
(2008) 06 GAU CK 0013
In the Gauhati High Court
Case No : Writ Petition (C) No. 6516 of 1999

Dalimi Taye (Patir) and Others

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 13-06-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2009) 2 GLR 552

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : B. Bhuyan, for the Appellant; U.K. Nair, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The Petitioners, numbering 3 (three), are aggrieved by the order of termination of their services. The order was passed on 17.12.1999, but they are continuing in their services on the strength of the interim order massed by this Court on 22.12.1999.

2. There is no dispute that the Petitioners were appointed as Grade-IV employees de hors the recruitment rules. The orders of their appointment reflect the same.

3. By order dated 29.12.1998, the Petitioner Nos. 1 and 2 were appointed as Seasonal Field Khalasi with effect from 2.1.1999. Thereafter, the Petitioner No. 1 was appointed as Film Developer by order dated 7.5.1999. Similarly, the Petitioner No. 3 was also appointed as Grade-IV employee with effect from 19.7.1999 against a transfer vacancy. The service of the Petitioner No. 1 as Film Developer was dispensed with and thereafter, she was re-appointed as Zinc Corrector. By yet another order dated 6.11.1999, the Petitioner No. 2 was temporarily appointed as Helper.

4. All the aforesaid appointments of the Petitioners were temporary and de hors the recruitment rules. Their services were terminated by the impugned Annexure-"B" series orders dated 17.12.1999. Being aggrieved, they filed the

writ petition and presently, are continuing in their services on the strength of the interim order passed by this Court.

5. From the aforesaid fact, it is seen that the Petitioners were so appointed purely on temporary basis for a limited duration. They did not even continue in their services for one year at the time of termination of their services but, by now, have rendered 9/10 years of service on the strength of the interim order passed by this Court.

6. The Respondents have filed their counter affidavit denying the contentions raised in the writ petition. Their stand is that the Petitioners were illegally appointed de hors the recruitment rules. On enquiry, it was found by the Government that the appointments were made by the then Director of Land Records Shri J.C. Pegu without following the procedure and insisting on prescribed qualification. Having noticed the same, the Government by its letter dated 7.9.1999 issued direction for termination of such illegal appointments. Thereafter, the impugned order was issued terminating the services of the Petitioners.

7. In the affidavit-in-reply, the Petitioners have not denied the stand of the Respondents that they were appointed illegally. What they have contended is that since they have been continuing in their services for all these years, their services are required to be treated as regular.

8. I have heard Ms. B. Bhuyan, learned Counsel for the Petitioners as well as Mr. U.K. Nair, learned Standing Counsel, Directorate of Land Records.

9. While Ms. Bhuyan, learned Counsel for the Petitioner has placed reliance on the decision of this Court dated 28.2.2006 in WP(C) No. 6458/1999 (Rajib Kakati v. State of Assam and Ors.), Mr. Nair, learned Counsel appearing for the Respondents has placed reliance on the decision dated 10.2.2005 passed in WP(C) No. 6515/1999 (Ms. Ratnali Boro v. State of Assam and Ors.).

10. Both the aforesaid decisions pertain to the same department concerning termination of services of the Petitioners involved therein, In Rajib Kakati (supra), the order of termination was set aside by this Court on the ground that there was violation of principles of natural justice. The court noticed that the Petitioners in the said writ petition were holding Grade-III and II posts and they were appointed pursuant to advertisement and selection. It was in that context the Court found fault with the termination of their service.

11. Unlike the aforesaid case, in the instant case, the Petitioners were appointed de hors the recruitment rules for temporary duration. In Ratnali Boro (supra), the Petitioners were aggrieved by same nature of termination orders impugned in this writ petition. They were also the appointees like that of the Petitioners. In that case also, they were appointed de hors the recruitment rules. As in the instant case, in that case also, the Petitioners were continuing in their services on the strength of the interim order passed by this Court. Having regard to the

said fact situation, this Court declined to interfere with the orders of termination. However, it was provided that in the event of filling up the posts, the Respondents should consider the case of the Petitioners along with other similarly situated persons. It was further provided that in the event of finding that the Petitioners are over-aged, the Respondents would condone the age bar.

12. The aforesaid decision in Ratnali Boro (supra) squarely covers this case. The emphasis put by the learned Counsel for the Petitioners on the long continuance of service of the Petitioners, cannot be accepted. In the normal course, the Petitioners continued in their services barely for one year and even less than that, but they have been continuing in their services on the strength of the interim order passed by this Court. As has been held by the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, such "litigious employment" is of no consequence. The Petitioners did not continue in their services on the strength of merit of their case, but they have continued in their services on the strength of the interim order passed by this Court. In the said case, it has been held that wide powers under Article 226 of the Constitution of India are not intended to be used for the purpose of perpetuating the illegality, irregularity or impropriety.

13. As regards the plea of violation of the principles of natural justice, same will have to be understood in the background of the fact situation involved in a case. When the very appointment of the Petitioners itself is in question, as has been held by the Apex Court in A. A. Umarani Vs. Registrar, Cooperative Societies and Others, giving opportunity of hearing to the Petitioners would be a futile exercise. As has been held by the Apex Court in Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others, temporary services terminated without notice would not attract Article 311 of the Constitution of India. In the instant case, the Petitioners were appointed illegally by the then Director of Land Records.

14. Learned Counsel for the Petitioners also emphasized on, the humanitarian aspect of the matter so as to contend that the matter needs sympathetic consideration. As has been held by the Apex Court in Ahmedabad Municipal Corporation Vs. Virendra Kumar Jayantibhai Patel, the sympathy or equality is out of place especially, where the selection is governed by statutory rules. If the plea of the Petitioner is to be accepted, it will be open for the department to favour any person or to appoint any person without following the procedure provided in the recruitment rules, which would also lead to nepotism and arbitrariness.

15. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly, it is dismissed. The interim order passed on 22.12.1999 stands vacated. However, it is provided that in the event, of initiating any regular process of selection as per the recruitment rules, it will be open for the Petitioners to sit in the said selection and as has been provided in Ratnali Boro (supra), the Respondents shall consider the condonation of the age bar of the

Petitioners if the same is required to be done.

16. Writ petition is dismissed leaving the parties to bear their own costs.