
(2008) 05 GAU CK 0050
In the Gauhati High Court

Bhabani Sarma and Others	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 113 FLR 273 : (2008) 4 GLT 560

Hon'ble Judges : Jasti Chelameswar, C.J;B.K. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The appellants are aggrieved by the order dated 17.12.2007 dismissing the writ petition being W.P (C) No. 5155/2005, which they had filed seeking regularization of their casual services and for setting aside and quashing the order dated 23.6.2005 by which their services as such, were terminated with immediate effect. Be it stated here that the appellants continued in their services beyond 30.9.1998 on the strength of the interim orders passed by this Court.

2. The appellants were engaged on casual basis for limited durations. While the appellant Nos. 1 and 2 were engaged in the year 1996, the appellant No. 3 was appointed in the 1994. As per the appointment letters annexed to the writ petition, they were appointed on a fixed pay of Rs. 900/- for limited duration, which according to the appellants, continued up-to 30.9.1998. However, according to the respondents, such casual services of the appellants were not continuous and in any case, there was no extension of their services beyond 30.9.1998.

3. From the materials on record, it appears that the services of the appellants were dispensed with and/or not extended beyond 30.9.1998, as per the Office Memorandum No. FC. (iii) 24/4/106 dated 20.5.1998 issued by the Finance Department, Government of Assam. As per the own case of the appellants, there was no order of extension extending their services beyond 30.9.1998. In

paragraph 7 of the writ petition, the appellants stated so.

4. When the matter rested thus, the appellants approached this Court by filing the writ petition being WP(C) No. 3209/1999. On the basis of the interim orders passed, they continued in their services. The writ petition was disposed of by judgment and order dated 23.8.2004 with the following directions:

...Without expressing any opinion on the course of action decided be taken by the State respondents, I deem it fit and proper to close this writ petition with the observation that if keeping in view the long length of service put in by the petitioners, the State authorities are inclined to make necessary arrangements for absorbing them in service or posts commensurate to their academic qualifications and experience, in accordance with law, they are at liberty to do so. It is made clear that this Court has not issued any mandamus for the purpose.

5. After the aforesaid order passed by this Court, the Government of Assam in the General Administration Department passed the order dated 23.6.2005 dispensing with the services of the appellants observing that there was no scope for regularization of services of the appellants. In this connection, the aforesaid Office Memorandum dated 20.5.1998 was also referred to. Being aggrieved, the appellants once again approached this Court by filing the writ petition being W.P. (C) No. 5155/2005. The writ petition having been dismissed by impugned order dated 17.12.2007, the appellants have preferred this writ appeal.

6. We have heard Mr. A.S. Choudhury, learned Senior Counsel assisted by Ms. B. Devi, learned Counsel for the appellants as well as Mrs. Babita Goyal, learned State counsel representing the respondents.

7. While Mr. Choudhury, learned Counsel, upon a reference to the letters written by the Deputy Commissioner to the State Government, emphasizing the need for continuation of services of the appellants, submitted that irrespective of regularization of the services of the appellants, they should be allowed to continue in their services. On the other hand, Mrs. Goyal, learned State counsel, submitted that the appellants having been engaged only on casual basis for limited duration and their continuation in their services beyond 30.9.1998 being on the strength of the interim orders passed by this Court, they cannot claim regularization of their services and/or continuation in services.

8. We have given our anxious consideration to the submissions made by the learned Counsel for the parties. We have also gone through the materials on record. As noted above, the appellants were appointed on casual basis for limited duration and as per own averments of the appellants in the writ petition, there was no formal order extending their services beyond 30.9.1998. According to the respondents, there being ban on appointment of casual workers, the services of the appellants were dispensed with, as per the aforesaid office memorandum issued by the Government of Assam in the Finance Department. In any case, if the services of the appellants were not extended beyond 30.9.1998 irrespective of any order of termination, same automatically stood terminated with effect

from 30.9.1998. Their continuation in services on the strength of the interim orders passed by this Court is of no consequence. As has been held by the Apex Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , merely because an employee had continued under cover of an order of the Court, under "litigious employment" or had been continued beyond terms of his appointment by the State or its instrumentality, he would not be entitled to any right to be absorbed or made permanent in service merely on the strength of such continuance, if the original appointment was not made by following due process of selection, as envisaged by the relevant rules.

9. In the instant case, the appellants continued in their services beyond 30.9.1998 not on the basis of any order passed by the appropriate authority of the department, but because of the interim orders passed by this Court. Prior to that, they had worked in different temporary spells from 1994 and 1996. If a policy decision was taken to impose ban on recruitment of casual employees and/or to dispense with their services, no fault can be attributed to the respondents.

10. Mr. Choudhury, learned Counsel for the appellants emphasized on the need for sympathetic consideration of the case of the appellants in view of the long continuance of their services. As noticed above, such continuation of services beyond 30.9.1998 on the strength of the interim orders passed by this Court is of no consequence. Such "litigious employment" would not entitle the appellants to any right to be absorbed or made permanent in services

11. There is no dispute that the appellants were not appointed pursuant to any regular process of selection. They were appointed on casual basis in the exigencies of services. Needless to say that in any public employment, one will have to come through the process of selection competing with other such eligible candidates. Adherence to the-rule of equality in public employment is the basic requirement in the matter of public employment. Consistent with the claim for public employment, unless the appointment is in terms of the relevant rules after proper competition among qualified persons, same would not confer any right on the appointee. The casual employment of the appellants came to an end when it was discontinued. As observed by the Apex Court in Uma devi (supra), the High Court acting under Article 226 of the Constitution, should not ordinarily issue direction for absorption, regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional schemes.

12. The learned Single Judge considering the above aspect of the matter declined to pass any order towards regularization and/ or continuance of services of the appellants. Upon a reference to the case reported in 2006 (2) GLT 654 Jitendra Kalita and Ors. v. State of Assam and Ors., the learned Single Judge has held that the appellants do not have any legal right to claim regularization of their services.

13. In the aforesaid decision, the Full Bench of this Court was concerned with the particular office memorandum laying emphasis on regularization of Muster Roll

Workers f and Work Charge employees engaged prior to 1.4.1993. Considering various aspects of the matter, the Full Bench held that the office memorandum does not reflect a valid policy decision of the State for regularization of Muster Roll Workers/Work Charge employees and that no Muster Roll/Work Charge employee is entitled in law to seek and claim regularization of service.

14. Merely because the appellants were engaged as casual employees for temporary durations during the period from 1994 to 1998 and 1996 to 1998 and they continued in such casual employment on the basis of the interim orders passed by this Court, they cannot claim regularization of their services. Similarly, they also cannot claim continuation in their services. It is entirely up to the State Government to decide as to whether their services are required or not. At the first instance, their services were not extended beyond 30.9.1998. Thereafter, again by order dated 23.6.2005, the Government of Assam in the General Administration Department considering various aspects of the matter decided to dispense with their services. Having regard to the facts and circumstances involved, such decision of the Government cannot be said to be arbitrary and/or illegal. Consequently, there is no question of any interference with the said order. We are in full agreement with the conclusion arrived at by the learned Single Judge in the impugned order dated 17.12.2007.

15. The writ appeal is dismissed at the stage of admission hearing with liberty to the appellants to respond to the regular recruitment process, if initiated by the respondents.

16. In such an eventuality, the respondents may also consider granting relaxation of age bar and counting of past experience in accordance with the recruitment rules holding the field.

17. Writ appeal is dismissed.