
(2018) 02 GAU CK 0031
In the Gauhati High Court
Case No : 183 of 2017

SRI DINADAYAL RABHA and ORS

APPELLANT

Vs

THE STATE OF ASSAM and ORS

RESPONDENT

Date of Decision : 15-02-2018

Acts Referred:

Citation : (2018) 02 GAU CK 0031

Hon'ble Judges : Ajit Singh, Manojit Bhuyan

Bench : Division Bench

Advocate : K. K. Mahanta, B. Ahmed

Final Decision : Dismissed

Judgement

1. A bunch of writ petitions were answered by a learned Single Judge vide common judgment and order dated 03.10.2016. The present appeal

pertains to the determination made in one such writ petition i.e. WP(C) 1399/2013.

2. We have heard Mr. K.K. Mahanta, learned senior counsel for the appellants, assisted by Mr. K. Singha and Ms. P. Thapa, Advocate(s) as

well as Dr. B. Ahmed, learned counsel for the respondents.

3. The facts of this case have been exhaustively dealt with in the related writ petition. However, for the determination of this appeal, the relevant

facts are traversed once again. The appellants were employees of a Government company called the Assam State Minor Irrigation Development

Corporation Limited (in short, ASMIDC). The financial health of ASMIDC having received severe setback, the Government of Assam examined

winding up of ASMIDC. In this regard, a proposal was initially made for creation of a separate ground water wing in the Irrigation Department for

absorbing the officers and staff of ASMIDC. In all, there were 564 numbers of employees in ASMIDC. At the initiative of the Irrigation

Department, endeavour was made to absorb all the employees in various State Government departments, which eventually did not fructify as the

departments concerned expressed their inability. The Irrigation Department on its own calculated the existing vacancies of analogous posts which

came to 262 nos. Accordingly, the Managing Director of ASMIDC submitted proposal for absorption of 262 numbers of employees of ASMIDC

in the Irrigation Department and for granting benefits under the Voluntary Retirement Scheme (VRS) to the rest of the employees. In this regard,

the Assam Government State Cabinet decided on 25.02.2004 that out of the total 564 employees, 262 were to be absorbed in the Irrigation

Department and 302 to be granted VRS benefits. The appellants herein were included in the list of VRS beneficiaries. Following the Cabinet

decision, consequential Notification dated 13.05.2005 was issued by the Government of Assam in the Irrigation Department for absorption of the

aforesaid 262 employees.

4. In the year 2005 itself, around 28 employees of ASMIDC (not any of the appellants herein), who were released and granted VRS benefits, had

instituted WP(C) 4083/2005 and WP(C) 6973/2005 for a direction to the State respondents to absorb them in the Irrigation Department. The

case laid out therein was that a proposal for their absorption was initiated and sent to the Planning Department for necessary approval. However,

when the file eventually reached the Judicial Department, an opinion was rendered that in case of absorption of the said petitioners, the same would

cause adverse effect on the process of the Voluntary Retirement Scheme. It was the case of the petitioners therein that they are senior to some of

the 262 employees who were sought to be absorbed in the Irrigation Department. As such, their case cannot be left out. Under these premises

both the writ petitions were favourably answered vide order dated 19.06.2008, whereafter Notification dated 30.03.2010 was issued absorbing

them in the Irrigation Department.

5. In the year 2008 two other persons, who were writ petitioner nos. 22 and 23 in the related WP(C) 1399/2013 but who have not joined hands

in the present appeal, had instituted WP(C) 3876/2008 contending that the

inclusion of their names in the VRS list was arbitrary and discriminatory. Reference was made to the Court's order dated 19.06.2008 passed in the aforesaid WP(C) 4083/2005 and WP(C) 6973/2005 with prayer for similar relief. While dismissing the writ petition on 05.09.2008, the learned Single Judge noted that the observations made in the aforesaid two writ petitions were on the basis of the records vis-a-vis the issue of absorption and the same is confined only to the petitioners therein and cannot be inferred to be extendable to the two petitioners in the said WP(C) 3876/2008. As against the said order dated 05.09.2008, Writ Appeal No. 169/2009 was instituted by the said two persons. On 27.03.2012 the writ appeal was disposed of without making any interference with the judgment and order passed by the learned Single Judge dated 05.09.2008. However, the Division Bench observed that no reply had been filed by the State respondents nor any rational criteria shown for classifying the employees. In that view of the matter, direction was made to the Secretary to the Government of Assam, Irrigation Department to examine the grievance of the appellants therein and to deal with the same by passing a speaking order.

6. In pursuance of the direction made in the writ appeal, the Speaking Order dated 03.10.2012 was issued, which came to be challenged by 62 persons, including the two persons who had instituted WP(C) 3876/2008 and Writ Appeal 169/2009. It is the order dismissing the said writ petition i.e. WP(C) 1399/2013 which is the subject matter of the present appeal. As the original challenge is to the Speaking Order dated 03.10.2012, the same is reproduced hereunder:

government of assam

Irrigation department ::: establishment branch

Dispur: Guwahati-781006

No: IGN (E) 129/2012/31

Dated Guwahati the 03rd October, 2012

speaking order

Read : 1. Hon"ble High Court Order dated 27.03.2012 in W.A. No. 169/2009

Also Read : 2. Hon"ble High Court Order dated 15.05.2009 in W.A. No. 60/2009

3. Hon"ble High Court Order dated 09.04.2012 in W.C.(C) No. 4825/2008
4. Hon"ble High Court Order dated 26.04.2012 in W.C.(C) No. 4213/2011
5. Hon"ble High Court Order dated 26.04.2012 in W.C.(C) No. 6796/2010
6. Hon"ble High Court Order dated 26.04.2012 in W.C.(C) No. 4244/2006
7. Hon"ble High Court Order dated 26.04.2012 in W.C.(C) No. 6786/2010
8. Hon"ble High Court Order dated 26.04.2012 in W.C.(C) No. 3233/2010
9. Hon"ble High Court Order dated 26.04.2012 in W.C.(C) No. 3146/2010
10. Hon"ble High Court Order dated 26.04.2012 in W.C.(C) No. 883/2010
11. Hon"ble High Court Order dated 26.04.2012 in W.C.(C) No. 2331/2011
12. Hon"ble High Court Order dated 26.04.2012 in W.C.(C) No. 615/2009
13. Hon"ble High Court Order dated 26.04.2012 in W.C.(C) No. 1239/2009
14. Hon"ble High Court Order dated 26.04.2012 in W.C.(C) No. 3458/2009
15. Hon"ble High Court Order dated 26.04.2012 in W.C.(C) No. 3300/2011
16. Hon"ble High Court Order dated 26.04.2012 in W.C.(C) No. 6787/2010
17. Hon"ble High Court Order dated 21.8.2012 in W.C.(C) No. 3950/2012
18. Hon"ble High Court Order dated 21.12.2011 in W.C.(C) No. 6220/2011
19. Hon"ble High Court Order dated 9.12.2011 in W.C.(C) No. 6183/2011
20. Hon"ble High Court Order dated in W.C.(C) No. 7383/2005
21. Hon"ble High Court Order dated in W.C.(C) No. 8746/2005
22. Hon"ble High Court Order dated in W.C.(C) No. 2376/2011
23. Hon"ble High Court Order dated in W.C.(C) No. 2425/2011

AND

Other similarly situated cases

Observation:

As per High Court Order dated 27.03.2012 and other 15 nos. of Writ Appeals and Writ petitions, this Department examines the

grievances of the petitioner in the respective petition. After signing the MoU with Government of India for closure of ASMIDC Ltd.

this Department took initiative to absorb all the ASMIDC employees in various State Govt. Departments. Accordingly, this

Department sought for the views of Agriculture Department, Water Resources

Department, Public Works Department and PHE

Department for accommodation /absorption of the ASMIDC staff against the then vacancies in those Departments but all the above

Departments expressed their inability to absorb any employee against the vacancy of those Department.

Subsequently, having no alternative measure to accommodate all 564 nos. of employees of the ASMIDC Ltd. this Department

calculated the existing vacancy of Analogous posts which came to 262 nos. and for the rest 302 employees the VRS was introduced.

Accordingly, with the approval of the Cabinet 302 nos. employees were given VRS benefit with their consent and other 262 nos. of

employees were absorb in the Department against vacant posts. The whole process of absorption and given VRS benefit were done

during the year 2005-06. Therefore, the Department efforts to accommodate to absorb to all 564 nos. of employees of ASMIDC

Ltd. can not be materialized in complete.

ORDER

After careful consideration of all the facts and absorption made in the Court Order, this Department is to act as per decision of

Cabinet held on 25/02.2004 and is not in a position to absorb the petitioner after lapse of seven (7) years after accepting the VRS

benefit.

This order dispose all the Writ Appeal and Writ Petition hence forth.

Shri M.K. Pathak

Secretary to the Govt. of Assam

Irrigation Department

7. Save and except the writ petitioner nos. 22 and 23 in the related WP(C) 1399/2013 (not parties in the present appeal), no evidence is laid that

the appellants had approached this Court prior to the year 2013 raising grievance of their inclusion in the list of VRS beneficiaries and/or non-

inclusion of their names in the other list. As can be seen from the speaking order itself, the entire process of absorption of 262 employees in the

Irrigation Department and granting of VRS benefits to the rest 302 employees was effected during the year 2005-2006. The speaking order also

shows that the employees who were given VRS benefits were so done with their consent. This is an unassailable position. There is nothing on

record to even suggest that the appellants objected to receiving VRS benefits and/or had objected to the inclusion of their names in the list of VRS

beneficiaries at any time prior to institution of WP(C) 1399/2013. For long 8 (eight) years they have been fence-sitting. They clearly belonged to

the group who had acceded to release from service by accepting VRS benefits.

8. Mr. Mahanta emphasizes on three primary grounds to challenge denial of absorption of the appellants in the service under the Irrigation

Department. First, the classification made amongst the employees into two groups - one for absorption, the other for VRS benefits- was done

without following any rational criteria. This aspect of the matter, according to Mr. Mahanta, was noticed by the Division Bench in the aforesaid

Writ Appeal 169/2009. The Speaking Order dated 03.10.2012, which was issued pursuant to directions of the Division Bench, did not spell out

the criteria for choosing one set of employees for absorption in the Irrigation Department and the other for grant of VRS benefits. Second, VRS

benefits was thrust upon the appellants and was, therefore, a unilateral action on the part of the State respondents. No consent was given by the

appellants herein. Third, the case of the 28 employees of ASMIDC for absorption having found favour with the Court in WP(C) 4083/2005 and

WP(C) 6973/2005, as such, the appellants being similarly situated were entitled to similar treatment, which the learned Single Judge failed to

appreciate. Mr. Mahanta have placed reliance in *Sunil Kumar Verma and Others v. State of Uttar Pradesh and Others*, reported in (2016) 1 SCC

397 for the proposition that decision rendered by a Court inter se parties is required to be followed in the same fact situation and there is no

necessity to take a different view.

9. On the first ground of challenge regarding absence of a rational criteria in making the classification, it is seen from the affidavit-in-opposition filed

by the Irrigation Department in the writ proceedings wherein it is stated that it was on the basis of equivalence of posts and age bar that the lists

had been prepared. The Speaking Order dated 03.10.2012 also explains as to how 262 nos. of employees were chosen for absorption. The

reason given is that same number of vacancies existed in analogous posts in the

Irrigation Department. The Speaking Order also explains that in respect of the rest 302 nos. of employees, which includes the present appellants, they were given VRS benefits as they had consented to it.

Absorption on the basis of equivalence of posts, limited to the then vacant 262 nos. of posts in the Irrigation Department, in our considered opinion, was a rational criteria. The grouping of 302 nos. of employees for grant of VRS benefits on the basis of their unvarying consent, in our considered opinion, was also a rational criteria in making the classification. As regards the second ground of challenge, the same is ill-conceived as there are no records, at least any documents filed by the appellants herein, to substantiate that they were made to accept VRS benefits against their wishes and that they, prior to institution of the writ petition i.e. WP(C) 1399/2013 had objected to it in black and white. As indicated above, the process of absorption and the grant of VRS benefits was effected during the years 2005-2006. The appellants had accepted the VRS benefits.

Now by making a challenge to the non- inclusion of their names in the absorption list and/or their inclusion in the list of VRS beneficiaries after lapse of a period of about 8 (eight) years from the time when VRS benefits were extended to them, they are only trying to unsettle a settled position. Having accepted and enjoyed the VRS benefits, they cannot be allowed to turn around, either to disturb or challenge the said settled position. As regards the third ground of challenge that they were denied similar benefit as in the case of the other similarly situated 28 nos. of employees, it is seen that no such prayer for similar benefits was made in the related writ petition. Notwithstanding the same, it is seen that the writ petitioner nos. 22 and 23 in the related WP(C) 1399/2013 had earlier filed WP(C) 3876/2008 praying for similar relief, which was negated vide order dated 05.09.2008. The Division Bench in Writ Appeal 169/2009 also did not interfere with the said order of the learned Single Judge dated 05.09.2008.

10. As regards the case law cited by Mr. Mahanta in Sunil Kumar Verma (supra), there can be no dispute that a decision rendered by a Court is required to be followed when another case is filed in the same fact situation. In this regard, it is also well settled that the principle which requires similarly situated persons to be treated similarly is also subject to the

wellrecognized exceptions in the form of delay and laches as well as that of acquiescence. Reference can be made to State of Uttar Pradesh and Others vs. Arvind Kumar Srivastava and Others, reported in (2015) 1 SCC

347. Paragraph 22.1, 22.2 and 22.3 thereof being relevant to the issue at hand, the same are extracted hereunder:

22.1 The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated

alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This

principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates

that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated

persons did not approach the Court earlier, they are not to be treated differently.

22.2 However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who

did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their

counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the

judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays,

and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3 However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to

give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the

authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision

touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma v. Union of India). On the other hand, if the judgment

of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated

expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the

said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

11. There is no gain-saying that the appellants have been fence-sitters and woke up after long delay when some other employees who had

approached the Court earlier in time got necessary relief. The conduct of the appellants does not entitle them to any equitable relief. Further, the

order passed by this Court on 19.06.2008 in WP(C) 4083/2005 and WP(C) 6973/2005 was rendered in the fact situation of that particular case

and the relief was confined only to the petitioners therein. This position was clarified when the writ petitioner nos. 22 and 23 of WP(C) 1399/2013

had earlier approached this Court in WP(C) 3876/2008, as indicated above, seeking similar benefit. The order passed in WP(C) 4083/2005 and

WP(C) 6973/2005 was not a judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or

not. The language employed in the order of the Court dated 19.06.2008, clearly shows that the same was rendered in personam, confining the

relief only to the 28 petitioners therein.

12. For the reasons stated above and on ground of delay and laches, we find no merit in the present appeal. We accordingly dismiss the same and

affirm the judgment and order dated 03.10.2016, in so far the determination of WP(C) 1399/2013 is concerned. Parties are left to bear their own

cost.