
(2004) 03 GAU CK 0002

In the Gauhati High Court

Case No : Writ Petition (C) No. 1031 (AP) of 2001

Anjan Dasgupta

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2004) 2 GLT 287

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : J. Hussain, for the Appellant; C.K.S. Baruah, A.G., A.P. and B.L. Singh, for the Respondent

Final Decision : Dismissed

Judgement

B. Lamare, J.—Heard Mr. J. Hussain, learned Counsel for the Petitioner. Also heard Mr. C.K. Sarma Baruah, learned Advocate General of Arunachal Pradesh assisted by Mr. B.L. Singh, learned Senior Govt. Advocate for the State Respondents.

2. Briefly stated the case of the Petitioner is that he was appointed as skilled contingency staff in the year 1990 in the district Horticulture Officer (DHO) and continued at Bomdila till November, 1999. On 16.11.1999, he was appointed as Grafter on officiating basis for a period of three months and his services as officiating Grafter were extended from time to time and the last extension was made by order, dated 18.01.1999 by which the services of the Petitioner was extended up to 31.3.2001. After expiry of the said period, the service of the Petitioner was discontinued with effect from 01.04.2001. According to the Petitioner, he has rendered service as skilled contingency from 1990 to 1999 and thereafter he was appointed as officiating Grafter by the order dated 16.11.1999 (Amiexure-II) and continued for the post as officiating Grafter till 31.3.2001, therefore, the Petitioner claims that his service is required to be regularised.

3. The Respondents have resisted the claims of the Petitioner in the their affidavit-in-opposition and in para-4 of the affidavit stated that on request of the Hon"ble Minister (Horticulture), Govt, of Arunachal Pradesh, the Petitioner was appointed as officiating Graftor for 3 (three) months against the post Sri D.K. Sinjuli, Graftor who was reported to be missing on 26.6.1999. It is the claim of the Respondents that after the Petitioner was appointed on officiating Graftor, a DPC was held on 27.12.2000 for regularization of all officiating appointees/ promotees of Group "C" and "D" staff in the Department of Horticulture. In the said DPC, the case of the Petitioner was also placed in the said DPC for regularization of his service, but the committee has rejected his case on the ground that the post is purely reserved for APST category on the basis of 100-point roster for APST candidates. According to the Respondents, the Petitioner could not be regularised against the said post which is meant for APST candidates.

4. I have heard the learned Counsel for the parties and also perused the materials on records. To appreciate the claims and counter claims of the parties we may look into the appointment order of the Petitioner as officiating Graftor vide order dated 16.11.1999, which reads as follows:

GOVERNMENT OF ARUNACHAL PRADESH DIRECTORATE OF HORTICULTURE:
NAHARLAGUN

ORDER

Dated Naharlagun, the 16th Nov. 99

No. HORT/E-86/88: Sri Anjan Dasgupta, skilled contingency is hereby appointed as officiating Graftor for a period of 3 (three) months only against the vacancy caused due to missing of Sri D.K. Sinjuli, Graftor, in the scale of pay Rs. 3050-75-3950-8-4590/- P.M. plus other allowances and concessions as admissible from time to time and posted under the Horticulturist. Shergaon from with effect from the date he report for duties.

The appointment is subject to following conditions:

1. The appointment is purely temporary on officiating basis and as and when Sri D.K. Sinjuli, Graftor report his duty, services of Shri Anjan Dasgupta automatically terminated.
2. The service is transferable and he now is liable to serve in any part of Arunachal Pradesh.
3. The appointment is purely temporary and incumbent will have no right to claim for regular appointment in the post of Graftor and the service may be terminated at any time without assigning any reason thereof.
4. The appointee is to produce Medical fitness Certificate at the time of joining duty from the authority not below the rank of civil surgeon District Medical Officer.

5. Other condition of service which have not been specified herein will be governed by relevant rules and orders from time to time.

The expenditure is debitable to the Head of Account "2401-Crop Husbandry C(a) 001-Direction and Administration Salary (Plan) under demand No. 48.

Sd/- D.P. Sonar Director of Horticulture, Govt, of Arunachal Pradesh, Naharlagun.
Dated Naharlagun, 18.11.99

Memo No. HORT/E-86/88

From the above appointment order, it is seen that the appointment of the Petitioner is purely on temporary basis and he has no right to claim for regular appointment in the post of Grafter and the service of the Petitioner may be terminated at any time without assigning any reason thereof.

5. The subsequent extension order dated 25.4.2000 (Annexure-VD) by which the Petitioner services was extended with effect from 19.2.2000 to 19.8.2000, the another extension order dated 9.10.2000 (Annexure-IX), by which the services of the Petitioner was also extended with effect from 20.8.2000 to 19.11.2000 and the extension order dated 18.1.2001 (Annexure-XIII) by which the services of the Petitioner was further extended up to 31.3.2001 stipulated the same conditions on the appointment order of the Petitioner. This temporary arrangement will not confer any right upon the official to claim his seniority or for regular appointment to the post of Grafter and the services of the Petitioner may be terminated at any time without assigning any reason thereof.

6. From the above facts, it clearly indicates that the appointment of the Petitioner is a stop-gap arrangement on temporary basis. In such a situation, we may refer to the decision of the Apex Court in the case of Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others, wherein para 5 of the judgment and order of the Apex Court was held as follows:

A plain reading of these two orders will go to show that the appointments were made purely on temporary basis and their services were liable to be terminated at any time without notice or assigning any reason. In the case of appointment on temporary basis a servant who is so appointed does not acquire any substantive right to the post, even though the post itself may be permanent and it is an implied term of such appointment that it may be terminable at any time and without notice. A temporary government servant does not become a permanent government servant unless he acquires that capacity by force of any rule or he is declared or appointed as a permanent servant. In the present case there is no rule under which the Respondents may be deemed to have become permanent by force of such rule nor they were so declared by any subsequent order of the Appellant-Company to have acquired that status. On the contrary the Respondents all along continued to be temporary and according to the terms of the order of the appointment their services could be terminated at any time without any notice or assigning any reasons. In such a case it is not necessary to

follow the formalities contemplated by Article 311 of the Constitution. In these facts and circumstances the High Court was not right in holding that the Respondents were entitled for being heard before passing the said order of termination of their services and that the order of termination was bad in law on that account.

In the above case, the Apex Court has dealt with similar appointments, which were purely on temporary basis and is liable to be terminated without assigning any reasons. The case of the Petitioner: also falls in the same category as referred to hereinabove.

7. In the instant case, the appointment order of the Petitioner was on officiating basis and on temporary arrangement and the conditions of the said appointment order shows that this temporary arrangement will not confer any right upon the Petitioner to claim his seniority or for regular appointment to the post of Grafter and the Petitioner maybe terminated at anytime without assigning any reason thereof. Therefore, the case of the writ Petitioner is also similar in nature with that of the decision made by the Apex Court in the case of Madhya Pradesh Hasta Shipa Vikas (Supra).

8. For the aforesaid reasons, I am of the opinion that the Petitioner has no right to claim for regularization of his service. The petition is therefore devoid of merit and accordingly it is dismissed.

However, I make no order as to costs.