
(2016) 06 MEG CK 0009
In the Meghalaya High Court
Case No : WP(C). No. 290 of 2015

Shri. Crixastone R. Marak

APPELLANT

Vs

State of Meghalaya

RESPONDENT

Date of Decision : 09-06-2016

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (2016) LIC 2703 : (2016) 5 NEJ 77

Hon'ble Judges : Mr. S.R. Sen, J.

Bench : Single Bench

Advocate : Mr. A.H. Hazarika, Advocate, for the Appellant; Mrs. S. Bhattacharjee, GA, for the Respondent

Final Decision : Allowed

Judgement

Mr. S.R. Sen, J. (Oral) - Heard Mr. A.H. Hazarika, learned counsel for and on behalf of the petitioner and also Ms. S. Bhattacharjee, learned GA for and on behalf of the respondents.

The petitioner's case in a nutshell is:

"1. That this is an application under Article 226 of the Constitution of India for issuance of Writ or direction.

2. That the Petitioner begs to state that he read upto Class-IX and he is duly qualified to hold any Grade-IV post.

3. That the Petitioner was appointed as Casual Worker vide Order dated 01-10-1996 and since then he has been working as casual worker without break in service and he has completed more than 18 (Eighteen) years continuous service under the Social Welfare Department, particularly under ICDS Office, Resubelpara, North Garo Hills, Meghalaya and he is entitled to be conferred with the status of RCW and upgraded to any Grade-IV Post as per the Scheme formulated by the State Government, i.e. "The Meghalaya Regular Casual Worker

Scheme" 1996", wherein it is clearly directed all the Department throughout Meghalaya, directing that all the casual Worker/Muster Roll worker who has been put their continuous service for more than 10 years should be conferred with the status of RCW and thereafter to upgrade them to Group-D Post by taking into consideration Educational qualification and suitability. Whereas same has been denied in most illegal manner to the Petitioner. It is further stated that most of the casual workers under the Social Welfare Department have been conferred with the status of RCW and subsequently upgraded them to Grade-IV Post, however, the same has been denied to the Petitioner in most illegal manner.

4. That there are huge numbers of vacant post of Group-D Post under the Department, however the Respondent Authority fail to consider the case of the Petitioner.

5. That the Respondent Authority violated the Meghalaya Regular Casual Worker Scheme, 1996 and Minimum Wages Act, 1948 and also number of Instruction issued by the Government from time to time. And as such the Humble Petitioner prayed before this Hon"ble Court for issuance of appropriate direction to Respondent Authority to consider the case of the Petitioner by conferring to the status of RCW.

6. That this application is filed bona fide for the ends of justice."

2. Mr. A.H. Hazarika, learned counsel for the petitioner submits that the petitioner is working as a casual worker for more than 18 (eighteen) years in the office of The Child Development Project Officer, ICDS, Resubelpara, East Garo Hills under the Social Welfare Department. Unfortunately, after giving sincere service for last 18(eighteen) years till date he has not been regularise as a regular casual worker. Hence this instant writ petition.

3. On the other hand, Mrs. S. Bhattacharjee, learned GA on behalf of the State respondents submits that the case of the petitioner is already considered and regularized, but it is not possible for the Government to promote him in the Grade-D post as there is no vacancy.

4. After hearing the submission advanced by the learned counsel for the parties and going through the affidavit filed by the respondents No. 1, 2, 4 5, and 6 in paragraph 12 which is reproduced herein below:

"12. That with regard to the statement made in paragraph 8 of the writ petition the answering deponent states that the petitioner alleged that the Govt. has totally failed to implement "the Meghalaya Regular Worker Scheme 1996". The petitioner was also not conferred the status of RCW and the petitioner was deprived from the three benefits under the scheme namely (i) Earned Leave of thirty days in a year, (ii) 15 days casual leave and (iii) Festival Advance and Children Education Advances.

The above allegation was also totally baseless and not true. The petitioner, Shri. Crixastone Marak has already been granted the status of Regular Casual

Employee by the Govt. on 08.06.15. Further, the petitioner is entitled for the benefits of the scheme with effect from the date of conferment on status of RCW. Hence, the question of depriving from the above mentioned benefits does not arise."

On bare perusal of the contents noted above, it appears that the petitioner has already been granted the status of regular casual employee by the Government on 08.06.2015. If he has already been granted the status of regular casual employee, no further order is necessary to be passed by this Court. However, on going through paragraph 14 of the affidavit which is reproduced below, it appears that at this moment it is not possible on the part of the State Government to upgrade the petitioner to the post of Grade-D and they have also agreed that they will look into the matter as and when the post will be available.

"14. That with regard to the statement made in paragraph 10 of the writ petition the answering deponent states that the respondents have not violated the office Memorandum issued vide Order dated 16.09.96 regarding the conferment of RCW status and up gradation to Grade D. The petitioner is already granted conferment of the RCW status and he will be upgraded to Grade D posts when the posts are available."

5. After perusal of paragraph 14 quoted above of the said affidavit, I agree with the submission of the Government counsel and the affidavit on behalf of the State. If the post is not available, no Court can direct to create a post. Thus, respondents are directed to consider the case of up gradation of the petitioner's post to Grade-D as and when vacancy will be available.

6. With this observation and direction, the instant petition is allowed and stands disposed of.