

(2001) 01 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 2948 of 1998

Tarunt Amuli

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-01-2001

Acts Referred:

Assam Public Service (Ad-hoc) Appointment Rules, 1986 — Rule 6
Constitution of India, 1950 — Article 226, 395
Government of India Act, 1935 — Section 241(2)

Citation : (2001) 1 GLT 87

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : Mr. P.C. Gayan and Mr. J.C. Nath, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. This petition under Article 226 of the Constitution has been preferred for setting aside the notification dated 23.9.1997 (Annexure-B) issued by the Commissioner and Secretary to the Government of Assam in the Finance department. The petitioner is the Secretary of the Goalpara District Higher Secondary Teachers' and employees Association. As many as 67 subject Teachers in different subjects were appointed in different Higher Secondary Schools in Goalpara District on ad hoc basis as per Assam Public Services (Adhoc) Rules, 1986 and they have been discharging their duties sincerely without any blemish. It is pleaded that the said 67 teachers have a right to get regularisation and prayer to this effect was also made to the respondent No. 4. No action has been taken so far to consider their case although they are entitled to regularisation as per Rules. The said 67 teachers were initially given the benefits of increment on completion of one year's service. Besides, most of them also came out successful in the selection test and, as such, they are entitled to regular appointment. Presently, their grievance is that by the impugned notification, the benefit of increment in the time scale of pay has been

withdrawn". Hence, this petition for quashing the notification.

2. I have heard Mr. P.C. Gayan, learned counsel for the petitioner association as well as the learned State Counsel. Shri Gayan assailed the impugned notification on the ground that the teachers have been appointed as per provisions of Rules of 1986 and, as such, the increment given to them annually cannot be withdrawn.

3. The impugned notification dated 23rd September, 1997 (Annexure-B) is quoted below: -

"Admissibility otherwise of incremental benefits for the services rendered as ad hoc appointees, appointed under ad-hoc appointment Rules, 1986 (since repealed) whose services were/ are extended from time to time with or without break was under active consideration of Finance Department for some time past. Now, after careful consideration of all aspects, the Governor of Assam is pleased to decide that no incremental benefit can be extended in case of ad-hoc service rendered as an ad-hoc appointee, appointed under the ad hoc appointment Rules, 1986 (Since repealed).

2. Consequent upon above decision, the Accountant General, Assam/All Administrative Department and all Heads of Department will have to review the cases of appointees under ad hoc Rules, 1986, and to re-fix the pay reducing the incremental benefit sanctioned earlier if any.

3. However, considering the hardship that the Govt. employee would face, due to refund of amount as per re-fixation, the Governor of Assam is pleased to waive refund of the excess drawn till the date of issue of this office memorandum.

4. The review and re-fixation of the past cases are to be started immediately and should be completed as early as possible and may be intimated to the Finance Deptt.

Sd/- Illegible Commissioner & Secretary Finance (Estt.A) Department."

4. The question to be answered in this case is whether the Subject Teachers appointed on ad hoc basis and discharging their duties without break are entitled to draw annual increment.

5. The impugned notification shows that withdrawal of the benefit of increment is meant only for the ad hoc appointees appointed under the Rules of 1986, since repealed Refund of the increment amount drawn by the teachers has, however, been waived considering the probable hardship the teachers are likely to face. This is undoubtedly a policy decision of the State and therefore, it has to be examined in the touch-stone of arbitrariness as well as the rights and privileges of the ad hoc employees admissible under the law.

6. There cannot be any dispute with the proposition of law that ad hoc appointees appointed dehors the Rules and without selection process are not entitled to claim regularisation of their services unless they come through selection process. In so far as the selected appointees are concerned, they have

a right for consideration of their cases for regularisation in service in accordance with the provisions of law. It would appear from the list of teachers (Annexure-A) that all of them have been appointed on different dates during the period between 1988 and 1994. They have been allowed to continue in service without break with the benefit of annual increments from year to year till the impugned notification dated 23rd September, 1997 was issued. An adhoc employee is a Government servant for all purposes. They are entitled for consideration for regularisation or absorption in accordance with the provisions of law. But there appears to be no justification in refusing them the benefit of annual increment on completion of one year of service in the time-scale of pay they are appointed. No question of annual increment would arise if the ad hoc appointment continues for a period less than a year. In a case where the ad hoc appointment is continued for years together, it would be against fair-play and justice to deny them the benefit of increment alike their counter-part appointed on regular basis. The State cannot be allowed to avail the services of the ad hoc appointees for years together and at the same time deny them the benefit of increment which they would have been entitled to had they been appointed on regular basis. The State sat over the matter and delayed consideration of the case of ad hoc appointees for regularisation in service. An exercise for regularisation ought to have been initiated immediate after appointment and those eligible should have been regularised. The inaction on the part of the State in taking a decision in the matter is indeed deplorable. The impugned notification is not only belated but also arbitrary for the simple reason that the teachers aggrieved continued in service for years together and have been rendering the same service like regular and permanent teachers. It would, therefore, be impermissible to allow the State to deprive them of the financial benefit by way of annual increment.

7. Ad hoc employees whether appointed in pursuance of Rules or otherwise acquires a status as Government servant on such appointment. They cannot be treated at par with appointees on contract or fixed pay. Their service conditions will be governed by the Rules and Regulations as may be applicable to other Government servants so long they are retained in service. Fundamental Rules as are applicable to other Government servants should also govern their service conditions in other spheres including pay matters. Here, we may refer to the following provisions of the Fundamental Rules relevant for this purpose:

"F.R. 24. An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by the State Government, or by any authority to whom the State Government may delegate this power under R.6 if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld and whether the postponement shall have the effect, of postponing future increments.

F.R. 26(a) All duty in a post on a time-scale counts for increments in that time-scale:

Provided that for the purpose of arriving at the date of next increment in that time-scale, the total periods as do not count for increment in that time-scale shall be added to the normal date of increment."

8. The provisions above clearly show that increment of a Government servant is to be drawn as a matter of course unless it is withheld for misconduct or unsatisfactory performance. The provisions in F.R.24 and F.R. 26 do not exclude the ad hoc Government servants. The Fundamental Rules were framed under provisions of the Government of India Act, 1935. The said Act was repealed by Article 395 of the Constitution of India, but the Fundamental Rules made under provisions of Section 241(2)(b) of the Act of 1935 have been saved. The Fundamental Rules are the laws for the State and, therefore, any decision of the Government contrary to the provisions of the Fundamental Rules will have to be struck down. The impugned notification dated 23.9.1997 being ultra vires of the Fundamental Rules cannot be sustained. The learned State Counsel could not show any statutory provision which has over-riding effect so as to enable this court to uphold the notification .

9. In the result, the writ petition is allowed and the impugned notification dated 23.9.1997 (Annexure-B) is hereby quashed. The ad hoc teachers continuing in service beyond- one year will be entitled to increments in accordance with the provisions of F.R. 24 and 26. The Respondent State is further directed to examine their cases for regularisation or absorption in service without loss of time strictly in accordance with the provisions of the Rules and the law.

10. No order as to costs.