
(2003) 09 GAU CK 0019

In the Gauhati High Court

Case No : W.A. No's. 535 of 2001, 331 to 339, 349, 383, 534 and 536 of 2002

Union of India (UOI)

APPELLANT

Vs

Hazera Khatun

RESPONDENT

Date of Decision : 02-09-2003

Acts Referred:

Citation : (2004) 102 FLR 1096 : (2004) 1 GLR 493 : (2004) 3 LLJ 70

Hon'ble Judges : P.P. Naolekar, C.J;S.K. Kar, J

Bench : Division Bench

Advocate : C. Choudhury and B. Kalita, for the Appellant; A.K. Bhattacharjee, B.K. Singh, R.B. Deb, A.K. Choudhury, A. Das and A. Hazarika, for the Respondent

Final Decision : Allowed

Judgement

1. All these fourteen number of Writ Appeals were, by order, heard together and for the sake of convenience are being disposed of by this common judgment and order because they would relate to the same question of law involved and consist of either identical or similar questions of facts. The Union of India, represented by the Secretary, Health and Family Welfare (Rural Health Division), Government of India, is the appellant in all these appeals.

2. The fact giving rise to the filing of the connected Writ Petitions and the presentation of these subsequent appeals may be given as hereunder. Mrs. Hazera Khatun in her capacity as the General Secretary, All Assam Health Centres Female Attendants Association, filed a petition registered as WP(C) No. 5496/2001 (giving rise to Writ Appeal No. 535/2001). Several such petitions were presented by groups of Female Attendants of Health Centres" from the year, 1995 onwards and all of them were disposed of as "covered cases", on the strength of order passed in Civil Rule No. 3073/95 by the Single Bench of this Court, by passing orders on different dates. The Government of Assam and the connected State Department were made the principal respondents and the Union of India was joined later with the connected Health Department as respondent

Nos. 6 and 7.

3. All these writ petitioners whether in their individual capacities or in the form of an association contended that they were working as "Female Attendants" under the respondent authorities in different Health Centres, Public Health Centres, State Dispensaries within the State of Assam on a consolidated pay of Rs. 50.00 per month as per the letters of appointment. That on being appointed as such they were performing their duties to the best of their capacities and devotions to the satisfaction of their respective superiors and the respondents were realizing service from them, equal and similar to that of Grade-IV employees and Nurses, in return of a nominal pay of Rs. 50.00 per month and all their representations were abortive in getting the higher pay benefit. That although some of the Female Attendants were given appointment as "Ward Girls" with pay scale of Grade IV employees such a relief was refused to the Writ petitioners in spite of the fact of they being "similarly situated persons" having the requisite qualifications. That the Writ petitioners out of dire necessities of life and on compelling circumstances had to continue with the meagre pay, some of them since 1979 and action of the respondents was thus violative of natural justice and administrative fair play, etc. etc. That they are legally entitled to the minimum wages of Rs. 900.00 per month. It appears that first of such cases in point of time was Civil Rule No. 3847/93 filed by one Smt. Nandeswari Bora decided on 18.7.1994, followed by the next petition WP(C) No. 3073/95, disposed of on 22.2.2000, giving the relief and the same was repeated in other connected cases on principles of covered cases as stated above.

4. It is evident from records that none of these Writ petitions was contested by the State Government and its departments at the relevant time by filing any counter affidavit. Equally, the Union of India also failed to file any counter affidavit on its impleadment. The Civil rules continued to pour in since 1993 till 2001. There was Contempt proceeding for the non-implementation of the Court's order and thereafter the batch of these Writ Appeals were presented only by the Union of India. It is believed that there were as many as 218 (Two Hundred and Eighteen) writ petitioners in this context till date.

5. We have heard the learned Sr. CGSC and the Government Advocates in length, considered all relevant materials in these appeals and perused the judgment and order passed by the Single Benches.

6. It is submitted by the learned counsel for the appellant that the learned single Judge has erred both in law as well as on facts and that before deciding the matter the appellants were not given due opportunity of being heard and there was non-application of judicial mind on the actual pleadings and under the particular facts and circumstances of the case the writ petitioners in those cases were only Voluntary workers". That as per staffing pattern of the Government of India the Voluntary Workers in the Sub-Centres were to be paid @ Rs. 50.00 per month as honorarium as per the provisions in the scheme and that they have no basis to claim wages per month as they could not have claimed themselves as

the employees under the Central Government appointed on regular basis but were just attendants. Accordingly, the impugned judgment and order of the learned Single Judge passed in WP(C) NO. 3073/95 and followed in subsequent Writ Petitions was not sustainable and that the Court ought to have left the matter of deciding the amount of remuneration to the Central Government and accordingly, the relief is sought for by way of allowing the Writ Appeal and setting aside the impugned judgment and order. It was reiterated that the Female Workers were neither employees nor Government servants but were just attendants to the ANM/MPW(F) for field visits for miscellaneous works like cleaning, etc., in the Sub-Centres. It is stated that there are 5280 Sub-Centres in the State of Assam as on 30.6.1999, out of which Government of India was assisting the State Government for meeting the recurring and non-recurring expenditure of 4561 Sub-Centres only.

7. These appeals were presented after obtaining the leave of the Court to condon the delay. It is not in dispute that there was the Central Government (Government of India) sponsored scheme. It was submitted that the connected pattern of input for Rural Sub-Centres to be opened under Family Welfare Programme there are the posts of "Voluntary Workers" on an honorarium of Rs. 50.00 per month, But then the appointment letters in question absolutely have neither any reference nor any mention that such appointments were being made under the said Centrally sponsored scheme to invite the liability of the Union of India. The pattern/sample of appointment letter goes as follows:

"..... Smt. is hereby appointed temporarily as female attendant (casual employee) against the sanctioned post of Female Attendant at..... at monthly remuneration of Rs. 50.00 only per month and posted"

Thus, it will be seen from the series of appointment letter annexed in Writ Petitions that there is absolutely nothing to say that these appointments were made under any centrally sponsored scheme or against the sanctioned posts of "Voluntary Workers" on honorarium basis @ Rs. 50.00 per month in order to encompass/entail the Central Government (the Union of India) with any liability. That being so the State Government is alone liable for the activities of its officers and wings. Till date the State of Assam has not filed any appeal next after 18.7.1994 when the first case of Smt. Nandeswari Bora was decided against the Government of Assam wherein the Union of India was not even made a party. The learned Single Judge in his judgment had made reference to that case of Smt. Nandeswari Bora (CR 3874/1993) which was based on laws given by the Hon"ble Apex Court and reported as AIR 1987 SC 2343 and The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc., wherein it was held that the State cannot deny the minimum pay to regularly employed workmen because such denial will amount to exploitation of labour and compelling workers to work on starving wages, the Government taking the advantage of its dominate position. Secondly, it is also

expected that the Government should be model employer. We, therefore, find nothing to disturb the merit of the findings of the learned Single Judge in so far as fixation of liability of payment of minimum wages to the appointees by the Government of Assam.

8. However, it will be seen as discussed in this judgment that the appointment letters in question have nothing to link them with the centrally sponsored scheme of Voluntary Workers at fixed honorarium espoused by the present appellant. Neither in the assertion in the writ petitions nor in the appointment letters there are any contention to invite and fix any liability on the Union of India for payment of the minimum wages. Any such dispute is a matter to be settled by the Union of India and the State of Assam without affecting the rights of the Writ petitioners.

9. Appeals filed by Union of India are allowed. The Union of India has no liability in these connected Writ Appeal, vis-a-vis the writ petitions. However, under the peculiar facts and circumstances of these cases, we award no costs. A copy of this judgment may form part of each connected Writ Appeals.