

(2002) 05 GAU CK 0048
In the Gauhati High Court
Case No : WP (C) No. 284 (AP) of 2001

Dwrick Kamduk and Others	Vs	APPELLANT
State of Arunachal Pradesh		RESPONDENT

Date of Decision : 31-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 3 GLR 609

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : B.D. Goswami and N.N.B. Choudhury, for the Appellant; G. Deka, G.A., for the Respondent

Final Decision : Dismissed

Judgement

N. Surjamani Singh, J.—In this writ petition under Article 226 of the Constitution of India, the petitioners, namely, Sri Dwrick Kamduk, Sri Tapon Mibang and Sri Gammo Kamki have questioned the validity of the impugned order of reversion dated 5.9.1997 (issued on 28.9.1997) as in Annexure-III to the writ petition, by contending, inter alia, that they were appointed as Assistant Engineer (C) on ad hoc basis under the Respondent-Department by order dated 24.6.1997 as in Annexure-II to the writ petition. Three other persons appointed to the post of Assistant Engineer (C) on officiating basis along with the petitioners have been allowed to continue in their respective-posts without any disturbance, but the petitioners have been reverted to the post of Junior Engineer (C) by the impugned order dated 5.9.1997 (28.9.1997). Mr. Goswami, learned counsel for the petitioners, vehemently argued that the action of the respondents is discriminatory and not in accordance with law. This court while issuing rule passed an interim order staying the impugned order dated 5.9.1997 on 10.9.1997.

2. A simple question arises in this case as to whether the writ petitioners have any legal right to continue in the posts of Assistant Engineer (C). According to

me they have no indefeasible right to continue in the post of Assistant Engineer (C) or to claim for regularisation of their services in the said posts for the following reasons :

(i) Services of the writ petitioners as Junior Engineer (C) were regularised by order dated 9.10.1996 as in Annexure-I to the writ petitioner with effect from 16.9.1994, 24.11.1994 and 16.11.1994 respectively. In terms of the related Recruitment Rules, these petitioners require at least minimum 8 years of regular service and experience in case of Engineering Graduate and 10 years of regular service in case of Engineering Diploma Holder which the writ petitioners do not possess at the relevant time. Apart from that, their term of appointment on officiating basis as seen from Annexure-II speaks that their appointment on officiating basis may be terminated or reverted to their original posts at any time without assigning any reason thereof. For better appreciation, their original officiating appointment to the posts of Assistant Engineer (Civil) is quoted below :

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4. Sri Durick Kamduk New Promotee As AK (Civil) Civil Sub-Divn, Pasighat vice Sri Lobsang Yesh, AE (C) repatriated.

5. Sri Tapon Mibang New Promotee As AE (Civil), Civil Sub-Divn. Along vice Sri Gamy Padu AE(C) repatriated

6. Sri Gammo Kamkl New Promotee As AE (Civil), Civil Sub Divn. Bomdlla vice Shri Pura Tupe, AE (C) repatriated.

This arrangement is purely in temporary basis and will not bestow on them any claim for regular appointment as AE (C) unless their services are regularised by a regular DPC in conformity with the provision of Recruitment Rules.

This officiating arrangement may be terminated/reverted to their original post at any time without assigning any reason thereof.

The other terms and conditions which are not specified herein will be governed by terms and conditions and other relevant Rules and orders of the Government in force.

Sd/- JM Tangu Commissioner (Power) Govt. of Arunachal Pradesh, Itanagar"

The law is well settled that ad hoc or officiating appointees appointed de hors the Service Rules are not eligible for regularisation (see AIR 1966 SC 2775 . It is also well settled that employees so appointed, i.e., de hors the Service Rule cannot claim for regularisation or absorption as of right and no public interest is involved in saving their appointment. In this regard, I may refer to a decision of the Apex Court in State of State of U.P. and others Vs. U.P. State Law Officers Association and others, In view of the aforesaid position of law, the petitioners have no enforceable legal right.

3. The submission of the learned counsel for the petitioners and the contention

made by the petitioners that similarly situated persons have been retained in service though they were also appointed de hors the Rules, as discussed above, have no legal force because of the fact that illegal and unwarranted order issued by the authority does not entitle this court to compel the authority to issue another illegal order (see AIR 1995 SC 701).

4. Be that as it may, this court while exercising its jurisdiction under Article 226 of the Constitution is not supposed to compel the authority to do and repeat an illegal act which the authority might have done earlier. The authority should bear in mind that ad-hoc or officiating appointees who got appointment de-hors the Rules have no indefeasible right to hold such posts for long time. This court need not go more into depth as suffice is made with the above observation to dismiss the writ petition.

5. In the result, the writ petition stands dismissed. Earlier interim order dated 10.9.1997 is hereby vacated. It is however made clear that all vacant posts of Assistant Engineer (Civil) under the Respondent-Department be filled up on regular basis by the Respondent-authority in accordance with the related Service Rules within a period of three months from the date of receipt of a certified copy of this order. I make no order as to costs.