
(2002) 08 GAU CK 0055
In the Gauhati High Court
Case No : Writ Petition (C) No. 49 (K) of 2000

Asangla Aier

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 3 GLT 507

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : B.N. Sarma and C.T. Jamir, for the Appellant; Y. Longkumer, Taka Masa and M. Theyo, for the Respondent

Final Decision : Dismissed

Judgement

B. Lamare, J.—Heard Mr. B.N. Sarma, learned Counsel for the Petitioner and Mrs. Y. Longkumer, learned Govt. Advocate for the State Respondents and Mr. Taka Masa, learned Counsel for the Respondents 3, 4 and 5.

2. The case of the Petitioner briefly stated is that the State Rural Development Agency (SRDA for short) conducted interview through interview board for appointment to the post of Assistant Project Officer (APO) on 15.10.82 and 19.11.82. The Petitioner was selected and placed at serial No. 5 of the list of the successful candidate. She was recommended for appointment. Thereafter, the Petitioner pursued the matter for her appointment but she was not appointed on the basis of the said selection. However, by order dated 20.7.84, she was appointed to the post of APO by the Chairman of the SRDA on adhoc basis initially for a period of 4 months. The Petitioner joined the post on 21.7.84.

3. In the year 1995, another interview was conducted by the Selection Board of SRDA for the same post of APO. The Petitioner appeared before the Selection Board and was declared successful. On having been successful in the said selection test, the Petitioner was appointed by order dated 13.2.86 as APO under

the SRDA and she joined the post on 1.3.86.

4. The SRDA circulated the draft seniority list of all the staff vide office memorandum No. SRDA/ESTT-21/87/4529-311 dated 29.7.92. In the said seniority list the Petitioner was shown as junior to Respondents 3 and 4. However, in the same seniority list, the Petitioner was shown as senior to the Respondent No. 5. Being aggrieved by the said seniority list, the Petitioner submitted a representation dated 26.8.92 for fixing her seniority and claiming that she should be entitled to her seniority from the date of her initial appointment i.e. 21.7.84.

5. The final seniority list of the officers of SRDA as on 1.1.94 was circulated vide office memorandum No. SRDA/Estt-21/87(Pt) dated 15.3.94. In the said seniority list the Petitioner's name is shown at serial No. 8 and her date of appointment was shown as 1.3.86. Against the said final seniority list, the Petitioner made a representation dated 25.3.94 to the Project Director, SRDA. In the said representation the Petitioner requested the Project Director to fix her seniority w.e.f. 21.7.84 the date of her appointment on adhoc basis. Thereafter, the Petitioner made several representations.

6. Again in the year 1999 a tentative seniority list of the officers under the Rural Development Department as on 1.1.99 was circulated vide office memorandum No. RD/Estt-34/98 dated 18.11.99. In the said seniority list the Petitioner appear at serial No. 10 of the Assistant Director and she was shown as junior to the Respondents 3, 4 and 5.

7. The State Respondents 1 and 2 contested the claim of the Petitioner by filing an affidavit in opposition. In paragraph 3 of the affidavit in opposition it is stated that the Interview Board which conducted the test on 15.10.82 and 19.11.82 selected 7 candidates including the Petitioner however, only 3 candidates were given appointment in order of merit. In paragraph 4 of the affidavit it is stated that the adhoc appointment given to the Petitioner was not on the basis of the said selection/recommendation made by the interview board but she was appointed as a fresh candidate on adhoc basis to which the Petitioner also accepted without any objection. In paragraph 5 of the affidavit it is stated that the interview held as per, the advertisement dated 16.8.85 is for fresh appointment on open competition and not for regularization of adhoc/contract employees as contended by the Petitioner. In response to the said advertisement, the Petitioner also applied and appeared before the selection board on 26.11.85. She was selected and recommended for regular appointment as APO and the Petitioner accepted the appointment w.e.f. 1.3.86. The Respondents also contended that the Petitioner was fully aware that her seniority would be fixed from the date of her regular appointment vide order dated 13.2.86 w.e.f. 1.3.86. The draft seniority list and the final seniority list were also published accordingly showing the date of the appointment of the Petitioner as 1.3.86. It is also contended that since the adhoc appointment of the Petitioner was not regularized, her date of seniority is counted from 1.3.86. The Respondents also

relied on the memorandum No. AR-13/21/74 dated 8.7.95 issued by the Home Department in which it is laid down that if the adhoc service is continued followed by regular appointment/confirmation, the period of adhoc service thus rendered will count for increment, leave pension and other service benefits but not for purpose of seniority.

8. The Respondents 3, 4 and 5 also contested the claim of the Petitioner and filed an affidavit in opposition. The said Respondents besides supporting the affidavit of the Respondents 1 and 2 has also contended that since the Petitioner has accepted the appointment on adhoc basis in the year 1984 she cannot claim the right of being selected in the selection made in the year 1982. It is also contended that when the post was advertised vide advertisement dated 16.8.85, the Petitioner has applied and appeared before the selection board and she was selected along with the Respondents 3, 4 and 5 and the seniority were placed according to the merit list on the basis of which they were appointed accordingly. The Petitioner has no right to claim her seniority from the date of her adhoc appointment as she was not appointed on the basis of the said selection made in the year 1982.

9. Mr. B.N. Sarma, learned Counsel for the Petitioner submitted that although the appointment was made on adhoc basis after the selection, the question of counting merit after the 1985 selection does not apply in the case of the Petitioner as she was already appointed on the basis of selection made in the year 1982. The learned Counsel also contended that the seniority list published as on 1.1.94 is totally wrong by showing the date of appointment of the Petitioner as 1.3.86. It is also contended that in the advertisement issued in 1985 the Petitioner has applied for the post at serial No. 4 of the advertisement for which the required qualification is B.Sc. Home Science and the post is mean purely for GWCRA whereas the Respondents 3, 4 and 5 had applied for the general post of APO. Therefore, the seniority of the Petitioner should not be counted along with the Respondents 3, 4 and 5.

10. Mrs. Y. Longkumer, learned Govt. Advocate submitted that the appointment of the Petitioner was not made on the basis of recommendation of the selection made in the year 1982. According to the counsel, in paragraph 4 of the affidavit of the Respondent the adhoc appointment of the Petitioner was made as a fresh candidate and she has accepted the appointment without any complaint to which she continued upto 28.2.86. However, on her being successful in the selection made as per the advertisement made on 16.8.85 she was appointed on regular basis w.e.f. 1.3.86 contends the learned Counsel.

11. Mr. Taka Masa, learned Counsel for the Respondents 3, 4 and 5 contends that since the Petitioner has applied for the post advertised in the year 1985 and appeared before the selection board and she was selected as a fresh candidate along with the Respondents 3, 4 and 5, she is estopped from claiming seniority w.e.f. 20.7.84. Learned Counsel also submitted that the seniority list published in the year 1982 and 1984 are not challenged by the Petitioner in this writ petition

and as such the said seniority list cannot be interfered with at this belated stage.

12. On perusal of the records, it shows that the only grievance of the Petitioner is that the counting of her seniority should be from the date of her adhoc appointment from the period 21.7.87 to 28.2.86. It is not disputed that the Petitioner was on adhoc appointment for the said relevant period. It is also not disputed that she was appointed on regular basis w.e.f. 1.3.86. The question therefore, to be seen is only as to whether the Petitioner is entitled to count her seniority for the service rendered by her during the adhoc appointment for the period from 20.7.84 to 28.2.86. However, before deciding this issue, it would be better to examine the contention of the Petitioner as alleged in the petition.

13. The Petitioner was selected by an interview board held on 15.10.82 and 19.11.82 and her name stood at serial No. 5 of the successful candidate. However, she was not appointed on the basis of the said selection. On the contrary, she was appointed on adhoc basis for a period of 4 months as APO by order dated 20.7.84 and she joined the post on 21.7.84 without any objection and thereafter, her adhoc appointment was extended from time to time. When the fresh appointment was issued on 16.8.85, she applied for the post and she was selected and appointed vide order dated 13.2.86 w.e.f. 1.3.86.

14. From the fact as revealed above, the Petitioner herself has acquiesced to the action of the Respondents and she did not exert herself to seek any relief against her non appointment in the said selection made in the year 1982. She has applied for the post in the fresh advertisement without any kind of protest and also appeared before the Selection Committee by which she was selected. From the above action of the Petitioner she had disentitled herself from claiming appointment under the earlier selection made in the year 1982 and she took the chance to appear before the selection board as per the fresh advertisement and she was selected. This Court, therefore, is of the view that the Petitioner is estopped by her own conduct from claiming her seniority by virtue of the earlier selection made in 1982.

15. The Petitioner has joined on regular service w.e.f. 1.3.86 and she continued in the service till the draft seniority list was published on 29.7.92. The final seniority list was published on 15.3.94 showing the seniority as on 1.1.94 showing the date of appointment of the Petitioner as on 1.3.86. Against this, the Petitioner made a representation to the Respondent authorities on 25.3.94 and thereafter repeatedly representing and pursuing with the Government for resolving her seniority, without any result. Again another seniority list was published vide office memorandum dated 18.11.99 showing the seniority as on 1.1.99 and the name of the Petitioner was shown at serial No. 10. By the said seniority list, the Petitioner was shown as superseded by three of her juniors, the private Respondents herein. Against the said seniority list published in 1999 the Petitioner again made several representations to the Respondents authority without any result.

16. In the case of B.S. Bajwa and Another Vs. State of Punjab and Others, the Apex Court in paragraph 7 of the judgment has held as under:

It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition.

17. In the instant case also, the first draft seniority was published on 29.7.92 and the final seniority list was published on 5.9.94. The Petitioner was aware of the fact that her date of appointment was shown as 1.3.86 and she was shown as junior to the Respondents 3 and 4. She has also made a representation on 25.3.94 to the Project Director, SRDA immediately after the final seniority list was issued on 5.3.94. Thereafter, she made series of representations but she approached this Court on 8.9.2000. The Petitioner did not exert her right nor took any effective steps at the relevant time to get the stay of the said seniority list or to declare the said seniority list null and void in respect of her date of appointment. Merely submitting representations to the authorities who could not grant her any relief or that the authorities were not sure as to the legal position, the Petitioner is not justified in making representations and making such representations are not the ground to justify the delay and laches on the part of the Petitioner in approaching this Court by this writ petition. Nothing prevented her from taking any course according to law without loss of time. For the aforesaid inaction on the part of the Petitioner, I am of the considered opinion that the claim of the Petitioner for seniority over the Respondents 3, 4 and 5 cannot be entertained at this stage and the petition is defeated on this ground alone.

18. Coming to the question of her adhoc appointment for counting towards seniority, attention may be drawn to the memorandum No. AR-13/21/74 dated 8.7.75 (Annexure-IV to the affidavit in opposition filed by the Respondents) by which the Government of Nagaland, Home Department, Administrative Reforms (O and M) Branch has laid down the procedure for counting of service of adhoc appointment which is as follows:

Government of Nagaland Home Department Administrative Reforms (O and M) Branch No. AR-13/21/74 dated Kohima, the 8th July, 1975

Memorandum

Subject: Counting of seniority of services rendered on adhoc appointment.

The undersigned is directed to refer to the subject cited above and to say that it has brought to the notice of the Department for clarification that whether the services rendered by an official on adhoc appointment should count towards seniority including leave, increment and pension etc. After careful examination it has been decided that if such adhoc service is continuous followed by regular

appointment/confirmation, the period of adhoc services thus rendered will count for increment, leave, pension and other service benefit. But seniority in the particular cadre should count only from the date of regular appointment and should follow the order of merit given by the Nagaland Public Service Commission or the Section Board.

Sd/- (A.K. Biswas) Under Secretary to the Govt. of Nagaland

A perusal of the above memorandum shows that the Petitioner has been granted all the benefits except for the purpose of seniority. This memorandum is still holding the field till date.

19. It is well settled that the adhoc service cannot be counted towards seniority. The count of seniority may be made if such adhoc appointment was subjected to the process of selection as is done in the case of regular appointment and the same was not a stopgap arrangement. The meaning of the words and phrases "adhoc", "fortuitous" and "stopgap" appointment in service jurisprudence has been dealt with by the Constitution Bench of the Apex Court in the case of Rudra Kumar Sain and Others Vs. Union of India and Others, and the meaning thereof was explained in paragraphs 16, 17 and 18 of the judgment which are as follows:

16. The three terms "adhoc", "stopgap" and "fortuitous" are in frequent use in service jurisprudence. In the absence of definition of these terms in the Rules in question we have to look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters. The meaning given to the expression "fortuitous" in Stroud's Judicial Dictionary is "accident or fortuitous casualty". This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to be "fortuitous". In Black's Law Dictionary, the expression "fortuitous" means "occurring by chance", "a fortuitous event may be highly unfortunate". It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression "adhoc" in Black's Law Dictionary, means "something which is formed for a particular purpose". The expression "stopgap" as per Oxford Dictionary, means "a temporary way of dealing with a problem or satisfying a need."

17. In Oxford Dictionary, the word "adhoc" means for a particular purpose; specially. In the same dictionary, the word "fortuitous" means happening by accident or chance rather than design.

18. In P. Ramanatha Aiyar's Law Lexicon (2nd Edn.) the word "adhoc" is described as; "For particular purpose. Made, established, acting or concerned with a particular (sic) and or purpose". The meaning of word "fortuitous event" is given as "an event which happens by a cause which we cannot resist; one which

is unforeseen and caused by superior force, which it is impossible to resist, a term synonymous with Act of God.

20. In the same judgment, the Apex Court has also laid down that it is not possible to lay down any strait-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stopgap) can be made. As such, this decision is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of inter se seniority of officers in the cadre.

21. In the case of direct recruit Class II Engineering Officers " The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, the Constitution Bench of the Apex Court has dealt thoroughly about the counting of service into seniority. In conclusion (A) and (B) of the paragraph 44 of the judgment, the Apex Court held as follows:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.

22. The above conclusion held by the Constitution Bench of the Apex Court was further discussed by the three Member Bench of the Apex Court in the case of State of W.B. and Others Vs. Aghore Nath Dey and Others, In paragraph 22 of the judgment, the Apex Court had interpreted the conclusions (A) and (B) as follows:

22. There can be no doubt that these two conclusions have to be read harmoniously, and conclusion (B) cannot cover cases which are expressly excluded by conclusion (A). We may, therefore, first refer to conclusion (A). It is clear from conclusion (A) that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially appointed "according to rules". The corollary set out in conclusion (A), then is, that "where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such posts cannot be taken into account for considering the seniority". Thus, the corollary in conclusion (A) expressly excludes the category of cases where the initial appointment is only ad hoc and not according to rules, being made only as a stopgap arrangement.

23. In the case in hand, the Petitioner was appointed purely on adhoc basis without a selection and her services were extended from time to time till she was regularly appointed after proper selection. To make the matter clear, the appointment order of the Petitioner is reproduced below:

State Rural Development Agency Nagaland: Kohima No. SRDA/IV/11-1/77(Pt-1)
Dt. Kohima, the 20th July/84

ORDER

The Chairman, SRDA, Nagaland is pleased to appoint Miss. Asangla Temjen, D/O/ Shri O. Temjen, Mongsenyimti village, Mokokchung District to the post of Assistant Project Officer (DWCRA), Class-II Gazetted status in the scale of pay of Rs. 600-35-845-EB-35-1125-EB-45-1350/- p.m. under the S.R.D.A., Nagaland for a period of 4 (four) months on adhoc basis from the date of her joining the post. Besides pay, she will be entitled to all other allowances which are admissible to the State Government employees of her status.

In the interest of public service she is posted at SRDA, Kohima.

(K. Angami) Project Director: SRDA Nagaland: Kohima

24. A bare perusal of the above order shows that the appointment order itself indicates that the appointment made is to meet certain temporary contingency for a period specified in the order and the same was extended till regular appointment was made. The appointment therefore can aptly be described as adhoc, stopgap arrangement made by the Respondents authorities till regular appointment can be made. The regular appointment was made only after the advertisement made on 16.8.85 was issued and selection made thereunder. The case of the Petitioner herein, therefore falls within the corollary in conclusion (A). In the circumstances as discussed above, the service of the Petitioner on adhoc appointment cannot be counted towards seniority.

25. For the aforesaid reasons as discussed and observed above, I am of the view that the petition deserves no merit and accordingly, it is dismissed. However, considering the facts and circumstances of the case, there will be no order as to costs.