

(1995) 08 GAU CK 0003

In the Gauhati High Court

Case No : Civil Rule Nos. 773 of 1989 and 392 of 1993

Assam Forest Employees Association

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 25-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1996) 1 GLJ 320

Hon'ble Judges : J.N.Sarma, J

Bench : Single Bench

Advocate : D.N.Choudhary, S.A.Laskar, Advocates appearing for Parties

Judgement

1. These two Civil Rules have been filed to enforce the assurance and terms given by the Government to the petitioner in the course of bilateral discussion held between the petitioners' society and the Government on 21.12.87.

2. Civil Rule No.773 of 1989 has been filed by the Assam Forest Employees Association represented by its Secretary and Civil Rule No.392 of 1993 has been filed by the Association claiming right of promotion to the higher grade as provided in that discussion. That the Subordinate Forest Service, Assam comprises of Rangers, Deputy Rangers, Forester and Forest Guards and other Subordinates as per the prevailing Rules. The Rules have been made for recruitment to those posts. It is alleged that upto 1982 promotion were made from lower cadre, but from 1982 this has been stopped. The petitioners' Association made a demand and an assurance was given on 21.12.1987 and that is quoted below : (not quoted : Editor)

2 A. The grievance of the petitioners is that the terms of these assurances regarding promotions have not been complied with. There is no denying of the fact that some promotion have been made from the lower grade staff, but the entire quota as assured in the minute of discussion was not filled up by promotion. Hence this writ application.

3. The admitted position is that in the meantime about 122 promotions have been made but that does not fill up the entire quota as mentioned earlier.

4. I have heard Shri DN Chowdhury, the learned Advocate for the petitioners and Shri B. Choudhury, learned Govt. Advocate for the State of Assam. The points urged by Shri Chowdhury, learned Advocate for the petitioners are as follows :

A. Petitioners have an existing right which is arbitrarily denied by the respondents since 1983 adversely affecting the service career of the petitioners.

B. As a result of refusal there is a stagnation in the Subordinate Forest Service comprising of Foresters/Deputy Rangers etc.

C. There are recorded agreements between the Govt. and the Association in the various minutes of bilateral discussion for promotion of departmental candidates to the rank of Forest Rangers.

D. Promotion to the rank of Forest Rangers is a legitimate expectation for the petitioners which is being arbitrarily denied by Govt.

E. By nonimplementation of the promise/assurance made by the Govt from time to time Govt. has gone back on their words adversely affecting the right of the petitioners.

F. There being no quota fixed for promotion of departmental candidates in the service rules the decision arrived at by the parties and Govt. having agreed to act upon the same, 50% of the vacancies are to be filled up from the members of the petitioner Association by promoting to the next higher grade.

G. Action of the Govt. is arbitrary and discriminatory and violative of Article 14, 16 and 21 of the Constitution.

5. The admitted position is that the minutes of discussion which have been quoted above is neither executive instruction nor it has any statutory force as a rule. The question is that whether a Mandamus can be issued for the enforcement of the same in its entirety. It is this short question which will besufficient for the disposal of these two writ applications and it is not necessary to go to the other aspect of the matter uraed by Shri Chowdhury. Further if this Court cannot exercise the power to issue the Mandamus the points urged by Shri Chowdhory need not to be considered at all.

6. In order to obtain a writ or order in the nature of Mandamus the applicant must satisfy the following conditions :

(i) That the applicant has a legal right to the performance of a legal duty (as distinguished from a discretion) by the authority against whom the Mandamus is sought and his right must be subsisting in each of the petition.

(ii) The duty that may be enjoined by Mandamus must be one imposed by Constitution, a statute, common law or by Rules or order having the force of law.

7. A Mandamus cannot be issued to enforce a contract against the Government which has not been made in exercise of the statutory power. A Mandamus cannot be issued to enforce concession which do not give rise to any legal right in favour of the petitioner. In the instant case a bare perusal of the minutes of discussion will show that certain things were agreed as between the parties and they did not create any right/interest of the petitioner. For issuance of a Mandamus it will not be sufficient to show merely that the petitioner has an interest in the performance of the duty, the petitioner must show that he himself has a legal right on such performance.

8. In that view of the matter the prayer for issuance of Mandamus as prayed for by the petitioners cannot be accepted. Shri Chowdhury in support of his contention placed reliance on the following decisions :

(1987) 4 SCC 482 (State of Gujrat vs. AC Bhargav). Shri Chowdhury relies on paragraph 7. That was a case where the Home Minister issued a Circular that with reference to the Indian Police Service (Probation) Rules and in connection with that the Supreme Court pointed out that within the limit of executive power under the constitutional scheme it will open to the appropriate Government to issue instruction to cover the gap where there be any vacuum or lacuna. This case does not help the petitioners.

9. The next case relied on by Shri Chowdhury is on the same volume at page 738 (V. Balasubramaniam & others vs. Tamil Nadu Housing Board & others). He relies on paragraph 11. That also was a case where certain regulations were made and it received the approval of the State Government, but it was not published in the Official Gazette the question was that whether that regulations made by the State Government with regard to promotion will be binding on it. The Supreme Court pointed out that will be binding on the Government. This case also does not help the petitioners as it is a case of regularisation.

10. AIR 1973 SC 303 (Union of India vs. Joseph & others). That was a g case where the question arose whether Mandamus can be issued to enforce rights arising out of administrative instruction. In paragraph 9 and 10, the Supreme Court has laid down the law as follows :

"9. Generally speaking, an administrative order confers no justiciable right, but this rule, like all other general rules is subject to exceptions. This Court has in Sant Ram Sharma vs. State of Rajasthan, (1968) 1 SCR 111 (AIR 1967 SC 1910) that although Government cannot supercede statutory rules by administrative instructions, yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service."

10A. In Union of India vs. M/s Indo Afgan Agencies Limited, (1968) 2 SCR 366 at page 377 (AIR 1968 SC 718), this Court, in considering the nature of the import trade policy said:

"Granting that it is executive in character, this Court has held that Courts have the power in appropriate cases to compel performance of the obligations imposed by the schemes upon the departmental authority."

To say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and imposed duties. It is because an administrative order can abridge or take away rights that we had imported the principle of natural justice or *audi alteram partem* into this area. A very perceptive writer has written.

Let us take one of Mr. Horison's instances, a regulation from the British War Office that no recruit shall be enlisted who is not 5 feet 6 inches height. Suppose a Recruiting Officer musters in a man who is 5 feet 5 inch only in height, and pays him the King's shilling; afterwards the Officer is sued by the Government for being short in his accounts; among other items he claims to be allowed the shilling paid to the undersized recruits. The Court has to consider and apply this regulation, and, whatever its effect may be, that effect will be given to it by the Court exactly as effect will be given to a statute providing that murderers shall be hanged, or that last Wills must have two witnesses." (Johri Chipman Grey on The Nature and Sources of the Law). There the Supreme Court in the facts and circumstances of that case held that the order in question conferred upon the first respondent the right to have his pay fixed in the manner and that was a part of the conditions of his service and the Supreme Court decided to enforce that right. This case also does not help the petitioner inasmuch as in the instant case the minutes of discussion cannot be deemed to be executive instruction nor it can be said that those minutes created any right in favour of the petitioners. Accordingly these writ petitions are dismissed.