

(1998) 08 GAU CK 0031
In the Gauhati High Court
Case No : Civil Rule No. 184 (SH) of 1997

Harkanta Das

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 28-08-1998

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1998) 3 GLT 437

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : C. Goswami, for the Appellant; K.S. Kynjing, for the Respondent

Judgement

N. Surjamani Singh, J.—The office order dated 28.10.1997 bearing No. EGH/Estt/18/87/Pt-I 1/203- A terminating the Petitioner from his services as Bearer of Circuit House, Williamnagar, with effect from 28.10.97 afternoon, is the subject matter under challenge in this writ petition.

2. According to Mr. Goswami , the learned Counsel for the Petitioner, the Petitioner hailed from a very poor family and abandoned his studies when he was reading in Class VII in search of service or any work so as to earn his livelihood and luckily, in the last part of the year 1988, he got employment as Grade IV casual employee in the office of the Deputy Commissioner, the third Respondent herein, for a period from 16.12.1988 to 28.2.1989 in the fixed pay of Rs. 450/- p.m. initially and thereafter, he had been engaged for the said services after expiry of the initial period of appointment under various appointment orders of 25.4.89, 24.8.89, 9.11.89 and 20.12.89 in the same post and in the same scale, and , after completion of one year's satisfactory service as casual worker, the Respondent No. 3 appointed the Petitioner as Peon vide order dated 25.1.1990 with effect from 29.1.1990 in the pay scale of Rs. 820-1175/p.m. (Annexure F). He was once terminated on 6.4.1990 from service but on the same date, itself, he was further appointed by issuing Anr. order for a period of 3 months in the same post as Mali (Annexure G and H) and since 6.4.1990, the services of the

Petitioner had been utilised by the Respondent No. 3 under various orders issued from time to time and he continued upto 11.7.95 as casual employee or sometimes engaged in leave vacancy and sometimes he had been engaged by the Respondent No. 3 as his personal Peon as seen in the document marked Annexure I, J, K, L, M, N and O respectively. The Petitioner also appeared for Interview/Viva Voice test conducted by the District Selection Committee, Williamnagar, for regularisation of his services or appointment to the Grade IV post and he was selected and, thereafter, his case was recommended for regularisation under a related letter dated 11.7.95 (Annexure P) and accordingly, he was appointed by the Respondent No. 3. to the post of Bearer of Circuit House Vide office letter/order dated 11.7.95 in the scale of pay of Rs. 820-1175/- p.m. plus other allowances admissible under the Rules, as seen in the document marked Annexure O to the writ petition. But, he was terminated from services with immediate effect under the impugned order of 28.10.97 (Annexure R).

3. It is also asserted that the Petitioner had rendered services for the period from 16.12.1988 to 28.10.1997 thus completing the service of almost 9 years under the Respondent No. 3 and now, he is barred by age for any other service. It is also argued by Mr. Goswami that one Shri Jenosh Sangma was also appointed in the same post with the Petitioner under a related order dated 23.4.1989 is still working/serving, but the Petitioner has not been allowed to continue in his service which is violative of Article 14 of the Constitution of India. According to Mr. Goswami, the impugned order of termination is arbitrary, unjust and whimsical and the same is violative of the principles of natural justice.

4. At the hearing, Mr. K.S. Kynjing, learned Counsel for the State-Respondents contended that, the Petitioner has been engaged only as casual employee on fixed pay or in leave vacancy and he had been paid fixed pay/salary for the period which he had served and he was not called for interview for regularisation of his services. Mr. Kynjing further submitted, that in pursuance of the public advertisement dated 25.11.1993, the Petitioner had applied for appointment to Grade IV post and accordingly, he was called for interview and declared passed thus listing his name as against serial No. 702 in the merit list of 707 successful candidates and, the Secretary, District Selection Committee erred in declaring that the Petitioner has been working continuously for more than 3 years in the Deputy Commissioner's establishment and recommending him for regularisation as there was break of service. Mr. Kynjing also assigned the reason for termination of the writ Petitioner by contending inter-alia that, the candidates whose position were higher in the merit list had not been given appointment but, the Petitioner who was placed at 702 in the merit list whose services had been regularised and this fact was duly considered by the State-Respondents and found that it was a irregular appointment of the writ Petitioner and, as such, the Petitioner was terminated from services under the impugned order.

5. Upon hearing the learned Counsel on both sides and also, on perusal of the available materials on record, it has been revealed that the Petitioner had been

serving under the Respondents for the period from 16.12.1988 to 28.10.1997 as casual employee, and some times served in the leave vacancy with some break of service at intervals. It is also an admitted position, that he was selected for appointment to the post of Grade IV by the District Selection Committee concerned and his name appears at serial No. 702 in the merit list. It is true, that a candidate whose name appears at serial No. 702 like the present Petitioner cannot be given appointment, thus depriving the case of those candidates whose names find place above the Petitioner in the related merit list. So far, the argument advanced by Mr. Kynjing with regard to a short break of service for a day or two, or even a week at intervals, though the Petitioner had been serving for a long period as discussed above, I am to recall three decisions of the Apex Court rendered in *Sri Rabinarayan Mohapartra Vs. State of Orissa and others*, ; *Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others*, and *Banaras Hindu University, Varanasi and another Vs. Dr. Indra Pratap Singh*, wherein, the Apex Court held in the first case, that the practice of giving appointment of 89 days basis with one day break and allowing the employees to continue having such one day break of service is discriminatory, in the second case, the Supreme Court struck down the related provisions in clause 5 of order of one day's break in service and it was declared ultra vires. In the third case, the Supreme Court held thus:

The interval may be of a day, a week or a month. What is relevant is not the length of the interval or break, as it may be called, but its nature. It cannot be said that length of such interval is totally irrelevant, however, what is meant is that one must take into consideration the reason for which, break or the circumstances in which such break has occurred. Another factor to be taken into consideration in understanding and construing the said expression is the object underlying the said requirement. The object is to ensure eight years teaching experience.

6. Now, the next issue as to whether the Respondents out to have considered the case of the Petitioner for absorption or regularisation of his services in the Grade IV post emerges. Considering the nature of service of the present writ Petitioner. The state-Respondents do not deny or rebut to the plea and statement of the writ Petitioner that he had been serving as casual employee or sometimes he had been engaged in leave vacancy and sometimes he had been engaged by the third Respondent as his personal peon. I have also perused the related appointment orders as seen in the documents marked Annexure A, B, C, D, E, F, G, H, I, J, K, L, M, N & O respectively to the writ petition. From there documents, it is established that the Petitioner had been allowed to work as casual employee and sometimes to officiate as Cleaner or Jamadar and Peon attached to Deputy Commissioner's bungalow, Williamnagar with a short break of service which, according to me, it is an artificial gap in service and the same can be ignored in view of the decisions of the Apex Court referred and cited in the forgoing paragraph. Now, this Court is also to see and examine as to whether the present writ Petitioner has an enforceable legal right or not, in the instant case.

7. In daily rated casual labour employed under PNT Department through Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, the Apex Court held, that keeping the casual employees for a long period without regularisation of their services is not a wise policy. The Apex Court further directed the Respondents to prepare a scheme on rational basis for absorbing so far as possible, the casual labourers who have been continuously working for more than one year in the Post & Telegraph Department. In Anr. case namely. Niadar and Anr. v. Delhi Administration and Anr., (1992) 4 SCC 112 the Apex Court directed the Respondents/Delhi Administration, to prepare a scheme for absorption of the casual labourers who have worked for one year and more in the Soil Conservation Department as regular employees. Likewise, in a case between State of Haryana and Ors. etc, etc, Appellants, v. Piara Singh and Ors. etc, etc, Respondents, the Apex Court made the following observations:

So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell-say two or three years-a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In the behalf, we do commend the orders of the Government of Haryana (contained in its letter dated 6.4.90 referred to herein before) both in relation to work-charged employees as well as casual labour.

We must also say that the orders issued by the Governments of Punjab and Haryana providing for regularisation of adhoc/temporary employees who have put in two years/one year of service are quite generous and leave no room for any legitimate grievance by any one.

These are but a few observations which we thought it necessary to make, impelled by the facts of this case, and the spate of litigation by such employees. They are not exhaustive nor can they be understood as immutable. Each Government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, but while doing so, it should bear in mind the observations made herein.

8. It is also well settled, that right of the citizen to employment and his entitlement for employment to the labour would all harmoniously be blended to serve larger social interest and public purpose. This principle of law finds its place in a case between Air India Authority Corporation, Appellant v. United Labour Union and Ors. Respondents, reported in (1997) 2 S T 165 wherein, the Apex Court held thus:

That all essential facilities and opportunities to the poor people are fundamental means to development, to live with minimum comforts, food, shelter, clothing and health. Due to economic constraints, though right to work was not declared as a fundamental right, right to work of workman, lower class, middle class and poor people is means to development and source to earn livelihood. Though, right to employment cannot, as a right, be claimed but after the appointment to a post or an office, be it under the State, its agency instrumentality, juridical person or private entrepreneur it is required to be dealt with as per public element and to act in public interest assuring equality, which is a genus of Article 14 and all other concomitant rights emanating therefrom are species to make their right to life and dignity of person real and meaningful. In a Socialist democracy governed by the rule of law, private property right of the citizen for development and his right to employment and his entitlement for employment to the labour, would all harmoniously be blended to serve larger social interest and public purpose.

9. Applying all these established principles of law laid down by the Apex Court, the State-Respondents/competent authority ought to have ignored the above little break of service of the writ Petitioner and they ought to have considered the case of the writ Petitioner alongwith other casual employees/workers who are similarly situated with the Petitioner, by formulating a scheme on rational basis for their absorption and regularisation of the services in the Grade IV post. Considering all these existing facts and circumstances of the case and after proper application of my mind in this matter, I hereby dispose of this writ petition with the following order and directions.

10. This Court require the state-Respondents to prepare a scheme on rational basis for absorbing and for regularisation of the services of the writ Petitioner, taking into account of his length of service with the vacancy position of the related post/posts which may even be created by the Respondents for smooth functioning of the department concerned, as well as for ventilating the grievances of the writ Petitioner keeping in mind all these established principles of law laid down by the Apex Court as mentioned above as early as possible, preferably, within a period of 6 months from the date of receipt of this judgment and order, and in the meantime, the Petitioner shall be taken back to service under the third Respondent forthwith. It is further made clear, that there is no infirmity or illegality in the impugned order of termination as many senior candidates who are above the Petitioner in the merit list are not yet given appointment in the post of Grade IV in terms of the merit list.

11. For the reasons, observations and directions made above, this writ petition is hereby closed. No cost.