

(2002) 11 GAU CK 0012
In the Gauhati High Court
Case No : WP (C) No. 68 of 2000

Amit Nitik and Others

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 15-11-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2003) 1 GLR 228

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : C. Baruah, for the Appellant; B.L. Singh, Sr. Govt. Advocate, for the Respondent

Judgement

I.A. Ansari, J.—When the Government has the choice to retain and/or re-appoint one out of its two temporary/ad-hoc employees, whether the Government can opt to retain and re-appoint the junior one in service between the two is the question, which this writ petition has raised for consideration by this Court.

2. With the help of the present application, made under Article 226 of the Constitution of India, the petitioner has approached this Court seeking issuance of appropriate writ/writs setting aside and quashing the continuation of the respondent Nos. 3 to 9 as Village Level Workers (Junior), hereinafter referred to as "the VLW (Jr.)", under the Directorate of Agriculture, Government of Arunachal Pradesh, and commanding the respondents to regularise the services of the petitioners as VLWs(Jr.) on the basis of their satisfactory performance of duties and/or to allow the petitioner to continue to remain in service as VLW (Jr.).

3. In a nutshell, the case of the three petitioners, as finally emerges, upon hearing of this writ petition, may be narrated as follows : The petitioner Nos. 1 and 2 were appointed on officiating basis as VLW (Jr.) by respondent No. 2, namely, the Director of Agriculture, Govt. of Arunachal Pradesh, Naharlagun, on 30.09.1997, for a period of 6 (six) months and their appointment were extended from time to time until 31.05.1999. The petitioner No. 3 was appointed, on

22.07.1996 as VLW (Jr.) for a period of one year on ad hoc basis by the respondent No. 2 and her services too was thereafter extended from time to time till 31.05.1999. the District Agriculture Officer of the district concerned certified, on 31.05.1999, that the performance of the petitioners was satisfactory. Same as the petitioners, 50 other persons including respondent Nos. 3 to 9 were appointed subsequent to the appointment of the petitioners as VLW (Jr.) in the said Directorate on ad-hoc/officiating basis and their terms of service were extended from time to time till 31.05.1999. By an order, dated 16.04.1999, respondent No. 2 directed all the ad-hoc VLWs (Jr.) to appear in the written test and viva voce to be held on 29th and 30th May, 1999, for their regularisation. The petitioners and other VLWs (Jr.) including respondent Nos. 3 to 9 appeared in the said written test and viva voce, which were held for filling up of 43 post of VLW (Jr.). On the basis of the performance in the said selection test 24 of the said ad-hoc/officiating VLWs (Jr.) were selected and 29 of them failed to qualify. Those persons, who so failed, included not only the present three petitioners, but also respondent Nos. 3 to 9. However, subsequent to the said selection/appointment of the 24 persons aforementioned, 16 numbers of VLWs (Jr.) were appointed afresh, which included the private respondent Nos. 3 to 9. In short, thus, the present petitioners as well as the private respondent Nos. 3 to 9 had failed to qualify in the said written test and viva voce, but while the respondent Nos. 3 to 9 were appointed afresh as VLW (Jr.) on ad-hoc basis, the present three petitioners, who had been appointed as VLW (Jr.) prior to the appointment of the respondent Nos. 3 to 9, were denied such appointment and not allowed to continue remain in their job.

4. As far as private respondents are concerned, they have not contested this case. The State respondents have, however, contested this case by filing affidavit-in-opposition, the case of the State respondents being, briefly stated, thus : While admitting that the petitioners were appointed on ad-hoc/officiating basis as VLW (Jr.) prior to the private respondent Nos. 3 to 9 and continued to work in the said capacity till 31.05.1999, State respondents have contend that on the basis of written test and viva voce held on 29th and 30th May, 1999, out of the total number 53 VLW (Jr.), who had appeared in the said competition, 24 of them were selected and out of the 29 persons, who had failed to qualify, fresh ad-hoc appointment were given to 16 persons, which included the respondent Nos. 3 to 9. However, as there is no fund available with the Government, no further appointment even on ad-hoc basis can be given to the petitioners.

5. I have carefully perused the materials on record. I have heard Mr. C. Baruah, learned Senior counsel for the petitioners, and Mr. B.L. Singh, learned Senior Govt. Advocate, appearing on behalf of the State respondents. ,

6. It is submitted by Mr. Baruah that the present three petitioners were, admittedly, appointed as VLW (Jr.) before the respondent No. 3 were appointed in the same capacity. However, not only these three petitioners, but even the respondent Nos. 3 to 9 failed to qualify in the selection test, held on 29th and

30th May, 1999. However, while subsequent thereto, the respondent Nos. 3 to 9 were re-appointed on ad-hoc basis as VLW (Jr.) present petitioners were denied such appointment. Since the petitioners were senior to the respondents as ad-hoc VLWs (Jr.) in service, the respondents, being juniors in service, though temporary or ad-hoc, could not have been, contends Mr. Baruah, appointed, re-appointed and/or or retained as VLW (Jr.) ignoring the petitioners, particularly, when their services were certified to be satisfactory by the District Agriculture Officer concerned. In support of his submissions, Mr. Baruah has placed reliance on Jarnail Singh and Others Vs. State of Punjab and Others,

7. Reaching to the above submissions made on behalf of the petitioners, learned Senior Govt. Advocate has submitted that the established principle of law is that one ad-hoc appointee cannot be replaced by another ad-hoc appointee and, hence, when the respondent as well as the petitioners were ad-hoc appointees and the respondent Nos. 3 to 9 have already been allowed to work as ad-hoc appointees in the capacity of VLW (Jr.), petitioners cannot, now, claim to be allowed to replace them. Learned Senior Govt. Advocate has also submitted that Govt. does not have adequate funds to sustain appointment of the present petitioners as VLW (Jr.) and, hence, the writ petition may dismissed,

8. Having heard both sides and upon perusal of the materials on record, what appears to be admitted case of the parties is that the present three petitioners as well as private respondents were ad-hoc appointees as VLW (Jr.). The petitioners were, however, appointed as VLWs (Jr.) on ad-hoc/officiating basis long day before the private respondents were so appointed. The three petitioners as well as private respondents appeared on 29th and 30th May, 1999, along with similarly situated persons for selection test for the purpose of obtaining regular appointment as VLWs (Jr.). The petitioners as well as the private respondents failed in the tests so held and could not receive regular appointment. Surprisingly enough, however, subsequent to the selection tests so held and all the regular appointments made in pursuance thereof, private respondents received ad-hoc appointment as VLW (Jr.) along with some others, but the petitioners did not receive such appointment.

9. While it is true, as contended by the learned Senior Govt. Advocate, that one ad hoc appointee cannot replace another ad-hoc appointee, it is also settled position of law that when two persons were holding a job temporarily or on ad-hoc basis, the person, who was junior in such temporary/ad-hoc appointment, cannot be regularised ignoring the claim of the person, who had received such ad-hoc/temporary appointment earlier. In other words, when two person are similarly situated as ad-hoc appointees, the junior between the two, even in such ad-hoc/ temporary service, cannot be appointed ignoring the claim of the senior one, because in making even ad-hoc appointments, the authority concerned cannot act arbitrarily or discriminate one against the other Reference made by Mr. Baruah to the case of Jarnail Singh (supra) is not misplaced.

10. In fact, to prior to Jarnail Singh's case (supra), the Apex Court in the case of

Manager, Government Branch Press and Anr. v. D.B. Belliappa AIR 1979 SCC 429 held to the effect that protection of Articles 14 and 16 of the Constitution is guaranteed even to temporary government servant if he has been arbitrarily discriminated against and singled out for harsh treatment in preference to his juniors similarly situated. In D.B. Belliappa's case (supra), the service of Belliappa, a temporary class IV employee, was terminated without assigning any reason in accordance with the conditions of his service, but at the same time, three other employees, who were junior to Belliappa in the same temporary cadre, were retained. The order of termination of Belliappa's service was struck down on the ground that it offended the equality clause in Articles 14 and 16. Referring to the case of Belliappa (supra), the Apex Court in Jarnail Sings's case (supra) has laid down as follows :

"In the instant case, ad-hoc services of the appellants have been arbitrarily terminated as no longer required, while the respondents have retained other Surveyors who are junior to the appellants. Therefore, on this ground also, the impugned order of termination of the services of the appellants are illegal and bad being in contravention of the fundamental rights guaranteed under Article 14 and 16 of the Constitution of India." (emphasis is added by me)

11. From the law laid down in the case of Belliappa (supra) and also from Jarnail Singh's case (supra), it clearly follows that out of the two ad hoc appointees similarly situated, the senior one between them in service cannot be arbitrarily removed, while retaining the junior one. Applying this salutary principle of law to the factual matrix of the present case, one can safely conclude, and I do conclude, that since the private respondents, namely, respondent Nos. 3 to 9 were similarly situated as the present three petitioners, the respondent Nos. 3 to 9 could not have been taken back in service as VLW (Jr.), even in ad-hoc capacity, ignoring the claim of the petitioners. Viewed from this angle, denial to appoint present three petitioners as VLW (Jr.) is highly arbitrary and cannot be allowed to stand good on record.

12. In the result and for the reasons discussed above, this writ petition succeeds and the same is disposed of with direction to the State respondents to appoint, within a fortnight from today, the present three petitioners as ad-hoc VLW (Jr.) with effect from the date, when their juniors were re-appointed as aforesaid. However, while giving such appointments with retrospective effect to present three writ petitioners and while maintaining their original seniority as VLW (Jr.) in the ad-hoc capacity, they need not be paid their back wages/ salaries.

13. With the above observations and directions, this writ petition shall stand disposed of.

14. No order as to costs.