

**(2019) 02 GAU CK 0040**

**In the Gauhati High Court**

**Case No : Writ Petition (C) No. 8070, 8159 Of 2017**

Arup Kr. Sharma And Ors

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

---

**Date of Decision : 13-02-2019**

**Acts Referred:**

**Citation : (2019) 02 GAU CK 0040**

**Hon'ble Judges : Nelson Sailo, J**

**Bench : Single Bench**

**Advocate : M R Choudhury, I H Saikia**

**Final Decision : Allowed**

---

## **Judgement**

1. Heard Mr. I H Saikia, the learned counsel for the petitioners and Mr. M. Adhikari, the learned Addl. Sr. Government Advocate appearing for the respondent Nos. 1 & 2.

2. As the two writ petitions i.e., WP(C) No. 8159/2017 and WP(C) No. 8070/2017 involve similar issues, they are taken up together for final disposal.

3. 20 writ petitioners have joined hands in filing WP(C) No. 8159/2017. It is their case that they were initially appointed in the year 2002 as Operators in the Community Information Centres (CIC) which was a funded scheme from the Centre. While they were working as such, a process was initiated by the State Government to integrate the CIC scheme with that of another scheme called Common Service Centres (CSC) scheme. The move of the State Government was challenged by the CIC Operators Association by filing WP(C) No. 2536/2008 and this Court, vide Order dated 20.06.2008 directed the parties to maintain status quo as on that date. Therefore, the petitioners contend that they were continuously working since then as CIC Operators in terms of the status quo Order passed by this Court.

4. The said writ petition was finally disposed of by this Court vide Order dated

03.10.2013, by declining to interfere with the steps taken by the State Government for the integration of CIC with that of CSC. However, it was observed that the petitioners may be considered and absorbed under the new Scheme of CSC in view of their experiences as Operators in the CIC.

5. The Judgment & Order dated 03.10.2013 was put to challenge by the Association of CIC Operators by filing WA No. 71/2014. The writ appeal was disposed of vide Order dated 28.01.2016, by directing the respondents to consider the case of the petitioners for continuing their services as CIC Operators and at the same time also to consider payment of their salaries.

6. In terms of the decision of the writ appellate Court in WA No. 71/2014, the Secretary to the Government of Assam, Information & Technology Department considered the claim of the CIC Operators and vide Order dated 07.06.2016 rejected the same. As per the said Order, it is provided that since the CIC Scheme had expired after December, 2008 and whatever dues which remained to be paid to the CIC Operators had already been paid and therefore, there was no question of paying arrear salaries w.e.f. January, 2009 to any of the CIC Operators. The Order dated 07.06.2016 has been impugned by the petitioners in the present 2 (two) cases.

7. It is the case of the petitioners in WP(C) No. 8159/2017 that since they were not paid their salaries w.e.f. January, 2009 despite working as CIC Operators, they got themselves engaged under other Schemes and in support of their claim, they have enclosed a statement showing their respective engagement under other Schemes at Annexure-7 of the writ petition. A similar statement is also annexed as Annexure-17 of the affidavit dated 01.02.2019. Thus, the claim of the petitioners in WP(C) No. 8159/2017 is that they are entitled to be given their salaries for the period they were engaged as CIC Operators and the respondents should also be directed to consider engaging them in any other similar jobs including the CSC.

8. In respect of WP(C) No. 8070/2017, there are as many as 25 writ petitioners, who have joined hands in filing the writ petition. The cases of the petitioners are similar with that of the petitioners in WP(C) No. 8159/2017. However, the only difference is that the petitioners claim that they are still working as CIC Operators despite the claim of the respondents that the Scheme is no longer in existence. In order to show that they are still working as CIC Operators, the petitioners have prepared a chart giving their details and have annexed the same as Annexure-15 in the additional affidavit filed on 01.02.2019. It is their pleaded case that they are entitled to be paid their arrear salaries from January, 2009 and the Order dated 07.06.2016, passed by the Secretary to the Government of Assam, Information & Technology Department should be set aside and quashed.

9. Mr. I H Saikia, the learned counsel for the petitioners submits that when the Association of the CIC Operators challenged the move of the State respondents to integrate CIC with that of CSC by filing WP(C) No. 2536/2008, this Court

passed an interim order on 20.06.2008, directing the parties to maintain status quo. The petitioners therefore, continued to render their services as CIC Operators. The writ petition was disposed of vide Judgment & Order dated 03.10.2013 wherein, the Court declined to interfere on the decision of the State Government to integrate the CIC with the CSC but however, a direction was given to consider utilizing the services of the CIC Operators under the CSC in view of the experiences already gained by the petitioners as CIC Operators. The Association of CIC Operators thereafter, preferred WA No. 71/2014 against the decision of the writ Court but however, in view of the submission made by the learned counsel for the appellants that in view of some developments, the appeal need not be considered on merit and instead, a direction be given to the respondents to consider the case of the appellant. Accordingly, the writ appeal was disposed of vide Order dated 28.01.2016 with a direction to the respondent authorities to consider the case of the appellant for continuing their services as CIC Operators and also to consider payment of their past salaries.

10. Mr. I H Saikia, the learned counsel for the petitioners submits that the respondents have not considered the case of the petitioners and the utilization of their services rendered under the CIC Scheme as directed by the writ Court as well as the writ appellate Court. Further, no arrear salaries have been paid to the petitioners and in fact, the petitioners in WP(C) No. 8070/2017 are still working as on date. He also submits that the State respondents have not preferred any review of the Order dated 28.01.2016, passed in WA No. 71/2014 and therefore, it will only be incumbent on the part of the respondents to consider their case as was directed. He further submits that the petitioners have rendered their services beyond December, 2008 and the petitioners in WP(C) No. 8070/2017 are working as on date and therefore, the impugned Order dated 07.06.2016 being misconceived should be set aside and quashed.

11. Mr. M. Adhikari, the learned Addl. Sr. Government Advocate appearing for the respondent Nos. 1 & 2 submits that this Court in WP(C) No. 2538/2008 filed by the Association of the CIC Operators vide Judgment & Order dated 03.10.2013 clearly declined to interfere with the steps taken by the State Government for switching over to CSC from the CIC Scheme. This Court had also clearly acknowledged the fact that the CIC Scheme had come to an end by December, 2008 and therefore, the claim of the petitioners to continue their services as CIC Operators beyond December, 2008 is not tenable. He further submits that when the CIC Scheme came to an end in December, 2008, there cannot be any basis to presume that the petitioners have continued to work as CIC Operators even after the expiry of the Scheme. He submits that in so far as the Order dated 07.06.2016 is concerned, the same has only been passed pursuant to the direction of the writ appellate Court in WA No. 71/2014. The writ appellate Court did not interfere with the decision of the writ Court wherein, the steps taken by the State Government to integrate CIC with CSC was challenged and therefore, the decision rendered by the writ Court has attained its finality. He therefore submits that the impugned Order dated 07.06.2016 has rightly been passed and

the petitioners cannot have any further claim for their arrear salaries and continuance of their services under the CIC Scheme, which is no longer in existence.

12. During the course of the hearing, Mr. I H Saikia, the learned counsel for the petitioners submitted that the CIC Operators Association filed WP(C) No. 4784/2017, claiming arrear salaries w.e.f. the date of passing of the interim Order in WP(C) No. 2536/2008 i.e., 20.06.2008 upto the date of the Judgment & Order of the said writ petition i.e., 03.10.2013. Therefore, in view of such submission, the parties were asked to apprise the Court about the outcome of the said writ petition i.e., WP(C) No. 4784/2017. Accordingly, the parties have produced a copy of the Judgment & Order dated 15.12.2017 by which, WP(C) No. 4784/2017 was disposed of by directing the Commissioner & Secretary to the Government of Assam, Information & Technology Department to examine as to whether the petitioners actually continued in services for the period from 20.06.2008 upto 03.10.2013. It was further directed that depending upon the outcome of such examination, the claim for arrear salaries should be determined and by passing a speaking order. The entire exercise was directed to be completed within a period of 3 months from the date of receipt of the certified copy of the said Order.

13. Mr. M. Adhikari, the learned Addl. Sr. Government Advocate submits that as per the instructions received by him from the Department concerned, the Department has indicated that examination and verification of the claim of each of the members of Association would be required to find out as to whether they are indeed entitled to get arrear salaries. In this connection, he has produced a Communication dated 01.12.2018 received by him from the Secretary to the Government of Assam, Information Technology Department. The communication also states that after December 2008, the CIC Operators were not under the supervision of Information Technology Department or AMTRON and therefore, a verification is required to be carried out for certifying whether the incumbents were working under any project under the district authorities or by any other Department of the Government. Let the Communication dated 01.12.2018 produced by the learned State counsel be retained in the file and be marked as Annexure-X for identification.

14. Mr. I H Saikia, the learned counsel for the petitioners submits that as per his instructions, the Order dated 15.12.2017 passed by this Court in WP(C) No. 4784/2017 in fact, has not been complied with by the respondent authorities and for which, the petitioners Association filed a contempt petition. He further submits that in so far as that case is concerned, the impugned Order dated 07.06.2016 was not challenged nor was it interfered with by this Court. It is therefore due to this reason that the respondent authorities have failed to comply with the Court's order. In so far as the present case is concerned, since the petitioners have challenged the said impugned Order, Court may interfere with the same and direct the respondent authorities to pay the arrear salaries

due to the petitioners and also direct them to consider engaging them any other Schemes under the State Government.

15. Mr. I H Saikia, the learned counsel further submits that the case of the petitioners is also covered by the decision of a Division Bench of this Court rendered in WA No. 45/2014 (State of Assam Vs. Upen Das & Others) vide Judgment & Order dated 08.06.2017 reported in (2017) 4 GLR 493. He submits that the Division Bench vide the said Judgment negated the claim of the writ petitioners for regularization of their services but however, in view of the stand taken by the State Government that the State will not terminate the services of its casual employees, who have rendered continuous service for more than 10 (ten) years until they attain the age of superannuation and that they will be paid salaries in the minimum scale, the case of the present petitioners is also covered. Accordingly, a suitable direction may be passed in favour of the present petitioners that their case is covered by paragraph 22 of the said Judgment.

16. I have heard the learned counsels for the rival parties and I have perused the materials available on record.

17. What can be seen from the above projection is that the grievance of the CIC Operators with regard to the steps taken by the State Government for integration to CSC has already been looked into by this Court in WP(C) No. 2536/2008. It may further be noticed that in the said writ petition, an interim Order was passed on 20.06.2008 to the effect that status quo should be maintained. The writ petition was then finally disposed of vide Judgment & Order dated 03.10.2013 with a finding that it was up to the State Government to take a policy decision to go for CSC Scheme and for which, it could not be faulted with. This Court thus declined to interfere in the matter. However, at the same time, an observation was made to the effect that the State Government should consider utilization of the services of the members of the petitioner Association keeping in mind their long experiences as CIC Operators. Though the petitioners Association pursuant to the disposal of the writ petition filed WA No. 71/2014, but the appeal was not pressed on merit and consequently, the appeal was disposed of vide Order dated 28.01.2016 with a direction to the respondent authorities to consider the case of the members of the appellant Association for continuing their services as CIC Operators and also for payment of their past salaries.

18. After the disposal of the writ appeal, the Commissioner & Secretary to the Government of Assam, Information & Technology Department passed the impugned Order dated 07.06.2016. From a perusal of the impugned Order, it may be seen that the CIC Scheme is said to have expired after December, 2008 and therefore, there was no scope for engaging CIC Operators after that period. Furthermore, the amount due to all the CIC Operators while the Scheme was in operation is also said to have been paid already and therefore, there was no question of payment of past salaries. On the other hand, it is also the specific case of the petitioners that their services have been utilized even after December, 2008 and in support of their claim, they have prepared a chart giving

the details of their employment. Under the given circumstances, it only appears that the impugned Order dated 07.06.2016 has been passed without there being a proper examination of the claim of the petitioners. It may further be noticed that another writ petition i.e., WP(C) No. 4784/2017 claiming the salaries for the period between 20.06.2008 to 03.10.2013 was also filed by the CIC Operators Association. The said writ petition was disposed of vide Order dated 15.12.2017 with a direction to the Commissioner & Secretary to the Government of Assam, Information & Technology Department to examine the claim of the petitioners and to pass a speaking order. Therefore, the claim of the petitioners cannot be said to be without any basis.

19. However, since the petitioners have not given the details of their claim in so far as past salaries are concerned and also materials to show that they are still working as CIC Operators, I am of the considered opinion that the petitioners should file a precise and concise claim before the Commissioner & Secretary to the Government of Assam, Information & Technology Department (Respondent No.1) with regard to their arrear salaries and also with regard to their continuity in service as CIC Operators with supporting documents if any. Such claim should be filed by the petitioners before the Commissioner & Secretary to the Government of Assam, Information & Technology Department (Respondent No.1) within a period of 1 (one) month from today. The Commissioner & Secretary to the Government of Assam, Information & Technology Department, on receipt of the claim of the petitioners will carefully examine and verify the same. Verification should be done by involving the district administrations and the Departments concerned if necessary as has been stated in the communication dated 01.12.2018 (Annexure-X). Upon completing the verification, the respondent No.1 shall pass a speaking order indicating the entitlement of each claimant within a period of 2 (two) months from the date of receipt of the claims. If the petitioners are found entitled to their past salaries, the same should be disbursed to them without delay. Engagement of the petitioners under any other Schemes as was observed in the earlier round of litigation shall also be considered. Also their entitlement in terms of paragraph No.22 of the Judgment & Order dated 08.06.2017 in Upen Das & Ors. (Supra) will depend on the outcome of the verification.

20. It is thus ordered accordingly.

21. The impugned Order dated 07.06.2016 (Annexure-14) is set aside and the writ petitions allowed to the extent as indicated. No cost.