
(1994) 09 GAU CK 0001

In the Gauhati High Court

Case No : Civil Rule Nos 2026, 1936, 2586, 2027, 2318, 2025 and 1931 of 1994

Jangeswar Dihingia ; Ajit Kumar Phukan

APPELLANT

Vs

Assam State Electricity Board and Ors.

RESPONDENT

Date of Decision : 20-09-1994

Acts Referred:

Citation : (1994) 2 GLJ 325

Hon'ble Judges : J.N.Sarma, J

Bench : Single Bench

Advocate : J.Chutia , N.N.Saikia, M.Sharma, B.N.Sharma, Advocates appearing for Parties

Judgement

1. In Civil Rule No. 2026 of 1994 one Jangeswar Dihingia is the petitioner. The petitioner passed the HSLC examination and he belongs to the Ahom community which is recognised by the State as Other Backward Class. The petitioner joined the service of the Board on 3.10.88 as Sahayak in the T &T Division, North Lakhimpur initially for 87 days from 1.9.88. The employment was continued by a series of orders. The last order was made on 28.4.94 appointing¹ the petitioner upto 6.7.94. It is stated that though in the orders, it is shown that there are break in service, yet the service of the petitioner was continuous for 5 years 6 months 27 days from 3.10.88 to 30.4.94. The break is only in paper. But in the ground the petitioner all along continued in service. By order dated 3.5.94 the service of the petitioner was discontinued. That is Annexures 5 and 6 to the writ application. Annexures 5 and 6 quoted below.

"You are aware that officiating appointments in the Board banned since a long time Board's order No. ASEB/CH/Vol21/14 dated 8.10.91 prohibiting officiating appointments, copy of which was sent to you also vide this No ASEB/PM/T&T/Estt!07/9295 dated 28.10.91 very clear. As such, please note that any officiating appointment shall be considered as an act of violation of the Chairman's order.

In pursuance of the Project Manager, T & T Gauhati Memo No. ASEB/IM/TT/

Estt118 Pt. I//154 (a) dated 6.4.94 received on 2.5.94 intimation that any officiating engagement (which has been banned by the Chairman, ASEB) will be considered as an act of violation of the Chairman Order, Hence all officiating engagement made by this Divn. Since July/87 in the interest of the Board's work against sanctioned but vacant post in anticipation of approval are hereby discontinued with effect from 3.5.94 (AN)."

2. An affidavit in opposition has been filed by the respondents wherein it is stated that the petitioner was employed to construct a planned HT (High Transmission) line throughout the State and it is further stated that the "appointment which was made as Sahayak is not a regular appointment. So, the question of continuing the service of the petitioner does not arise.

3. In Civil Rule No. 1936 of 1994 one Ajit Kumar Phukan is the petitioner. He passed the HSLC examination in 1983 and he further possesses Wireman Licence. The petitioner joined the service of the Board on 3.10.88 and the other facts are same as in with the earlier case. His service was also terminated by order dated 3.5.94 and the orders are same. An affidavit in opposition has been filed on the same line as quoted above.

4. In Civil Rule No. 1931 of 1994 one Rajen Kalita is the petitioner. He read upto X standard and possesses a diploma certificate of Wireman. The petitioner joined the service of the Board on 3.8.88 and continued upto 30.4.94 and thereafter his service was terminated by order dated 3.5.94, Other facts are same and the affidavit in opposition is also in the same line.

5. In Civil Rule No. 2586 of 1994 one Dharanidhar Deka is the petitioner. He passed the Pre University examination in the Second Division in 1985 and was appointed by the Board on 3.8.88 as Sahavak and the other facts are same and his service was also terminated by the same order dated 3.5.94.

6. In Civil Rule No. 42027 of 1994 one Faizuddin Ahmed is the petitioner. The petitioner read upto Class tenth standard and holds a valid licence to drive light vehicle and he joined in service on 2.11.87 and continued for more than 7 1/2 years and ultimately his service was terminated by order dated 3.5.94 ie by the same order as mentioned above. An affidavit in opposition has also been filed in the same line.

7. In Civil Rule No. 2318 of 1994 one Faizullah Ahmed is the petitioner. He was appointed as Sahayak with effect from 1.8.88 and continuing as stated above and his service was terminated by order dated 3.5.94. An affidavit in opposition was also filed in the same line.

8. In Civil Rule No. 2025 of 1994 one Rabindra Nath Haloi is the petitioner. He passed the HSLC examination in the year of 1983. He has also typing diploma. He was appointed as Sahayak on 15.2.88 and thereafter his service was terminated by order dated 3.5.94. The affidavit in opposition is also in the same line as mentioned above.

9. I have heard Sri BN Sharma, learned counsel for the petitioner in all the Civil Rules and Sri NN Saikia, learned Standing Counsel for the ASEB.

10. Shri Sharma submits that this matter is covered by the judgment dated 8.8.94 passed by this Court in Civil Rule No. 2320 of 1994 [Prabin Hensua vs. Assam State Electricity Board & others : 1994 (2) GLJ 301]. In that case the facts are same and order of termination as in the instant case is the same order dated 3.5.94 and that order was interpreted by this Court in that case and this Court relying on different judgments of the Supreme Court ultimately came to the finding that the termination order dated 3.5.94 Annexure 4 (c) in that writ application itself clearly shows that these posts are not casual in nature but are sanctioned and vacant posts. It was further held that this being the position, it cannot be said that the petitioner is a casual employee. It was further held that the petitioner is a regular employee as he was working against a sanctioned and vacant post and as such it was the obligation/ duty and liability of the Corporation to regularise the petitioner by the Board and that writ application was accordingly allowed. In these cases also that judgment squarely applies and in that view all these writ applications are to be allowed.

11. Sri Saikia appearing for the respondents places before me a judgment dated 8.8.94 in Civil Rules No. 2671 of 1992 and 2672 of 1992 where this Court rejected the writ application holding that there is no merit in those two writ applications. The facts of these cases are absolutely different inasmuch as in those two cases one petitioner was appointed as driver with effect from 12.10.87 to 9.11.87. Subsequently he was again appointed on 25.3.88 and worked from 22.4.88 to 22.5.88. Thereafter he was again allowed to work from 19.8.88 to 4.9.88 and thereafter his service was terminated on 1st April, 1992. In case of Shri Dhruba Chandra Das he was first appointed on 1989 and thereafter he was continued with breaks as stated earlier to 31st March, 1992. So it was found that the services of those two persons were not continuous in nature. They were appointed from time to time and as such this Court held that those two petitioners cannot acquire any right. The facts of these cases are absolutely different inasmuch as in these cases the petitioner were continuing in service from 1987 to 1994 with paper break as stated by them, but they were continuing in service and that all were sanctioned and approved posts and as such by putting up the service for more than 6 years, they acquired the right for regularisation. It cannot be said that these are not sanctioned and approved posts. They were appointed against the sanctioned and approved posts. Each of them possesses the requisite qualification to be appointed against each posts. Further, all these petitioners are appointed against the sanctioned and approved vacancies. So, the appointments of all these petitioners cannot be deemed to be casual employment. Shri Sharma submits that these appointments were made by the competent authority, and he submits that is not in violation of 1987 Notification. Be that as it may, continuance for all these years against sanctioned, vacant and approved posts will give right to the persons and the termination was untenable on the ground sought to be done. Sri Saikia in this

connection relies on (1994) 3 SCC 180 Ramchand Tripathy vs UP State Tribunal) where the service of a temporary employee was terminated after 16 years, but the Supreme Court upheld the termination on payment of compensation of Rs.75,000/ but the ground on which the Court upheld the termination was that the petitioner was not suitable to hold the post and it was on that ground the termination order was upheld. So, this case does not hold the respondents. Sri Saikia also relies in AIR 1991 SC 1554 (State of UP vs. LP Law Officers Association) where the Supreme Court pointed out as follows : "Those who claim to be appointed by such arbitrary procedure cannot complain if the termination of their appointments is clearly arbitrary. Those who come by the back door have to go by the same door." That is not the case in hand. In the instant cases as I have indicated above the petitioners were qualified. They were appointed by the competent authority. The other cases which are relied by Sri Saikia is (1991) 1 SCC 691, State of UP vs, KK. Shukla where the Supreme Court pointed out as follows : "If the service of temporary Govt. servant is terminated on the terms and conditions of service that, will not effect the right of the service. In the instant case the services of the petitioners were not terminated in terms of their appointments. But the termination was done in a most arbitrary manner as discussed in the judgment dated 8.8.94 in Civil Rule Nos. 2320 of 1992 [1994 (2) GLJ 301].

12. For the reasons stated above, all the writ applications are allowed. The impugned orders of termination dated 3.5.94 are set aside. The petitioners shall be taken back in their services within a period of one month from the date of receipt of the order. The petitioners may obtain a certified copy of this order and may produce the same before the authority to do the needful in terms of the order. I make no order as to costs.