

GAHC010021862022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./22/2022

RAM CHANDRA PAUL AND 2 ORS.
S/O LATE ARUN CHANDRA PAUL,
VILLAGE SRIKONA, PO SILCHAR, DIST CACHAR, ASSAM,788004

2: SRI PRIOJIT DAS

S/O SRI SONTUSH DAS

VILLAGE MEHERPUR
PO SILCHAR
DIST CACHAR

3: SRI RAM PRASAD ROY
S/O LATE JYOTISH CHANDRA ROY

VILLAGE RONGPUR
DIST CACHAR
ASSA

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI 06

2:THE PROJECT DIRECTOR

DRDA
CACHAR
SILCHAR
ASSAM 788004

3:THE DEPUTY COMMISSIONER

CACHAR
SILCHAR

4:THE BLOCK DEVELOPMENT OFFICERS
DIFFERENT DEVELOPMENT BLOCKS
DIST CACHAR
ASSA

Advocate for the Petitioner : MR M J QUADIR

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. M. J. Quadir, Advocate.

For the Respondents : Mr. S. Dutta, Advocate.

Date of Hearing : 23.08.2022

Date of Judgment : 14.02.2023

JUDGMENT & ORDER (CAV)

Heard Mr. M. J. Quadir, learned counsel for the review petitioner. Also heard Mr. S. Dutta, learned counsel for the respondents.

2. The present review petition is filed seeking review of order dated 22.12.2021 passed by this Court in WP(C) No. 2988/2018, whereby the writ petition was dismissed.
3. The background fact of institutions the writ petition was that the petitioner No.

1 was appointed as Computer Assistant on contractual basis by the Project Director, District Rural Development Agency, Cachar, Silchar vide engagement order dated 22.02.2012 pursuant to selection process and the petitioner No. 2 was also appointed as Computer Assistant by the same authority by an engagement order dated 01.10.2009. Similar is the case of the petitioner No. 3, who was appointed as Computer Assistant by an engagement order dated 01.10.2009. The appointment orders were on contractual basis for a period of 1 (one) year. It is also case of the petitioners that their terms of service were extended from time to time. While they were discharging their duties, contractual engagements were terminated by separate order dated 14.06.2017, issued by the Project Director, District Rural Development Agency, Cachar, Silchar. Such orders were challenged in the writ petition.

4. The said writ petition was pending before this Court since the year 2018 and the matter was taken up for hearing in the year 2021. The writ petition was dismissed by this Court, upholding the termination orders basically on the ground that the engagement of the petitioners were for a very temporary period and during pendency of the writ petition, the period of engagement of the petitioners was already expired and therefore, this Court came to a conclusion that this Court cannot direct the parties to enter into a fresh contract, when the matter is governed by contractual liabilities. While coming to such conclusion, this Court relied on the decision of a Coordinate Bench in the case of **Ajoy Kumar Haloi –Vs- State of Assam** reported in **MANU/GH/0309/2014**.
5. In the case of **Ajoy Kumar Haloi** (supra), learned Bench while held that before determining a question as to whether termination of contractual appointment of the petitioners in that case was legal or not, the court first need to decide another issue whether the writ petition is over taken by time and has, ipso facto, become infructuous. The learned Bench came to a finding that the Court

cannot extend the period of engagement of the contractual employee, beyond the period of contract.

6. Mr. M. J. Quadir, learned counsel for the petitioners has submitted that that at the time of hearing of the aforesaid writ petition, he could not bring out two orders of this Court deciding similar writ petition involving termination of similar employees by similar order passed in WP(C) No. 1964/2020 (Sanjoy Kairi –Vs- State of Assam and Ors) dated 29.01.2021 and WP(C) No. 8618/2018 (Surojit Roy –Vs- State of Assam and Ors), dated 09.12.2020.
7. Mr. Quadir, learned counsel for the petitioner argues that similarly situated person, terminated by the Project Director, District Rural Development Agency, Cachar, were set aside by this Court on the ground that the orders were stigmatic and therefore opportunity of hearing ought to have been granted to the petitioners and thus a direction was issued to reinstate the petitioners in those cases.
8. Mr. Quadir, learned counsel submits that as the said orders were not brought to notice of this Court and in absence of such orders, the Court had passed the order and therefore, there is error apparent on the face of the record. Accordingly, he prays that the order dated 22.12.2021 be reviewed and matter be heard afresh.
9. The record reveals that the petitioners were appointed initially for a period of 5 (five) months and it was extended from time to time and the last contract was executed on 2nd of April, 2017 and the contract discloses that the period of contract shall stand automatically terminated at the expiry of the contract period unless the terminated earlier. The impugned order of termination also reflects that some serious anomalies were noted for the financial year 2014-2015 and 2015-2016 in respect of materials component. However, in the impugned order

of termination, there is no allegation that such serious anomalies were caused by the petitioners.

10. In ***Surojit Roy*** (supra), the fact revealed is that in the order of termination, it was recorded that the petitioner was found grossly negligent in performing his assigned duty regarding promotion of PMAY-G activity in his assigned Block/Gaon Panchayat and that he had submitted false completion report without verification of incomplete houses leading to incomplete and poor performance of PMAY-G houses in Hailakandi Development Block. It was further disclosed in the said order that the said petitioner was grossly negligent and indisciplined and accordingly, the Court set aside the termination order being stigmatic.
11. In the case of ***Sanjoy Kairi*** (Supra) is also similar case and the petitioner therein, was terminated from contractual service on account of gross negligence, absence and indiscipline during his service and the learned Bench relying on the judgment pronounced in ***Surojit Roy*** (supra) allowed the writ petition.
12. In the present case, the impugned termination order cannot per se be said to be stigmatic order. Though it is reflected in the termination order of the present petitioners that there are serious anomaly noticed in MIS, MGNREGA for the financial year 2014-2015 and 2015-2016 regarding pending liability of material component of MGNREGA, however, there is no allegation that the petitioners were negligent or were involved in such anomalies rather the order reflects that the termination has been issued in exercise of powers as incorporated in the terms of contractual engagement under MGNREGA.
13. The last contractual engagement annexed with the writ petition is dated 2nd April of 2017. The Clause 2 which reflects duration of contract envisages that

the services of the contractual staff shall stand automatically terminated at the expiry of the contract period, unless terminated earlier without any necessity of the Agency giving any notice to the contractual staff and without any liability on the part of the Agency to pay any retrenchment or other compensation or other amounts to the contractual staff.

14. Further, though a statement has been made in the writ petition that contracts has been extended from time to time. However, no material was available on record to show, till which date the contract was existing, inasmuch as the contract reflect that the period of contract shall be as mentioned in the order of the contractual engagement. The contractual engagement was for a period of 5 (five) months.
15. That being so, from the date of termination dated 14.06.2017 till passing of the judgment in WP(P)/2988/2018 almost 5 (five) years had already elapsed. And accordingly, this Court dismissed the writ petition relying on **Ajoy Kumar Haloi** (supra).
16. In the given facts and circumstances of the present case, the judgments of **Surojit Roy** (Supra) and **Sanjoy Kairi** (supra) are not applicable inasmuch the factual context of the same were different to that of the present case.
17. Therefore, non placing of the said decision cannot be said to result in error apparent on the face of the record. Accordingly, this revision petition stands dismissed.

JUDGE

Comparing Assistant