

(2004) 01 GAU CK 0011

In the Gauhati High Court

Case No : Writ Petition (C) No. 386 (SH) of 2002

Sible Sayoo

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 27-01-2004

Acts Referred:

Citation : (2004) GLT 478 Supp

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : S.P. Mahanta and H. Abraham, for the Appellant; T.T. Diengdoh, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—Heard learned Counsel for the parties.

2. The grievance made in this writ petition is in respect of non-regularisation of the services of the Petitioner. As per the averments made in the writ petition, the Petitioner was appointed as a casual Mail with a fixed remuneration of Rs. 1200/- per month by order dated 2.12.1986. The Petitioner, while she was continuing as such, by an office order dated 19.4.89 was allowed to officiate on temporary basis as a Mali in the scale of pay of Rs. 8201175/- per month. Her such appointment was against the resultant vacancy which occurred due to promotion of one Shri P Parang, Mali as Forest Guard. The appointment of the Petitioner although was stated to be on temporary basis, her such appointment was not termed as an ad-hoc appointment. Her appointment was also against a regular resultant vacancy. Pursuant to the said order dated 19.4.89, the Petitioner joined the post of Mali and had been discharging her duties till the order dated 11.7.94 was passed by which the services of the Petitioner was terminated. In the said order, the appointment of the Petitioner as Mali by the aforesaid order dated 19.4.89 was stated to be on ad-hoc basis, although the said order did not reflect the appointment of the Petitioner to be on ad-hoc basis. Being aggrieved, the Petitioner approached this Court by filing a writ petition which was registered and

numbered as Civil Rule No. 62(SH) 1995. This Court initially provided interim protection of service and finally the writ petition was disposed of by order dated 29.5.95. By the said order, this Court provided that the appointment of the Petitioner may not be disturbed and her case should be taken up for consideration in the next available vacancy. Now, by the present writ proceeding, the Petitioner has made a grievance against the Respondents alleging their inaction on the question of regularisation of the services of the Petitioner.

3. The Respondents have filed their affidavit-in-opposition. Their basic theme in the affidavit is that necessary recommendations have already been made in favour of the Petitioner towards regularisation of her services. However, the District Selection Committee is yet to regularise the services of the Petitioner. As per Annexure E letter dated 29.9.93 issued by the Member Secretary, District Selection Committee and addressed to the Divisional Forest Officer, Social Forestry Division, Jaintia Hills District, Jowai, referring to the request made for regularisation of the services of the Petitioner and others, it was stated that such regularisation of their service would be in violation of the office memorandum dated 22.6.89 by which the need for regularisation of the services of the ad-hoc appointees was emphasised. As per the said office memorandum dated 22.6.89 the services of those ad-hoc appointees who were appointed prior to 1987 was to be considered for regularisation. Referring to the said office memorandum, the Member Secretary, District Selection Committee, in his letter dated 29.9.93 stated that in case of taking up the case of the Petitioner and others for regularisation of their services, same would be violative of the said office memorandum of 1989 as it was a onetime exception so made in favour of the ad-hoc appointees. However, the said letter did not say anything as of whether the case of the Petitioner was taken up for regularisation or not.

4. Mr. S.P. Mahanta, learned Counsel for the Petitioner submits, that the Petitioner is by now about 52 years of age and she cannot seek for any other employment. He further submits that taking into account the services the Petitioner has so far rendered from 1986, it is a fit case for regularisation of her services otherwise, he submits, she would not be entitled to any pensionary benefits etc. He also submits that the duty was cast upon the Respondents to consider the case of the Petitioner as per the aforesaid office memorandum dated 22.6.89 and the contention raised in the letter dated 29.9.93 for non-consideration of the case of the Petitioner with retrospective effect is not tenable.

5. Mr. T.T. Diengdoh, learned Counsel for the Respondents on the other hand, referring to the affidavit-in-opposition filed on behalf of the Respondents submits, that as per the earlier order of this Court passed on 29.5.95 in Civil Rule No. 62 (SH) 95, the case of the Petitioner would be taken up for regularisation of her services as and when vacancy arises. Referring to the various recommendations made by the authorities in the Forest Department for regularisation of the services of the Petitioner, Mr. T.T. Diengdoh, learned Counsel appearing for the Respondents fairly submits that having regard to the long

years of service rendered by the Petitioner, her service is required to be regularised. He, however submits that such regularisation must be against the available vacancy.

6. I have considered the materials on record and the submissions advanced on behalf of the learned Counsel for the parties. The admitted position is that the Petitioner has been serving in the Forest Department ever since her appointment in 1986. In the order dated 19.4.89 whereby she was appointed as a Mali, there was no mention that her such appointment was on ad-hoc basis, rather her such appointment was in continuation of her earlier period of service she has rendered on casual basis and was against the resultant vacancy. However, by the order dated 11.7.94 her service was sought to be terminated without considering her case for regularisation which the District Selection Committee was duty bound as per the aforesaid office memorandum of 1989. In my considered opinion, the plea raised in the letter dated 29.9.93 is not tenable. Something which was required to be done as per the aforesaid office memorandum of 1989 having not been done in respect of the Petitioner, the District Selection Committee could not have taken the plea that the services of the Petitioner could not be taken up for regularisation. The pre-conditions laid down in the aid office memorandum towards regularisation of the services of the Petitioner, having been fulfilled, i.e. that she was a pre- 1987 recruit, her case ought to have been considered by the said Selection Committee for regularisation. On the other hand, as noticed above, the Petitioner after her initial service as casual Mali was appointed in 1989 against the regular vacancy, her service could not have been terminated as was sought to be done by the order dated 11.7.94. By then the Petitioner had rendered about 8 years of service and by now, the Petitioner has rendered about 18 years of service. This Court, also having noticed that aspect of the matter passed an order on 29.5.95 in Civil Rule 62 (SH) 95 urging for regularisation of the services of the Petitioner against the available vacancy. This Court however, did not decide as to what would be the effective date of such regularisation of service and as to whether the Petitioner by such regularisation of service would be entitled to the consequential service benefits.

7. Various schemes have been formulated by the State Government Departments and also by the Central Government Departments taking note of the concern of the Apex Court towards regularisation of the services of casual employees. The plea of the Respondents that no vacancy exists in the Forest Department for regularisation of the service of the Petitioner cannot be a continuous process. It is the common knowledge of all that there are various divisions in the Forest Department and it is unbelievable that not a single vacancy has occurred in any of the divisions for all these years to accommodate the Petitioner. A duty was cast on the Respondents to consider the case of the Petitioner for regularisation of her services as per the aforesaid memorandum of 1989. In any case, she having been appointed in 1989 without any reservation and without branding her such appointment to be on ad-hoc basis, her services could not have been terminated as was done vide order dated 11.7.94. It appears that the

Respondents are also not oblivious to the fact that the Petitioner deserves regularisation of her services and in fact during the course of hearing, it was fairly submitted by the learned counsel appearing for the Respondents, referring to the communications made by the official Respondents that in fact the case of the Petitioner has been taken up for regularisation of her services. In my considered view, long 18 years of service already rendered by the Petitioner is sufficient to establish that there is necessity towards continuation of the service of the Petitioner and, such services cannot be continued and should not be allowed to be continued on exploitative terms. As already noticed, she is already about 52 years of age and hardly left with another 6 years of service. If her long period of service is not taken into account, she will go on retirement on attaining the age of superannuation without any service benefits.

8. Considering the facts and circumstances involved in the case, this writ petition is allowed and it is hereby ordered that the case of the Petitioner should be considered for regularization with affect from 1989 when the aforesaid office memorandum of June 1989 was issued. Upon such regularisation, the Petitioner would be entitled to count her entire length of service towards pensionary and other retiral benefits. While considering the case of the Petitioner for regularisation, the Respondents may adjust her against any available vacancy in any of the divisions of the Forest Department. Necessary compliance order shall be passed within a period of 3 (three) months from the date of receipt of certified copy of this judgment and order by the official Respondents which the Petitioner shall obtain and furnish.

No order as to costs.