
(2006) 12 GAU CK 0046
In the Gauhati High Court
Case No : Writ Petition (C) No. 425 of 2000

Kanaklata Saha

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 07-12-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311(2)

Citation : (2006) GLT 559 Supp

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : B. Das and D. Chakraborty, for the Appellant; A.S. Lodh, for the Respondent

Judgement

Hrishikesh Roy, J.—The Petitioner Smt. Kanak Lata Saha who was enrolled as a Rural Homeguard Volunteer in the Tripura Homeguards Organization by calling-up letter dated 02.02.90 (Annexure-A) has filed the present petition seeking direction to provide the Petitioner the regular post of Group -D General duty Attendant (GDA) (Class IV post) with effect from 01.04.90 and treating her to be regularly serving in the said post for all purposes.

The Petitioner was issued with the calling-up letter dated 02.02.90 in order to give her a source of earning as her husband who was serving in the Tripura Homeguard Organisation, was suffering from insanity during his service career. Following the call-up order dated 02.02.90, the writ Petitioner was engaged with effect from 01.04.90, to discharge duties as a GDA in the Police hospital, Agartala and on the basis of such engagement, the Petitioner is now putting forward the claim for treating her in the regular post of GDA with effect from 01.04.90.

2. It has been argued by Mr. B. Das, learned Sr. Counsel assisted by Mr. D. Chakraborty, learned Counsel for the Petitioner that the writ Petitioner by virtue of being posted as a Homeguard is entitled to be considered to hold a civil post and also as a regular employee of the Government and accordingly her case

should be considered for a direction to treat her as a regular GDA with effect from 01.04.90.

In support of the aforesaid contention, the learned Counsel has pressed home the following decisions:

The judgment of this Court dated 22.07.88 in Civil Rule No. 119 of 1981 (Ratan Lal Dutta v. State of Tripura) and the judgment dated 12.11.02 in Writ Appeal No. 46 of 1997 (Dilip Kumar Deb v. State of Tripura) as well as the judgment of the Supreme Court reported in State of West Bengal and Others Vs. Pantha Chatterjee and Others, have been cited in support of the submission that the service rendered by the Petitioner is to be treated as service in a civil post under the Government of Tripura and consequently, the Petitioner is entitled to the benefits of the services rendered by her as a GDA, for treating her to be a regularly posted as GDA with all consequential benefits.

3. Ms. Lodh, learned Counsel for the State Respondents, on the other hand, has argued that the claim made in the writ petition is not liable to be entertained by this Court since the writ Petitioner was engaged as a Homeguard volunteer on account of sympathetic consideration shown by the Government and the nature of services of the Homeguard, does not entitled the Petitioner to be treated as a regular employee in the post of GDA.

In support of her contention, Ms. Lodh has drawn attention to the provisions of the Bombay Homeguards Act, 1947 (hereinafter referred to as "the Act") which has been made applicable to the State of Tripura and has drawn attention to Section 16 of the Act to indicate the functions and duties of the members of the Homeguard. It has been submitted with reference to the provisions of Section 16(1)(c) of the Act that the Homeguards are to perform such other duties as may be assigned to them from time to time and accordingly it has been argued that engagement of the Petitioner as a GDA in the hospital is with reference to the assignment envisaged u/s 16(1)(c) of the Act and by virtue of such engagement, the Petitioner is not entitled to be treated as a regular GDA.

Learned counsel has also drawn attention of this Court to the Judgement dated 06.01.97 in Civil Rule No. 302 of 1989 (Nirmal Dey v. State of Tripura) to put forward the argument that the writ Petitioner who is a Homeguard volunteer is not entitled to be treated to hold a civil post under the Tripura Government.

Learned State counsel has also drawn attention of this Court to the decision reported in Secretary, State of Karnataka and Others Vs. Umadevi and Others, in support of her submission that the Petitioner is not entitled to be treated as a regular employed GDA as her engagement is de hors the Rules and the Petitioner has not been appointed or engaged in the post of GDA by following the prescribed process for recruitment to the post of GDA.

4. It would now be appropriate to refer to the decisions cited on behalf of the Petitioner to examine the applicability of the ratio laid down in the said cases to

the facts of the present case.

Ratan Lal Dutta's (Supra) was a case where a claim for being treated as a civil employee and as a regular member of the Tripura Armed Forces was put forward by Homeguards who are deployed as the Border Wing Homeguards of the Government. Their claim for being treated as members of regular Homeguard was considered favourably by this Court. In Pantha Chatterjee's (Supra) case also, the Supreme Court was dealing with a case over a claim of Border Wing Homeguards for being treated as a regular Homeguard. In these two cases, the Court directed the part-time Border Wing Homeguards to be treated as whole-time employees and further direction was issued to treat them as civil employees under the State.

However, the present is not a case of Boarder Wing Homeguards coming forward for being treated as a regular Homeguard and accordingly, this Court is of the view that the said decisions are not applicable to the facts of the present case, to support the claim for seeking regular employment in the post of GDA by the Petitioner.

In Dilip Kumar Deb's case, this Court referred to the decision of Ratan Lal Dutta and granted relief to the Petitioner Dilip Kumar Deb who was posted as a Border Wing Homeguard for treating him as a regular member of the State Police Organisation. This decision also pertains to a claim made by the Border Wing Homeguard and accordingly, the said ratio also does not support the claim put forward by the Petitioner in the present case.

5. Another decision reported in (1985) 1 GLR NOC 8 (Ranjit Ghosh v. State of Tripura) has also been cited on behalf of the Petitioner in support of the prayer made in the present petition. In that case, the Petitioner Ranjit Ghosh and 25 Ors. on being discharged from the services of Homeguard without holding any inquiry had challenged their discharge from service. In the context of the said petition, filed by Ranjit Ghosh (Supra), this Court held that the discharge of the Petitioner was in violation of the provisions of Article 311(2) of the Constitution of India and accordingly, this Court interfered with the order of discharge. The ratio of the decision Ranjit Ghosh's case also does not help the claim for regular appointment of the Petitioner in the post of GDA.

6. This Court may now take note of the stand taken by the Tripura Government in their counter affidavit. The Government has taken the stand that the Petitioner being a member of the Tripura Homeguards Organisation is nothing but a member of an auxiliary force and is liable to be engaged in such assignment as may be deemed necessary in terms of Section 16(1)(c) of the Act and merely because the Petitioner was engaged as a GDA, she cannot claim to be treated as a regular GDA which is a Class-IV post having its own recruitment Rules. The further averment in the counter affidavit of the Government is to the effect that the nature of duties of a Homeguards, requires her to be engaged as per the requirement of the Organisation and there had been occasions when the

Petitioner had also been withdrawn from her hospital duties for performing other assignment as Homeguard. Accordingly, there may not be any justification for treating her as a regular GDA on the strength of her engagement as GDA in the hospital.

7. It may now be convenient to take note of the decisions cited by Ms Lodh in support of her contention. In the case of Uma Devi (Supra), the Supreme Court has clearly held that merely because a person is continued in a specific assignment for a long time, only on the strength of such continuance, not right is acquired to hold the said post on regular basis, if the initial appointment was not made by following a due process of selection as envisaged by the relevant Rules. The Supreme Court has further held in Uma Devi's case that engagement of a person when not based on a proper selection as recognized by the relevant Rules or procedure, such person is aware of the nature of his engagement and accordingly no claim for such person for being confirmed in such post where he is engaged is liable to be entertained and there cannot be any legitimate expectations for such regular appointment.

It does appear from a reading of the Uma Devi s case (Supra) that direction sought for by the Petitioner in the present case is not liable to be entertained by this Court as such direction would be contrary to the provisions of equal opportunity in matters of public employment envisaged under Articles 14 and 16 of the Constitution of India. The engagement of the Petitioner in the post of GDA was de hors the Rules. The Petitioner is a member of a auxiliary force of Homeguards where she is liable to be assigned with such duty as may be thought appropriate in terms of Section 16 of the Act. Therefore, merely on the strength of engagement as a GDA, it cannot be said that the Petitioner has gathered a legally enforceable right for treating her as a regular employee in the post of GDA.

Reference to the decision cited on behalf of the Respondents in the Nirmal Dey's case (Supra) would also go to show that the Petitioner's services as Homeguards vis-a-vis as a General Duty Attendant are totally different in the matter of recruitment, service to be rendered, salaries drawn and other service conditions and accordingly, there cannot be any justification for treating the Petitioner who is a Homeguard, as a regular GDA under the Respondents.

In view of the discussions made as above, this Court does not find any merit in the writ petition and accordingly, the same is dismissed. No cost.