

GAHC010027922022



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

Case No. : WP(C)/1231/2022

BIJON HAPILA
S/O- UMANANDA HAPILA, R/O- TOWN RAJI, P.O. AND P.S. HAFLONG, DIST.
DIMA HASAO, ASSAM-788819.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
PUBLIC HEALTH ENGINEERING DEPARTMENT, DISPUR, GUWAHATI-
781006.

2:THE SECRETARY TO THE GOVT. OF ASSAM
PUBLIC HEALTH ENGINEERING DEPARTMENT
HENGRABARI
GUWAHATI-36.

3:THE CHIEF ENGINEER
PUBLIC HEALTH ENGINEERING DEPARTMENT
HENGRABARI
GUWAHATI-36.

4:THE PRINCIPAL SECRETARY (T)

NORTH CACHAR HILLS AUTONOMOUS COUNCIL
HAFLONG
DIMA HASAO-788819.

5:THE ADDITIONAL CHIEF ENGINEER
PUBLIC HEALTH ENGINEERING DEPARTMENT
HAFLONG
DIMA HASAO-788819.

6:THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING DEPARTMENT
UMRANGSO DIVISION
UMRANGSO
DIMA HASAO-788931.

7:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-781006

8:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
HILLS AREA DEPARTMENT
DISPUR
GUWAHATI- 781006

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent : SC, P H E

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 19/07/2023

Heard Mr. B.D. Das, learned senior counsel assisted by Mr. D. Thaosen, learned counsel for the writ petitioner. Also heard Mr. R.R. Gogoi, learned Standing Counsel, Public Health Department, Assam, appearing for the respondent nos. 1, 2 & 3, Ms. J. Gogoi, learned Standing Counsel, North Cachar Hill Autonomous Counsel (NCHAC), appearing for the respondent nos. 4, 5 & 6 and Mr. P. Nayak, learned Standing Counsel, Finance Department, Assam, representing the respondent no. 7. Ms. A. Talukdar, learned Government Advocate, Assam, is present on behalf of the respondent no. 8.

The writ petitioner herein, claims to have been appointed as Muster Roll Worker under the Public Health Engineering (PHE) Department of NCHAC with effect from 12/06/1984. His initial appointment was as a Khalasi. However, with effect from 06/05/1999, the petitioner had been engaged as Work Charge (Plumber) under the same department. In the year 2005, the Governor of Assam had accorded sanction for creation of 567 numbers of posts with effect from 22/07/2005 to 28/02/2006 under the NCHAC Zone, Haflong, in order to regularize the services of 567 numbers of Work Charge workers, who were engaged prior to 01/04/1993. Accordingly, a list of 567 Work Charge

workers engaged prior to 01/04/1993 was prepared and forwarded to the Office of the Accountant General (A & E)/Audit, Maidamgaon, Beltola, Guwahati on 07/10/2005 enclosing the list of the beneficiaries. The name of the petitioner appeared at Sl. No. 22 of the aforesaid list.

From the list dated 07/10/2005, it is apparent that the writ petitioner herein, was one of the 567 Work Charge employees whose services were regularized. However, subsequently, the Commissioner and Secretary to the Government of Assam, Finance Department, had issued notification dated 10/02/2006 cancelling the order of regularization of services of a number of Work Charge and Muster Roll Workers including that of the writ petitioner, on the ground of their services were inadvertently regularized. In so far as the writ petitioner is concerned, it has been mentioned in the impugned order that since his engagement as Work Charge (Plumber) was with effect from 06/05/1999, hence, he could not be considered for regularization as Muster Roll/Work Charge employees engaged prior to 01/04/1993. Aggrieved thereby, the writ petitioner has approached this Court by filing the instant writ petition.

Mr. B.D. Das, learned senior counsel for the petitioner submits that the only reason, the order of regularization of the petitioner was cancelled was on an erroneous assumption that he was engaged on 06/05/1999 as Work Charge (Plumber), and therefore, his engagement was past 01/04/1993. However, the department had failed to take note of the fact that the petitioner was originally appointed as 'Khalasi' (Muster Roll) worker under the PHE department with effect from 12/06/1984 and therefore, he was evidently engaged prior to 01/04/1993. On such ground, submits Mr. Das, the impugned order dated 10/02/2006 cancelling the regularization of service of the petitioner is arbitrary and illegal and hence, liable to be set aside by this Court.

Ms. J. Gogoi, learned Standing Counsel, NCHAC, has produced the relevant departmental records. A perusal of the records goes to show that the petitioner was initially engaged as a 'Khalasi' with effect from 12/06/1984 and his engagement was made with the approval of the Government. Thereafter, on 06/05/1999, the petitioner was engaged as 'Plumber'. However, the petitioner has been continuously rendering his services with effect from 12/06/1984 without any break.

Mr. Nayak, learned Standing Counsel, Finance Department, Assam, submits that the reason for which the order of regularization of service of the petitioner was cancelled, is mentioned in the order dated 10/02/2006. The learned departmental counsel has, however, submitted in his usual fairness that the engagement of the petitioner in both the capacities were as Work Charge employees only.

If that be so, there can be no element of doubt that the petitioner was appointed prior to 01/04/1993 and, therefore, he would come within the ambit of the order dated 07/10/2005. As such,

the services of the writ petitioner were rightly regularized along with the 566 other Work Charge employees. Therefore, the subsequent order dated 10/02/2006 cancelling his order of regularization, on the face of the record, appears to be arbitrary and illegal. The mere fact that on and from 06/05/1999, the petitioner was engaged as Work Charge (Plumber) could not have been a valid ground to cancel his order of regularization, more so, since the petitioner has been in continuous engagement under the Department since 12/06/1984.

The aforesaid facts is also evident from the counter affidavit filed by the respondent no. 6, the relevant portion of which, is extracted herein below for ready reference :-

“6. That the deponent begs to state that the petitioner was appointed as work charge Khalasi by the Executive Engineer, Public Health Engineering Haflong Division under the North Cachar Hills Autonomous Council vide office order under no. 25 of 1984-85 issued under Memo No. Estt-2/84-85/705-711 dated 08/06/1984. Accordingly the petitioner joined in his service on 12/06/1984 at Haflong Public Health Engineering Division.

7. That the deponent begs to state that, later on the service of the petitioner was transferred from Haflong Public Health Engineering Division and posted him under the Umrangso Public Health Engineering Division.

8. That the deponent begs to state that the Government of Assam vide their letter No. PHED/201/2005/194-A dated 07/10/2005 had regularized the service of the petitioner. But the said regularization order was cancelled by the Finance Department vide letter No. FEC(ii)61/2005/59 dated 10/02/2006”.

The respondent no. 7 has not denied or disputed the above assertion made in the counter affidavit filed by the respondent no. 6 i.e. the Executive Engineer, PHE Division, Umrangso Division, Haflong.

For the reasons stated herein above, this Court is of the considered opinion that the impugned order dated 10/02/2006, *qua* the petitioner, thus cancelling his order of regularization, is on the face of it, arbitrary and illegal. The same is accordingly set aside.

The respondents are directed to give all consequential benefit to the petitioner pursuant to his regularization of his service vide order dated 07/10/2005 after adjusting the pecuniary benefits, if any, already paid to him.

The aforesaid exercise shall be carried out and completed as expeditiously as possible, but not

later than 3 (three) months from the date of receipt of a certified copy of this order.

The writ petition stands allowed.

The records be returned back.

JUDGE

sukhamay

Comparing Assistant