
(2006) 02 GAU CK 0049
In the Gauhati High Court

Pungsubam Manglem Singh

APPELLANT

Vs

State of Manipur

RESPONDENT

Date of Decision : 23-02-2006

Acts Referred:

Citation : (2006) 02 GAU CK 0049

Hon'ble Judges : M.B.K.Singh, J

Bench : Single Bench

Advocate : Th.Ibohal Singh, H.S.Paonam, Advocates appearing for Parties

Judgement

1. Heard Mr. H.S. Paonam, learned counsel appearing on behalf of the petitioner and Mr. Ibohal, learned Addl.G.A. appearing on behalf of the respondents.

2. Petitioner's case, in brief, is as follows: he was initially appointed as Peon cum Chawkidar against a clear vacancy on ad hoc basis for a period of 6 months by an order dated 19.5.99 in pursuance of the Government of Manipur, Under Secretary's (Hort. & Soil Consn.) Letter dated 15.5.99 and he joined the office of the Deputy Director (HQ), Manipur on 19.5.99. The ad hoc appointment was extended for another 6 months vide order dated 3.12.99 issued by the respondent No.2. Thereafter, he was transferred against the post of Horticulture Demonstrator, which became vacant consequent upon promotion of its earlier incumbent to the post of Field Assistant, vide order No. DH & SE1/875/85, dated 3.12.1999. His service was extended from time to time by various orders of the Department and he is still rendering his service as Horticulture Demonstrator as his service is highly required in the Department. When the Government started ousting measure by issuing order dated 11.7.01 and 1.8.2001 by abolishing available vacant post in the Department, he and 3 other persons challenged the said order by filing W.P(C) No.6008 of 2001 in this Court and obtained an interim order suspending the said orders and directing the concerned respondents not to oust him and others without the leave of the Court. He also file another writ petition being No.1240 of 2002 before this Court paying for releasing his pay and allowances w.e.f. December, 2000 and obtained an order to the effect that the

concerned authority was to make an inquiry to ascertain if he was rendering service or not, and that there was any due wages, it should be paid at the earliest. His due salary has not been paid and though the respondent No.2 has recommended for extension of his service, it has not also been done by the Government.

3. Petitioner is aggrieved that after relaxation of ban on direct recruitment, process has been started to fill up the post of Horticulture Demonstrator held by him through regular DPC. In this connection, the petitioner apparently contemplates for seeking an interim order from this Court directing the respondents not to fill up the said post of Horticulture Demonstrator from open market by holding a regular DPC. At the same time, main prayer of the petitioner mentioned in the writ petition are that writ or direction be issued to the respondents to consider his case for regularization as Horticulture Demonstrator and that the respondents be restrained from giving effect to the requisition letter dated 10.11.2005 issued by the Director (H & SC) Govt. of Manipur. However, in the course of hearing, the learned counsel appearing on behalf of the petitioner submits that the petitioner will not press with the said prayers and the petitioner wants only a direction to be given to the respondents for giving some weightage in his favour in respect of his long service as Horticulture Demonstrator on ad hoc basis at the time of holding the DPC for filling up the said post on regular basis.

4. It is well settled that an ad hoc appointee to a post does not have any legal right to claim for regularization to the post. No provisions of law confer a right to an ad hoc appointee to claim for regularization in respect of the post to which he has been appointed is brought to the notice of this Court. In this context, the submission of the petitioner's counsel for not pressing with the above said main prayers is appreciable. Now, point to be considered is if this Court is to make any direction for giving some weightage in favour of the petitioner in respect of his long service as Horticulture Demonstrator on ad hoc basis at the time of holding DPC for filling up the post of Horticulture Demonstrator on regular basis.

5. The petitioner's counsel draws this Court's attention to the decision of the Supreme Court in *Badari Prasad & Ors. Vs Union of India* reported in (2005)11 SCC 304 and submits that the petitioner is entitled to some weightage in his favour in respect of his long service on ad hoc basis at the time of consideration by the DPC for recommendation to fill up the said post of Horticulture Demonstrator on regular basis. In the above said case, the appellants started their service in the Railways as Daily Rated Employees of different posts of Khalasi, Gangman, Chawkidar between the years, January, 1981 to June, 1982. They were given temporary status on the basis in which they were working. They were posted on different dates in the year, 1984 to work as Storeman which is a higher post in Group C carrying a higher scale of pay. They continuously worked on the post of Storeman for long period during the year, 1984-85, 1988 and 1990 till they were reverted by the impugned order passed on 29.7.99 from Group C

post of Storeman to GroupD post of Khalasi in open line. Supreme Court held that appellants were not entitled to regularization on the groupC posts merely on the basis of their ad hoc promotion. But, they were entitled protection of pay last drawn by them in the said post even after their repatriation to GroupD post. It was, further, held that the appellants were entitled to claim as regularization and advantage of experience for the long period spent on higher post while being considered for promotion.

6. The petitioner's counsel, further, draws this Court's attention to the decision of the Supreme Court in *Bhadai Rai Vs Union of India and Ors* reported in (2005) 11 SCC 298 wherein the Supreme Court on finding that the appellants had been qualified in a Screening Test and that they were holding the post of Rigger in GroupC post for 20 years held that there was legitimately entitled to the relief for pay protection and consideration of his case for regularization of the post to GroupC post in his turn with others with due regard to the fact that his having passed the Screening Test and his work and performance for long 20 years on the basis of Rigger in GroupC.

7. Mr. Ibohal, learned Addl. Government Advocate vehemently submits that facts and situation of the said case are not similar to the present case and as such the petitioner shall not be entitled to any weightage in respect of his service as Horticulture Demonstrator on ad hoc basis at the time of holding the DPC for filling up the said post on regular basis. 8. In my considered opinion, even though the writ petitioner cannot claim for regularization to the post on the basis of his service on ad hoc basis in respect of the post, the fact of his service of more than 6 years as Horticulture Demonstrator on ad hoc basis cannot just be ignored at the time of consideration for filling up the said post on regular basis when he has also applied for the post on fulfilling the essential qualifications prescribed for it. Even if his service was not of the period of about 20 years, his service for a period of about 6 years on ad hoc basis is a relevant factor to be taken into account at the time of consideration for filling up the said post of Horticulture Demonstrator when the said fact is brought to the notice of the DPC. It is for the concerned DPC to consider cases of the candidates and then to recommend the name/names of the candidate/candidates found suitable for the post. While making consideration the cases of the candidates for the purpose of recommendation of the suitable candidate/candidates for the post, it will be unreasonable on the part of the DPC to ignore the service of a candidate who is found to have held the said post for 6 years. By saying so, I do not mean to say that because of the petitioner's service for a long period of about 6 years on ad hoc basis, he should be recommended by the DPC for appointment to the post irrespective of any finding about his suitability or otherwise for the post. In my opinion, suitability or otherwise of a candidate in respect of a post will have to be determined by taking into consideration all the relevant facts including post service of the candidate holding the post on ad hoc basis, if any. This Court is, thus, of the opinion that while making consideration for the purpose of recommending suitable candidate/candidates for the said post of Horticulture

Demonstrator, it will be reasonable on the part of the concerned DPC to consider service of the writ petitioner on ad hoc basis for about 6 years and as such non consideration of the said fact by the concerned DPC will be unreasonable. The concerned DPC is expected to act reasonably in accordance with relevant rules and not unreasonably.

9. With this finding and observation, this Writ Petition is disposed of.