
(2014) 08 GAU CK 0052
In the Gauhati High Court
Case No : Writ Petition (C) No. 597 of 2009

Dijen Roy and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Citation : (2015) 1 GLT 325

Hon'ble Judges : Tinlianthang Vaiphei, J.

Bench : Single Bench

Advocate : J.I. Borbhuiya, F. Begum, L. Mohan, S. Roy and A. Ahmed, for the Appellant; D. Saikia, for the Respondent

Final Decision : Allowed

Judgement

Tinlianthang Vaiphei, J.—This writ petition is filed by 118 petitioners, who are engaged as Superior Field Workers (SFW) and Field Workers (FW) under the Malaria Action Programme of the Health Department, Government of Assam, seeking the intervention of this Court for directing the State-respondents to frame a scheme for their future employment and to treat them as reserved force for future employment till such scheme is framed. The facts are hardly in dispute. Following the outbreak of Malaria with high mortality rate in the year 1994, the State-respondents formulated the operational manual for Malaria Action Programme ("the Programme" for short) whereunder some posts of Seasonal Superior Field Worker (SFW)/Field Workers (FW) were created under the Gosaigaon Block PHC for DDT Spray Operation during the year 2008 with a daily wages of Rs. 54/- and VDA Rs. 7.20 only for SFW and Rs. 50/- and VDA Rs. 7.20/- for FW. By the advertisement dated 1.2.2008 issued by the Office of the Sub-Divisional Medical and Health Officer, Gosaigaon, applications were invited from intending male candidates for the said two categories of posts by fixing minimum educational qualifications and age bar. The petitioners applied for and were engaged for the said categories of post on different dates so much so that they have been rendering their services for the period ranging from 3 years to 19

years as seasonal workers. They are engaged twice in a year for works which are malaria oriented with a working period of 45 days in two rounds in each season i.e. summer and winter. According to the petitioners, they have in the process gained practical experience in the range up to the upper limit of 19 years. The statement showing the names of the petitioners with their respective experiences in the field and duration of their experiences are as follows:

2. The grievance of the petitioners is that the State-respondents have utilized their services in seasonally for so many years, but they do not think it fit to provide them with regular employment: no service rules have been framed till now. On year to year basis, their appointments are made after conducting interviews, but no weightage has been given to their experience gained by them while working as such for years and years altogether. Since their engagements are made on the basis of year wise selection, there is, in the absence of service rules, every possibility of their being dropped for future employment. Some groups of FWs and SFWs had filed a bunch of writ petitions before this Court in WP(C) No. 2440 of 2007 and others to give due weightage by formulating objective norms of uniform to the persons but the directions of this Court were never fully complied with. The representations filed by the petitioners before the respondent authority from time to time to treat them as reserved category did not yield any result. On the other hand, the respondents tried to adopt the policy of pick and choose to favour some of their men at the time of selection thereby opening the possibility of dropping the petitioners from future employment: the sword of Democles is hanging over their heads everyday. Frustrated by the refusal to frame scheme for their absorption/regularization or treat them as reserved force for future employment in the post of SWF and FW, they are constrained to file this writ petition for appropriate relief.

3. No affidavit-in-opposition is filed by the State-respondents. However, Mr. D. Saikia, the learned Additional Advocate General, Assam, has made elaborate submissions on behalf of the State-respondents to justify their inability to treat the petitioners as reserved force or to formulate a scheme for their absorption/regularization, which are duly taken note. It is the contention of Mr. J.I. Borbhuyia, the learned counsel for the petitioners, that the petitioners have been treated like bonded labours and were engaged on seasonal basis every year without security of tenure. According to the learned counsel, the practice of engaging seasonal workers with artificial breaks from time to time has been deprecated by the Apex Court in various decisions in the past, but the respondent authorities are continuing to indulge in such unfair practices till now. The learned counsel, therefore, submits that a model employer like the State-respondents is not expected to resort to the practice of small time traders. He thus strenuously urges this Court to issue appropriate directions upon the respondent authorities to frame a scheme for their absorption or treat the petitioners as reserved force as long as the Programme continues, which is not likely to end in the near future and assure their future employment without their having undergo the ordeal of facing selection process every year or so. To

buttress his contentions, the learned counsel relies on the decision of the Apex Court in *Md. Abdul Kadir and Another Vs. Director General of Police, Assam and Others*, .

4. The fact that the Malaria Action Programme under which the petitioners have been engaged on seasonal basis is still continuing is not disputed by the learned Additional Advocate General, Assam. It is also not disputed by the learned AAG that the petitioners have been engaged as SWF and WF for sometime now under the Malaria Action Programme. There is also no dispute at the bar that the petitioners were appointed after duly advertising the posts. The law in this behalf is by now well-settled. It is true that the continuation of a programme/project from time to time does not entitle the staff employed in such programme/project to claim regularization; their service comes to an end as and when such programme or project is completed or discontinued. However, it is also equally settled that so long as the programme/project continues, the staff appointed against such programme/project should be allowed to continue, and they should not be subjected to artificial break. The observations of the Apex Court in *Mohd. Abdul Kadir (supra)* are instructive, and are reproduced below:

"14. The fact that the scheme had been in operation for some decades or that the employee concerned has continued on ad hoc basis for one or two decades would not entitle the employee to seek permanency or regularization. Even if any posts are sanctioned with reference to the Scheme, such sanction is of ad hoc or temporary posts co-terminus with the Scheme and not of permanent posts.

15. On completion of the project or discontinuance of the scheme, those who were engaged with reference to or in connection with such project or scheme cannot claim any right to continue in service, nor seek regularization in some other project or service. [*Bhagwan Dass v. State of Haryana, Delhi Development Horticulture Employees' Union v. Delhi Admn., Hindustan Steel Works Construction Ltd. v. Employees' Union, U.P. Land Development Corpn. V. Amar Singh, Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra, State of Karnataka v. Uma Devi (3), Indian council of Medical Research v. K. Rajyalakshmi and Lal Mohammad v. Indian Railway Construction Co. Ltd.*]. In view of this settled position, the appellants will not be entitled to regularization.

* * * *

17. When the ad hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. Ad hoc appointments under schemes are normally co-terminus with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the length of their ad hoc service or the scheme, they will not be entitled to regularization nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in

view of the continuing Scheme, the ex-servicemen employed after undergoing the selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments.

18. We are therefore of the view that the learned Single Judge was justified in observing that the process of termination and re-appointment every year should be avoided and the appellants should be continued as long as the Scheme continues, but purely on ad hoc and temporary basis, co-terminus with the Scheme. The Circular dated 17.3.1995 directing artificial breaks by annual terminations followed by fresh appointment, being contrary to the PIF Additional Scheme and contrary to the principles of service jurisprudence, is liable to be quashed."

5. In my opinion, the observations extracted above are applicable to this case. So long as the Malaria Action Programme continues, the petitioners should be allowed to continue subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attaining normal age of retirement, if there any retirement age. It is imperative that the petitioners are not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their engagement is termed as seasonal. They shall not also be subjected to artificial breaks, even though their engagement is seasonal in nature. For what has been said in the foregoing, this writ petition succeeds. The respondents are, therefore, directed to treat the petitioners as reserved force for engagement as Seasonal Superior Field Workers and Field Workers and continue to engage them until the Malaria Action Programme comes to an end (subject to the conditions referred to in the foregoing paragraph 6). Similarly situated persons who do not approach this Court shall also be treated as reserved force entitled to similar treatment as in the case of the petitioners herein. This order shall not come in the way of these workers being subjected to periodical medical examination or service review to assess their continued fitness and suitability. It is made clear that the petitioners need not be treated as on par with regular employees of the State-respondents.