**(2012) 08 GAU CK 0085**

**In the Gauhati High Court**

**Case No :** Writ Petition (Civil) No. 5008 of 2009

Sri Babul Roy APPELLANT

Vs

The Bodoland Territorial Council and Others RESPONDENT

**Date of Decision :** 22-08-2012

**Acts Referred:**

**Citation :** (2012) 5 GLT 138 : (2013) 1 LLJ 198

**Hon'ble Judges :** Ujjal Bhuyan, J

**Bench :** Single Bench

**Advocate :** I.H. Saikia and S. Kanungoe, for the Appellant; D. Das, SC, BTC, Mr. B.J. Ghosh, GA, ASSAM and Mr. D. Saikia, SC, F.DEPTT., for the Respondent

## Judgement

Ujjal Bhuyan

1. Facts and reliefs sought for being identical, W.P.(C) No. 5008/2009 and W.P.(C) No. 4992/2009 were heard together and are being disposed off by this common order. The petitioners in both the writ petitions were serving as Muster Roll workers since the year 1990. Shri Babul Roy, petitioner in W.P.(C) No. 5008/2009 was so engaged on 01-01-1990 in the office of the Hatidhura Development Block under the Project Director, District Rural Development Agency (DRDA), Kokrajhar. Likewise, Shri Ashok Kumar Sen, petitioner in W.P.(C) No. 4992/2009 was so engaged on 01-10-1990 in the office of the Kokrajhar Development Block under the Project Director, DRDA, Kokrajhar. Since their initial engagement, both the petitioners continued on Muster Roll basis.

2. After continuous engagement of about fifteen years as Muster Roll workers, the services of the petitioners were regularised in Grade-IV posts by orders dated 05-08-2005 and 01-08-2005 respectively issued by the Project Director, DRDA, Kokrajhar. But their appointments to the existing regular vacancies were made subject to approval of the Finance Department, Government of Assam. Though the authorities of the Bodoland Territorial Council (BTC) had forwarded the regularization proposal of the two petitioners to the Finance Department, no

orders were passed by the latter, compelling the petitioners to approach this Court for a direction to the authorities to regularize their services in Grade-IV posts under the Panchayat and Rural Development Department, Government of Assam within the territorial jurisdiction of BTC by adjusting their services against regular vacancies and thereafter to grant them the regular scale of pay.

3. The BTC authorities in their separate but identical their counter affidavits filed on 31-03-2010 have taken the stand that the petitioners had been discharging their duties as Muster Roll workers and that they may be entitled to regularization subject to approval of the Finance Department. It is further stated that BTC had written letter dated 02-05-2006 seeking approval for the regularization of the services of the two petitioners, which is stated to be pending before the Finance Department.

4. The Panchayat and Rural Development Department, Government of Assam in its affidavit dated 09-06-2010 has contended that the BTC authorities had directly moved the Finance Department. However, in a subsequent affidavit filed by the said Department on 14-03-2011, the stand has been taken that the Project Director, DRDA Kokrajhar had appointed the two petitioners without the prior approval of the Panchayat and Rural Development Department as well as of the Finance Department. It is however stated that subsequently on receipt of the proposal for regularization of the services of the petitioners, the same was forwarded to the Finance Department where the matter is now stated to be pending. It is further stated that on getting approval from the Finance Department, their services will be regularized.

5. The Finance Department in its affidavit dated 20-03-2012 has stated that the Finance Department is in no way involved with the process of selection and appointment which is the responsibility of the concerned administrative department which has to be done in accordance with law. Reference has been made to the decision of the Hon''ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, . It is further stated that on 19-07-2011 the Finance Department had issued approval for filing up of thirty six numbers of posts in the Panchayat and Rural Development Department which included twenty six numbers of Grade-IV posts against the proposals submitted. The further stand taken is that the names of the two petitioners did not figure in the proposals of the Panchayat and Rural Development Department and that no new proposal has been received from the Panchayat and Rural Development Department regarding filling up of vacant sanctioned posts.

6. Heard Mr. I.H. Saikia and Ms. S. Kanungoe, learned Counsels for the petitioners. Also heard Mr. D. Das, learned Standing Council, BTC, Mr. B.J. Ghosh, learned Government Advocate, Assam and Mr. D. Saikia, learned Standing Counsel, Finance Department.

7. Learned Counsel for the petitioners submits that the petitioners had continued their Muster Roll engagements for about fifteen years when the BTC authorities

 

on due consideration of their cases decided to regularise their services. That was in the year 2005. But inspite of that, due to non receipt of approval from the Finance Department, they have been denied the benefits of regularization and are still being paid on daily wage basis. He therefore prays for appropriate intervention of this Court by issuing necessary directions.

8. Learned Standing Counsel, BTC has reiterated the stand taken in the counter affidavit and further submits that the Finance Department should take a decision in the matter at the earliest.

9. Learned Government Advocate, Assam appearing for the Panchayat and Rural Development Department submits that the BTC authorities should have forwarded the proposal for regularization of the services of the petitioners through the administrative department i.e. the Panchayat and Rural Development Department instead of directly submitting the same to the Finance Department. He however submits that now the Panchayat and Rural Development Department has forwarded the proposal to the Finance Department and is awaiting its decision.

10. Learned Standing Counsel, Finance Department submits that no proposal for regularization of the services of the petitioners is before the Finance Department. As and when such a proposal is received, the matter will be looked into. He however submits that in view of the Apex Court judgment in Uma Devi (Supra), Finance Department may not be in a position to accord approval to such proposal.

11. The submissions made have been considered.

12. This Court in the course of hearing the two writ petitions have been monitoring the stand being taken by the respondents by passing orders from time to time. On 23-08-2010, this Court passed the following order :-

As per the letter dated 26-03-2010 addressed to the learned Standing Counsel, Finance Department by the Finance Department and also as recorded in the order dated 11-06-2010, the matter is pending for want of necessary proposal from the Panchayat and Rural Development Department. In the letter dated 26-03-2010, it has been stated that the proposal earlier sent by the Panchayat and Rural Development Department was lacking in required documents. Accordingly, the file was returned to the said Department by the Finance Department with its endorsement dated 23-06-2010.

From the above, what is seen is that due to inaction on the part of the Panchayat and Rural Development Department the matter has not attained its finality. If by the next date fixed, the Panchayat and Rural Development Department does not furnish the required proposal with supporting documents to the Finance Department and in turn the Finance Department does not act in the mater in accordance with law, appropriate order will follow.

13. Again on 13-09-2010, this Court passed the following order:-

 

From the above what is seen is that while it is the case of the Finance Department that proposal has not been submitted by the P&RD Department to the Finance Department with required materials as called for vide Finance Department''s endorsement dated 23-06-2010 in P&RD department''s file No. PDB 182/2000, as per the said letter of the Deputy Director, P &RD Department, instructions are required to be obtained from the PD, DRDA, Kokrajhar and BTC authorities for which the learned State Counsel has been requested. The P&RD Department cannot absolve from their liability to furnish necessary proposal to the Finance Department by directing the State Counsel to obtain instruction from the PD, DRDA, Kokrajhar and BTC authorities.

Whatever instructions are required to be obtained towards furnishing a proposal to the Finance Department, same shall be so done by the P&RD Department and in the process, the PD, DRDA, Kokrajhar and BTC authorities shall fully cooperate by taking prompt action.

14. Ultimately, on 07-09-2011, this Court passed an interim order directing that two Grade-IV posts sanctioned by the Finance Department should not be filled up.

15. On 13-02-2012, the learned Standing Counsel, Finance Department informed the Court that no proposal was received from the Panchayat and Rural Development Department and that it is for the said Department to take up the matter with the Finance Department.

16. From the above, what can be seen is that there is some kind of a squabble going on between the three state instrumentalities viz., BTC, Panchayat and Rural Development Department and Finance Department and in the process, the case of the petitioners has not received any attention.

17. Coming back to the petitioners, it is not disputed that the petitioners had continued as Muster Roll workers since the year 1990. They were continued as Muster Roll workers for about fifteen years without the intervention of any Court and without the benefit of any stay order of any Court or tribunal. Thereafter, they were appointed as office peon (Grade-IV) in their respective blocks by separate but identical orders dated 05-08-2005 and 01-08-2005 respectively issued by the Project Director, DRDA, Kokrajhar. The appointments were however made subject to approval of the Finance Department. Following the above orders, the Deputy Secretary, BTC wrote to the Finance Department by letter dated 02-05-2006 with copy to the Directorate of Panchayat and Rural Development Department requesting accord of financial approval for regularization and appointment of the petitioners. The said letter is quoted hereunder for ready reference:-

BODOLAND TERRITORIAL COUNCIL SECRETARIAT ::: KOKRAJHAR

No. BTC/P&RD-13/04/168

Dated Kokrajhar, the 2nd May, 2006

 

From : Shri A.K. Brahma, ACS Deputy Secretary, Bodoland Territorial Council, Kokrajhar.

To : The Commissioner & Secretary to the Govt. of Assam, Finance (SIU) Department, Dispur, Guwahati-6.

Sub. : Financial approval for regularization and appointment of Grade-IV post in different Development Block.

Sir,

With reference to the subject cited above, I am directed to inform you that some Grade-IV posts are lying vacant in different Development Block in Kokrajhar District.

In this regard, I am to inform you that there are some employees who are working in the same Block as Office Peon on MR basis since 1990 & 1991. They are working on MR basis out of work engaged on MR basis. The BTC has already accorded approval to the following 2(two) MR employees for filling the instant vacant post to accommodate them as regular employee.

Name of Block

Name of employee

Designation

Date of Joining

Remarks

1. Kokrajhar Dev. Block

Sri Ashok Kr. Sen

Office Peon

01-10-1990

2. Hatidhura Dev. Block

Sri Babul Roy

Office Peon

02-11-1991

Therefore, you are requested kindly to accord financial approval for regularization and appointment of above mentioned MR employees at an early date.

Yours faithfully, Sd/- illegible 02-06-2006 Deputy Secretary, Bodoland Territorial Council, Kokrajhar

Memo No. BTC/P&RD-13/04/168-A

 

Dated Kokrajhar, the 2nd May, 2006

Copy to:-

1. PS to Chief of BTC, Kokrajhar

2. PS to Addl. Principal Secretary, BTC, Kokrajhar

3. The Director of Panchayat & RD, Assam, Juripar : Panjabari, Guwahati-37

4. The CHD, P&RD, BTC & PD, DRDA, Kokrajhar

5. The BDO concerned for information.

Deputy Secretary Bodoland Territorial Council, Kokrajhar

18. As the approval of the Finance Department has not been forthcoming, the petitioners have been continued on daily wage basis. Thus by now, the petitioners have worked on daily wage basis for more than two decades. This is really an unfortunate state of affairs.

19. The Hon''ble Supreme Court in the case of State of Karnataka and Others Vs. M.L. Kesari and Others, explained the decision rendered in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , particularly in the context of para-53 of Uma Devi.

20. The Apex Court noted that there is an exception to the general principles against regularization enunciated in Uma Devi if two conditions are fulfilled, namely, the State or its instrumentally should have employed the employee and continued him in service voluntarily and continuously for more than ten years without the benefit or protection of any interim order of any Court or any tribunal, and secondly, the appointment should not be illegal, even if irregular. It was further noted that Uma Devi casts a duty upon the State to take steps to regularize the services of such employees who had severed for more than ten years without the benefit or protection of any interim order of Courts or tribunals, as a one time measure.

21. The term "one-time measure" has been explained by the Apex Court in the following manner :-

9. The term "one-time measure" has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi(3)1, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad-hoc employees who have been working for more than ten years without the intervention of Courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularise their services.

10. At the end of six months from the date of decision in Umadevi(3)1, cases of several daily-wage/ad-hoc/casual employees were still pending before Courts.

 

Consequently, several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in Courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of para 53 of the decision in Umadevi(3)1, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six-month period mentioned in para 53 of Umadevi(3)1, has expired. The one-time exercise should consider all daily-wage/ad-hoc/casual employees who had put in ten years of continuous service as on 10-04-2006 without availing the protection of any interim orders of Courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi(3)1, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi(3)1, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one-time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of Umadevi(3)1, are so considered.

11. The object behind the said direction in para 53 of Umadevi(3)1, is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of Courts or tribunals, before the date of decision in Umadevi(3)1 was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in Umadevi(3)1] without the protection of any interim order of any Court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi(3)1, or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi(3)1 as a one-time measure.

22. It is thus clear that the one-time exercise should consider all daily wage employees like Muster Roll workers who had put in ten years or more of continuous service as on 10-04-2006 without availing the protection of any interim order of Courts or tribunals. Cases of those employees who were left out or not considered, are required to be considered as a continuation of the one-time exercise. Thus, all persons who had work for more than ten years as on 10-04-2006 (the date of decision in Uma Devi) without the protection of any interim order of any Court or tribunal are entitled to be considered for

 

regularization.

23. Viewed in the above context, the objection of the respondents to the proposal for regularization of the services of the petitioners is more of form than of substance.

24. Considering the above, this Court is of the view that it would be in the interest of justice if the following directions are now issued :-

(1) The Panchayat and Rural Development Department shall forward the proposal for regularization of the services of the petitioners to the Finance Department within a period of one month from the date of receipt of a certified copy of this order, if not already forwarded. If any further documents are required, those shall be obtained from the BTC authorities, who shall extend all necessary cooperation.

(2) On receipt of such proposal from the Panchayat and Rural Development Department, the Finance Department shall consider accord of financial approval to such proposal consistently with the observations made above within a period of one month thereafter. If the proposal has already been received, the Finance Department shall carry out the exercise within a period of two months from the date of receipt of a certified copy of this order.

25. This disposes of the two writ petitions. No cost.

 