
(1989) 04 GAU CK 0019
In the Gauhati High Court
Case No : Civil Rule No. 392 of 1988

Sri Chongtham Tiken Singh

APPELLANT

Vs

The State of Manipur and Others

RESPONDENT

Date of Decision : 05-04-1989

Acts Referred:

Citation : (1990) 1 GLR 273

Hon'ble Judges : Y.I. Singh, J; Manisana, J

Bench : Division Bench

Advocate : Th. Priyananda Singh, for the Appellant; K. Irabot Singh, for the Respondent

Final Decision : Allowed

Judgement

Manisana, J.—In this writ petition, the Petitioner has prayed for issuing a writ of mandamus directing the Respondents to regularise the services of the Petitioner with effect from the date of his initial appointment, viz., October 15th, 1981, on ad-boc basis as Assistant Engineer.

2. Facts—The Petitioner was appointed as Section Officer Grade-I on ad-hoc basis in the Public Works Department, Government of Manipur, under Order No. 62 dated January 17th, 1979. Subsequently, on the recommendation of the Manipur Public Service Commission, his service as Section Officer Grade-I was regularised with effect from July 26th, 1980. Thereafter the Petitioner was promoted to the Assistant Engineer on ad-hoc basis against a permanent vacancy under order dated October 15th, 1981. The ad-hoc appointment was regularised on the recommendation of the Departmental Promotion Committee under order dated September 20th, 1985. The Petitioner submitted various representations to the authorities concerned for regularising him retrospectively with effect from the date of his initial appointment on ad-hoc (sic) by pointing out that there were cases of Assistant Engineer having been regularised retrospectively, but of no avail. Hence this writ petition.

3. In a series of cases, this Court has held that if an ad-hoc employee is eventually regularised, the appointment shall take effect from the date of initial appointment on ad-hoc basis. If any decision is required, we may refer to the decision in Civil Rule No. 422/83, Basanta Singh v. State of Manipur.

In Dr A.K. Jain and Others Vs. Union of India (UOI) and Others, the Supreme Court has held:

The services of all doctors appointed (sic) as Assistant Medical Officers or as Assistant Divisional Medical Officers on ad-hoc basis upto October 1, 1984 shall be regularised in consultation with the Union Public Service Commission on the evaluation of their work and conduct on the basis of their confidential reports in respect of a period subsequent to October 1, 1982. Such evaluation shall be done by the Union Public Service Commission. The doctors so regularised shall be appointed as Assistant Divisional Medical Officers with effect from the date from which they have been continuously working as Assistant Medical Officer/ Assistant Divisional Medical Officer.

4. Ratification or regularisation is possible of an act which is within the power and province of the authority where there has been some non-compliance with the procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. If the regularisation is said to be a mode of recruitment, it would introduce a new head of the appointment in defiance of the rules. Therefore, the term of the regularisation is calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to the methodology followed in making the appointment.

5. Keeping in view the above decision of the apex court and those of this Court, we are of the view that, on the facts and circumstances of the case, the Petitioner should have been regularised retrospectively. But the question then is from which date the Petitioner is to be regularised. The Petitioner was appointed as Section Officer Grade-1 on regular basis on July 26th, 1980. Under the Recruitment Rules of the Assistant Engineer, the Petitioner should have served at least three years as Section Officer Grade-1 on regular basis. Although the Petitioner was appointed on ad-hoc basis on October 15th, 1981, he was not qualified to be regularised with effect from October 15th, 1981 as the three-year service of the Petitioner on regular basis as Section Officer Grade-1 would complete on July 25th, 1983. At this stage, it will be helpful to refer to the decision of the Supreme Court in Ram Sarup v. State of Haryana AIR 1978 SC 1537. In that case, the Supreme Court has held that the appointment of a person not having necessary five years experience as required under the rules, was held to be irregular but not void, and that employee must be deemed to have been validly appointed on completion of necessary period of experience. In this view of the matter, we are of the opinion that the Petitioner was qualified to be appointed as Assistant Engineer on regular basis under the relevant Recruitment Rules with effect from July 26th, 1983.

For the foregoing reasons, the Petitioner should have been regularised with effect from July 26th, 1983. Accordingly, we direct the concerned Respondent that the Petitioner shall be regularised and appointed as Assistant Engineer with effect from July 26th, 1983. The petition is allowed to the extent indicated above. No costs.