
(2003) 11 GAU CK 0029
In the Gauhati High Court
Case No : Writ Petition (C) No. 3809 of 2002

Khanindra Kr. Kalita

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 28-11-2003

Acts Referred:

Assam Public Service Commission (Limitation of Functions) Regulations, 1951 — Regulation 3

Citation : (2004) GLT 588 Supp

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : N. Saikia, A. Borah, R. Gogoi and S. Sarma, for the Appellant; S.N. Sarma, R.K. Bora and T.C. Chutia, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—The writ Petitioners belonging to a group of 41 persons, who were appointed under Regulation 3(f) of the Assam Public Service Commission (Limitation of Functions) Regulations, 1951 as Lecturers in different subjects in Diphu and Haflong College. The aforesaid appointment made by order dated 23.3.2001 contained a stipulation that in the event they do not qualify in the APSC selection, they will not claim regularisation of their services. Soon after the Petitioners were appointed in the manner noticed above, an advertisement was published in the news-papers on 17.5.2001 inviting applications for filling up of 114 posts of Lecturers in different subjects in the Government Colleges of the State of Assam. The Petitioners participated in the selection process, pursuant to the advertisement issued and their names appeared in the select list, which was published on 17.5.2002. Thereafter WP(C) 3809, 3832, 3834, 3835, 3936, 4126 and 4194 of 2002 were filed by different persons belonging to the group of 41,3(f) appointees, claiming regularisation of their services on the ground that being selected by the A.P.S.C., they had fulfilled the condition attached to their initial appointment order dated 23.3.2001 and, therefore, they would have a right for regularisation. The State has filed a common affidavit in the aforesaid

cases, wherein it has been stated that in terms of the order of appointment of the Petitioners, they have been found to be qualified and as such, the Petitioners may now be regularised.

2. While the matter was so situated, an order dated 26.5.2003 was passed and as the core of the present case relates to the true meaning, purport and effect of the aforesaid order, the order dated 26.5.03 maybe reproduced hereunder:

Dtd. 26.5.2003

No. B(2) 11260/2001/26: The Governor of Assam is pleased to regularise the Adhoc appointments made under Regulation 3(f) of APSC, in respect of all the 41 Lecturers in Diphu and Haflong Govt. Colleges in relaxation of ban imposed by the Govt. vide O.M. No. 74/96/1, dt. 30.5.96, with the initial pay and allowances under UGC pay scale by relaxing the existing provisions of the Rules, subject to the condition of further extension of their initial term of 4 months until the dated when the APSC had published the select list, vide No. 265/PSC/DR-1/1/2001-2002 dtd. 17.5.02.

Sd/- Dr.I. Saran, IAS, Commissioner and Secy. to the Govt. of Assam Education (II) Department.

3. Thereafter, another order was passed on 30.6.2003 extending the Adhoc service of the Petitioners, after expiry of the initial period of 4 months from the date of the appointment. It must be noticed that by the aforesaid order dated 30.6.2003, piece meal extension of 4 months each, has been granted to each of the Petitioners for the period upto 17.5.2002, i.e. the date of publication of the select list. Thereafter, an order dated 30.8.2003 was passed terminating the services of 29 persons of the group of 41 Adhoc as appointees on the ground that though selected, the merit position of the aforesaid persons do not come within the zone required for appointment. WP(C) Nos. 6944, 6981, 7021, 7022, 7024, 7025, 7119, 7120, 7121, 7122, 7144 and 7169 of 2003 have been filed by the persons affected by the termination order dated 30.8.2003. Two other orders, both dated 30.8.2003, giving appointment to persons included in the select list against the posts held by the Petitioners have also been challenged in the aforesaid writ petitions. The selected persons so appointed in place of the Petitioners have been arrayed as private Respondents in the writ petitions.

4. As would be evident from the above, common questions of law having arisen on more or less identical facts, all the writ petitions were taken up for hearing together and are being disposed of by this common judgment and order.

5. I have heard Mr. P.K. Goswami, learned Sr. Counsel appearing for the writ Petitioners in W.P(C) No. 7022/03. The lead arguments advanced by Mr. Goswami have been adopted by the learned Counsels for the Petitioners appearing in all the other cases. Mr. S.N. Sarma, learned Sr. Standing Counsel, Education, assisted by Mr. R.K. Bora, learned Standing Counsel, has appeared on behalf of the official Respondents in all the cases, whereas Mr. T.C. Chutia,

learned Standing Counsel, APSC has appeared on behalf of the said Respondents in all the cases. I have also heard Dr. Y.K. Phukan, learned Sr. Counsel for the private Respondents in WP(C) Nos. 6944, 7021, 7024, 7119, 7121 and 7169 of 2003.

6. Mr. N.M. Mazarbhuyan, learned Standing Counsel, North Cachar Autonomous District Council has also been heard. The prayer of Mr. Mazarbhuiyan, learned Standing Counsel, for deferment of the hearing of the present bunch of cases so as to enable an appropriate intervention application to be filed on behalf of the Autonomous Council, having been made after the arguments of the parties were heard, was not considered appropriate for acceptance by the Court. However, without being formally impleaded as a party to the present proceeding, the learned Standing Counsel was permitted to advance his oral arguments, which have been duly considered.

WP (C) Nos. 6944, 6981, 7021, 7022, 7024, 7025, 7119, 7120, 7121, 7122, 7144 and 7169 of 2003:

7. The arguments advanced on behalf of the Petitioners in so far as the above noted writ petitions are concerned is that the order dated 26.5.2003 is an order of regularisation of the appointment of the Petitioners made under Rule 3(f) of the Regulations. This, it is contended, is evident from the plain language of the notification. There is no ambiguity in the language used and, therefore, its true meaning must be deciphered from its plain language. Mr. Goswami, learned Sr. Counsel for the Petitioners has referred to the condition stipulated in the initial appointment order of the Petitioners dated 23.3.2001 to the effect that the Petitioners will not seek regularisation in the event they are not selected by the APSC. As the names of the Petitioners were included in the select list dated 17.6.2002, the first batch of writ petitions was filed in the year 2002, claiming the relief of regularisation by virtue of the selection of the Petitioners by the APSC. In response to the aforesaid claim, the State in the affidavit filed, learned Counsel has pointed out, clearly and categorically admitted that the Petitioners have fulfilled the conditions stipulated in their initial appointment order and they having qualified, would be entitled for regularisation. On the aforesaid basis, it is the argument of the learned Counsel for the Petitioners, that the order dated 26.5.2003 is in consonance with what has been stated in the affidavit. Learned Counsel further argued that the regularisation of the adhoc services of the Petitioners made by notification dated 26.5.2003 is in conformity with the terms of the initial appointment of the Petitioners and as the order dated 26.5.03 had the effect of regularising the services of the Petitioners, the impugned cancellation and that too without notice would be ex-facie illegal.

8. Mr. Goswami, learned Sr. Counsel for the Petitioners, by referring to the Government affidavit filed in the present bunch of cases, has submitted that the stand taken in the said affidavit is wholly unacceptable. The order dated 26.5.2003, according to the learned Sr. Counsel for the Petitioners, by no stretch of reasoning and interpretation can be construed to be an order of post facto

approval of the initial 3(f) appointment of the Petitioners, as claimed in the affidavit filed. By referring to the decision of the Apex Court in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, and the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, Mr. Goswami has argued that the order dated 26.5.2003 must be construed objectively with reference to the language used in the order and the explanations and clarifications made in the affidavit would not be determinative of the matter. Learned Counsel has further argued that neither the validity of the initial 3(f) appointment of the Petitioners nor the validity of the order dated 26.5.2003 is in issue in the present case. What this Court is called upon to decide is the purport and effect of the order dated 26.5.2003 and on that basis to adjudge the validity of the cancellation made by order dated 30.8.2003.

9. Refuting the arguments advanced on behalf of the Petitioners, Mr. S.N. Sarma, learned Sr. Standing Counsel, Education has extensively relied on the affidavit filed by the official Respondents to contend that the initial 3(f) appointments of the Petitioners were all made illegally. To rectify the illegalities in the initial appointments of the Petitioners, a Cabinet Memorandum was prepared to obtain post facto Cabinet Approval of the otherwise illegal appointments, on the suggestion of the Personnel Department. Mr. Sarma by placing before the Court, the Cabinet Memorandum and the relevant file, in original, has contended that the proposal for grant of post facto approval to the illegal appointment of the 3 Petitioners, was approved by the Cabinet on 27.3.2003 and the order dated 26.5.2003 emanates from the aforesaid Cabinet approval. Learned Standing Counsel, therefore, has argued that notwithstanding the language used, the order dated 26.5.2003 must be construed in the light of the Cabinet approval which formed the basis of the said order. Learned Standing Counsel has further argued that the post facto approval of the Cabinet was granted subject to the condition of extension of 3(f) service of the Petitioners, from the date of expiry of the initial term of 4 months, till date of the publication of the select list, i.e. 17.5.2002 and such extension was subsequently granted by the notification dated 30.6.2003. Learned Standing Counsel, therefore, has vehemently argued that the regularisation intended by the order dated 26.5.2003 must be construed by this Court to be a limited exercise of regularisation of the illegal 3(f) appointments and not as an act of conversion of the 3(f) appointments into regular appointments, as contended on behalf of the Petitioners. The affidavit filed by the State Respondents in the earlier bunch of cases on which reliance has been placed on behalf of the Petitioners, has been sought to be explained by the learned Standing Counsel by contending that it would be axiomatic to understand that the statements made in the said affidavit to the effect that the Petitioners have qualified in the selection and maybe regularised, obviously meant that the merit position of the Petitioners would warrant such regularisation. Learned Standing Counsel has lastly argued that the order dated 26.5.2003 being limited in its application and what was regularised was the initial illegal 3(f) appointment, the impugned cancellation on the ground cited, i.e. that

the Petitioners" merit position did not warrant their appointment, would be perfectly valid and justified in law and there could be no occasion for this Court to cause any interference with the said actions.

Dr. Y.K. Phukan, learned Sr. Counsel appearing for the private Respondents, has supported the arguments advanced by the learned Sr. Standing Counsel and has contended that no infirmity is disclosed in the appointment made in favour of the private Respondents whom he represents and, therefore, the writ petitions ought to be dismissed to facilitate the appointment of the private Respondents who have been so appointed by the subsequent orders passed on the same date, i.e. on 30.8.2003.

10. The core question that arises, on the rival submissions made, is what is the meaning, purport and effect of the order dated 26.5.2003. Is it an act of conversion of the adhoc appointment of the Petitioners into regular appointment with effect from 17.5.2002, i.e. the date of publication of the select list, by regularising the period of service up to 17.5.2002, as contended by the Petitioners or is it an act of post facto approval of what the State contends to be the illegal initial adhoc appointments of the Petitioners?

11. There can be no manner of doubt that a public order issued by a public functionary must be construed by the plain language contained in the order and subsequent explanations or clarifications given by means of affidavits filed, ought not to be relied upon to decipher the true meaning of an order/notification. The law has been succinctly stated in the case of Commissioner of Police, Bombay (Supra) to the following effect:

An attempt was made by referring to the Commissioner's affidavit to show that this was Really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

An emphatic reiteration of the above law is to be found in the decision of the Apex Court in the case of Mohinder Singh Gill (Supra) and the position is best summed up in the following words appearing in paragraph 8 of the aforesaid judgment:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.

12. While it is true that a government order/notification must not be understood or interpreted in the light of subsequent facts as may be pleaded and such an order/notification must be understood by the plain language appearing in the notification, antecedents facts as maybe manifested by the notings in the file, in a given case, can and ought to be looked into by the Court to resolve a controversy that may erupt between the parties, as has happened in the present case, an aspect to which this Court must now turn to.

13. The records produced by the learned Standing Counsel in original in support of the averments made in the government affidavit to the effect that the order dated 26.5.2003 emanated from the approval granted by the Cabinet on 27.3.2003 to the memorandum placed before it, has been duly looked into by the Court. The aforesaid records reveal that one of the Petitioners Smt. Kakali Khersa, submitted an application for extension of her 3(f) appointment beyond the initial term of 4 months. The Personnel Department of the State Government was moved for accord of approval for extension of the Adhoc service of the said incumbent, where after the Personnel Department took the stand that as all the 41 Adhoc appointments were made without a Cabinet approval during the period when a ban on such appointment was in force, the post facto approval of the Cabinet with regard to the initial 3(f) appointments should be obtained before consideration of the question of extension. The Personnel Department also clarified that the approval of the State Level Empowered Committee to the making of the 3(f) appointments, was subject to a cabinet clearance, which apparently was not obtained prior to making of the 41 appointments in question. The records placed before the Court, amply demonstrates that the initial 3(f) appointments of the Petitioners were cleared by the Chief Minister at his own level, at the instance of the Minister, Education and the appointees were virtually hand-picked by a committee constituted by the Minister, Education. The Principal Secretary as well as the Secretary, Higher Education disassociated themselves from the appointment process and at the instance of the Chief Minister and the Minister, Education, the appointment orders were issued by the Deputy Secretary. In such a situation, a Cabinet memorandum was prepared highlighting the objection of the Personnel Department as already noted and suggesting grant of post facto approval to the Adhoc appointment already made and for extension of the initial term of 4 months of the appointees. The said proposal was approved by the Cabinet where after the matter was referred once again to the Personnel Department for approval of the extension of the initial period of appointment of the concerned appointees. The Personnel Department on 13.5.2003 took the view that a notification in terms of the Cabinet Approval dated 27.3.03 be issued and thereafter a proposal for extension be re-submitted by the Education Department. As a sequel to the aforesaid note, the order/notification dated 26.5.2003 was issued and thereafter a fresh proposal for extension having been submitted to the Personnel Department and the concurrence/approval of the Personnel Department having been obtained, the subsequent order dated 30.6.2003 was issued.

14. Having noticed what is revealed by the records, the Court must now address itself to the rival contentions advanced. "Words" are not mathematical symbols conveying any precise and definite meaning and language, in any form, cannot always act as an accurate barometer of human thoughts. The Court must, therefore, keep in mind the limitations inherent in any medium of expression. As already noted, the question that confronts the Court is whether the order dated 26.5.2003 is the expression of an act of conversion of the Adhoc status of the Petitioners into regular service or is it a curative exercise in so far as the illegalities/irregularities of the initial Adhoc appointment, is concerned. The order, read as a whole, could convey either of the meanings. The interpretation sought by the Petitioners is indeed attractive, however the meaning sought to be ascribed by the State, particularly, in the context of the words "in relaxation of the ban imposed" as appearing in the order dated 26.5.2003, is not inherently incredible. In such a situation, the facts antecedent as evidenced by the records, would play a pivotal role. What was intended by the exercise, as revealed by the facts anterior, must be the meaning that should be ascribed to the order dated 26.5.2003. The records produced clearly reveal that the order dated 26.5.2003 was a sequel to the Cabinet decision dated 27.3.2003 by which post facto approval was granted to confer legitimacy to what was perceived by the State to be irregular/illegal Adhoc appointments of the Petitioners and further the extension of such Adhoc service upto 17.5.2002. The Court must, therefore, construe the order dated 26.5.2003 in that light alone and discard all suggestions to the contrary.

15. In view of the above, this Court holds that the order dated 26.5.2003 is not an order converting the Adhoc service of the Petitioners under Regulation 3(f) into regular appointments. It is an order of limited impact regularising the defects in the initial order of Adhoc appointment without affecting the Adhoc status of the employment of the Petitioners. As the Petitioners' service continued to remain Adhoc and they had failed to come within the requisite zone of merit, in the selection held, so as to warrant their appointments, no infirmity can be found in the cancellation made.

16. Furthermore, the A.P.S.C. having recommended over 300 candidates in order of merit, in different subjects, against the 114 posts advertised, the Petitioners must come within the requisite zone of merit to claim a right for appointment. No such condition that the Petitioners would be entitled to regularisation only on being selected, irrespective of their merit position, can be read in the initial order of appointment of the Petitioners.

17. For the reasons stated, all these writ petitions have to fail. They are accordingly dismissed. However, having regard to the facts and circumstances of the case, I do not consider it proper to impose any costs.

18. Before parting with the records, the submissions of the learned Standing Counsel. North Cachar Hills Autonomous Council must be noted. Learned Standing Counsel has argued that the consequential appointments of the private

Respondents would be illegal as the requisite consent/concurrence of the Autonomous Council was not obtained, thereby violating an office Memorandum dated 31.12.1996. The argument having come at the closure of the arguments is without any pleadings and counter pleadings, that apart a fresh and independent cause of action is disclosed. The grievances of the Autonomous Council, if the same persists must, therefore, be left to be agitated by way of a fresh proceeding, without halting the process of bringing the instant cases to a logical end.