

(2005) 09 GAU CK 0070

In the Gauhati High Court

Case No : Writ Petition (C) No. 107 (SH) of 2004

Bormot Rymbai

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 27-09-2005

Acts Referred:

Citation : (2006) 1 GLT 264

Hon'ble Judges : Aftab H. Saikia, J

Bench : Single Bench

Advocate : H.S. Thangkhiew, for the Appellant; N.D. Chullai, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—Heard Mr. H.S. Thankhiew, learned Counsel for the Petitioner and Mr. N.D. Chullai, learned State counsel appearing for the official Respondents.

2. The order dated 19.1.04 issued by the Respondent No. 4, Divisional Forest Officer (T), Jaintia Hills Division, Jowai (for short "the D.F.O.") reverting the Petitioner back to the position of ad hoc appointee by cancelling his regularization of service as Forest Guard, vide order dated 28.3.02 passed by the said authority is under challenge in this writ petition.

3. It is pleaded in the instant writ petition that the Petitioner was initially appointed temporarily as Forest Guard by a Range Forest Officer, Pasaduwar Range, Pasaduwar vide order dated 30.4.91 (An-nexure-1 to the writ petition) alongwith other two incumbents. On completion of his 10 years of continuous service, his case was considered by the Respondent No. 4 for regularization in terms of the Office Memorandum dated 16.9.96 (Annexure-3 to the writ petition) which is basically a scheme for regularization of service of Casual/Muster Roll Workers, though the said Memorandum/Scheme was not applicable to the Petitioner who was originally appointed temporarily as Forest Guard and accordingly alongwith other six incumbents, the Petitioner's service was regularized vide order dated 28.3.02 (Annexure-4 to this petition). After one

year of completion of service therein, he was also given annual increment vide order dated 21.4.03.

4. While the Petitioner was working in the capacity of Forest Guard on a regular basis, to his utter astonishment and surprise, the impugned order was issued by which he was reverted to the position of ad hoc appointee to which he was, at no point of time, appointed, holding him to be a RCW (Regular Casual Worker). It is also contended that the Petitioner was made to be the only victim of such reversion when the other similarly situated incumbents have still been continuing in their respective posts. He was singled out for such reversion for the reasons best known to the authority and without giving him any hearing. The entire action of the reversion is violative of the principles of natural justice.

5. For the sake of convenience, the impugned order dated 19.1.04 may be reproduced as under:

GOVERNMENT OF MEGHALAYA OFFICE OF THE DIVISIONAL FOREST OFFICER
JAINTIA HILLS DIVISION: JOWAI

In view of the directions contained in the letter of the Conservator of Forests (T), vide Memo No. MFE.4/14/Pt. dt. 22.8.03 and 5.9.03 respectively, it is found that RCW appointment vide O.O. No. 335 dt. 28.3.02 in respect of Shri B. Rymbai is irregular for the following reasons:

1. Shri B. Rymbai during the period under consideration served as adhoc appointee and not as casual worker.

2. The requisite vacancy position is not satisfied in respect of the appointment as per regulations laid down in Government Notification No. PEF (AR) 36/95/70 dt. 16.9.96.

Therefore RCW appointment in respect of B. Rymbai is cancelled with effect from 28.3.02 and he is reverted back to the position of adhoc-appointee, which status he occupied while served with Orders of RCW appointment.

Divisional Forest Officer (T) Jaintia Hills Division, Jowai.

6. From a bare perusal of the above order, it would appear that the same was passed as per direction of Conservator of Forests (T) vide his Memo No. MFE. 4/14/Pt. dt. 22.8.03 and 5.9.03. On pointed asking, Mr. Chullai, learned State counsel has failed to produce those two communications before this Court for its perusal. By the impugned order aforesaid, the Petitioner's appointment was held to be irregular basically for two reasons, firstly-the Petitioner was serving not as casual worker but as an ad hoc appointee and secondly requisite vacancy position was not satisfied as at the time of his regular appointment made in terms of the Government Notification dated 16.9.96. Due to such irregularities, the appointment of the Petitioner as RCW was cancelled with effect from 23.8.02 and he was reverted back to the position of adhoc appointee which status according to the D.F.O., was occupied by the Petitioner while serving as RCW.

7. It would be prudent to refer herein also to the initial appointment order of the Petitioner, being necessary for consideration of the question of correctness and validity of the above impugned order and accordingly the same is quoted as follows:

GOVERNMENT OF MEGHALAYA OFFICE OF THE RANGE FOREST OFFICER
PASADUAR RANGE PASADUWAR

Subject to discharge without notice and assigning any reason thereof, the following persons are hereby appointed temporarily as Forest guards in the Scale of pay of Rs. 900-15- 975-EB-20-1115-26-1375/- plus usual allowances as admissible under the existing rules with effect from the date they reported for duty, against the post of the absentees shown against each. The above appointments are purely temporary and automatically terminated at the joining of the absentees.

- 1) Shri Siangmin Pohtam-Vice Shri Silversionpohrmen Fdg. the absentee.
- 2) Shri, Hermon Syrti-Vice Shri. Mawdong Sapuh Fgd. the absentee
- 3) Shri Bormot Rymbai-Vice Shri Marliwan Laloo the D.S.C. candidate who did not join till date. Range Forest Officer Pasaduwar Range Pasaduwar. Memo No. P/2(b)/Esstt./ 91-92/13-16 Dated Pasaduwar the 30th April, 1991

8. It is amazing to find from a conjoint reading of the impugned order and the appointment order as well that when the Petitioner was initially appointed temporarily as Forest Guard, now how he can be reverted back to the status of ad hoc appointment treating him to be a RCW on the date of regularization on 28.3.02. At the time of appointment vide order dated 31.4.91 above, it clearly shows, the Petitioner was appointed temporarily as Forest Guard under the signature of Range Forest Officer who sent a copy of the said order to the Respondent No. 4, the D.F.O., referring to the said Officer's letter dated 18.4.91. In this regard also the Court has been detained from laying its hand on the communication dated 18.4.91 as the learned State counsel could not produce the same before this Court when asked for. However, after 10 years of continuous service of the Petitioner as Forest Guard, his case for regularization was considered on 28.3.02 by the Respondent No. 4 and that too in terms of the Scheme dated 16.9.96 which has no applicability to the case of the Petitioner as concededly he was neither a casual worker nor a Muster Roll Worker. It appears that the D.F.O. has effected such regularization of the Petitioner's service without application of mind inasmuch as the Scheme was made only for Casual and Muster Roll Worker but it is evident from the appointment order dated 30.4.91 itself that the Petitioner was never appointed as either casual worker or Muster Roll Worker.

9. Be that as it may, while issuing the impugned order the authority concerned, abruptly and by its own sweet will and whims reverted the Petitioner to the position of ad-hoc appointee holding him as RCW at the time of regularization on

28.3.02. No reason whatsoever has been placed on records to show what necessitated the State authorities, particularly Respondent No. 4 to make the Petitioner as RCW when the regularized him as Forest Guard as reflected in the impugned order.

10. Significantly, by dint of the impugned order, the Petitioner was reverted to the position of ad hoc appointee without showing any valid or cogent reasons. The records do not reveal that the Petitioner was ever appointed as ad hoc appointee. A reversion of an incumbent in accordance with law is permissible only to the substantive post which was in accordance with law is permissible only to the substantive post which was originally held by him but in the case in hand the Petitioner was never appointed, as already noticed hereinabove, as ad hoc appointee to which position he was reverted back. Any unilateral reversion, as in the instant case, of an incumbent serving under the Government from the post in which he was legitimately regularized and wherein he was continuously working for more than 10 years, without following the principles of natural justice would be illegal and invalid.

11. The learned State counsel also could not explain and satisfy the Court as to why and under what capacity the Petitioner was reverted back to the status of ad hoc appointee. His only case is that firstly, initial appointment of the Petitioner as Forest Guard by the Ranger was illegal as he was not a competent authority to issue such appointment order. Secondly, the Respondent No. 4 while regularizing the service of the Petitioner erroneously accepted the Scheme which was not at all applicable to the case of the Petitioner. From the argument of the learned State counsel and on perusal of the counter filed by the State- Respondents, it would appear that the authority has yet to take a definite stand to put the Petitioner in his right post because the Government itself is not sure which post is being held by the Petitioner since 1991 till date. The Government itself is confused saying at one stage that he was holding a RCW, it the fact that is not borne out of the records and on the other hand, it has now reverted the Petitioner to the status of ad-hoc appointee. In fact, there is no record to show the clear status of the present Petitioner either at the time of appointment or regularization of his service. That being the position, this Court opines that the impugned order of reversion itself suffers from illegality and irregularity on the following two counts:

1. Once the Petitioner's service was being regularized vide order dated 28.3.02 on completion of more than 10 years of continuous service, he cannot be reverted to an imaginary post of ad-hoc appointee without affording him of reasonable opportunity of hearing.

2. The impugned reversion itself has no leg to stand in view of the fact that the Petitioner was never reverted to the original post held by him for the last 10 years.

12. In view of the same, the impugned order deserves interference by this Court

and accordingly the same is set aside and quashed. Interim order passed on 16.4.04 is hereby made absolute.

13. In the result, the writ petition succeeds and stands allowed. However, considering the facts and circumstances of the case, there shall be no order as to costs.