
(2004) 02 GAU CK 0064
In the Gauhati High Court
Case No : WP (C) No. 6446 of 2002

Pramod Barmah and Others APPELLANT
Vs
State of Assam and Others RESPONDENT

Date of Decision : 20-02-2004

Acts Referred:

Citation : (2004) 3 GLR 265

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : G.K. Bhattacharya, for the Appellant; K.C. Mahanta, for the Respondent

Judgement

B.K. Sharma, J.—This writ petition relates back to an earlier writ petition, which was registered and numbered as Civil Rule No. 1889/94. By the said writ petition the Muster Roll labourers of the Veterinary Department, Government of Assam had approached this Court invoking its writ jurisdiction through their Union. By the said writ petition a prayer was made for regularisation of the services of the Muster Roll workers and not to give effect to the directives of the Department by which the decision was communicated not to engage any Muster Roll workers except for the purpose of development of the livestock and poultry firms with effect from 19.09.94. The said writ petition was disposed of with the following observations and directions :

"In making absorption the authority should bear in mind that it is well settled law that the Government must behave like a model employer. The Government is not expected to exploit its employees nor it is expected that the Government should adopt a policy of hire and fire as convenient and suitable to it. It is stated by the petitioners that some of them are working since last 1979 and even after 15 years they have not been absorbed and they are hanging in the balance without any existence. This position cannot be allowed to continue in a society, which claims to be a welfare society. The committee shall submit the recommendation to the Govt. within a period of two months from the date of receipt of this order.

A copy of the complete list have been given to Smt. A. Hazarika, learned junior Government advocate to send it to the Director of Animal Husbandry and Veterinary Department. Shri Baruah also submits that these persons are even now working but their salary have not been paid. The committee shall also consider that aspect of the matter and if it is found that really these persons are working but they have not been paid their salary, immediately on such scrutiny and verification, shall make the arrangement to pay half of their arrear salary within one (1) month from the date of such verification by the committee.

It is also stated that in Annexure "B" that on 29th March, 1994, the Director of Animal Husbandry and Veterinary Department that the Govt. in deciding to retain the Muster Roll workers who were already in Muster Roll Register. That aspect of the matter shall also be considered by the committee.

It is made clear that the petitioners shall not be ousted from their quarters till the report of the committee and three (3) thereafter so that the petitioners may take recourse to the appropriate remedy. The President and Secretary of the Sramik Union shall be heard by the committee after issuing necessary notices to them."

2. Now the present writ petition has been filed by 38 petitioners who claim the benefit of the said direction of this Hon'ble Court. According to the petitioners, they were the members of the union, which had filed the earlier writ petition and thus their case is covered by the aforesaid judgment and order dated 19.9.94. Pursuant to the said judgment and order a meeting was convened on 21.3.98 in the Office Chamber of the then Minister, Animal Husbandry and Veterinary Department, Assam. In the said meeting the Union was represented by its President, Hari Nath and other eight members of the Union and in the Government side it was represented by the then Minister, Commissioner and Secretary of the Department, Joint Secretary of the Department, Director of Animal Husbandry and Veterinary Department and the Finance Officer in the Directorate. After a threadbare discussion it was agreed that according to the list submitted by Shri Hari Nath, 972 workers would be allowed to be engaged afresh immediately. As regards the arrear salary etc., if any, from 1993 to the date of the meeting it was observed that the same would be decided by the Govt. and the decision which might be arrived at would be accepted. In the said meeting Shri Hari Nath submitted the letter dated 5.4.97 enclosing the list of 84 workers allegedly engaged by the establishment. It was expressed with surprise that how such an original document could be obtained by Shri Hari Nath. It was observed that as per the verification carried out by the Director, Animal Husbandry and Veterinary Department, the same did not tally with another list submitted on that day. It was further observed that after verification, 39 Muster Roll workers were found to be genuine as against the list containing the names of 84 persons. It was held that the establishment being Very small, there was no occasion and scope to engage such a huge numbers of Muster Roll workers. Finally, it was observed that the decision to absorb 972 Muster Roll workers was final and the

matter stood disposed of. As per the said minutes, the office of the Director, A H & V Deptt., Assam was to take immediate necessary action.

3. Pursuant to the said minutes of discussion, the Director, A H & V Deptt., Assam addressed a letter dated 1.4.98 to the Commissioner and Secretary of the said Department submitting the requirement of funds to create additional posts of 972 of Muster Roll workers. By the said communication it was also intimated that the existing Muster Roll workers were not getting their wages regularly since October 1997 due to inadequate budget provision. The total requirement in respect of 972 Muster Roll workers who had figured in the aforesaid minutes of discussion was stated to be Rs. 1.9 crore. The communication was followed by some other communications. However, the same having not yielded any result and the aforesaid minutes of discussion having not attained any finality, the present petitioners after 8 years of the aforesaid judgment dated 19.9.94 and 4 years of the meeting held on 21.03.98 have approached this Court by filing the present writ petition praying for appropriate writ/order or direction towards engagement/absorption of the petitioners in service as Muster Roll workers with all consequential benefit including seniority and back wages from the date of the decision taken as per the aforesaid minutes of discussion held on 21.3.98.

4. The respondent No. 2 has filed an affidavit taking a stand that all the petitioners were illegally engaged without any approval of the competent authority and also in violation of instruction issued by the Government in terms of which the Muster Roll workers engaged after 1.1.90 were not to be retained. According to the stand in the said affidavit, the petitioners were engaged temporarily and illegally after 1.1.90. In paragraph 5 of the affidavit a stand has been taken that the Govt. of Assam has already constituted a committee for examination of the position of deployment of Muster Roll worker in A. H. & V. Department. Thereafter, the Govt. has taken a policy decision not to retain any Muster Roll workers who were engaged after 1.1.90. However, the Drawing and Disbursing Officers (DDO) in total violation of Government decision had illegally engaged some Muster Roll workers without the approval from the competent authority. Thus, it is the stand of the respondents that the case of the petitioners does not fall within the approved norms laid down by the Government and that the petitioners having already been retrenched from service as Muster Roll workers, there is no question of their re-engagement or regularisation as has been prayed for in the writ petition.

5. Mr. G. K. Bhattacharyya, learned senior counsel appearing for the petitioners, submitted that the Committee constituted by the Govt. pursuant to the directions of the Court in the earlier writ petition referred to above and having taken the conscious and solemn decision, the respondents cannot ignore and sidetrack the same with some untenable pleas as has been raised in the affidavit. There being enough indication in the earlier judgment of this Court for re-engagement and regularisation of the services of the Muster Roll workers and there being a decision in the aforesaid minutes of discussion dated 21.3.98 to reengagement of

972 workers, the respondents are bound to obey the same. On the other hand, Mr. Mahanta, learned senior Government advocate appearing for the respondents, submitted that the minutes of the meeting held on 21.03.98 is not enforceable in law and it is upon the Govt. to decide whether to accept the recommendation given by the Committee or not.

6. I have considered the rival submissions made by the learned counsel appearing for the parties and have also perused the materials on record. In the earlier writ petition the union representing the Muster Roll workers made a prayer for regularisation of services of the Muster Roll workers and not to give effect of the impugned letter by which directions were issued not to engage any Muster Roll workers w.e.f. 19.4.94. The admitted position is that at the time of filing of the earlier writ petition, the members of the Union who had been earlier engaged as Muster Roll workers including the petitioners were not in service. This Court while disposing of the said writ petition issued a direction for constitution of a Committee to examine the case of the Muster Roll workers. As per the said judgment the Committee was to submit the recommendations to the Government. Thus, while leaving everything to the Committee, the final decision to be taken in the matter was left to the Government.

7. The Committee so constituted held a meeting on 21.3.98 in presence of the representatives of the Union representing the Muster Roll workers and in the said meeting it was accepted that 972 workers would be allowed to be engaged afresh immediately. Observing the decision to be final, the matter was disposed of and the Director of the Deptt. was directed to take immediate necessary action. Pursuant thereto, certain communications were made for re-engagement of the workers and for payment of their wages indicating the requirement of additional budget provision to the tune of Rs. 1.9 crore. By the said communication, a request was made to observe necessary formalities such as routing the matter through Personnel and Finance Departments for creation of additional posts of 972 Muster Roll workers. Such a request made for creation of additional posts of 972 Muster Roll workers is not found in the minutes of the discussion held on 21.3.98. Only observation made was for engagement of 972 workers afresh. The engagement of Muster Roll workers does not necessarily mean that there should be available vacancies and the question of post would arise only for the purpose of regularisation of the services of such Muster Roll workers.

8. Coming to the question of enforcement of the decision taken in the meeting held on 21.3.98, Mr. Bhattacharyya, the learned senior counsel for the petitioners, submitted that the same is enforceable in law and this Court is empowered to issue mandamus towards enforcement of the same. Mr. Mahanta, learned senior Government advocate, submitted that although the minutes of discussion which was held pursuant to the direction of this Court carried sanctity, the same cannot be enforced in law and for that matter the petitioners are not entitled to any direction. This Court while disposing of the earlier writ petition

providing the constitution of a Committee to examine the case of the Muster Roll workers directed that the recommendations of the Committee should be submitted to the Govt. This necessarily means that the Committee directed to be constituted was only recommendary in nature and the final decision was to be taken by the Government. Certain communications were made in that direction, however, no finality was attained and it appears that the Government is yet to take a decision in the matter.

9. Certain action which was required to be undertaken as per the direction of this Court was so taken after about 4 years of the order of this Court as against the stipulated time of 3 months. Even thereafter the Government did not act upon the recommendation made by the Committee either accepting or rejecting the same. This cannot be said to be a healthy sign in the matter of implementation of Court's order. The fate of the petitioners could not have been kept hanging in this manner indefinitely. They ought to have been told as to where they stand. Instead, they have been kept hanging for the last 8 years till the filing of the writ petition after final disposal of the earlier writ petition.

10. By now more than 9 years have elapsed since the first writ petition was disposed of by a judgment and order dated 19.9.94 and the petitioners are still cherishing hopes with legitimate expectation that their case would be considered by the Government as per the aforesaid minutes of discussion. However, even after lapse of 6 years from the date of the aforesaid minutes of discussion, the Government has not taken any decision in the matter. It was expected of the Government and was also incumbent on its part to pass appropriate order in terms of the aforesaid judgment and the recommendations made as per the minutes of discussion held on 19.9.94. The stand of the respondents in their affidavit cannot be appreciated. The same very stand was available for the respondents in the earlier writ proceeding. It is immaterial as to whether the stand as projected in the present writ proceeding was taken or not in the earlier writ proceeding. The said judgment and order has attained its finality and cannot be allowed to be reopened by the stand now taken in the present proceeding. Pursuant to the said judgment and order, the Committee was constituted which made the recommendations as per the minutes of discussion held on 21.3.98. The Government in the particular department ought to have taken action immediately on that basis, instead they have been sitting over the matter for the last six years with an indifferent attitude.

11. In view of above, I dispose of this writ petition issuing a direction to the respondents to take a decision on the basis of recommendation made by the Committee in its meeting held on 21.3.98 which was pursuant to the directions as contained in the judgment and order dated 19.9.94 in Civil Rule No. 1889/94. Such decision shall be taken consistently with the directions and recommendation made in the aforesaid judgment and the minutes of the meeting respectively within a period of three months from the date of receipt of the certified copy of the order.

12. Before parting with the case records I make it clear that the aforesaid decision shall confine only in respect of the petitioners and shall have nothing to do with the remaining Muster Roll workers out of the total 972 workers. I have adopted this course of action considering the fact that about 10 years have gone by since the date of the judgment in the earlier writ proceeding and the other Muster Roll workers have not made any grievance against the alleged non-implementation of the directions as contained in the said Judgment and the recommendation made by the Committee.

13. No order as to cost.