

(1998) 02 GAU CK 0042
In the Gauhati High Court
Case No : Civil Rule No. 1887 of 1996

Taffajul Haque

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-02-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 1 GLT 279

Hon'ble Judges : V.D. Gyani, J

Bench : Single Bench

Advocate : A.K. Purkayastha, for the Appellant; Govt. Advocate, for the Respondent

Judgement

V.D. Gyani, J.—Heard learned Counsel for the Petitioner and also the learned Govt. Advocate for the Respondent State.

2. By this petition under Article 226 of the Constitution, the Petitioner who was a work-charge employee under the Executive Engineer, Guwahati West Division, Irrigation prays for a direction to the Respondents to regularise him in service. He has based his case on a letter dated 2nd April, 1994 addressed to the Superintending Engineer, Guwahati Circle -I, which reads as follows:

GOVERNMENT OF ASSAM IRRIGATION DEPARTMENT: ESTABLISHMENT BRANCH
GUWAHATI-3.

No. IGN (E) 98/93/62

Dated Guwahati, the 2nd April/94.

From : Shri K.N.Das,

Deputy Secy. (E) to the Govt. of

Assam,

Irrigation Deptt., Guwahati -3.

To : The Superintending Engineer,
Guwahati Inv. Circle (I), Guwahati.

Sub : Approval for appointment.

Sir,

In forwarding herewith an application from Shri Tafazul Haque, I am directed to accord Govt. approval for appointment of Shri Haque against any regular vacant post if there be any or any post available for his apptt. by up-gradation for a period of 2 (two) months only subject to availability of fund.

Yours faithfully, Sd/- 2.4. Deputy Secy. (E) to the Govt. of Assam Irrigation Deptt., Ghy-3.

3. A mere reading of this letter would go to show that the so-called approval is preceded with certain conditions and unless these conditions as stated in the above said letter are fulfilled, the question of consideration for regularisation does not arise. In umpteen cases, to note only a few, the Supreme Court in:

- (1) Union of India and others Vs. Dinesh Kumar Saxena and others,
- (2) State of Haryana and others Vs. Piara Singh and others etc. etc.,
- (3) M.S. C.C.G. M.F. Ltd. v. M.S. C.C.G.M. F.E. Union AIR 1994 SC 1046.

-has consistently been held that regularisation cannot be claimed as a matter of right. It is subject to availability of vacant sanctioned post and on fulfilment of eligibility conditions. The aspirant has to take his turn in the line, he cannot claim any precedent or preference in the matter of regularisation. It is a settled proposition of law that in order to maintain petition for a writ of mandamus the Petitioner must have a subsisting legally enforceable right at law, and such right is not conferred by the aforesaid letter as quoted above. No such right accrues to the Petitioner for such letter. Reliance has also been placed on an order passed by the learned Single Judge of this Court on 3.1.95 in Civil Rule No. 10/95. All that was directed to the Respondent to consider Petitioner's representation and the same has in fact been considered but the grievance that has now been made that it has not been properly considered by the State. There is an omission on the part of the authorities, inasmuch as, the circular dated 14th October, 1995 issued by the Secretary to the Govt. of Assam and addressed to all Departmental Heads, was not taken into account. This circular on which the reliance is now being placed by the Petitioner has not even been made in the petition, much less a ground of attack in the petition and reference is also made to yet another circular dated 20th April, 1995 issued by the Chief Secretary to the Govt. of Assam to all Commissioners and Secretaries to the Govt. of Assam. Now taking both these circulars placed for the first time before this Court at the stage of hearing, yet they do not confer any right on the Petitioner to invoke Article 226 of the Constitution. The circular dated 20th April 1995 reads as follows:

...It is therefore, reiterated that all concerned Departments should take necessary action in consultation with the Finance Department for early regularisation of the services of such workers who were engaged in service prior to 01-04-1993 and also to take steps for payment of their wages regularly.

Further, while taking steps for regularisation of the services of work-charged and Muster Roll Workers, the Department concerned must ensure with proper justification and evidence that only the case of those workers who were entertained before 01.04.1993 are considered for regularisation in consultation with Finance Department. It has also been decided that in case of any violation of the Government direction or manipulation of records by any official or Department, appropriate action will be taken against the officer concerned for such violation or manipulation of records.

4. Assuming for the sake of argument that the circular was not considered or taken into account while disposing of Petitioner's representation, does it confer a right on the Petitioner to invoke Article 226 of the Constitution ? These official circulars are for guidance of the authorities concerned and even flouting all these circulars does not confer a right to invoke the Writ jurisdiction of this Court under Article 226 of the Constitution, as has been held by the Supreme Court in *Shyam Kishore and others Vs. Municipal Corporation of Delhi* and another, These departmental circulars or instructions contained in such circulars do not ipso facto afford a ground for writ. Going by the circular, no absolute right for regularisation is conferred. On the other hand, there are prohibitions contained in the circular and some scope is curved out for regularisation of those who were appointed on work-charge basis prior to 1.4.93. Going by this circular there is no material except for the averments made in the paragraph 2 of the petition stating that he was appointed on 15.3.93 and the Respondents in their counter affidavit have admitted this position in the following words:

That with regard to the statements made in paragraph 2 of the petition, the deponent states that originally the Petitioner as casual employee joined in the office of the Superintending Engineer, Guwahati Investigation Circle on 15.3.93 on his appointment vide No. SBG (1 No) Estt. 2/86/133 dt. 12.3.93. Initially he was appointed for 2 (two) months only subsequently his service was extended from time to time. In the month of April, 1994 his service was placed at the disposal of the deponent.

This circular, read as a whole, prohibits engagement of work-charge persons and muster roll workers on or after 1.4.93. But that does not necessarily mean that those who were engaged prior to 1.4.93 should automatically be regularised. The general conditions which governs regularisation shall have still to be fulfilled. It is also significant to note that this circular is neither pleaded nor referred to in the petition, it was only at the time of hearing of this petition that a copy thereof was placed for Court's perusal. learned Counsel states that there is some other circular. It remains to be examined whether Petitioner was one appointed prior to 1.4.93 so as to entitle him to a direction to the authorities for regularisation of

his service. The Petitioner has filed his representation dated 8.2.96, Annexure-E, to the petition stating the

following facts:

I have the honour to inform you that I am a casual employee serving under you. The Secretary, Irrigation Department vide letter No. IGN (E) 98/93/62 dated 2.4.94 directed to appoint me in any vacant post or as workcharged and in that context, I had submitted an application on 29.11.94. Having failed to invoke any response from the authority, I was compelled to take recourse to law and the Hon"ble High Court vide its order in Civil Rule No. 10/95 directed the authority to dispose of my application within two months. The authority, thereafter disposed of my petition on 31.5.95 and was informed to the Hon"ble High Court also.

Referring to a memorandum dated 2.4.94 the Petitioner on his own showing submitted an application on 29.11.94. Long after the date as prescribed 1.4.93 as per the circular dated 20th April, 1993. The Petitioner in paragraph 2 of his petition, he has averred that he joined as casual employee on 15.3.93 in the office of the Respondent No. 3. The Superintending Engineer, Irrigation Circle, Guwahati. The affidavit-in-opposition is filed by the Respondent, the Executive Engineer, Guwahati West Division (Irrigation) and it is he who in his affidavit stated in paragraph 4 as quoted above. In face of this self-contradictory statements made by the Petitioner it is extremely doubtful whether in fact he was employed prior to 1.4.93. No documentary proof such as letter or order of appointment has been placed on record. In these circumstances, no direction can be made to the authorities and the petition is liable to be dismissed, it is accordingly dismissed. However, notwithstanding this dismissal, if on enquiry, which is entirely for the Respondents on their own to hold, the Petitioner is otherwise found to be eligible for regularisation in terms of the above circulars, his case for regularisation may be considered along with others similarly placed. But this direction, it is made clear, does not confer any right on the Petitioner. The petition is dismissed.