

(2018) 02 GAU CK 0019
In the Gauhati High Court
Case No : 5532 of 2012

RANTU TALUKDAR and ORS

APPELLANT

Vs

THE STATE OF ASSAM AND ORS

RESPONDENT

Date of Decision : 01-02-2018

Acts Referred:

[Constitution of India](#), [Article 14](#) -
Appointment of Commission to inquire into and report on the administration of
autonomous districts and autonomous regions

Citation : (2018) 02 GAU CK 0019

Hon'ble Judges : Michael Zothankhuma

Bench : Single Bench

Advocate : R M DAS, A N CHOWDHURY, S KATAKI, B AHMED

Final Decision : Dismissed

Judgement

1. Heard Mr. S Kataki, counsel for the petitioners in WP(C) No.5532/2012, WP(C) No. 1070/2012, WP(C) No.150/2013, WP(C)

No.2939/2013, WP(C) No.577/2012, WP(C) No.6315/2012, WP(C) No.6555/2011 and WP(C) No. 6559/2011. Also heard Dr. B Ahmed,

Standing counsel, Irrigation Department for the respondents.

2. The cases are being disposed off by this common judgment and order as the subject matter in issue is the same.

3. The petitioners, by way of the above writ petitions, have prayed for payment of arrear salaries, which has not been paid to the petitioners since 10.10.1999.

4. The petitioners have relied upon the judgment and order dated 04.09.2009 passed by this Court in WP(C) No. 5580/2002, in making a claim for payment of their arrear salaries on the ground that the petitioners herein are

similarly situated as the petitioners in WP(C) No.5580/2002.

5. The case of the petitioners in brief is that, pursuant to an advertisement dated 23.08.1998, published in a local daily for filling up of different

posts in the Irrigation Department, Tezpur Division, the petitioners took part in the selection process and were accordingly selected for the same.

Thereafter, vide order dated 08.10.1999, the petitioners were appointed to different posts under the Irrigation Department. The petitioners

submitted their joining reports on 10.10.1999 and had gone to attend their works. To cut a long story short, the petitioners were not allowed to

work w.e.f. 10.10.1999 and they were also not given any salary. Some persons, who had been selected and appointed similarly as the petitioners

and on the basis of the same selection process, approached this Court by way of WP(C) No. 6936/2000, claiming payment of arrear salaries as

well as to allow them to continue their services.

6. WP(C) No.6936/2000 was disposed of vide order dated 03.01.2001, which is as follows:-

Heard Mr. M H Mazarbhuiya, learned counsel for the petitioners and Mr. T C Chutia, learned Junior Government Advocate, Assam. The case of

the 74 petitioners in this writ petition is that they have been selected for appointment to Grade-III and Grade-IV posts in Tezpur Irrigation

Division, and have been appointed against the said posts by order dated 08.10.1999. pursuant to the said orders they joined in their respective

places of posting and submitted joining reports to the Executive Engineer, Tezpur Irrigation Division, Tezpur, but they have not been paid their

salary as year. They have therefore moved this Court in this writ petition under Article 226 of the Constitution for appropriate relief.

It appears from Annexure-5 to the writ petition that the petitioners have submitted a representation to the Commissioner & Secretary to the

Government of Assam, Irrigation Department, stating all relevant facts and making a prayer that their monthly pay and allowances be released as

early as possible. I dispose of this writ petition with the direction that a certified copy of this order and a copy of the writ petition with all its

Annexures including Annexure-5 be filed before the Commissioner & Secretary, Irrigation Department, who will consider the representation in

Annexure-5 and pass orders thereon and communicate the same to the

petitioners within one month of the receipt of the said copies from the petitioners.

7. In pursuance to the order dated 03.01.2001 passed by this Court in WP(C) No.6936/2000, the Secretary to the Govt. of Assam, Irrigation

Department issued a speaking order dated 21.10.2002 holding that the appointments had been made without holding an interview and without

processing the same through a Selection Board, which was to be headed by a Superintending Engineer. The speaking order held that the

documents were manipulated to enable the petitioners in WP(C) No.6936/2000 to gain employment through a back door policy. Further, no

record being available with regard to issuance of any appointment letters, the claim of the petitioners in WP(C) No. 6936/2000 was rejected.

8. No appeal was filed against the speaking order dated 21.10.2002 issued by the Secretary to the Govt. of Assam, Irrigation Department in

pursuance to the order passed in WP(C) No. 6936/2000. Thereafter, another batch of persons, which did not include the present petitioners, filed

WP(C) No. 5580/2002 claiming unpaid arrear salaries and to allow them to work. Said WP(C) No. 5580/2002 was disposed of vide judgment

and order dated 04.09.2009, which is as follows:-

42. As appointment of the petitioners are not illegal and irregular, rather regular appointment, though there are some procedural lapses, those

cases have no application in the instant case. Hence, those cases are not of much help to the State respondents, rather to decide the dispute

involved in this case, the decision of this Court in Arup Kr. Sarma Vs. State of Assam & Ors. (WP(C) No.6286/2007) would be of much helpful.

As it is stated earlier that when the appointment was valid and the petitioners had submitted their joining reports which were also accepted by the

authority concerned, it would be improper on the part of the Court to deny them to get their salary, more particularly, in view of the inquiry report

of the Additional Chief Engineer of the Department and in view for the note of the L.R. of the Government of Assam. This Court is of further

opinion that for the mistake as well as procedural and administrative lapses, the appointees like the petitioners should not be deprived from their

legitimate right of getting their salaries when they were admittedly not working in any other post during this period considering the fact that their

appointments were not cancelled by the authority meanwhile.

43. It is submitted that the petitioner joined their respective posts from time to time after issuing of the appointment letters and till today, they have

not been paid anything towards their pay and allowances. It is an admitted position that the State respondents did not prefer any appeal against the

interim order of this Court dated 06.09.2002 by which this Court directed the respondents to examine as to whether the petitioners were

appointed after due selection against the available sanctioned posts and, if so, to pay 50% of the pay and allowances as admissible for them for

their service and also to ensure the regular payment of current salary. The respondents authorities have no right to deprive the petitioners from the

benefit of the said order. More so, it is the respondents who did not allow the petitioners to discharge their duties, even when they were appointed

by a duly constituted selection committee. When the petitioners are not aware about the procedure relating to rotation/movement of the file of the

Government and in no way involved with the matter, as also held by this Court in the discussion made above that this is not a case of appointment

dehors the rules, rather a case of procedural lapses on the part of the respondents authorities, the petitioners cannot be deprived for such lapses.

Not only that the action of the respondents is, according to this Court, an illegal action. The petitioners are entitled to 50% of the pay and

allowances for the period prior to 06.09.2002 since their appointment and they are also entitled the regular payment of their salary on and from

06.09.2002. for the foregoing reasons and discussion, the respondents are directed to pay the salaries of the petitioners from the date of their

joining.

44. The aforesaid direction shall be complied with by the respondent authorities forthwith. In the result, the writ petition is allowed and accordingly,

it is disposed of. No order as to costs.

9. The respondents challenge to the judgment and order dated 04.09.2009 passed in WP(C) No.5580/2002 before the Division Bench of the

Gauhati High Court was dismissed due to delay in filing the appeal. The Supreme Court also dismissed the SLP filed by the respondents.

10. The petitioners' counsel submits that though the petitioners were not a party to the earlier writ petition, i.e., WP(C) 5580/2002 or the writ

petition filed prior to that, the petitioners being similarly situated as the petitioners in WP(C) No. 5580/2002, the direction given by this Court in

WP(C) 5580/2002 should be made applicable to the petitioners herein, in view of the Article 14 of the Constitution of India.

11. The petitioners' counsel thus prays that in view of the facts stated above, a direction should be issued to the State respondents to consider the

claim of the petitioners for payment of unpaid arrear salaries and to allow them to discharge their duties as per their appointment orders.

12. Dr. B Ahmed, counsel for the Irrigation Department submits that all the appointment orders of the petitioners herein are manufactured

documents and the Government have no records regarding their appointment orders. He also submits that the petitioners have not even worked for

the Government for a single day. He submits that the entire selection and appointment has been made by the Executive Engineer, Tezpur Division,

which is not in conformity with the Rules. He submits that the advertisement issued in the local daily, i.e., "The Mahajati" was not in circulation at the

relevant point of time. Dr. B Ahmed, also submits that the Superintending Engineer is the Chairman of the Selection Board for the posts in which

the petitioners were appointed. However, there is no record of the Superintending Engineer having participated in any selection process.

13. The respondents counsel also submits that the petitioners' appointment orders being manufactured documents, there is no question of there

being any cancellation orders being issued by the State Government. He also submits that the present writ petition should be dismissed due to

delay and laches.

14. I have heard the counsels for the parties.

15. The petitioners herein were appointed to different posts under the Irrigation Department, Tezpur Division on 08.10.1999. However, they have

not worked for a single day and no salary has been given to them. The petitioners herein have however not made a challenge to the said non-

payment of arrear salaries or not discharging their duties except by way of the present writ petitions that had been filed during 2012-2015.

16. The submissions made by the respondent's counsel to the effect that the appointment orders of the petitioners are manufactured and are not a

part of the official records are disputed questions of fact, which cannot be

decided by this Court. Be that as it may, the present petitions suffer from laches and delay. They have been filed after 13 years from the date the petitioners were allegedly not allowed to work.

17. In the case of State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors., reported in (2015) 1 SCC 347, the Apex Court held

that when a particular set of employees is given relief by the Court, the normal rule would be that all other identically situated persons need to be

treated alike by extending that benefit, otherwise, it would be violative of the Article 14 of the Constitution of India. The Apex Court further held

that the above principle was however subject to well-recognized exceptions in the form of laches and delays as well as acquiescence. The persons,

who approached the Court later, trying to ride the piggy back upon the earlier judgments, would have to be treated as fence-sitters and laches,

delays and acquiescence, would be a valid ground to dismiss their claim. In fact, the exact words of the Apex Court in the case of Arvind Kumar

Srivastava (supra) are reflected at paragraphs 22.1. and 22.2 and the same are quoted below:-

22.1. The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated

alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This

principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates

that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated

persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognized exceptions in the form of laches and delays as well as acquiescence. Those persons

who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that

their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the

judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays,

and/or the acquiescence, would be a valid ground to dismiss their claim.

18. In the present case, in order for the petitioners to get the benefit of the judgment and order dated 04.09.2009 passed in WP(C)

No.5580/2002, they will have to satisfy the Court that the delay and laches in filing the present writ petitions are justified and sufficient cause is

made out.

19. A perusal of the pleadings of the petitioners shows that no reasons have been given as to why they have approached this Court after a long

delay of more than 13 years. They have acquiesced to their predicament and woke up only after 13 years after the judgment and order was

passed in WP(C) No. 5580/2002.

20. In view of the unexplained delay and laches in filing the writ petition and acquiescence by the petitioners, it would be unjust to direct the

respondents to give payment of alleged unpaid arrear salaries to the petitioners or to give a direction for allowing them to discharge their works as

per their appointment orders. As the petitioners are fence-sitters, this Court is not inclined to exercise its discretion in this case. Accordingly, the

writ petitions are dismissed.