IN THE HIGH COURT OF MANIPUR
AT IMPHAL

WP(C) No.515 of 2020

1. Ningombam Rajesh Singh, aged about 32 years s/o N. Thoiba Singh of Ningomthong Kitna Panung Near CRCL Community Hall, PO Singjamei & PS Irilbung, District-Imphal East, Manipur- Pin 795008.

....Petitioner

- Versus -

1. The Union of India represented by the Secretary, Department of Higher Education, Ministry of Human Resources Development, Shastri Bhawan, New Delhi-110001.
2. The National Institute of Technology, Manipur (NITM) represented by the Registrar, at Langol, PO & PS Lamphel, District –Imphal west, Manipur-795004.
3. The Director, National Institute of Technology, Manipur (NITM), at Langol PO & PS Lamhel, District-Imphal West Manipur-795004.

... Respondents

B E F O R E
HON'BLE MR. JUSTICE MV MURALIDARAN

For the petitioner :: Mr M.Devananda, Adv.

For the respondents. :: Mr. BP Sahu Sr. Adv
Date of hearing and
Date of hearing &
Order. :: 13.10.2020.

JUDGMENT & ORDER
(ORAL)

[1] I heard Mr. M. Devananda, learned counsel for the petitioner and Mr. BP Sahu, learned senior counsel for the respondents No. 2 & 3. By consent of both the parties, this writ petition had been taken up and disposed of at the admission stage itself.

[2] The facts of the case is that the petitioner is a Graduate in Commerce from Manipur University and had completed PGDCA, ADHNT, CCNA, 'O' Level and CCC courses and is an IT & Networking Professional Institute of Technology, Manipur (NITM) and worked in the MANITRON from 15/2/2008 to 18/5/2010. His service was also employed by the State Election Commission (SEC), Manipur as Computer Operator from 24/11/2010 to 24/2/2011 engaging in the computer work of under ADC, Lamphel & Maintenance of Election Records.

[3] The further case of the petitioner is that while working in the MANITRON, petitioner along with another incumbent was sent on deputation to the National Institute of Technology, Manipur, (NITM) vide letter bearing No.1/4/120/MEDC/OS:/1219 Dated 20/05/2013 and were informed to report to the Assistant Registrar, NIT from 20/05/2013 itself. As a consequence petitioner joined to the NITM as directed. Subsequent to the letter dated 20/05/13, the Registrar, NIT Manipur issued Experience

certificate bearing No.NITM. 1/(13-Estt)/2013-2293 dated 24.09.2014 certifying that petitioner has been deputed to the NITM a Data Entry Operator in the Department of Administration from MANITRON since 20th May, 2013.

[4] It is the further case of the petitioners that while the petitioner was continuing his service as Dated Entry Operator in the NITM, a letter bearing No.NITM.1/(2-Estt)/MP/2016(Pt)/145 Imphal, the 15th May, 2017 was communicated to the General Manager (Admn) MANITRON on the subject of enhancement of outsourcing fee whereon it was stated that the outsourcing fee of Data Entry Operator has been enhanced from Rs.7,000/- p.m to Rs.12,000/- pm w.e.f. 03/05/2017. And again the General Manager (Admn) MANITRON issued Certificate bearing No.1/4/120/MEDC/Deputation:902 Imphal, the 26th May, 2018 stating that the petitioner has been deputed as Data Entry Operator cum Computer Operator in the Department of Administration from MANITRON. And in the year 2018, the service of the petitioner as Data Entry Operator on deputation from MANITRON TO THE NITM, has been converted and treated as Casual employee of the NITM vide the office Order bearing No.NITM.1/(7-Estt)/Order/2017-440 Imphal, the 24th August, 2018 w.e.f. 1st January, 2018 and subsequently another Order bearing No.NITM.1/(120-Estt)/Hon/2016 (Pt)/360 Imphal, the 28th March, 2019 was issued stating

that, " In continuation to office order No.NITM.1/(7-Estt)/Order/2017-440, the engagement of Shri Ningombam Rajesh Singh as Data Entry Operator on casual basis is converted to 6(six) monthly basis w.e.f. 28.03.2019.

[5] Subsequently, the Registrar i/c NIT, Manipur issued Certificate bearing No.NITM.1/(13-Estt)/Certificate/2019-2014 Imphal, the 21st June, 2019 certifying that petitioner is working in the NITM as Data Entry Operator cum Computer Operator on outsourcing basis from 1st January, 2018 till date and that he is presently drawing a consolidated salary of Rs.12,000/-p.m. and prior to that, he was utilized in the NIT, Manipur as Data Entry Operator on outsourcing basis through MANITRON from 20th May, 2013 to 31st December, 2017. Now, the petitioner has completed almost 7(seven) and half years of service in the NITM as Data Entry Operator cum Computer Operator and continuing service as such and in the List of Contractual Staff and Casual Staff of the NITM, Manipur and the name of the petitioner is at Sl.No.1 of the list of Casual Employee. In fact, the present petitioner is the only lone casual employee in the NITM.

[6] It is the further case of the petitioner that in the National Institute of Technology, Manipur (NITM) there is a post called Junior Assistant where the duties , responsibilities are exactly similar with the post of Date Entry Operator and as per the Recruitment Rules for the post of

Junior Assistant petitioner has become eligible to be considered for regularization to the said post considering his long career as Casual Data Entry Operator. And the petitioner has learnt that the authorities are now processing for filling up of 3(three) vacant post of Junior Assistant in the scale of pay of Rs.5,200-20,000/- with Grade pay of Rs. 2000/- seeking for consideration for appointment to the post of Junior Assistant on regular basis.

[7] It is the further case of the petitioner that subsequent to the submission of the representation dated 26.08.2020, the Registrar i/c NITM issued order bearing NITM.1(7-Estt)/ Order/2019(pt)/ 267 approving the transfer of the petitioner to Academic Section while revising the rosters of staff of the Administration/Accounts/Academic. And another order bearing No.NITM.1/(7-Estt)/order/2019/306 Imphal, the 22nd Sept, 2020 was issued thereby withdrawing the transfer of the petitioner to Academic Section and was to continue to function as Data Entry Operator in his earlier place of posting. And consequent order bearing No.NITM.1(7-Estt)/order/2019/308 Imphal, the 22nd Sept, 2020 was issued directing the petitioner to hand over all recruitment related date and documents within 15 days from the date of issue of the order.

[8] It is the further case of the petitioners is that the petitioner has become eligible for appointment to the post of Junior Assistant considering his educational qualification, work experience and more than 7(seven) years length of service as Casual in the NIT and has submitted the representation dated 26.08.2020 seeking for consideration of regularising his service to the post of Junior Assistant but the respondents for reasons beyond the reasonable comprehension of the petitioner had withdrawn works allocated to the petitioner and are initiating process for discontinuing the service of the petitioner while at the same time initiating process for filling up the post being held by the petitioner by another casual or contractual employee in violation of Article 14 & 16(1) (2) of the Constitution of India.

[9] It is the further case of the petitioners that there are altogether around 69 non-teaching contract employee in the various Department, Blocks of the NITM and from amongst the 69 contract employees the respondents have singled out the petitioner only illegally and arbitrarily in violation of the principle of natural justice and in violation of the Article 14 & 16(1) (2) of the Constitution of India has initiated process for discontinuing the service of the petitioner to be replaced by another casual or contract employee. The petitioner has submitted representation dated 26.08.2020

for considering his case for regularization to the post of Junior Assistant but that has not been considered and disposed of till date.

[10] Narrating the above facts and the case of the petitioner Mr. M. Devananda, learned counsel for the petitioner argued that though he has put up 8(eight) years of service as Data Entry Operator he had made representation dated 26.08.2020 to the respondents No.2 & 3 with a request to consider and to pass appropriate orders to regularize the service of the petitioner as Data Entry Operator by passing appropriate speaking orders in the respondents Department but though he made a representation on 26.08.2020 but till date there is no response from the respondents Nos. 2 & 3.

[11] Therefore, without any other alternative, the petitioner is approaching this Court seeking prayer in this writ petition as follows:-

> *(i) Admit the writ petition and Issue Rule Nisi calling upon the respondents to show cause as to why a writ/order/direction in the nature of Certiorari or any other appropriate Writ/order/directive (S) should not be issued directing the respondents to consider the case of the petitioner for regularization to the post of Junior Assistants as per rules by considering and disposing of the Representation dated 26.08.2020 (Annexure-A/11) by passing reasoned and speaking order within a stipulated period of time, in the facts and circumstances of the present petition;*

(ii) To show case as to why a writ in the nature of Mandamus or any other appropriate writ/order/ directive (s) should not be issued directing the not to discontinue the service of the petitioner and to restrict the respondents from replacing the petitioner by another casual or contract employee, in the facts and circumstances of the present petition.

(iii) Direct the respondents to consider and dispose of the representation dated 26.08.2020 by passing reasoned and speaking order within a stipulated period of time.

(iv) Make the rule absolute;

(v) to pass any appropriate order or direction(s) which may be appropriate to be passed under such facts and circumstance of the instant case, for the ends of justice.`

[12] Mr. M. Devananda, learned counsel for the petitioner further stated that there is prima facie case and the balance of convenience is in favour of the petitioner for issuing suitable direction to the respondents to consider the petitioner's representation dated 26.08.2020 and to pass reasoned and speaking order within the stipulated period of time coupled with the direction not to disturb the service of the petitioner till regularization of his service as Junior Assistant.

[13] I heard Mr. BP Sahu, learned senior counsel for the respondents No. 2 & 3. Without going into the merits of the case, he represented before this Court that he is ready to consider the petitioner's

representation dated 26.08.2020 and to pass speaking order within the stipulated period of time as fixed by this Hon'ble Court but he is strongly opposing to pass any interim order of continuation of the petitioner service in the respondent's Department.

[14] I heard both counsels and perused the documents as produced by the writ petitioner.

[15] Whether the petitioner is having the right to regularize or not should be considered by the respondents No.2 & 3 by way of the petitioner's representation dated 26.08.2020 and to pass appropriate speaking order.

[16] It is the admitted fact that the petitioner is continuing his service from 2008 till date and till the consideration of the petitioner's representation dated 26.08.2020, there is no harmful to the respondents for continuing service of the petitioner in the respondents Nos. 2 & 3 institute as Data Entry Operator.

[17] In the above circumstances, without considering the petitioner's case on meritsand demerits, I am inclined to pass the following orders:-

(a) The writ petition is disposed of at the admission stage itself.

(b) The respondent Nos. 2 & 3 are hereby directed to consider the petitioner's representation dated 26.08.2020 by giving fair opportunity to the petitioner and to pass appropriate speaking order within a period of 8(eight) weeks from the date of receipt of this order.

(c) till the consideration of the petitioner's representation dated 26.08.2020, the respondent Nos.2 & 3 are hereby directed not to disturbed the petitioner's service as Data Entry Operator.

[18] Accordingly, this writ petition is disposed of. No costs.

JUDGE

FR/NFR

John kom

Yumkham Rother

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