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**(1991) 09 GAU CK 0011**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 312 of 1990**

Khargeswar Talukdar

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

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**Date of Decision :** 26-09-1991

**Acts Referred:**

**Citation :** (1991) 2 GLR 475

**Hon'ble Judges :** Manisana, J;J. Sangma, J

**Bench :** Division Bench

**Advocate :** A.M. Mazumdar and N. Saikia, for the Appellant; B. Banerjee, G.A., for the Respondent

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## Judgement

Manisana, J.—In this writ application, the Petitioner Khargeswar Talukdar has challenged the communication dated 22.1.90 of the Deputy Secretary, Planning and Development, terminating the services of the Petitioner with effect from 1.1.90.

2. Facts-The Petitioner was engaged to work as peon temporally for two months with effect from 1.3.85 under order dated 1.3.88 of the Director of the Decentralised Planning Division. The Petitioner worked in the Decentralised Planning Division from 1.3.88 to 1.10.88 for 8 months. Thereafter, he was transferred to Planning and Development Department. The Petitioner joined in the Planning Development Department on 1.3.12.88. His appointment was extended again and again. On 2.1.89 an order was passed by the Deputy Secretary allowing the Petitioner to work as peon for a period from 2.1.89 to 31.1.89, The last order of extension was made by the Deputy Secretary on 19.12.89. Under that order the service of the Petitioner as peon was extended upto 31.12.89. Another circular letter dated 22.1.89 was also sent out by the Deputy Secretary stating that the service of the Petitioner stood terminated with effect from 1.1.90 and his service would not be utilized any more for official purpose from that day (1.1.90).

3. Mr. A.M. Mazumdar, learned Counsel for the Petitioner, has contended that the Petitioner could not be terminated retrospectively with effect from 1.1.90 under circular-letter dated 22.1.91, On a reading of the circular-letter dated 22.1.90 it appears that it was a reminder reminding all concerned of the last extension order dated 19.12.90 under which the engagement of the Petitioner as peon was extended upto 31.12.90, viz, the service of the Petitioner stood terminated with effect from 1.1.90. In that view of the matter it cannot be said that the circular-letter dated 22.1.90 is an order terminating the Petitioner retrospectively. However, it appears that although no extension was made, under the expectation that his services would be extended, the Petitioner continued to work till 31.12.90. We shall deal with this aspect of the matter later in this judgment.

4. Mr. Mazumdar has further submitted that the Petitioner was interviewed, for regular appointment and after the interview he was appointed and, therefore, his appointment was made on regular basis. From the counter of the State, it appears that in the select list the position of the Petitioner was 34th, and as such, he could not be appointed on regular basis. However, he was engaged to work as peon on ad-hoc basis extending his services again and again till 31.12.89. The fact on record does not support the contentions of Mr. Mazumdar. The nature of the orders made extending the services of the Petitioner clearly indicate that the Petitioner was engaged on ad-hoc basis. Therefore, the contention's of Mr. Mazumdar must fail.

5. The last contention of Mr. Mazumdar is that, in place of the Petitioner, Dimbeswar Saikia (Respondent-4) has been appointed on ad-hoc basis on the ground that he was one of the persons victimized in the Assam Movement. Therefore, it was replacement of an ad-hoc appointee by a new ad-hoc: appointee thereby diving cut the Petitioner illegally and arbitrarily. The submission of Mr Mazumdar has sufficient force. In Dr A.K. Jain and Others Vs. Union of India (UOI) and Others, replacement of ad-hoc appointments by new ad-hoc appointees was restrained. But the Respondent-4 has been working for about one year and 7 months in such a situation we are not inc-(sic)ned to uproot him.

6. The next question which, therefore, arises is what relief is to be granted to the Petitioner, it is stated that ho was working upto 22.1.90. Be that as it may in view of the decision of the Supreme Court in A.K. Jain's case (supra) the replacement of ad-hoc Appointment by new ad-hoc appointee may be set aside but we are not inclined to uproot the Respondent-4 as already stated. Considering the scale of pay of the Petitioner which was Rs 370/- to Rs. 490/- pm plus other allowances, and having regard to the peculiar circumstances of the case, we make the following order-

(a) The Petitioner shall be paid a sum of Rs. 5000/- as monetary compensation in the nature of palliative, and

(b) If there is vacancy, and if not when any vacancy arises the Petitioner's application, if filed, shall be considered for appointment to post suitable to him

by relaxing his age.

The writ petition is disposed of with the above directions No costs.