

(2001) 01 GAU CK 0018
In the Gauhati High Court
Case No : Writ Petition (c) No. 4497 of 1999

Vijay Kumar Sharma

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 17-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (2001) 1 GLT 189

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : Mr. R.L. Yadav and Ms. K. Yadav, for the Appellant; Mr. H. Roy, G.A., for the Respondent

Judgement

1. This petition under Article 226 has been filed for quashing the notice dated 24.08.1999 whereby the services of the petitioner who was serving as Assistant Director (Faculty) in the State Institute of Rural Development, Arunachal Pradesh was terminated with one month's notice. In addition, the petitioner also prayed for issuance of a direction for regularisation of his services with other incidental reliefs. The notice impugned in this petition reads as follows:-

"In pursuance of provisions under para-3 of order No.SIRDA-2/ 95(Estt) PM dated 22nd October, 1997 read with clause X(U of order No.SIRDA-02/95(Estt)Pt-I dated 10.11.1995,1 Shri T. Taloh, President, Executive Council. State Institute of Rural Developmeht. Arunachal Pradesh, hereby give notice to Shri V.K. Sharma, Assistant Director (Faculty) that his services in SIRD, Arunachal Pradesh, stand terminated with effect from the date of expiry of period of one month form the date on which this notice is served on him."

2.1 have heard Mr. RL.Yadav, learned counsel for the writ petitioner and also Mr. H. Roy, Learned State Counsel for the State of Arunachal Pradesh. According to Sri Yadav, the services of the petitioner cannot be terminated as he has a right for consideration for regularisation. Shri H. Roy, Learned State Counsel, however, pointed out that it is purely an appointment on contract initially for a period of

two years and, thereafter, continued for a further period of three years on fresh contract on specific terms and conditions of which the termination clause provides for one month's notice on either side and, as such, the petitioner having no right to enforce regularisation or permanent appointment cannot invoke the jurisdiction of this court under Article 226.

3. The impugned notice dated 24.08.1999 shows that it was issued in pursuance of the provisions under para-3 of the order dated 22nd October, 1997 read with Clause 10(1) of the order dated 10.11.1995. It would, therefore, be of convenience to refer to the aforesaid provisions invoked by the respondents in the instant case.

4. Para-3 of the order dated 22nd October, 1997 provides that the terms and conditions of the appointment will be same as Indicated in the earlier appointment order dated 10th November, 1995.

5. Clause X(i) of the order dated 10th November, 1995 reads as follows :-

" (X) Termination of Contract Service:

(i) the authority reserves the right to terminate services of the officer without assigning any reason before completion of the term of contract by giving one month's notice or one month's pay in lieu of notice."

6. The above clause was incorporated in the appointment order (Annexure-D) of the writ petitioner. The appointment clearly indicates that it was meant for a period of two years on contract basis on a consolidated pay of Rs. 5912. Other clauses also make it clear that the appointment was purely on contract basis. The nomenclature of the post of Lecturer was subsequently changed and it was redesignated as Assistant Director by a notification issued on 10th September, 1996. Before expiry of the said term of two years, by a letter dated 11th July, 1997, options were called for from the petitioner and another for renewal of contract. The petitioner in his letter dated 26th July, 1997 in reply to the said letter communicated his willingness for renewal of his contract service with claim for certain pay benefits. This letter written by the petitioner clearly indicates that he was aware of his status as an employee on contract. The respondents by Annexure-K1 renewed the offer of appointment on contract basis more or less on the same terms and conditions and, thereafter, by an order dated 22nd October, 1997 (Annexure-B) the petitioner and another were appointed on contract basis for a further period of three years. The terms and conditions regulating the termination remained the same as it were in the earlier appointment order dated 10th November, 1995. The petitioner has been raising various demands with regard to pay and other benefits and eventually the authorities issued the impugned termination notice dated 24th August, 1999.

7. This court by an order dated 23.9.1999 allowed the writ petitioner to continue in service upto November, 2000 on a consolidated monthly salary of Rs. 11,600 on his accepting an agreement in terms of the offer dated 23.4.1999. Though the

period of extension is over, the petitioner has been continuing as such by virtue of the aforesaid order. This order, however, does not in any manner confer any right to the writ petitioner. His service conditions are to be determined in accordance with the terms of the contract as reproduced above. The authorities vide, communication dated 22.4.1999 gave seven days time to enter into fresh contract and for acceptance of the terms and conditions embodied therein with stipulation that in default thereof, it would be presumed that the petitioner is not interested to serve the institution any more. A careful consideration of all these documents clearly indicate that at no point of time the respondents ever gave any assurance that the petitioner's case would be considered for permanent absorption.

8. Mr. H. Roy, learned counsel for the respondents argued that the petitioner is not a Government servant but a Faculty Member of the Institution financed by the Central Government and, therefore, the Rules and Regulations or Executive Instructions as may be issued by the Central Government would govern the service condition of the writ petitioner. Shri Roy, further argued that the Central Government, being in control of the Institute, ought to have been impleaded as a party in the petition.

9. Shri R.L. Yadav, learned counsel for the petitioner in order to show that the petitioner has a case to vindicate relied upon the decision of the Supreme Court in *Union of India and others v. Arun Kumar Roy* (1986) 1 SCC653. In para-18 of the said judgment, the Supreme Court dealt with the status of employees in Government Service and observed that an employee whose appointment in Government service originates in a contract acquires a status and, therefore, is governed by the Service Rules and not by the terms of the contract. It was further held that in case of employees under the Government, the terms of the contract will have no precedence over the Rules governing their service conditions.

10. Shri Jadav also relied upon a decision of this court in *Sanakhya Ebotombi Haorokcham v. State of Manipur and others* (2000) 3 GLR 436. In this case the High Court dealt with a case of a casual Government employee who was allowed to continue in service for years together by way of extension without least indication that the service was terminable at any time. The cases referred to and relied upon by Shri Jadav, in my opinion, stand on a different footing. The decision in *Arun Kumar Roy* (supra) was rendered in the context of service rules framed by the authorities under Article 309 regulating the service conditions of its employees. In the instant case, we are not dealing with a matter pertaining to any Government servant. That apart, no Rule has also been framed, either Executive or statutory, by the respondents encroaching regulating the service condition of the writ petitioner and others situated alike. Had there been any Rule, Executive Instructions or decision, such Rule or Executive Instructions or decisions would have prevailed upon the terms and conditions of the contractual appointment of the writ petitioner. Hence, the said decision in *Arun Kumar Roy*

(supra} cannot be applied in the instant case. The decision of this court in Sanakhya Ebotombi Haorokcham (supra) was on a completely different context. He was employed for years together by way of extension. The court in the given situation of that case where the future of the Government employee was involved directed reinstatement. The ratio of the said judgment also for apparent factual distinction cannot be applied in the instant case.

11. I have also considered the decision in I.N. Subba Reddy Vs. Andhra University and Others, and in Hindustan Machine Tools and Others Vs. M. Rangareddy and Others, referred to by Shri Roy, learned counsel for the respondents. The ratio laid down therein clearly indicate that unless the employer frames any Rules or Regulation for regulating the service conditions of the employees appointed on contract for a specific period, it is the terms and conditions of the appointment that would determine the status of the employees. In the instant case, the concerned Institute have not initiated any such process for regularisation or permanent absorption of the employees appointed on contract basis and, as such, the petitioner does not appear to have any right to enforce.

12. In the result, the writ petition having no merit is disposed of with the observation that the respondents would be free to consider the case of the writ petitioner and other similarly situated employees if any of them pray for regularisation or for fresh appointment on contract and appoint them accordingly if they so decide.

13. No order as to costs.