

(2005) 09 GAU CK 0031
In the Gauhati High Court
Case No : WP (C) No. 158 of 2000

Baneswar Dutta

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-09-2005

Acts Referred:

Citation : (2006) 2 GLR 351

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : S.C. Biswas, K. Bhattacharjee and M.K. Mazumdar, for the Appellant;
G. Soren, for the Respondent

Judgement

Ranjan Gogoi, J.—Heard Mr. S.C. Biswas, learned Counsel for the petitioner and Mr. G. Soren, learned Government Advocate, Assam.

2. The writ petitioner was initially appointed as a Muster Roll worker in the office of the Manager, District Poultry Farm, Tezpur under the Animal Husbandry and Veterinary Department of the State of Assam. The aforesaid appointment was made sometime in the year 1973. The petitioner claims to have continued to work in the said capacity and in the same establishment, i.e., of the Manager, District Poultry Farm uninterruptedly and without any break until the year 1985. By an order dated 30.6.1985 he was transferred and appointed in the office of the Research Officer, Coordinated Poultry Breeding Project, Tezpur. Thereafter, by an order dated 4th of April, 1988 he was appointed as a L.D.A.-cum-Typist on a regular scale of pay but against a leave vacancy. The aforesaid appointment was in the same establishment, i.e., office of the Research Officer, Coordinated Poultry Breeding Project, Tezpur. According to the petitioner, he continued to work in the said establishment until sometime in the year 1994 when his service was discontinued. A certificate dated 1.8.1998 issued by the Research Officer, Coordinated Poultry Breeding Project, Tezpur, which has been enclosed as Annexure-IX to the writ petition, makes it amply clear that the petitioner had worked as a muster roll/casual employee from 1.9.1973 until 19.4.1994 when his

service was discontinued. After making several attempts to secure reinstatement in service and thereafter regularization as well as arrear pay, which is contended also to be due to the petitioner for service rendered, the instant writ petition has been filed in the year 2000.

3. Though this writ petition has remained pending for over five years now no return has been filed on behalf of the official respondents denying or disputing the claims made in the writ petition. In the absence of any counter on the part of the State and the facts stated in the writ petition not having been controverted, this Court must proceed on the basis that the petitioner after rendering nearly 21 years of service as a muster roll/casual employee in the Veterinary Department of the State has been disengaged. The Court must also proceed on the basis, in the absence of any contrary material, that the disengagement of the petitioner after over two decades of service is without any valid or acceptable reason. Service rendered for a period of over 21 years, though in fortuous capacities, if had continued without any interruption, must be understood by the Court, on equitable grounds, to vest in such an incumbent a right of consideration for regularization. Such recognition must be made by the Court keeping in mind that the concerned incumbent had rendered long continuous years of service to the State and in the process had become used to the earnings from the job besides becoming over-aged and perhaps unsuitable for any other kind of employment. Recognition of a right of fair consideration for regularisation in such an incumbent must also be made by the Court to avoid conferment of arbitrary powers on the employer/State or its instrumentalities and furthermore in order to prevent the incumbent and his family members from ruin or devastation that is bound to result in the event such long period of service is abruptly snapped by an order of disengagement.

4. The facts of the present case would go to show that the petitioner had rendered nearly 21 years of service in the Veterinary Department. Even in terms of the Circular dated 20.4.1995, which though had come subsequent to the disengagement of the petitioner, an equitable right of fair consideration of such cases for regularisation has been virtually admitted by the Government. The Court can also take judicial notice of the fact that many such employees who have rendered such long years of service on fortuitous basis have been regularised by the State. Taking into account all the aforesaid facts and circumstances, the Court is inclined, in the facts of the present case, to recognise a legally enforceable right in the petitioner to obtain equitable relief at the hands of the Court.

5. The petitioner is not presently in employment. There can, therefore, be no question of regularization of his existing service. However, having regard to the long years of service rendered by the petitioner and the fact that petitioner has by this time, become over-aged for employment by the State, I am of the considered view that this writ petition ought to be answered by directing the respondent No. 2, the Director, Animal Husbandry and Veterinary Department, to

fairly consider the case of the petitioner for appointment in any available vacancy as and when any vacant post in any of the establishments under the said respondent, particularly in the establishments of the respondent Nos. 3 and 4, is filled up. While so considering the case of the petitioner for appointment the respondent No. 2 or his subordinates will be well-justified to give some preferential treatment to the petitioner in view of the long years of service rendered by him.

7. The writ petition shall stand answered and closed in terms of the above directions.