

(2017) 12 GAU CK 0035
In the Gauhati High Court
Case No : 4014 of 2013

Ranjit Talukdar

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 08-12-2017

Acts Referred:

Citation : (2017) 12 GAU CK 0035

Hon'ble Judges : Nelson Sailo

Bench : SINGLE BENCH

Advocate : K Sarma, YS Manan

Final Decision : Disposed off

Judgement

1. Heard Mr. K Sharma, the learned counsel for the petitioner and Mr. YS Manan, the learned Standing Counsel appearing for the Public Works Department (Building and National Highway) viz; PWD(B & NH) for short.
2. The case of the petitioner in brief is that he was initially appointed as Work Charge Section Assistant on compassionate basis vide Office Order dated 17.03.1989 (Annexure-1). Thereafter, the petitioner alongwith two other person i.e., Sri Prabin Chandra Thakuria and Sri Prakash Bezbaruah were upgraded to the post of Sub-Engineer Grade-II from the date of taking over charge vide Office Order dated 02.04.2003 (Annexure-2).
3. While the petitioner was working as such, he was convicted by the Ad-hoc Additional Sessions Judge, Kamrup at Guwahati vide Judgment dated 31.12.2003 convicting and sentencing the petitioner and other co-accused persons with rigorous imprisonment for life in connection with Sessions Case No.160(K) of 2000. On his conviction, the petitioner was sent to jail. Thereafter, he preferred an appeal against the conviction and sentence vide Criminal Appeal No.30 of 2004 alongwith an application for bail vide Misc. Case No.41 of 2004. The petitioner was then released on bail vide Order dated 23.3.2004 passed in the Misc. case. However, while the petitioner was in jail after his conviction, he was

dismissed from service vide Office Order dated 10.3.2004 (Annexure-4) with immediate effect.

4. The petitioner then filed WP(C) No. 3048 of 2004 challenging the Order of his dismissal from service. During the pendency of the writ petition, the aforesaid Criminal Appeal filed by the petitioner came up for consideration and vide Judgment and Order dated 24.04.2006, the conviction and sentence passed by the learned Trial Court was set aside. Consequently, WP(C) No.3048 of 2004 also came up for consideration on 20.09.2011 wherein the learned counsel appearing for the PWD produced a communication made to him on 19.09.2011 by the Chief Engineer (Building), wherein it was stated that in view of acquittal of the petitioner in the Criminal Appeal, the order of his dismissal from service dated 10.03.2004 would require a review towards his reinstatement in service from the date of the Judgment i.e., 24.04.2006. As a result, the writ petition was disposed of directing the respondent authority to pass appropriate order towards reinstatement of the petitioner back into service w.e.f the date of the acquittal. However, it was also directed that the petitioner would be reinstated without backwages and his pay should be fixed notionally.

5. Pursuant to the disposal of the Criminal Appeal as well as the Writ Petition, the petitioner was reinstated back into service from the date of his acquittal i.e., 24.04.2006 vide Office Order dated 02.04.2012 (Annexure-6). It was further provided that the petitioner would not be entitled to any backwages but however his pay would be fixed notionally. After he was reinstated, the petitioner submitted a representation to the Under Secretary to the Government of Assam, PWD (Building) on 08.11.2012 (Annexure-8) with a request that his service in the post of Sub-Engineer Grade-II be regularized. However, the representation of the petitioner having not been considered, he is again before this Court through the present writ petition.

6. Appearing for the petitioner, Mr. K Sarma, the learned counsel submits that the petitioner was upgraded to the post of Sub-Engineer, Grade-II vide Office Order dated 02.04.2003 alongwith two other persons, one of them being Sri Prakash Bezbaruah. He submits that the State Government in the PWD vide communication dated 30.09.2005 (Annexure-7) had communicated to the Accountant General (A & E) , Assam conveying the sanction of the State Government for filling up of 3471 numbers of post for different categories of Work Charge staff and 8598 numbers of Grade-IV post for Muster Roll Workers w.e.f. 22.07.2005 to 28.02.2006 for regularization of their service and whose engagements were made prior to 01.04.1993 and still working in their respective establishment without interruption of their service. He submits that pursuant to the said sanction of posts by the Government, Sri Prakash Bezbaruah was amongst those who were regularized. He therefore submits that had the petitioner not been convicted by the Sessions Court he too would have been regularized.

7. Mr. K Sarma submits that the petitioner now having since been acquitted from

the criminal case and reinstated back into service, his service should be regularized. He further submits that the petitioner, in fact vide Office Order dated 28.6.2016 (Annexure-P/1 of the Additional Affidavit) has been promoted from the post of Sub-Engineer, Grade-II (Works) to the post of Sub-Engineer Grade-I (Works). However, despite the promotion, the respondent authorities, more particularly, respondent No.5 has not allowed him to join the promotional post. Mr. R Sharma thus submits that the case of the petitioner is not comparable with the case of the other temporary employees seeking regularization as the petitioner was not considered for regularization during the relevant time only because of his conviction in the criminal case. Since the same has ended in his acquittal, the petitioner should be regularized in service so that the petitioner can avail of all service benefits including pensionary benefits on his retirement.

8. Against the writ petition, respondents have filed their affidavit-in-opposition. Mr. YS Manan by referring to the statement made therein submits that the respondent authorities concerned pursuant to the representation submitted by the petitioner for his regularization had initiated a proposal to the State Government in the PWD (B & NH) through Chief Engineer, PWD (Building) on 11.09.2012. However, vide communication dated 13.03.2013, the Under Secretary to the Government of Assam, PWD (B & NH) informed the respondent No.5 that the petitioner was not entitled to regularization in service. It was also stated that the views of the Additional Advocate General, Assam had also been obtained. The respondents have further contended that the petitioner cannot claim regularization as a matter of right or even as a legitimate expectation in as much as the Finance Department of the State vide Office Memorandum dated 16.06.2012 had already issued instructions that regularization would not be permissible. The petitioner in fact having not even challenge the Office Memorandum dated 16.06.2012 which was under consideration in Writ Appeal No. 45 of 2014, the petitioner has no right to claim regularization.

9. Mr. YS Manan further submits that Writ Appeal No.45 of 2014 was considered and disposed of vide Judgment dated 08.06.2017 wherein the Division Bench of this Court negated the claim of the casual employees for their regularization in service. Therefore, the petitioner being clearly covered by the said Judgment, there is no merit in the writ petition.

10. Mr. YS Manan by referring to the Judgment and Order dated 08.06.2017 passed in WA No. 45 of 2014 submits that the Office Memorandum dated 16.06.2012 which provides that there would be no more regularization by creating supernumerary post in respect of the casual employees engaged prior to 01.04.1993 was upheld. He submits that the casual employees engaged prior to 01.04.1993 who are similarly placed like the present writ petitioner had projected their grievance that for one reason or the other, their case were not considered by the State Government for regularization in the light of the Cabinet decision dated 22.07.2005. Therefore, they approached this Court by filing a writ petition which was considered and allowed by the learned Single Judge by

quashing the Office Memorandum dated 16.06.2012 while observing that there was no bar for creating supernumerary post and regularization for one day of casual employees who were engaged prior to 01.04.1993 after they had attained the age of superannuation or in case of death for the purpose of pensionary benefits. However, the Division Bench held that the decision of the learned Single Judge was not in tune with the verdict of the Supreme Court rendered in the case of State of Karnataka Vs. Uma Devi (3), (2006) 4 SCC 1 and therefore held that the casual workers were not entitled for regularization of their service with consequential benefits such as pension etc. However, it was observed that as the State Government had agreed not to permanent terminate the services of its casual employees who have been working since the last more than 10 years and against a sanctioned post till their normal retirement except on disciplinary ground or on ground of criminal offence and further agreed to give them such benefits except regularization of their services and benefit of pension. Mr. YS Manan submits that the instant writ petitioner can only be given similar benefits except regularization of his service and the consequential benefit of pension.

11. I have heard the learned counsel for the rival parties and I have perused the materials available on record including the decision rendered by a Division Bench of this Court in WA No.45 of 2014.

12. The point to be considered and decided is as to whether the petitioner having been acquitted by the criminal court and therefore reinstated back into service can be entitled the benefit of regularization in service as was done in case of other similarly situated persons. Secondly, whether the decision rendered by the Division Bench of this Court in WA No. 45 of 2014 would cover the case of the petitioner and thereby deprive him the benefit of being regularized in service.

13. As may be noticed, the petitioner was dismissed from service solely on the ground of his conviction by the criminal court vide Office Order dated 10.03.2004. However, after he was acquitted on filing a criminal appeal vide Judgment and Order dated 24.04.2006, the petitioner was directed to be reinstated into service w.e.f. from the date of his acquittal without backwages but with notional fixation of pay by the writ Court vide Order dated 20.09.2011 passed in WP (C) No.3048 of 2004. Thereafter the petitioner was reinstated vide Office Order dated 02.04.2012 w.e.f 24.04.2006 (the day on which he was acquitted from the criminal case). As can be noticed, the petitioner was dismissed from service on 10.03.2004 while he was reinstated only w.e.f 24.04.2006 and therefore, there is a service break for about two years. The Order dated 20.09.2011 passed in WP (C) No. 3048 of 2004 has not been challenged by the writ petitioner and therefore, it has attained its finality. While such is the position, the petitioner through the instant writ petition has claimed regularization of his service. The Government's sanction for creation of 3471 + 8598 posts for different categories of Work Charge staff and Muster Roll workers w.e.f. 22.07.2005 to 28.02.2006 was conveyed vide communication dated 30.09.2005 (Annexure-7). As can be seen the petitioner was not in service

during the aforesaid period and therefore, merely because similarly appointed persons were regularized, the petitioner with a service break of about 2 years which he did not challenge has no continuity of service to claim similar benefit. A benefit which otherwise also cannot be claimed as a matter of right, especially after the Judgment passed by the Division Bench of this Court in WA No.45 of 2014. Therefore under the given facts and circumstances, there is no scope for treating the case of the petitioner as an exception or special case for regularizing his service.

14. With regard to the Judgment and Order rendered in WA No.45 of 2014, the Division Bench clearly held that casual employees who were not regularized in service and were similarly situated with those who had already been regularized cannot take the plea of discrimination and legitimate expectation in as much as the decision taken by the State Cabinet on 22.07.2005 to regularize the service of the casual employee engaged prior to 01.04.1993 was not in tune with the decision of the Apex Court rendered in the case of Uma Devi (supra). Therefore, the Office Memorandum dated 16.06.2012 barring regularization of service which was rejected by the writ Court was brought back into force. In case of those who had since been regularized, their regularization was not disturbed. Thus, taking into account the decision of the Division Bench as contained in paragraph 14, 19 and paragraph 20 in particular, I am of the considered view that the case of the petitioner is only covered by the said Judgment and Order. In that view of the matter, I do not find any merit in the writ petition and the same is dismissed. With regard the promotion of the petitioner from the post of Sub-Engineer, Grade-II (Works) to the post of Sub-Engineer Grade-I (Works) and he not being allowed to join the promotional post, as it is not the subject matter and relief claimed in the writ petition, the same is not being examined.

15. Before parting with the records, it is needless to observe herein that the petitioner will be entitled to the benefits as mentioned in paragraph 22 of the Judgment and Order dated 08.06.2017 passed in WA No.45 of 2014 subject to scrutiny and verification by the respondents.

16. Writ petition stands disposed of. No cost.