

(2016) 03 GAU CK 0028
In the Gauhati High Court
Case No : WP (C) No. 5507 of 2015

Shyam Kakati and Ors.

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 GauLJ 630 : (2016) 3 GauLT 39

Hon'ble Judges : Ujjal Bhuyan, J.

Bench : Single Bench

Advocate : Mr. H.R.A. Choudhary, Sr. Advocate and Mr. F.U. Borbhuiyan, Advocate, for the Appellant; Ms. A. Verma, SC, P and RD Department, Finance Department, for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J. (Oral) - Though this case was tied up as part of the bunch of cases, the lead case being WP(C) No. 5135 of 2015 (Sadau Assam Panchayat Casual Karmachari Santha v. State of Assam), having regard to the fact that it is the lone case under the heading -"Casual Employees working in District Rural Development Agency and seeking regularization", it has been heard today and is being disposed of by this order.

2. Heard Mr. HRA Choudhury, learned Senior Counsel, assisted by Mr. FU Borbhuiyan, learned counsel for the petitioners and Ms. A Verma, learned counsel appearing for the Panchayat and Rural Development Department as well as Finance Department, the respondents.

3. 16 (sixteen) petitioners having identical grievance have joined together and have filed the present writ petition as a common proceeding.

4. By filing this petition under Article 226 of the Constitution of India, petitioners seek quashing of order dated 03.07.2015, passed by the Commissioner, Panchayat and Rural Development, Assam, rejecting the claim of the petitioners

for regularisation and further seeks a direction to the respondents to regularise their service against vacancies under respondent No. 5, i.e., Project Director, District Rural Development Agency (DRDA), Cachar or in any establishment of Panchayati Raj Institution (hereinafter, "PRI", in short). Further prayer made is for release of their monthly remuneration @ Rs. 7,000/-, w.e.f. March 2015 as well as the current dues.

5. Case of the petitioners is that they were engaged by the Project Director, DRDA, Cachar, in the years - 1991, 1992 and 1994, the details of which have been placed on record in the form of a statement and marked as Annexure - I (Page 24 of the writ petition).

6. Petitioners had approached this Court on a number of occasions either individually or as a group under the banner of All Cachar DRDA Casual Employees Union. In Civil Rule No. 3856 of 1995, this Court passed order dated 27.02.1997, directing the respondents to frame a scheme within a period of 6 (six) months to enable regularisation of casual employees working in Cachar DRDA.

7. However, it appears that Commissioner and Secretary to the Government of Assam, Panchayat and Rural Development, had passed the order dated 10.05.1999, directing the Project Director, DRDA, to stop all appointments in Grade-III and Grade-IV and to furnish a list of all Muster Roll and casual employees with detailed particulars with the observation that in future while making appointments/regularization in Grade-III and Grade-IV posts, cases of those Muster Roll/casual employees appointed prior to 1993, should be considered.

8. 2 (two) of the petitioners had also approached this Court by filing Civil Rule No. 3600 of 1997, which was disposed of vide order dated 03.06.2002 with the following direction:-

"Considering the matter in its entirety, this writ petition is disposed of with a direction to the respondents to regularise the services of the present two petitioners, in accordance with their seniority in service, against vacant posts, if the same are available and if the petitioners satisfy the conditions of the relevant scheme and policy of the Government. If no such posts is presently available, the services of the petitioners shall be regularised as and when regular vacancy arises, in Silchar Development Block, commensurate with seniority of the petitioners."

9. It is stated that similar writ petitions were filed by the other petitioners as well, wherein identical directions were issued.

10. Thereafter, Project Director, DRDA, Cachar, informed the Director of Panchayat and Rural Development, Assam, (now, Commissioner of Panchayat and Rural Development), vide letter dated 22.09.2008 stating that during 1992 and 1994, Government of Assam had created new blocks in Cachar district for

effective functioning of the blocks and implementation of anti-poverty schemes but without any supporting staff. Petitioners were engaged in the newly created blocks. Suggestion was made to accommodate the casual employees against various vacancies either in the blocks or in the Panchayats. Since case of the petitioners did not receive consideration at the hands of the authority, they again approached this Court by filing WP(C) No. 6423 of 2014, which was disposed of by this Court vide order dated 11.12.2014. In the course of hearing, it appears that the Office Memorandum dated 27.06.2013 of the Finance Department, Government of Assam, was placed before the Court. The said office memorandum was issued following the decision of the Hon'ble Supreme Court in the case of State of Karnataka v. Uma Devi; reported in (2006) 4 SCC 1. As per the said office memorandum, the State Government took a decision for regularisation of Work Charged, Muster Roll or similarly placed workers as a one time measure subject to fulfilment of 3 (three) conditions:-

- i) Those who have been working continuously for more than 10 (ten) years or more as on 10.04.2006., i.e., the date of judgment in Uma Devi, without the benefit or protection of interim order of any Court or Tribunal;
- ii) Those working against sanctioned vacant post; and,
- iii) Those having requisite qualification for the vacant post in question.

Referring to the said office memorandum, this Court disposed of the writ petition by directing the respondents to consider the case of the petitioners for regularisation in terms of the said office memorandum and to communicate to the petitioners the decision taken thereon.

11. Project Director, DRDA, Cachar, thereafter passed an order on 26.06.2015. As per the said order, it is stated that petitioners were engaged by the Project Director, DRDA, Cachar, in the year 1992 as Grade-IV staff in Silchar Development Block and presently they are paid Rs. 7,000/- per month. It is stated that DRDA is a society registered under Societies Registration Act, 1860, and is administered as per its own guidelines. DRDA is a centrally sponsored scheme where the fund sharing with the State is 90:10, in so far State of Assam is concerned. Since petitioners were engaged in DRDA, regularisation in Government service is not possible.

12. Based on the decision of the Project Director as above, Commissioner of Panchayat and Rural Development, Assam, passed the impugned order dated 03.07.2015 in respect of all the petitioners. It is the stand of the Commissioner that since DRDA is a society having its own bye-laws and administrative guidelines, employees of DRDA cannot claim enhancement of pay or regularisation of service against vacancies in posts under the Government departments.

13. Aggrieved, present writ petition has been filed.

14. This Court while issuing notice on 14.09.2015, passed an interim order

directing respondent No. 5 to maintain the present service status of the petitioners and to pay them their due wages including the arrear amount within 30 (thirty) days, where after, regular wages are to be paid, till the case is decided by the Court.

15. Mr. Choudhury, learned Senior Counsel for the petitioners, submits that petitioners have not been paid their wages both current and arrear despite the above order of this Court. To this, Ms Verma, learned counsel submits that as per instructions furnished to her, governing body of Cachar DRDA has taken a decision to release the salary and current dues of the petitioners.

16. Be that as it may, respondent No. 5 has filed an affidavit. Stand taken in the affidavit is that DRDA has been set up to be the principal organ at the district level to oversee implementation of different anti-poverty programmes. DRDA is to act as a supporting arm of the Government departments as well as PRIs. New schemes have been introduced which are implemented through the DRDA. Administrative costs of DRDA are received both from the Central Government as well as the State Government on 75:25 basis and in case of North-Eastern region on 90:10 basis. DRDA is a society registered under the Societies Registration Act, having a distinct identity. Administration of DRDA is carried out by the governing body. As a matter of policy, DRDA should not have any permanent staff; rather employees are taken on deputation. As a matter of fact, DRDAs are enjoined from making any direct recruitment henceforth. It is stated that petitioners were appointed during 1992-1994 without any advertisement and selection. Moreover, petitioners are not working against any valid sanctioned posts. Therefore, as per judgment of the Apex Court in Uma Devi (supra), as highlighted in the office memorandum of the Finance Department, case of the petitioners cannot be considered for regularization, even as a one-time measure. As a matter of principle, employees of DRDA cannot claim regularisation against Government sanctioned posts. Additionally, petitioners do not fulfil the 3 (three) pre-conditions mentioned in the Office Memorandum dated 26.07.2013. Therefore, their claim for regularisation cannot be considered. Finally, it is contended that the writ petition is devoid of merit and that it should be dismissed.

17. Submissions made by the learned counsel for the parties are on pleaded lines and, therefore, a detailed reference to the submissions made is considered not necessary. However, the submissions so made have received the due consideration of the Court.

18. At the outset, what is evident is that the status of the petitioners is not disputed. Petitioners are casual employees working in DRDA, Cachar since 1992-1994. It is also not disputed that DRDA is not a Government department and has a separate and independent identity as a registered society. Naturally, employees working in such societies, which are not a part of the Government administrative structure cannot have a claim for regularisation of service against vacant sanctioned posts under the Government.

19. Having said that, administrative guidelines of DRDA framed by the Ministry of Rural Development, Government of India, in the year 2008 and which, it is submitted, still holds the field, may be referred to. DRDA has traditionally been the principal organ at the district level to oversee the implementation of anti-poverty programs. Administrative costs are met both by the Central Government and by the State Government by providing separate budget provisions. While in the rest of the country the funding is on 75:25 ratio, in the case of Assam and other North-Eastern states, the ratio is 90:10. While DRDAs are expected to effectively coordinate with PRIs, they are required to maintain their separate identity and to perform functions of PRIs. For effective implementation of various anti-poverty schemes by the DRDA adequate approval is required to be made to have requisite staff in the DRDAs. DRDA should have appropriate staff structure keeping in mind the role and functions of DRDA. While the Project Director is normally a senior officer belonging to the All India Services or of the State Services, the other staffs are required to be recruited by the DRDAs. As a matter of policy, DRDAs should not have any permanent staff and often opt for deputation of Government employees. As per personnel policy of DRDA, they are not required to have any permanent staff. DRDA cannot also make direct recruitment. In respect of staff already on the pay roll of DRDA, State Rural Development Departments, like the Panchayat and Rural Development Department in the State of Assam, are required to draw up a 3-5 years plan for absorption of staff into the line departments. Since this part of the policy mentioned in Clause- 4.2 of Chapter-IV under the heading-"Personnel Policy of the DRDAs" is relevant, the same is extracted hereunder:-

"4.2. As a matter of policy, the DRDA should not have any permanent staff. Taking employees on deputation to the DRDA for specific period has the advantage of better choice of staff, flexibility in staffing pattern and of motivating the staff. The objective of strengthening of DRDAs is to provide them with certain professional capacity and have a flexible-staffing pattern. To start with, DRDAs shall no longer be allowed to make any direct recruitment. In respect of the Staff that is currently borne on the DRDA, the State Rural Development Department should immediately draw up a 3-5 year plan for absorption of the staff into the line departments."

20. Thus, from the above, more particularly, Clause-4.2 of the Personnel Policy of DRDA, it is evident that while the DRDAs have been injuncted from making any further direct recruitment of staff, a duty is also cast upon the DRDAs or rather the Panchayat and Rural Development Department to draw up a 3-5 year plan for absorption of the staff into the line departments of the State.

21. At this stage, it will be useful to revert back to the first order of this Court passed wayback on 27.02.1997, whereby direction was issued to the respondents to frame a scheme to enable regularisation of the casual employees of Cachar DRDA. This order is supported by the Personnel Policy of DRDA, as per the administrative guidelines prepared by the Government of India in the year

2008. However, from a careful analysis of the impugned order dated 03.07.2015, passed by the Commissioner, Panchayat and Rural Development, Assam, it is evident that this aspect of the matter was not at all considered by the Commissioner. This is a relevant factor which ought to have been taken into consideration by the Commissioner. Non-consideration of such a relevant factor has clearly vitiated the impugned order dated 03.07.2015.

22. Accordingly, Court is of the considered opinion that the impugned order dated 03.07.2015 cannot be sustained and is accordingly set aside and quashed. Panchayat and Rural Development, Government of Assam, shall draw up a 3-5 years plan in terms of the Personnel Policy of DRDA for absorption of the petitioners into the line departments. While issuing this direction, Court is conscious of the fact that this is the only case which is presently before this Court, filed by the casual employees working in DRDA seeking regularization/absorption and also the fact that the number of claimants is 16 (sixteen).

23. Accordingly and in the light of the above, the following directions are now issued:-

1) Respondent Nos. 1 and 2 shall draw up a 3-5 years plan for absorption of the petitioners into the line departments of the State Government and, thereafter, consider the individual case of the petitioners for such absorption. This shall be done within a period of 4 (four) months from the date of receipt of a certified copy of this order.

2) As petitioners have rendered service in the DRDA since 1992-1994, their services shall not be replaced by other casual employees till continuation of DRDA scheme or till their absorption as above.

3) Respondent No. 5 shall release the current wages of the petitioners within a period of 30 (thirty) days from the date of receipt of a certified copy of this order. Arrear wages shall be paid within a period of 3 (three) months thereafter.

24. Writ petition is accordingly allowed. No cost(s).