
(2001) 04 GAU CK 0016

Gauhati High Court

Case No: Writ Appeal No. 511 of 2000

Abu Hyat

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: April 13, 2001

Citation: (2001) 2 GLT 265

Hon'ble Judges: R.S. Mongia, Acting C.J.; B. Biswas, J

Bench: Division Bench

Advocate: A. Rashid, for the Appellant; A.M. Buzarbaruah, for the Respondent

Final Decision: Allowed

Judgement

R.S. Mongia, C.J. (Actg)

1. The appellant/writ petitioner's father was a Muster Roll labourer in the office of the Executive Engineer, PWD (Roads) Division, Goalpara. Unfortunately the appellant's father died while working as Muster Roll labourer. By order dated 04.01.1997 issued by the Executive Engineer, PWD Roads Division, Goalpara (Annexure-3) the petitioner was appointed as Muster Roll labourer on casual basis. It is mentioned in the order that he was appointed on compassionate ground due to expiry of his father. This appointment was initially for a period of three months. By another order dated 03.04.1997 the services of the appellant as Muster Roll labourer was extended until further orders. However, by an order dated 25.08.1997 (Annexure-6) the appellant's service was terminated on the ground that his appointment initially was unlawful issued during the Ban period. The order reads as under:

In pursuance of the Chief Engineer. PWD(Roads) Assam's order No. CE/ADI(II)33/2000/4 dt. Guwahati the 19th Aug. 2000, the following work-charged Muster Roll labourer as appointed unlawfully i.e. during "Ban period" (on or after 01.04.1993) is hereby terminated with immediate effect.

Name of W/C Muster Roll Labourer.

Abu Hayat.

Sd/- Illegible

Executive Engineer, PWD

Goalpara (Roads) Division"

2. This order was made the subject-matter of challenge in the writ petition. The learned Single Judge vide order dated 09.11.2000 dismissed the writ petition. The learned Single Judge non-suited the writ petitioner on the basis of a judgment of this Court reported as [Achyut Ch. Pathak and Others Vs. State of Assam and Others,](#) . The appellant aggrieved by the judgment of the learned Single Judge has filed the present appeal.

3. We have heard Mr. A. Rashid, learned counsel for the appellant and Mr. A.M. Bujarbaruah, learned Govt. Advocate for the respondent State.

4. We have not been shown any document by which ban on appointment on Muster Roll for any period had been imposed. Even otherwise we can not countenance of a ban on appointments on muster roll. Inasmuch as, if such ban is imposed, perhaps quite a number of projects undertaken by the PWD authorities would come to a stand still. Works of the PWD are mostly carried out by muster roll appointees. No doubt. It is mentioned in the appointment order of the appellant that he was being appointed on compassionate ground but as observed above, there was no ban on appointments on muster roll and consequently the reason given in the order of termination of service in Annexure-6(supra) is not well based. We have also perused the judgment of the Division Bench (supra). That was a case where the Division Bench considered the scheme issued by the State Government, whereby certain persons who were appointed on Daily Wage/Work Charged/Muster Roll basis were made entitled for consideration for regularisation. However, such persons were to be those who had been appointed prior to 01.04.1993 in pursuance of the Circular dated 26.04.1995 (Annexure-7). The Division Bench held that appointees on muster roll/work charge basis etc. who had been appointed after had no right to claim regularization. The Division Bench upheld the fixation of the cut off date as 01.04.1993. The Division Bench, however, did not hold that there was a ban on muster roll appointments. The case was only regarding consideration for regularisation of certain employees as referred to above.

5. The question still remains as to what relief the appellant would be entitled at this stage. A muster roll employee as such has no indefeasible right to continue on muster roll appointment. Of course, if some persons who have been appointed later on are allowed to continue, then the person who had been appointed prior to such appointment may have some grievance. We hold that the impugned termination order is illegal and therefore set aside the appellant's case will now is considered for muster roll appointment as and when muster roll appointments are made by the respondents.

6. While allowing this appeal, we quash the order of the learned Single Judge with the directions given to the respondents to the aforesaid extent. The writ appeal is decided accordingly.