

(2013) 08 GAU CK 0028

Gauhati High Court

Case No: WP (C) No. 2201 of 2009

Shri Utpal Chandra Das, Shri
Dhajan Chandra Das and Miss
Ajima Begum

APPELLANT

Vs

The Sate of Assam, The Chief
Engineer and The Executive
Engineer

RESPONDENT

Date of Decision: Aug. 19, 2013

Hon'ble Judges: Arup Kumar Goswami, J

Bench: Single Bench

Advocate: M. Nath, for the Appellant; R. Deka, Standing Counsel, PWD, Assam, for the Respondent

Final Decision: Disposed Off

Judgement

Arup Kumar Goswami, J.

Heard Mr. M. Nath, learned counsel for the petitioners. Also heard Ms. R. Deka, learned Standing Counsel, PWD, Assam. This writ petition is directed against the order dated 27.03.2009 issued by the respondent no. 3 cancelling the writ petitioners' appointment/up-gradation to the post of Section Assistant vide order dated 09.01.2006.

2. The writ petitioners were engaged as Muster Roll Labourers on 09.07.1994, 05.09.1994 and 01.03.2004, respectively, under the establishment of respondent no. 3. By order dated 09.01.2006 issued by the respondent no. 3, the three petitioners were up-graded as Section Assistants.

3. Two writ petitions being W.P.(C) No. 2647/06 and W.P.(C) No. 5332/05 were filed with the grievance that five persons were illegally upgraded to the post of Section Assistant without considering the cases of the said writ petitioners. However, the said five persons were not made parties in the said two writ petitions. On the basis of materials on record, this court, in its judgment and order dated 27.01.2009,

recorded a prima facie finding that the up-gradation/promotion/appointment of those five persons were made illegally. Taking note of the fact that the said five persons were not made party-respondents, this court did not set aside and quash their orders of appointment/up-gradation and directed the respondents to pass appropriate orders consistent with the observations made in the said judgment after providing adequate opportunities to the five incumbents.

4. The present writ petitioners are three out of five persons mentioned in the judgment and order dated 27.01.2009.

5. Thereafter, notices were issued by the respondent no. 3 to the writ petitioners on 26.03.2009 for oral hearing on 27.03.2009. Thereafter, the order dated 27.03.2009, which has already been noted, was passed by the respondent no. 3.

6. Mr. M. Nath, learned counsel for the petitioner's submits that the petitioner's were not provided sufficient time to prepare and project their cases. It is submitted by him that the petitioners prayed for grant of two days time to submit their reply, but no such time was granted and the impugned order was passed. Thus, according to him, the opportunity of hearing provided to the petitioners was a mere eye-wash and an empty formality and on this count alone, the writ petition deserves to succeed.

7. Ms. R. Deka, learned Standing Counsel, PWD, placing reliance on paragraph-8 of the affidavit of the respondent no. 3, submits that the petitioner's had submitted written statement on 27.03.2009 and therefore, submission of Mr. Nath that petitioners were not granted adequate opportunity is not correct. It is also submitted by her that for promotion to the post of Section Assistant, which is equivalent to the post of Lower Division Assistant, seven years continuous service, apart from other qualifications, is required and the petitioner's being not regularized as Muster Roll Workers, they were not even eligible for consideration for appointment/up-gradation to the post of Section Assistant. It has also been submitted by her that the authorities had admitted that promotion of the petitioners were made by the respondent no. 3 by mistake.

8. Submissions advanced by the counsel for the parties are considered.

9. There is no dispute that this court in its judgment and order dated 27.03.2009 had recorded a prima-facie finding regarding illegal up-gradation/promotion/appointment of the petitioners to the post of Section Assistant. In the writ petition, there is no attempt on the part of the petitioners to justify how their up-gradation /promotion/appointment was in accordance with law. In the face of prima-facie finding recorded against them by this court, onus was on the petitioners to canvass about legitimacy of their up-gradation. The petitioners have failed to place on record any material to dislodge the prima facie finding recorded against them by this court. During the course of hearing, Mr. Nath has candidly submitted that petitioners have not been regularized as Muster Roll

Workers. It is also worth noting that against the affidavit filed, the petitioners did not file affidavit-in-reply.

10. Principles of natural justice have many facets and they cannot be put in a straight-jacket formula. When the petitioners had filed written statement, it cannot be said that they were deprived of presenting their cases in a reasonable manner. What is more, in the writ petition, there is no attempt on their part to justify their up-gradation to enable them, theoretically speaking, to contend that because of lack of reasonable opportunity, they were prejudiced.

11. In view of the above discussions, this court finds no merit in this writ application and accordingly, the same is dismissed.

12. At this stage, Mr. Nath, learned counsel for the petitioners submits that the State has come out with an Office Memorandum dated 27.06.2013 on the subject of Regularization of services of Work-Charged, Muster Roll and similarly placed workers in pursuance of orders of the Hon"ble Supreme Court of India dated 10.04.2006, reported in [Secretary, State of Karnataka and Others Vs. Umadevi and Others](#), and he submits that cases of the petitioners may be considered for regularization in the light of the said memorandum. He also submits that petitioners may be given opportunity to file a representation before Commissioner and Special Secretary (Roads) to the Government of Assam, PWD for consideration of their cases for regularization in terms of the said Office Memorandum.

13. Without expressing any opinion on the merits of the claim of the petitioners for regularization of their services under the Memorandum, the petitioners are left at liberty to file representation(s) for regularization of their services under Office Memorandum dated 27.06.2013.

14. Ms. R. Deka, learned Standing Counsel, PWD submits that though the matter of regularization of the petitioners as Muster Roll Workers is not an issue, their cases would be considered if they are found to be meeting the requirements for regularization under the one-time measure under the Memorandum. Writ petition stands disposed of. No costs.