
(2014) 09 GAU CK 0033
In the Gauhati High Court
Case No : W.P. (C) No. 22(K) of 2014

Touviu and Others

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Citation : (2014) 5 GLT 182

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : A. Zho, Inaholi Kinny, Chemya, Prohemary, Moa, Lichani, Lipeni and Setolu, Advocates for the Appellant; C.T. Jamir, Addl. A.G., Wati Jamir, N. Longkumer, Akum Jamir, Imkong Jamir, Amen Anichar and Polugin Yaden, Advocates for the Respondent

Judgement

Biplab Kumar Sharma, J.—Heard Mr. A. Zho, learned counsel for the petitioner. Also heard Mr. T.B. Jamir, learned Addl. A.G. Nagaland for the State respondents and Mr. Wati Jamir, learned counsel appearing for private respondent Nos. 4 to 8. I have also considered the entire material on record. The matter pertains to fixation of seniority of the petitioners numbering 9 vis-a-vis the private respondents numbering 5. The petitioners are aggrieved by the Annexure-F seniority list (tentative) by which reversing the earlier seniority positions they have been shown as junior to the private respondents. In the writ petition, the petitioners have referred to the earlier seniority lists of 2006, 2008 and 2010 in which they were all along shown senior to the private respondents.

2. Coming to the facts of the case, both the petitioners and the private respondents were appointed temporarily as Computer in the prescribed pay scale. While in the appointment orders of the petitioners it was indicated that the appointment was subject to regularization through selection board in due course, but in the appointment orders of the private respondents there was no such condition. However, the fact of the matter is that both the groups i.e. the petitioners and the private respondents were appointed temporarily without any

selection. This is the condition in the appointment orders of the petitioners namely, "the appointment is subject to regularization through the selection board in due course" which has given rise to the present proceeding.

3. It will be pertaining to mention here that all the petitioners were appointed prior to the appointments of the private respondents. The appointments were made during the period 1997-1998. While the petitioners were appointed in 1997, the private respondents except one, were appointed in 1998. The said respondent was also appointed after the appointment of the petitioners.

4. When the matter rested thus and the respondents continued in their services with the aforementioned seniority positions, orders dated 15.11.2003, 12.2.2004, 28.9.2003, 12.2.2004, 12.2.2004, 12.2.2004, 30.6.2003, 12.2.2004, 12.2.2004 and 13.6.2003 were issued by the Director of Economics & Statistics in which Department the parties are working. By the said orders, the services of the petitioners were said to be regularized by the DPC held on 12.6.2003. While in some of the orders it was indicated that seniority would be counted from the date of regularization but in others there was no such-indication except the indication that the appointment will not confer any right to claim seniority in the cadre of Sub-Inspector. In some others, it was indicated that the appointment will not confer any right to claim seniority in the cadre of Computer. The petitioners being in the cadre of Computer, there could not have been any mention of the cadre of Sub-Inspector. If the DPC had regularized the services of the petitioners, uniformity ought to have been maintained in the orders of regularization. While the case of the petitioners was dealt with in the above manner, the private respondents were not subjected to any such regularization by the DPC on the ground that their appointment orders did not stipulate any condition for regularization of their service in due course.

5. The aforesaid position has led to the present situation in which although even after the aforesaid orders of regularization, the petitioners were shown senior to the private respondents but eventually by the impugned tentative seniority list dated 8.2.2012, the private respondents were shown senior to the petitioners. Representation made by the petitioners against the seniority was also rejected. In the writ petition, the petitioners have also challenged the officiating promotion provided to some of the private respondents to the post of Sub-Inspector of Statistics on the basis of the impugned seniority list.

6. Justifying the action of the Government in processing the case of the petitioners for regularization of their services, the respondents, both official and private, have contended that since in the appointment orders of the petitioners there was clear stipulation of being subject to regularization of their services in due course, there was nothing wrong in subjecting them through the process of regularization. So far as the private respondents are concerned, it is their plea that since there was no such rider in their appointment orders, they were not required to be subjected to the process of regularization. According to the respondents, the petitioners having not challenged the orders of regularization

clearly stipulating therein that their seniority would be counted from the date of regularization, they are precluded from making grievance against the tentative seniority list impugned in this proceeding. Another ground urged by the learned Addl. A.G. is that the writ petition is pre-mature inasmuch as the challenge is only to the tentative seniority list and not the final seniority list, which is yet to be issued. However, according to him, the things having been finalized, the same need not be reopened at this stage.

7. In the rejoinder affidavit filed by the petitioner, it has been stated that on perusal of the minutes of the DPC it would be revealed that the same was only pertaining to ad-hoc and contractual appointment and not pertaining to the petitioners as their names are also not reflected in the minutes of the DPC.

8. As per the policy decision of the Government there is scheme for regularization of services of ad-hoc/contract appointees as per the provisions of the Nagaland Work Charge and Casual Employees Regularization Act, 2001. In this connection, the learned counsel for the petitioners has also drawn my attention to the minutes of the DPC meeting held on 12.6.2003. In the said meeting, the matter relating to regularization of officiating promotion and regularization of contract/ad-hoc appointments were taken into consideration. Unlike naming of the incumbents, who were taken into consideration for regularization of their officiating promotion, in the case of regularization of services of the contract/ad-hoc Computers, no names were indicated. It is in this context, the learned counsel for the petitioner submits that from the said DPC minutes, it cannot be said that the same was pertaining to the petitioners. Be that as it may, the department regularized the service of the petitioners in reference to the said minutes of the said DPC.

9. Irrespective of the aforesaid regularization of services of the petitioners, in the seniority lists that were published in 2006, 2008 and 2010, the petitioners were all shown senior to the private respondents. Thus, the petitioners had no occasion to make any grievance regarding their seniority as they were made to understand that irrespective of the aforesaid orders of regularization they will always remain senior to the private respondents. Another aspect of the matter is that since in the minutes of the DPC, no names were indicated it could be inclusive of the private respondents also. The grievance of the petitioners started when the impugned seniority list was published on 8.2.2012 altering their seniority positions vis-a-vis the private respondents. In this seniority list, unlike the 3 earlier seniority lists, the petitioners were shown junior to the respondents.

10. The position relating to the issue raised in this writ petition can be looked into from another angle. When it is admitted fact that both the categories of employees were appointed under the same terms and conditions and without any selection, the fact which the learned counsel appearing for the respondents including the learned Addl. A.G. have fairly admitted, no distinction could have been made between the said two groups who are equally circumstanced. While one category was subjected to the process of regularization, the other category

i.e. the private respondents were not subjected to any such process of regularization. This was done only in reference to the rider in appointment orders of the petitioners referred to above. Merely because no such rider was provided in the appointment orders of the private respondents, it cannot be said that they are in a better footing than the petitioners. In this context, the learned counsel for the petitioners has submitted that this position has arisen in view of the fact while the appointment orders in respect of the petitioners had been issued by the then Director, in case of the private respondents, their appointments orders were issued by the successor Director. Merely because a particular clause was inserted in the appointment orders of the petitioners and omitted in the appointment orders of the private respondents, the same cannot lead to different treatment between the two categories of employees in the same group with the same terms and conditions of their appointments.

11. In view of above, this writ petition is allowed interfering and setting aside the impugned seniority list dated 8.2.2012 and all consequential actions on that basis. It is hereby provided that since the private respondents are continuing in their service for about 16 to 17 years, their services should also be deemed to have been regularized at par with the petitioners from the same effective date as per the minutes of the DPC referred to above. This provision is made as in the minutes of the DPC, while regularizing the services of the ad-hoc/contract Computers , no name was indicated and was made en-block. However, seniority of the petitioners vis-a-vis the private respondents shall be maintained as per the respective dates of their initial appointments. The respondents shall now pass appropriate orders as expeditiously as possible preferably within 2 (two) months from today. Writ petition is allowed, without, however, any order as to costs.