

(2024) 03 GAU CK 0079

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2751 of 2013

Uttam Kakati

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 27-03-2024

Acts Referred:

Citation : (2024) 03 GAU CK 0079

Hon'ble Judges : N. Unni Krishnan Nair, J

Bench : Single Bench

Advocate : M.K. Choudhury, M. Sarma, R.K.D. Choudhury, L. Devi

Final Decision : Disposed Of

Judgement

1. Heard Mr. M.K. Choudhury, learned senior counsel, assisted by Mr. M. Sarma, learned counsel for the petitioners. Also heard Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India, assisted by Ms. L. Devi, learned counsel representing all the respondents.

2. The petitioners by way of instituting the present proceedings have raised a grievance with regard to non-regularization of their services and also non-extension to them the benefits of financial upgradation at par with other similarly regularized casual temporary workers working in the respondent No.4 Institution.

It is to be noted that from amongst the original petitioners, during the pendency of the present proceedings, few of them had expired and the petitioners have substituted some of such original petitioners with their legal heirs. However, in view of the nature of the order being sought to be passed in the present proceedings, the issue with regard to non-substitution of the other original petitioners, who have died during the pendency of the present proceedings, is not examined by this Court.

3. The petitioner Nos.1 to 5 were initially engaged as Muster Roll workers under the Assistant Executive Engineer, Irrigation Department, Tezpur in the years

1988-1989. While working as such, the respondent No.4 Institute having been set up, the services of the said petitioners were placed at the disposal of the Director, North Eastern Regional Institute of Water and Land Management (NERIWALM). The petitioner Nos.6 to 10 were also engaged as casual employees under the respondent No.4 Institute in the year 1990-1992 and all the petitioners have been serving in the said Institute thereafter. The petitioners contends that their cases were required to be absorbed against the post created in the Institute, however, the petitioners were kept on daily wage basis upto the year 2002. On 12(twelve) vacant posts of Group-D being sanctioned by the North East Council (NEC) to the Institute in the year 1992 itself, the cases of the petitioners for absorption against the said posts were not considered and persons not working on casual/ Muster Roll basis in the Institute came to be appointed against the said posts.

4. The NERIWALM Employees' Union being aggrieved by the discrimination meted out to the Muster Roll, casual workers engaged in the Institute, had instituted Civil Rule No.5975/1998 before this Court praying for regularizing the services of Muster Roll and casual employees. This Court vide judgment & order dated 17.09.2001 directed that in the event the NERIWALM is continued beyond March, 2002 and/or converted into a permanent establishment, the cases of the aforesaid employees, who have put in long spells of service as Muster Roll and casual workers will have to be considered for continued/regular employment. In terms of the directions passed by this Court, vide office order dated 20.02.2002, the present petitioners were appointed as temporary appointees against sanctioned Grade-IV posts of Chowkider, Mali, Farm Attendant and Guest House Attendant until further orders and were authorized a scale of pay. The petitioners thereafter continued in their services in such capacity.

5. It is contended by the petitioners herein that they were also extended with the benefit of Modified Accelerated Career Progression (MACP) Scheme and were also extended with the benefits as applicable under the said Scheme for financial upgradation. Such financial upgradation was extended to the petitioners only vide order dated 25.10.2010. It is further contended that the NERIWALM was taken over by the Ministry of Water Resources, Government of India, vide a communication dated 11.10.2011. The services of the petitioners not having been regularized and having been continued on temporary basis against sanctioned posts, the petitioners have instituted the present proceedings.

6. Mr. M.K. Choudhury, learned senior counsel appearing for the petitioners at the outset submits that the petitioners ought not to have been continued on temporary basis after the directions of this Court as contained in the judgment & order dated 17.09.2001 passed in Civil Rule No.5975/1998 and the NERIWALM having been continued its functioning after March, 2002, they ought to have been regularized in their services and considered as regular employees and not temporary employees. The present writ petition was stated to have been instituted by the petitioners on an apprehension that being temporary

employees, they may not have any entitlement or right to be regularized in service and their such continuation for a long time would be detrimental to their morale. It was also contended that in the event the petitioners, who were initially engaged in the Irrigation Department, Government of Assam on Muster Roll basis, having been so engaged prior to 1993 in such capacity and if they had continued with the said Department of the Government of Assam, their services would have been so provincialised at least w.e.f. the year 2005 with all consequential benefits. Accordingly, Mr. M.K. Choudhury, learned senior counsel submits that a direction is required to be issued by this Court upon the respondent authorities to issue appropriate orders regularizing the services of the petitioners.

7. Per contra, Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India representing the respondents, by referring to the affidavit as filed in the matter by the NERIWALM authorities, has contended that the services of the petitioners have been regularized and they have been granted all the permissible benefits as would be flowing to them as a regular employee of the Organization. It is submitted that the petitioners have also been extended with the benefit of MACP Scheme and accordingly, the petitioners being deemed to be the regular employees in the Organization, there is no requirement of issuance of any further direction by this Court to regularize their services.

8. On a perusal of the affidavit as filed in the matter by the NERIWALM authorities, it is seen from Paragraph 10 thereof that the direction passed by this Court vide judgment & order dated 17.09.2001 in Civil Rule No.5975/1998 was duly complied with by the concerned authorities and the petitioners were duly granted all such benefits of service in accordance with the relevant Rules. Further, in Paragraph 12 of the said affidavit, it has been held that the petitioners, on completion of prescribed period of service in the Institute, were provided with the benefits of financial upgradation w.e.f. 20.02.2012 under the Modified Assured Career Progression Scheme (MACP) as is applicable to the Central Government civilian employees and accordingly on grant of such financial upgradation under the MACP Scheme, the pay of the petitioners were so fixed at the higher stage. It was also noted that in pursuance to the acceptance of the recommendation of 6th Central Pay Commission, the designation of all Group-D posts in the Institute has been changed to Multi Tasking Staff (MTS) and the petitioners are now regarded as Multi Tasking Staff (MTS) and are classified to be holders of Group-C posts. It has been further stated in Paragraph 15 of the said affidavit that the services of the petitioners have already been regularized and they have been appointed on such regularization on temporary basis to different sanctioned Grade-IV posts in the Institute vide office order dated 20.02.2002.

9. In view of the directions passed by this Court vide judgment & order dated 17.09.2001 in Civil Rule No.5975/1998, more specifically, the direction requiring the respondents to consider the cases of the Muster Roll and casual employees for regular employment as well as the stand as taken in the affidavit filed by the

Institute that the services of the petitioners have been regularized and they have also been extended with the benefits as flowing from the MACP Scheme, this Court deems it fit and proper to declare in view of the above facts and circumstances that the petitioners herein are all to be treated as regular employees holding sanctioned vacant posts under the respondent No.4 Institute and accordingly, they would be entitled to all benefits that would be so flowing to regular employees of the said Institute of the same rank. The petitioners having been already held to be regularized employees and holding sanctioned vacant posts, no further direction for regularization of their services is called for in the matter.

10. With the above observations and directions, the writ petition stands disposed of.