
(1996) 05 GAU CK 0027
In the Gauhati High Court
Case No : Civil Rule No. 16 of 1993

ITI Rani Deb

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 20-05-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 39

Citation : (1997) 1 GLR 158

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Advocate : S. Dutta, for the Appellant; U.B. Saha, G.A., for the Respondent

Judgement

N.G. Das, J.—This application under Article 226 of the Constitution of India has been filed by the Petitioner Smti Iti Rani Deb for issuance of a writ in the nature of Mandamus directing the Respondents to regularise her services to the post of Lower Division Clerk by issuing necessary order of appointment.

2. I have heard Mr. S. Dutta, the learned Counsel appearing on behalf of the Petitioner and Mr. U.B. Saha, the learned Government Advocate appearing on behalf of the Respondents. Pursuant to the order dated 26.2.1996 this case is taken up for final disposal.

3. To appreciate the contentions canvassed at the Bar by learned Counsel for the parties, the facts relevant for the purpose may be stated as under:

The Petitioner was appointed as Daily Rated Worker in the office of the Respondent No. 2 and she joined for such work on 19.10.1989. At that time the Petitioner was being treated as a Class-IV staff. Thereafter, the Petitioner passed Madhyamik Examination in the year 1991 and on account of her having passed the said examination she was given clerical job with effect from 4.10.1991. But although she has been performing the duties of Lower Division Clerk her wages remained as before.

4. Meanwhile, 4 posts of L.D.C. fell vacant under Respondent No. 2 and the Respondents also decided to fill up those posts of L.D.C. and in pursuance of that decision Respondent No. 2 issued interview cards dated 28.12.1992 to the eligible candidates. The Petitioner also got interview letter and she appeared before the Selection Board on 3rd January, 1993. But it has been contended that even though the Petitioner appeared the interview Board for her selection to the post of L.D.C. the result of that interview has not yet been published. It has been further alleged that to ignore the claim of the Petitioner the Respondents are going to consider the lease of the Respondent No. 3 although her name was not sponsored by the Director Man Power. The Petitioner further alleged that without publishing the names of the successful candidates the Respondent No. 2 is making endeavour to fill up one of the posts by Respondent No. 3 The Petitioner has, therefore, prayed for issuance of a writ in the nature of Mandamus as stated above.

5. The Respondents have not filed any counter to resist the writ petition, However, in course of his submission Mr. U.B. Saha, the learned Government Advocate has submitted that the Petitioner is not entitled to be considered for regularisation of her service and in support of his contention he has referred to a decision of the Supreme Court rendered in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., The facts of the above case are, in my view, distinguishable from the present case is in that case certain categories of persons who approached the High Court were appointed as Work-charged employees, daily wagers, casual labourers and they were employed in temporary/ time bound projects. In the instant case it is abundantly clear from the facts stated in the writ petition that not only there are 4 regular vacancies of L.D.C. but the authority also took interview for filling up those posts. But even though the interview was taken as far back as on 3.1.93 the result of the interview has not yet been published. In view of these facts I am of the view that the aforesaid decision is not applicable to the present case.

6. The other decision referred to by learned Government Advocate is a decision of the Supreme Court rendered in the case of Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, The facts of this case are also distinguishable from the present one as it would appear from the facts that during the 5th Five Year Plan the Central Government had formulated various schemes to provide wage-employment to agricultural and landless labourers during lean periods. One such scheme was "Food for work". Under this scheme, employment was given to the poorer sections of the population in the rural areas partly for food and partly for cash payment. During the 6th Five Year Plan, the objective of the programme was enlarged to include alleviation of rural poverty by distribution of income in favour of the poor and the needy population in the rural areas by providing employment opportunities to them. With this view a new programme called the National Rural Employment Programme was started in October, 1980 replacing the "Food for Work "programme....objective was to generate additional employment in the rural areas particularly for the landless

workers. In view of the above facts the Supreme Court held that the object was not to provide the right to work as such own to the rural poor - much less to the unemployed in general. This decision in view of the above facts is also not applicable to the present case.

7. As already stated, in the present case the posts are not only lying vacant for a pretty long time but the Respondents also took interview as far back as on 3.1.1993 for filling up those posts. But on getting the smell that only the Respondent No. 1 was going to be appointed the Petitioner came before this Court for restraining the appointment of the Respondent No. 3 to one of those posts of L.D.C. This Court by an interim order restrained not to fill up the posts. But the court did not pass any order for not publishing the result of the interview.

8. Now in the background of all these facts the question which is to be decided is whether the Petitioner is entitled to be regularised to the post of LDC which she has been holding since 4.10.1991. Mr. S. Dutta, the learned Counsel appearing on behalf of the Petitioner has submitted that ratio laid down by the Supreme Court a catena of decisions will abundantly make it clear that the person who is holding; the post in such manner is entitled to be regularised. In support of his contention Mr. Dutta has at first referred to a decision of the Supreme Court rendered in the case of Union of India and Others Vs. Basant Lal and Others, What happened in that case was that Shri Basant Lal and 104 others were employed to the post of casual labour in July, 1988. The workers submitted a representation against their illegal termination. Their contention was that they had been working continuously for more than 120 days and as such were entitled to the status of temporary Railway servants. Having received no response to their representation they approached Central Administrative Tribunal. The Tribunal held that admittedly all the Applicants before it had completed more than 120 days services and as such they have acquired temporary status. The matter ultimately came before the Supreme Court when the Apex Court by its aforesaid judgment held under para 5 that they do not find any error in the order of the Tribunal so as to call for any interference.

9. The next decision referred to by Mr. Dutta is the decision of this Court rendered in the case of Prabin Hensua Petitioner v. Assam State Electricity Board and Ors. Respondents reported in (1994) 2 GLR 416. In this case the initial appointment of the Petitioner was 87 days. But it was continued by an order dated 28.4.94 appointing him upto 14.7.94. But thereafter on 3.5.94 authority passed the order terminating the services of the Petitioner on the ground that any officiating engagement was determined by the Chairman, ASEB. The learned judge after referring to a number of decisions of the Supreme Court held that since the Petitioner was in continuous service for a period of 6 years there is no scope to say that the Petitioner was a casual employee. With this finding the learned Judge allowed the writ petition with necessary direction to the Respondents to regularise the services of the Petitioner within a period of 3 months from the date of receipt of the order.

10. The other contention advanced by Mr. Dutta the learned Counsel for the Petitioner is that the Petitioner has been rendering her services as Class-III staff since 4.10.1991 and as such there is no reason why she should not be entitled to get pay and allowances of a Class-III staff on the basis of the principle of equal pay for equal work. In this context the decision of the Supreme Court in the case of Grih Kalyan Kendra Workers" Union Vs. Union of India and others, may be referred to where under para 6 of its judgment the Apex Court held "equal pay for equal work is not expressly declared by the Constitution as a fundamental right but in view of the Directive Principles of State Policy as contained in Article 39(d) of the Constitution equal pay for equal I work has assumed the status of a fundamental right in Articles 14 and 16. Equal pay for equal work and providing security for service by regularising casual employment within a reasonable period has been accepted by the Supreme Court I as a constitutional goal to our socialistic pattern. It was also held by their Lordships that this principles of equal pay for equal work even in an establishment which is Jan instrumentality of a state is applicable to its full vigour".

11. As already stilted, the facts of the case of Piara Singh (Supra) are distinguishable from the present one inasmuch as in the present case it is an admitted fact that 4 posts of L.D.C, are lying vacant and the authorities also took interview of the candidates including the Petitioner for filling up those posts. But the result of that interview has not yet been published. That the Petitioner is qualified is not denied. The Respondents did not file any counter to controvert any of the statements of the Petitioner. That the Petitioner is in continuous service from 19.10.89 is not denied. The period ranging from 19.10.89 to 3.10.91 was of course as Class-IV staff. But there is no denial of the fact that the Petitioner has been rendering her services as Class-III staff (clerical) since 4.10.91. The Petitioner is also qualified to hold the post of Class-III staff (L.D.C.) and as such I find no reason why the Petitioner should not be absorbed to the post of L.D.C. for rendering services continuously since 19.10.89.

12. In the result, the writ petition is allowed. The Respondents are directed to regularise the services of the Petitioner to the post of L.D.C. as she has been holding the post since 4.10.1991 within a period of six (6) weeks from the date of receipt of this order.

13. With the above order and directions this writ petition is disposed of. But under the circumstances, there would be no order as to costs.