
(2004) 02 GAU CK 0056
In the Gauhati High Court
Case No : WP (C) No. 1007 (AP) of 2001

Sriniwas Singh

APPELLANT

Vs

Director, North Eastern Regional Institute of Science and
Technology and Others

RESPONDENT

Date of Decision : 02-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 3 GLR 282

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : L. Sera, for the Appellant; N.N. Saikia and A. Apang, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—By this application made under Article 226 of the Constitution of India, the petitioner, who has been, by virtue of the interim order passed in this writ petition, on 17.9.2004, functioning as a Junior Engineer (Electrical) in the North Eastern Regional Institute of Science and Technology (hereinafter referred to as "the NERIST"), has approached this Court seeking to get set aside and quashed the order, dated 13.9.2001, passed by the respondents/authorities concerned posting the petitioner to his substantive post of Laboratory Assistant in the Department of Electrical Engineering and replacing him (i.e., the petitioner) by the respondent No. 3 as the Junior Engineer (Electrical).

2. I have heard Mr. L. Sera, learned counsel for the petitioner, and Mr. PK Tiwari, learned counsel appearing on behalf of the respondent No. 3. I have also heard Mr. N.N. Saikia, learned senior counsel, assisted by Mr. A. Apang, learned counsel appearing on behalf of the respondent Nos. 1 and 2, namely, Director and Registrar of the NERIST.

3. The facts, material for disposal of the present writ petition, may, in brief, be

set out as follows:

In the NERIST, Department of Electrical Engineering has, among others, three different hierarchy of appointments, the post at the bottom of this hierarchy being Technician (Electrical), the Laboratory Assistant/ Senior Technician occupies the middle position in this hierarchy and the next promotional post, with Laboratory Assistant/Senior Technician as the feeder post, is the post of Senior Instructor Grade-II, The petitioner was appointed, vide order, dated 4.12.1990, as Technician (Electrical) under the Department of Electrical Engineering. This appointment was against regular and substantive post. While the petitioner was working as a Technician, he was appointed, vide order, dated 1.6.1994, to officiate, temporarily, as Junior Engineer (Electrical). While the petitioner was so officiating as Junior Engineer (Electrical), he was, on the recommendation of the Departmental Promotion Committee of the Institute concerned, promoted to the post of Laboratory Assistant by order, dated 29.11.1994. A Laboratory Assistant is a nontechnical teaching staff, who assists the teaching faculty by imparting necessary skills to the trainees. However, notwithstanding his appointment as Laboratory Assistant, as aforesaid, the petitioner continued officiating as Junior Engineer. By the impugned order, dated 3.9.2001, when the respondent No. 3, who is a Senior Instructor Grade-II, was posted as Junior Engineer (Electrical), in place of the petitioner, the petitioner approached this Court seeking to get, as indicated hereinabove, the impugned order set aside and quashed.

4. It is the case of the writ petitioner that he came to be appointed as the Junior Engineer (Electrical) in officiating capacity following a regular selection and having worked, notwithstanding his appointment as Laboratory Assistant, on 29.11.1994, as Junior Engineer (Electrical), he has acquired a right to continue to occupy the post of Junior Engineer (Electrical) until promoted to higher grade. It is also the petitioner's case that the authority concerned, having realised services of the petitioner as Junior Engineer (Electrical) and having not allowed him to work as a Laboratory Assistant, has played mischief with the career of the petitioner inasmuch as the petitioner has not remained fit to work in the Department of Electrical Engineer, for, he has not been assisting, as a Laboratory Assistant and as a non-teaching technical staff, the teaching faculty in the Department of Electrical Engineer. In such a situation, according to the petitioner, the petitioner deserves to be retained as Junior Engineer (Electrical) and the impugned order bringing him back to the post of Laboratory Assistant is against the right that the petitioner has acquired to remain, until promoted further, as Junior Engineer (Electrical).

5. Controverting the averments above made by the petitioner, the respondents/ authorities concerned have submitted, in no uncertain words in Para No. 14 of their affidavit-in-opposition, that after passing of the promotional order, dated 29.11.1994, aforementioned appointing the petitioner as a Laboratory Assistant, it was, in fact, the petitioner, who had requested, vide his joining report, that he be allowed to continue as a Junior Engineer (Electrical) in officiating capacity. It

is, thus, the case of the respondent/authorities concerned that the petitioner was never regularly selected as a Junior Engineer (Electrical), his substantive appointment being as the Laboratory Assistant and what the impugned order seeks to do is to place the petitioner in the post to which he was promoted. No right to continue to hold the office of the Junior Engineer (Electrical) has accrued to the petitioner and the impugned order has not adversely affected the career of the petitioner inasmuch as the petitioner still remains entitled to be considered for further promotion if he is, otherwise, in terms of the relevant rules/instructions, eligible for promotion to the post of Senior Instructor Grade II.

6. So far as the respondent No. 3 is concerned, his case is that he has no special interest in the post of Junior Engineer (Electrical), but pursuant to the directions given by the impugned order, dated 3.9.2001, the respondent No. 3 already reported for duty, on 13.9.2001, as Junior Engineer (Electrical). However, suppressing the fact that the respondent No. 3 had already reported for duty as Junior Engineer (Electrical) as far back as on 13.9.2001, the petitioner obtained an interim order by this Court, on 17.9.2001, whereby the respondent/authorities concerned were directed to maintain status quo as on 1.7.9.2001. It is also the grievance of the respondent No. 3 that on account of the fact that an interim order has been passed by this Court, the respondent/authorities concerned have distributed the works, which were earlier performed by the Junior Engineer (Electrical), and by such distribution, the respondent No. 3 has been made to approach the petitioner for everything in order to ensure effective functioning of the office. It is also the Case of the respondent No. 3 that he has no special interest in the post of Junior Engineer (Electrical), but he is willing to work in terms of the requirement of service and in the interest of the Institute.

7. What clearly emerges from the above narration of facts is that while the petitioner was working as a Technician, he was appointed as a Junior Engineer (Electrical), on 1.6.1994, in the officiating capacity. It is no longer *res integra* that there is a distinction between a pleading under the CPC and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed thereto. (See *Bharat Singh and Others Vs. State of Haryana and Others*, . See also *Zakir Hussain v. State of Assam and Ors.* reported in 2003(1) GLT 644 . Viewed from this angle, the petitioner ought to have produced some material to show that his appointment as Junior Engineer (Electrical) in the officiating capacity was pursuant to a regular selection made in this regard. However, not a shred of materials could be produced by the petitioner to show that his appointment as Junior Engineer (Electrical), in the officiating capacity, was pursuant to any regular selection.

8. Far from the fact that the petitioner failed to show that his appointment as Junior Engineer (Electrical) was pursuant to any selection, the very order of appointment, dated 1.6.1994, states, in no uncertain words, that the petitioner's

appointment as Junior Engineer (Electrical) was in officiating capacity and temporary. That the authorities concerned, who passed the order, on 1.6.1994, meant to make this order temporary is evident from the fact that barely within less than six months from the date, when the petitioner was so appointed as Junior Engineer (Electrical), his appointment, on promotion, was made on 29.11.1994, to the post of Laboratory Assistant. This promotional appointment effectively terminated the appointment of the petitioner as Junior Engineer (Electrical). That the petitioner also realised that his appointment as Junior Engineer (Electrical) had come to an end is evident from the fact that the petitioner has not denied the specific averments made in paragraph number 14 of the affidavit-in-opposition by the respondent Nos. 1 and 2 that it was the petitioner, who, on 29.11.1994, in his joining report given in pursuance of his promotional appointment, requested the authorities concerned to let him function as Junior Engineer (Electrical), in officiating capacity. Having, thus, declined to join the post of Laboratory Assistant, in the Department of Engineer (Electrical) and having continued, on his own request, as Junior Engineer (Electrical), in officiating capacity, the petitioner cannot, now, turn back and challenge the impugned order, dated 3.9.2001, whereby the petitioner was posted as Laboratory Assistant, which was his substantive appointment. Considered thus, it is clear that there is absolutely no merit in the present writ petition. However, considering the matter in its entirety, this Court is of the view that the service, which the petitioner has rendered, while working as Junior Engineer (Electrical), though in the officiating capacity and temporarily, shall be counted for the purpose of his further promotion to the post of Senior Instructor Grade II. Subject to this protection, which the petitioner is, strictly speaking, not even entitled to, this writ petition needs to be disposed of.

9. In the result and for the reasons discussed above, this writ petition fails and the impugned order is maintained. The writ petition shall accordingly stand dismissed. The interim directions passed in this case, on 17.9.2000, and continued thereafter, shall accordingly stand vacated. The respondent Nos. 1 and 2 are, however, directed to treat the period of service, which the petitioner has rendered as a Junior Engineer (Electrical), since after his appointment as Laboratory Assistant on 29.11.1994, as a period of service rendered by him in the post of the Laboratory Assistant.

10. No order as to costs.