regularisation of their services. In all these cases, the Court refused to regularise their services and directed that State respondents to fill up the posts of Medical Officers and Dental Surgeons in accordance with rules through MPSC. Mr. Asok has drawn our attention to the Cabinet decision (Annexure-B/12). It appears from the aforesaid Cabinet decision at Annexure-B/12 that the Council of Ministers in the meeting dated 22.6.1998 took a decision for regularisation of Class I and II employees who have been appointed through a Screening Committee, in that meeting the case of the ad hoc Medical Officers and Dental Surgeons have also been discussed. In paragraph 4 of the Cabinet decision at Annexure-B/12 it is evident that the cases of ad hoc 115 Medical Officers and 21 ad hoc Dental Surgeons has been discussed by the Council of

Ministers and the council of Ministers took a decision that in view of the Court's order passed in C.R. Nos. 456/97, 809/97, 753/97 and order of the Division Bench in W.A. No. 51/98 the process of selection through MPSC should not and cannot be discontinued and side by side review of the cadre strength of Manipur Health Service may be initiated by cadre controlling authority and increase or decrease of the number of vacancies on the basis of such review be intimated to the Commission in line with the Court's order. In accordance with the aforesaid cabinet decision the Govt. has issued Office Memorandum also it has been clearly stated that regularisation of ad hoc Class I and II employees cannot be made in contravention of any court's order/directive. Therefore, on plain reading of the cabinet decision and office memorandum only one conclusion can be drawn that the Council of Ministers excluded the present ad hoc Medical Officers and the Dental Surgeons from the purview of the Office Memorandum dated 19.8.1998. Therefore, we find sufficient force in the submission of Mr. Asok Potsangbam Id. Counsel appearing on behalf of the appellants. Since there is a clear court direction in various cases to appoint the Medical Officers and Dental Surgeons in accordance with Rules through MPSC, these ad hoc Medical Officers and Dental Surgeons who have been appointed between 8.2.1996 to 12.2.1997 cannot be regularised in pursuance with the office memorandum issued on 19.8.1998.

20. Mr. T. Nandakumar Singh, Ld. Advocate General however, made a submission that after the first cabinet meeting subsequent meeting was held and in that cabinet meeting the Govt. has taken a decision to regularise the services of the ad hoc Medical Officers and Dental Surgeons through Screening Committee and for that purpose the MPSC (Exemption & Consultation) Regulations have been amended. Mr. T. Nandakumar, therefore, submitted in pursuance of the subsequent decision of the Cabinet the Govt. has regularised the services of the ad hoc Medical Officers and Dental Surgeons and there is no illegality in such regularisation and it is within the competence of the Govt. Mr. Asok submitted that some unemployed Doctors who applied for their selection through MPSC has filed contempt petition for regularising the services of the ad hoc Medical Officers and Dental Surgeons by the Govt. by an order dated 21.12.1998 by Annexures B/2 and B/3 of W.A. No. 4 of 1999. Mr. Asok further submitted that in the aforesaid contempt petition the Chief Secretary of the Govt, of Manipur has filed a counter

affidavit and in that counter the Chief Secy. has explained the entire circumstances. Mr. Asok Potsangbam, consequently press that the counter filed by the Chief Secy. in the contempt petition No. 5/99 may be perused by this court. Accordingly, we have called for the records of Contempt case No. 5/99. It appears that the Chief Secretary of the Govt. who is respondent in the aforesaid contempt petition filed the counter affidavit. In the aforesaid contempt petition, respondents 1 to 4 filed counter affidavit and in the counter affidavit it has been stated that in pursuance of the decision of the Council of Ministers taken in the meeting on 14.1.1998, He services of the ad hoc Medical Officers and Dental Surgeons have been regularised by the Govt. The proceedings of the meeting of the Council of Ministers held on 14.12.1998 has been annexed at Annexure-R/4 of the contempt petition No. 5/99. On a plain reading of the minutes of the meeting of the Council of Minister dated 14.12.1998, it is evident that the Council of Ministers took the decision for regularisation of the services of ad hoc Medical Officers and Dental Surgeons in pursuance of the order passed by the learned Single Judge No. 7.12.98 in C.R. No. 1222/98 and C.R. No. 1226/98. The Cabinet took the decision in view of the aforesaid judgment passed by the learned Single Judge in the two Civil Rules which has been impugned in the present appeals. It further appears from the Cabinet decision at Annexure-R/4 that Council of Ministers took the decision to regularise the services of the ad hoc Medical Officers and Dental Surgeons in view of the direction passed by the High Court in C.R. Nos. 1222/98 and 1226/98 that the regularisation of the ad hoc Medical Officers be done in terms of the Office Memorandum dated 19.8.1998 and accordingly, the Govt. constituted a Screening Committee and regularised the services of the ad hoc Medical Officers and Dental Surgeons by an order dated 21.12.1998 (Annexure B) and by an order dated 21.12.1998 Annexure B/3. In the aforesaid Annexures B/2 and B/3 it has been clearly mentioned that the regularisation have been made in accordance with the High Court order dated 7.12.1998 in C.R. Nos. 1222/98 and 1226/98, and interim order passed on 17.12.1998 in C.R. Nos. 1297/98, 1298/98, 1299/98 and the interim order dated 18.12.1998 passed in C.R. No. 1302/98. Mr. Asok Potsangbam submitted that four writ petitions namely, C.R. No. 1297, 1298, 5299, and 1302/ 98 were filed by some ad hoc Medical Officers who were not parties in C.R. No. 1226/98 and 1222/98. These ad hoc Medical Officers filed the

four writ petitions claiming the benefits of the judgment passed by this court on 7.12.1998 and they have obtained the interim order on 17.12.1998 and 18.12.1998. Mr. Asok Potsangbam further submitted that regularising the services of the ad hoc Medical Officers and Dental Surgeons have not been made in pursuance of the Office Memorandum of the Govt. dated 19.8.1998 on the contrary it is evident from the Cabinet decision dated 14.12.1998 (Annexure-R/4) that the services of the ad hoc Medical Officers and the Dental Surgeons were made in pursuance of the aforesaid decision and the decision was taken on the direction of the Court's orders passed in C.R. Nos. 1222/98 and 1226/98 on 7.12.1998. Mr. Asok further submitted that the judgment and order passed in C.R. Nos. 1222/98 and 1226/1998 on 7.12.1998 has been challenged in the present writ appeals. Mr. Asok Potsangbam also submitted that the learned Single Judge was wrong in passing the order on 7.12.1998 in the aforesaid C.R. for regularisation of services of the ad hoc Medical Officers and the Dental Surgeons in view of the earlier orders of the Court passed in different Civil Rules and Writ appeals, as mentioned earlier in the judgment. Mr. Asok further submitted that the petitioners of C.R. Nos. 1222/98 and 1226/38 have suppressed before the learned Single Judge about the existence of the earlier orders of the Court passed in various writ petitions and writ appeals and by suppressing the earlier orders had obtained the order of the learned Single Judge for regularisation of the services in accordance with the Office Memorandum dated 19.8.1998. Though the Govt. has regularised the services of ad hoc Medical Officers and Dental Surgeons by an order dated 21.12.1998 (Annexures N/2 and B/3) but the said regularisation have been made in pursuance of the Cabinet decisions dated 14.12.1998 and not in accordance with the Cabinet decisions and Govt. Office Memorandum dated 19.8.1998.

21. Mr. T. Nandakumar Singh, learned Advocate General after going through the Cabinet decision dated 14th December, 1998 at Annexure-R/4 of the contempt petition has very frankly submitted that he was wrong in submitting that as per Office Memorandum dated 19.8.1998 the Govt. is competent to regularise the services of ad hoc Medical Officers and Dental Surgeon. Mr. T. Nandakumar, Id. Advocate General further submitted that the Govt. might have committed mistake in interpreting the order of the High Court and in view of the earlier orders passed

by the Ld. Single Judge and Division Bench in the appeals, the Govt. should not have regularised the services of the ad hoc Medical Officers and Dental Surgeons without waiting for the result of the present appeals. Mr. T. Nandakumar, further, submitted that the Govt. Officers who have implemented the impugned judgment of the learned Single Judge cannot be blamed as they were under the impression that the order of the court has to be carried out and implemented in time and accordingly the services of the ad hoc Medical Officers were regularised by the Govt. by Annexures B/2 and B/3 of Writ Appeal No. 4/99. On this background it is necessary to examine whether the petitioner has obtained the order in C. R. No. 1222/98 and 1226 of 1998 on 7.12.1998 by exercising fraud on court. It is an admitted fact that the ad hoc Medical Officers and ad hoc Dental Surgeons are the petitioners in the aforesaid two C. Rules. They claim their regularisation of their ad hoc services in the aforesaid two Civil Rules. It is true that the petitioner about the existence of the earlier orders passed by the learned Single Judge in various Civil Rules and the order of the Division bench in various writ appeals. The learned Single Judge passed the order in the aforesaid two writ petitions regularisation of the services of the ad hoc Medical Officers and the Dental Surgeons in view of the order passed by the Court in C.R. Nos. 1105 of 1997 and 918/98. In those two cases the learned Single Judge of this Bench passed order for regularisation of the ad hoc services of one Medical Officer of Health Department and one Officer of the Employment Exchange as per office memorandum dated 19.8.1998. The learned Single Judge, relying on the order of this Court in the aforesaid two cases, directed the Govt. to regularise the services of the ad hoc appointment of the Medical Officers and Dental Surgeons on 7.12.1998 in C.R. Nos. 1222/ 98 and 1226/98. We are of the view that the learned Single Judge has committed an error that in C.R. No. 1105 98 the court passed order for regularisation of services of the Medical Officer who belongs to Education Department and not of the Health Department. In Civil Rule No. 918/ 98 the court assed an order for regularisation of the services of and officer of employment directorate. There is no court order not to regularise the services of ad hoc officers of Education Department of Employment Directorate. Therefore, there is no bar to regularise the services of the class I and II officers of education directorate or of employment as per office memorandum dated 19.8.1998, but in respect of ad hoc Medical Officers and

Dental Surgeons of Health Department of the Govt., there are various orders and directions of the learned Single Judge as well as Division Bench of this court in various Civil Rules and writ appeals for not regularising the ad hoc services of the Medical Officers and Dental Surgeons and in earlier cases this court made it clear that the Medical Officers and Dental Surgeons should be appointed in accordance with the rules through MPSC. Since the Medical Officers and Dental Surgeons of the Health Department of the Govt. were not appointed on ad hoc basis in accordance with rules. The court directed that their services should not be regularised unless they are regularly appointed in accordance with the Manipur Health Services through MPSC. In view of this situation the learned Single Judge was clearly in error for directing the State respondents to regularise the services of the ad hoc Medical Officers and Dental Surgeons by its order dated 7.12.1998 in C.R. No, 1222/98 and C.R. No. 1226/98. Consequently, the regularisation of the services of the ad hoc Medical Officers and Dental Surgeon in pursuance of the Cabinet decision dated 14.12.1998 in compliance with the court's direction passed in C.R. Nos. 1222/98 and 1226 of 1998 on 7.12.1998 in contrary to the earlier judgment of this court. The petitioners of this writ petitions who are ad hoc Medical Officers and Dental Surgeon have not mentioned before the learned Single Judge about the existence of the earlier orders of the Court. We are of the view that if the earlier orders of the court were brought to the notice of the Ld. Single Judge, then the Ld. Single Judge would not have passed the order on 7.12.1998 in C.R. Nos. 1222/ 98 and 1226/98.

22. The Apex Court in *S.P. Chengal Varaya Naidu v. Jagnnath and Ors.* Respondent reported in (1994) 1 SCC (1) held that, 'the principle of finality of litigation' cannot be pressed to the extent of such a absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands.' In the present case the petitioners in C.R. Nos. 1222/98 and 1226/98 who are ad hoc Medical Officers and Dental Surgeons have earlier filed cases and they were respondents in some other case filed by the unemployed Doctors and Court in various cases settled the dispute by directing the State respondents not to regularize the services of the ad hoc Medical Officers and Dental Surgeons. The court also directed that the post of Medical Officers and

Dental Surgeons should also be filled up in accordance with rules through MPSC. Therefore, it is evident that this ad hoc Medical Officers and Dental Surgeon have suppressed the earlier orders of this court regarding the method of filling up of the post of Medical Officers and Dental Surgeons passed by the court in various cases. We are, therefore constrained to say that the process of the Court has been abused in the present case by the petitioner of these two writ petitions. In the fact of the present case, leaves no manner of doubt that the ad hoc Medical Officer and Denial Surgeon obtained the order on 7.12.1998 in the two C. Rules by suppressing the earlier order passed by this court in various writ petitions and writ appeals. A fraud in an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. The ad hoc Medical Officers and Dental Surgeons were not appointed in accordance with law and they were continuing in their ad hoc service in pursuance of Court's order till regular appointment of Medical Officers and Dental Surgeons in accordance with law. Had these petitioners brought to the notice of the learned Single Judge about the existence of the earlier order, we are of the view that the Ld. Single Judge would not have passed the order of regularization of ad hoc Medical Officers and Dental Surgeons on 7.12.1998 in the aforesaid two writ petitions. In the case reported in (1994) 1 SCC 1 further held that, 'a judgment or decree obtained by playing fraud on the court is nullity and non east' in the eyes of law. Such judgment and decree by the first court of by the highest court has to be treated as nullity by every court whether superior or inferior. It can be challenged in any court even in collateral proceedings.

23. Having regard to the decision of the Apex Court in the aforesaid case we are constraint to hold that the petitioners who are the ad hoc Medical Officers and Dental Surgeons in C.R. Nos. 1222/98 and 1226/ 98 have committed a fraud by suppressing the earlier orders passed by this court in various Civil Rules and Writ appeals and obtained the order on 7.12.1998 in the aforesaid two writ petitions. Therefore, we are constraint to hold that the judgment of the learned Single Judge passed on 7.12.1998 in C.R. Nos. 1222/98 and 1226/98 is a nullity. Consequently the judgment of the learned Single Judge passed in C.R. Nos. 1222/98 and 1226/98 on 7.12.1998 has to be quashed and the subsequent action of the Govt.

in regularising the services of the ad hoc Medical Officers and Dental Surgeons by an order dated 21.12.98 by annexures B/2 and B/3 of Writ Appeal No. 4/99 has to be quashed. Accordingly, the judgment and order passed by the Ld. Single Judge in C.R. Nos. 1222/98 and 1226 98 in 7.12.1998 is quashed. The order of regularisation of the ad hoe Medical Officers and Dental Surgeons made by the Govt. by an order dated 21.12.1998 Annexure-B/2 and by an order of the Govt. dated 21.12.1998 Annexure-B/3 are also quashed. The appeals are accordingly allowed we make it clear that the Govt. shall fill up the post of Medical Officers in Grade IV of the Manipur Health Services and the post of Dental Surgeon in accordance with the Manipur Health Service Rules through the MPSC. We further direct the MPSC to complete the process of selection for appointment of Medical Officer and Dental Surgeons in the Manipur Health Service as early as possible. It is submitted by the learned counsel mat in accordance with the order passed by the Court, some unsuitable officers appeared in the written test conducted by the MPSC and MPSC has moved the Hon'ble Supreme Court to exclude the unsuitable in candidates from the selection process. We are of the view that S.L.P. pending before Supreme Court may not be a bar for the MPSC to complete the process of selection in so far with regard to the eligible candidates.

24. In view of the order passed in these writ appeals, we are of the view that W.A. No. 10/99 and W.P.(C) 21/99, W.P.(C) 37/99, CR No. 1297/98, C.R. Nos. 1298/98, 1299/98 and 1302/98 have become infructuous and all these writ petitions and writ appeal along with the connected Misc. applications are disposed of as infructuous. The contempt petition being No. 5/99 is also dropped in view of the submission made by the Ld. Advocate General that the Govt. has regularised the services of ad hoc Medical Officers and the Dental Surgeons on the basis of the impugned judgment passed by the learned Single Judge. A copy of the common Judgment passed in these appeals may be placed in the aforesaid writ petitions and writ appeal.

25. We accordingly direct the State respondents to fill up the post of Medical Officers and Dental Surgeons in accordance with Manipur Health Service Rules through MPSC and not by any other method.

26. The writ appeals are accordingly disposed of as per order indicated above and in the facts and circumstances of the case we make no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com