
(2014) 11 GAU CK 0026
In the Gauhati High Court
Case No : WA No. 22(K) of 2013

Tekatemjen AO

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Citation : (2015) 145 FLR 647 : (2014) 5 GLT 729 : (2015) 1 LLJ 637

Hon'ble Judges : Lanusungkum Jamir, J;C.R. Sarma, J

Bench : Division Bench

Advocate : I. Imti Longchar and K. Renupemo Tungoe, Advocates for the Appellant; K. Sema, Addl. AG, S. Mere, GA and Pfosekho, Advocates for the Respondent

Judgement

C.R. Sarma, J.—Heard Mr. I. Imti Longchar, learned counsel, assisted by Mr. K. Renpemo Tungoe, learned counsel, appearing for the appellant, Mr. K. Sema, learned Addl. Advocate General, Nagaland and Ms. S. Mere, learned State counsel, appearing for the State respondents. Also heard Mr. Pfosekho, learned counsel, appearing for the respondent No. 8. By this writ appeal, the appellant, who was the petitioner in the Writ Petition No. WP (C) No. 152 (K)/2012, has challenged the correctness of the impugned judgment and order, dated 27.09.2013, passed in the said writ petition.

2. The appellant/writ petitioner was appointed as Work-charged Khalasi (Jugali) under the establishment of the Executive Engineer, PHE Department, Mokokchung Division No. 1, Nagaland, on 28.02.1976, under the scheme of rehabilitation, adopted for the benefit of surrendering undergrounds. Thereafter, on 19.04.1982, the appellant was promoted to the post of Work-charged Fitter, Grade-II and then to the post of Mechanic Grade-I, on 23.10.1987.

3. After rendering service for about 19 (nineteen) years, "in the said post, without any break, the petitioner retired from service, on superannuation, with effect from 01.04.1995. As the appellant was not appointed as a regular employee, against any sanctioned post, no pensionary benefit was given to him,

after his retirement. However, after about 17 years of his superannuation i.e. on 31.07.2012, the appellant, as writ petitioner, approached this Court, invoking the writ jurisdiction of the Court, seeking the following reliefs.

"(1) to regularize the service of Shri Tekatemjen Ao w.e.f. 28.02.1976 to 31.03.1995 with all service benefits;

(2) pay pension to the petitioner as per the Rules and pay, penal interest @ 24% p.e. till full payment of the arrears.

(3) Exemplary costs for the proceedings, and on cause (s) being shown and after hearing the parties be pleased to make the Rule absolute and/or pass any such other or further order/orders as to your Lordships may deem fit and proper in the facts and circumstances of the case."

4. The appellant's claim, made in the writ petition, was challenged by the State respondents, by filing an affidavit-in-opposition. In their affidavit-in-opposition, the contesting respondents, specifically stated that the petitioner approached this Court after delay of seventeen years, without explaining the cause, which prevented the writ petitioner from preferring the said writ petition and that the relief, sought for by the writ petitioner, was hit the principle delay defeats the equity". It was contended that, due to the unreasonable delay on the part of the writ petitioner, he was not entitled to the said relief. In their said affidavit, the State respondents further averred that the, State, being over burdened with excess work charged employee, enacted the "Work Charge Regularization Act, 2001" for regularizing the services of the work charged employees as per the Scheme formulated thereunder.

It has also been contended that the petitioner, who retired in 1995, is entitled to regularization.

5. A learned single Judge of this Court, after hearing the learned counsel for both the parties, by the impugned judgment and order aforesaid, dismissed the said writ petition, on the ground that the writ petitioner, due to the delay, was not entitled to get the relief sought in the writ petition.

6. Aggrieved by the said judgment and order, the writ petitioner, as appellant, has come up with this appeal.

7. Mr. Longchar, learned counsel, appearing for the appellant, taking us through the impugned judgment and order, has submitted that the petitioner, who rendered service for about 19 (nineteen) years, without regularization of his employment, he was entitled to be regularized to facilitate him to get the benefits of pension. It is also submitted that, there being no prescribed period of limitation for approaching a writ Court, the learned single Judge committed error by dismissing the writ petition on the ground of delay, on the part of the writ petitioner/appellant.

The learned counsel for the appellant, has further submitted that the appellant

being deprived from getting pensionary benefits, due to non-regularization of his service, has been facing much hardship and inconvenience. In view of the above, it is submitted that the impugned judgment and order is liable to be set aside, with direction to the State respondents to regularize the service of the petitioner for the purpose of granting him the pensionary benefits.

8. Refuting the said argument, advanced by the learned counsel, for the appellant/writ petitioner, Mr. K. Sema, learned Addl. Advocate General, Nagaland, appearing for the State respondents, has submitted that, though there is no specific period of limitation in preventing a writ petition, the petitioner had to approach the Court, seeking reliefs, within a reasonable period, without inordinate delay. It is also submitted that the appellant/writ petitioner failed to explain the causes of delay, which prevented him from approaching the Court or the Government, seeking regularization of the service during the period of his service or immediately after the retirement. It is also submitted that the filing of the writ petition, after seventeen years of retirement, without any reasonable cause, clearly shows the laches of the petitioner.

9. Supporting the impugned judgment and order, the learned Addl. Advocate General, Nagaland has submitted that in view of the decision, rendered by the Supreme Court, in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , no regularization can be made in respect of any irregular employment or appointment made on ad-hoc basis without following the due procedure. The learned Addl. Advocate General has submitted that as the service of the petitioner was not regularized, during the tenure of his employment, there can be no scope to regularize his service at this delayed stage, that too after seventeen years of his retirement

10. In tune with the said argument, advanced by the learned Addl. Advocate General, Ms. S. Mere, learned State counsel, has submitted that the learned Single Judge has rightly dismissed the writ petition on the ground of delay and laches, on the part of the appellant.

11. Mr. Pfosekho, learned engaged counsel, appearing for the respondent No. 8, has adopted the argument, advanced by the learned Addl. Advocate General, Nagaland.

12. Having heard the learned counsel, appearing for both the parties, we find that the appellant/writ petitioner was appointed as Work-charged Khalasi (Jugali), without following the due procedure of employment and his service was not regularized till the date of his superannuation. The appellant, who retired, on 01.04.1995, after completing nineteen years service, never approached the State Government, seeking regularization of his service, for facilitating him to get pension, etc.

13. Undisputedly, the writ petitioner approached this Court after seventeen years of his retirement from the job, that too, without explaining the delay, which prevented him from approaching the Government as well as the Court, from

seeking regularization of service. In view of the decision, held in the case of Uma Devi (Supra), irregular appointment cannot be regularized, without following due procedure of employment.

As stated by the State respondent, in their affidavit-in-opposition, the Government, in order to regularize the services of the work charged employee, has brought the Act namely "Work Charge Employee Regularization Act, 2001". Admittedly, the appellant retired from service prior to the bringing of the said enactment and as such his service was not been regularized.

14. In the present case, the appellant/writ petitioner was appointed as Work-charged Khalasi (Jugali) employee and he retired holding the said irregular employment, in as much as, his employment was not made as per the due procedure of employment Hence, in view of the decision held in the case of Umadevi (Supra) there can be no question of regularizing the service of the petitioner.

15. There can be no dispute that, in order to be entitled to get pensionary benefit, the employee must hold a permanent-and sanctioned post, as a regular employee. The appellant, who was appointed, without following due procedure of law, cannot claim regularization, as a matter of right Therefore, there can be no question of granting him pensionary benefits.

16. As referred by the learned single Judge, in the case of S.S. Balu and Another Vs. State of Kerala and Others, , the Supreme Court observed that the writ petitioner, who approaches the Court after long delay, is not entitled to the relief, as prayed for, on the ground of delay.

17. In the case at hand, the appellant/writ petitioner has approached the writ Court after 17 (seventeen) years of his superannuation, that too, without explaining the causes, which prevented him from approaching the Court. Therefore, the said inordinate delay, which indicates the laches on the part of the petitioner, itself, deprives him from regularization, even for the purpose of getting pension. Considering the entire aspect of the matter, we find that the learned single Judge of this Court committed no error by refusing to grant the reliefs, sought by the writ petitioner. Therefore, we find no merit in this appeal, requiring interference with the impugned judgment and order. Hence, this appeal stands dismissed. No cost.