
(2000) 09 GAU CK 0046
In the Gauhati High Court
Case No : Writ Appeal No. 154 of 1996

Director General of Police and Others	APPELLANT
Vs	
Abdul Kadir and Another	RESPONDENT

Date of Decision : 01-09-2000

Acts Referred:

Citation : (2000) 3 GLT 271

Hon'ble Judges : Brijesh Kumar, C.J;P.G. Agarwal, J

Bench : Division Bench

Advocate : G.K. Bhattacharyya, G.N. Das and B. Chakraborty, for the Appellant;
A.K. Phookan, D. Choudhury and A.K. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

Brijesh Kumar, C.J.—The three Appellants in the present appeal are the Director General of Police, Assam, inspector General of Police, (Border), Assam and Superintendent of Police (Border), Assam, Guwahati.

2. By means of a common judgment dated 29.2.96 Civil Rule No. 2065/95 preferred by Md. Abdul Kadir and Civil Rule No. 1698/95 preferred by Dharmeswar Baishya were disposed of by the learned Single Judge. The said judgment dated 29.2.96 has been impugned in this appeal impleading the two Petitioners as Respondents. By way of reference, we feel it necessary to mention that the appeal was decided earlier by this Bench by order dated 17.3.99 on the basis of some preliminary objections raised on behalf of the Respondents. However, it has been considered by the Hon'ble Supreme Court, on appeal, that the case may be decided on merits. Hence, the matter has been placed before us for decision.

3. Heard Shri G.K. Bhattacharyya for the Appellants and Shri A.K. Phookan, learned Counsel appearing for the Respondents.

4. The main grievance which has been raised on behalf of the Appellants is that the learned Single Judge wrongly held that the Respondents should be entitled to

get the benefit of Memorandum dated 14.6.84 and further directing that the Respondent No. 1 would continue till the scheme would be continued by the Government of India and that Respondent No. 2 would be taken back in service immediately. According to the Appellants, the office memorandum dated 14.6.84 was for the personnel in the Assam Special Peace Keeping Force and it had nothing to do with P.I.F. Scheme, under which actually the Respondents were employed. Therefore, the Respondents could not get the benefit of office memorandum dated 14.6.84.

5. It is further submitted that the two schemes, namely, the Assam Special Peace Keeping Force and the Prevention of Infiltration of Foreigners (P.I.F.) Scheme, are different and the engagement under the two schemes are made on different terms and conditions. The ex-army personnel engaged under the aforesaid two schemes cannot be intermingled nor there is any kind of overlapping.

6. The Contentions on behalf of the Respondents however, is that they could not be engaged on contract basis and those below the age of 50 years, they were entitled for benefit of regular employment and not service on contract on year to year basis or otherwise. In support of the contention, according to them, reliance was rightly placed by the learned Single Judge on Annexure-G to Civil Rule No. 2065 of 1995.

7. Before coming to the findings recorded by the learned Single Judge on the merits of the matter and indicating the reasons for holding that the Petitioners/ Respondents would be entitled for the benefit under the scheme of 1984, it would be appropriate to consider the two circulars/memoranda under which employment of ex-servicemen was envisaged. We may first take up the Memorandum of 1984.

8. The Appellants have filed a copy of the letter No. HMA.220/83/87, dated Dispur, the 27th October, 1983, addressed to the Director General and Inspector General of Police, Assam, Guwahati, on the subject of "Raising of 4 Battalions of Special Peace Keeping Force". It has a reference to an earlier letter dated 4.6.83. The letter dated 27.10.83 conveys sanction of the Governor for raising of four Battalions of Special Peace Keeping Force upto 29.2.84 in the usual scales of pay plus other allowances. The limit of expenditure in the current financial year was indicated and it was debitable to the head "Relief operation in connection with disturbances on Foreigners issue". The staffing pattern and strength was also indicated in respect of each Battalion. A copy of this letter is marked as Annexure-II to the Memorandum of Appeal.

9. Annexure-III to the Memorandum of appeal is the copy of the Office Memorandum No. HMA.220/83/Pt./42, dated 14th June, 1984, issued by the Government of Assam, Home (A) Department, with the title, "Enrolment of Ex-Service Personnel in Assam Special Peace Keeping Force". It indicated that ex-service personnel who are 50 years or below in age may be appointed on regular basis, for which there may be relaxation in the recruitment rules. Those who had

crossed 50 years of age, may be recruited on contract basis initially for a period of three years, renewable for a further period after watching their performance. Those appointed on regular basis would be entitled to get pension under the State Government's Rules for the period of service rendered under the State Government. The manner in which the pay was to be fixed in respect of regular appointees was also indicated. Other benefits available to the State Government employees were also made admissible to them and they were to get their Army pension in addition to the emoluments etc. payable by the State Government. But all these benefits were not allowed to those who got their employment on contract basis. The method of fixation of their emoluments was also different as compared to those who were appointed on regular basis.

10. We may now come to the other category of employment as per the scheme of Government of India issued on 3rd June, 1987/5th June, 1987. A copy of the said letter has been annexed as Annexure-I to the Memorandum of Appeal. This Memorandum is No. VI. 17019/6/81?G and Q, Government of India/Bharat Sarkar, Ministry of Home Affairs/Grih Mantralaya, New Delhi. It is addressed to the Secretary, (Home-Police) Department, Government of Assam, Dispur, on the subject of "Strengthening of the Assam governmental machinery for the purpose of detection and deportation of foreigners-Additional posts under the PIF Scheme." By means of this letter, sanction of the President was conveyed for reimbursement of the cost of pay and allowances of the personnel of Additional posts under the PIF scheme for Assam (i.e., the Prevention of Infiltration of Foreigners Scheme). In all, 1280 posts were sanctioned in different categories. One of the condition was that the reimbursement of the cost of pay and allowances of such personnel would be subject to the condition that all the posts were filled up by ex-servicemen only. The sanction was for a period of two years, subject to review of the working of the PIF scheme. The reimbursement was to be made to the State of Assam by the Government of India, Ministry of Home Affairs on production of requisite audit certificate of scrutiny.

11. On behalf of the Appellants it is indicated that the Prevention of Infiltration of Foreigners Scheme (PIF scheme) was renamed as such after creation of Bangladesh in place of Prevention of Infiltration of Pakistanis scheme (PIP scheme) and the scheme is in existence since 1962.

12. A perusal of the three documents, namely, Annexure-I, dated 3rd June, 1987/5th June, 1987, copy of which has been filed in the petitions as well as with the Memorandum of Appeal and Annexure-II, dated 4th June, as well as Annexure-DI, dated 14th June, would clearly indicate that by means of Annexure-I, the Government of India, Ministry of Home Affairs, had conveyed to the Government of Assam, sanction by the President for reimbursement of the cost of pay and allowances of the personnel for manning the additional posts under PIF scheme for Assam. The said letter also indicates that the scheme was for the purpose of detection and deportation of foreigners. The expenditure was to be made initially by the State of Assam to be reimbursed by the Central

Government. In all, 1280 posts were sanctioned in different categories of employees. The posts were to be filled up by ex-servicemen. The sanction was for a period of two years subject to review of the functioning of the PIF scheme.

13. So far the raising of four Battalions by means of Memorandum of Government of Assam, dated October 27, 1983 is concerned, the sanction was given by the Governor of Assam for raising of Special Peace Keeping Force. Four such Battalions were sanctioned. The expenditure was to be borne by the State of Assam under the given head relating to "Relief Operation in connection with disturbances on Foreigners issue". Annexure-III, dated 14th June, 1984, is in connection with enrolment of ex-servicemen personnel in Assam Special Peace Keeping Force. It details the scheme regarding emoluments of such personnel appointed on regular or on contract basis and their entitlement to other benefits, etc. A perusal of the two sets of documents, namely, Annexure-I to the Memorandum of Appeal, dated 3rd June, 1987/5th June, 1987, conveying sanction by the President of India for reimbursement of the cost of pay and allowances etc. of the persons recruited under the PIF scheme (Prevention of Infiltration of Foreigners scheme) is different from the for Battalions raised by means of Annexure-II, dated October 27, 1983, and Annexure-III, dated June 14, 1984, to the Memorandum of Appeal, known as Assam Special Peace Keeping Force, the expenditure of which was debitable to the head, "Relief Operation in connection with disturbances on Foreigners issue". The difference is obvious and quite clear on the face of the two sets of documents. The purpose of the two schemes also seems to be different, as also submitted by the learned Counsel for the Appellants. The duties involved under the two schemes also seems to be different in nature. One related to detection and deportation of infiltrators into India and the other scheme related to maintenance of peace where disturbances were caused due to foreigners issue. Under the PIF scheme, the costs of the additional strength was to be borne by the Government of India and the sanction was only for a period of two years, which was subject to review of the functioning of the PIF scheme. Therefore, perhaps, the question of regular employment did not arise in relation to persons employed for strengthening the said scheme by adding 1280 posts. The continuance of such posts for the additional strength was dependant upon sanction of the Government of India for reimbursement of the cost of their salary and allowances, etc., whereas, the Assam Special Peace Keeping Force seems to be entirely a scheme under the State Government of Assam, cost of which was also to be borne by the State Government, which is debitable to the head, "Relief Operation in connection with disturbances on Foreigners issue". The above factors, which are borne out from the documents referred to, clearly indicate that the two schemes are different in nature, as well as, from the point of view of bearing the expenditure of the persons manning the two schemes namely, the Assam Special Peace Keeping Force and the creation of additional posts for strengthening the PIF scheme (i.e., Prevention of Infiltration of Foreigners scheme), cost of which was to be reimbursed by the Government of India, as sanctioned for a period of two years in the year 1987, continuance of

which was dependant upon the review of the working of the PIF scheme by the Central Government.

14. A perusal of the petitions filed by the Petitioners shows that the two schemes have not been differentiated and it is admitted by the Petitioners that their services were taken on contract basis under the PIF scheme. They, however, claim benefit of the Assam Special Peace Keeping Force scheme promulgated in the year 1983-84 by the State of Assam. The benefit of regular employment of those who were below 50 years of age was available under the Assam Special Peace Keeping Force, promulgated in 1983-84. On whose services were taken on contract basis under the PIF scheme may have to confine his claim to the terms of the scheme and may not be entitled to claim benefit of Anr. scheme of the State Government.

15. A perusal of the order passed by the learned Single Judge shows that the terms of the two schemes have been intermingled. Initially it deals with conditions of recruitment and service as envisaged under the Memorandum of the Assam Government, dated 14.6.84, relating to Assam Special Peace Keeping Force providing for regular employment of ex-servicemen below the age of 50 years and other terms. Immediately, thereafter, the letter of the Ministry of Home Affairs, Government of India, dated 3rd June, 1987/5th June, 1987, is dealt with, by which 1280 additional posts were sanctioned by the President for the purposes of reimbursement of cost of salary and allowances of the additional posts under the PIF scheme, it is, though, mentioned that it was for the purpose of strengthening of the Assam Governmental machinery for the purpose of detection and deportation of foreigners, but the difference between the two schemes, namely, the PIF scheme and the Assam Special Peace Keeping Force, does not seem to have been noticed. Merely because the PIF scheme is being continued, it does not mean that it would be governed by the terms and conditions of recruitment and emoluments, etc., as provided for Assam Special Peace Keeping Force. The fact that under both the schemes services of ex-servicemen are to be utilized, in no manner leads to the conclusion that the two schemes are the same, or the terms and conditions of one scheme can be applied to the other. There is no occasion to hold that an ex-servicemen who is below 50 years of age, engaged in PIF scheme (namely, Prevention of Infiltration of Foreigners scheme) against the posts sanctioned by the Government of India on the basis of reimbursement of cost of pay and allowances for a period of two years, was to be appointed on regular basis in terms of the scheme of the State Government, namely, the Assam Special Peace Keeping Force Scheme, 1983-84. The object under the PIF scheme seems to be to detect the cases foreigners staying in India and to deport them, whereas, in the other scheme, namely, the Assam Special Peace Keeping Force, the object of engaging persons under the schemes was to keep or maintain peace in areas or places where there may be disturbances on account of foreigners issue, or things of the like nature. A member of the Assam Special Peace Keeping Force may not be authorised to detect or deport a foreign national, which duty seems to have been cast upon a

person working under the PIF scheme. By means of Annexure- I, dated 3rd June, 1987/5th June, 1987, 1280 additional posts were sanctioned by the President of India for strengthening of the PIF scheme for Assam, reliance upon which has been placed by the Petitioners, only for a period of two years. Hence, obviously, there was no occasion to apply the terms and conditions of regular employment on such persons appointed under the scheme and utilization of their services on contract basis seems to be quite obvious.

16. We also find that the learned Single Judge has made a reference to a document filed as Annexure-G in Civil Rule No. 2065 of 1995 (Md. Abdul Kadir v. State of Assam and Ors.), to infer that the terms and conditions of 1984 scheme of the State of Assam relating to Assam Special Peace Keeping Force may be applicable to the persons engaged under the PIF scheme. A perusal of the said document shows that it has been issued from the office of the Director General of Police, Assam on 13th July, 1993, addressed to the Commandants of the four Battalions in regard to enrolment of ex-service personnel in Assam Special Peace Keeping Force and in that connection reference of the letter of the State Government, Home (A) Department, O.M. No. HMA/220/83/Pt./42 dated 14.6.84 has been made. It is not understandable in what manner it shows or leads to the inference that the engagement of ex-servicemen under the PIF scheme would be on the basis of the Memorandum of the State Government dated 14.6.84. The document, Annexure-G, relates to recruitment in the Assam Special Peace Keeping Force, to which undoubtedly, the Memorandum dated 14.6.84 would be applicable. Hence, in our view, there was no occasion to place reliance upon the document Annexure-G, to arrive at a conclusion that the terms and conditions of those engaged in PIF scheme would be governed by the Memorandum of the State Government, dated 14.6.84. The Petitioners are in no doubt, as would also appear from the averments made in their petitions, that they were engaged as against 1280 posts sanctioned by the Central Government on reimbursement basis by letter dated 3rd June, 1987/5th June, 1987, under the PIF scheme. That being the position, it would not be open to them to seek benefit of terms and conditions and other benefits envisaged in the scheme of the State Government meant for the Assam Special Peace Keeping Force. They cannot claim appointment under PIF scheme and at the same time, claim the benefits and terms and conditions of service under Anr. scheme, namely, the Assam Special Peace Keeping Force scheme. No overlapping of the two schemes at any stages is decipherable from any document or otherwise. Hence, the Appellants committed no mistake in treating the employment of the Respondents purely on contractual basis under the PIF scheme and in not making the benefits of the scheme under the Memoranda of the State Government, dated 4.6.83 and 14.6.84 for the Assam Special Peace Keeping Force admissible to the Petitioners/Respondents.

17. In view of the discussions held above, in our view, the appeal is liable to be allowed.

18. In the result, the appeal is allowed and the common order of the learned

Single Judge, dated 29.2.96, passed in Civil Rule No. 2065 of 1995 and Civil Rule No. 1698 of 1995, is set aside and the Civil Rules are dismissed. There would, however, be no order as to costs.