

GAHC010028312023



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

Case No. : I.A.(Civil)/420/2023

SHRI MANOJ KR. SALOI AND 5 ORS.
S/O SRI KRISHNA KR. SALOI
R/O VILL- GURKUCHI
P.O. RANGIA,
P.S. RANGIA
DIST. KAMRUP, ASSAM,
PIN - 781105.

2: SHRI GAJENDRA NATH SALOI
S/O LATE RAJEN SALOI
R/O VILL- CHANMAGURI
P.O. CHNMAGURI
P.S. RANGIA
DIST. KAMRUP
ASSAM
PIN - 781015.

3: SHRI BALI RAM BARMAN
S/O LATE KAHCHI RAM BARMAN
R/O VILL- BARTALA
P.O. BARTALA
P.S. MUKALMUA
DIST. NALBARI
ASSAM
PIN- 783005.

4: SHRI DHARANI CH. KALITA
S/O LATE JAY RAM KALITA
R/O VILL- KARIA
P.S.NALBARI
DIST. NALBARI
ASSAM- 783001.

5: SHRI HEMANTA SALOI

S/O LATE DAYA RAM SALOI
R/O VILL- KARTHORA
P.O. JAMTOLA
P.S. RANGIA
DIST. KAMRUP
ASSAM

PIN - 781015.

6: SHRI CHABIN KALITA
S/O LATE DHARANI DHAR KALITA
R/O VILL- KADAMTOLA
P.O.NISALAMARI
P.O. BARAMA
P.S. BARAMA

DIST BAKSA
ASSAM- 783006

VERSUS

THE UNION OF INDIA AND 3 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF WATER
RESOURCES SHRAM SHAKTI BHAWNA, RAFI MARG, NEW DELHI- 110001.

2:BRAHMAPUTRA BOARD

REP. BY ITS CHAIRMAN

BASISTHA
GUWAHATI -29.

3:THE CHAIRMAN

BRAHMAPUTRA BOARD
BASISTHA
GUWAHATI -29.

4:OFFICE OF THE EXECUTIVE ENGINEER

BRAHMAPUTRA BOARD ROING DIVISION
REPRESENTED BY THE CHAIRMAN
BRAHMAPUTRA BOARD
BASISTHA
GUWAHATI-2

Advocate for the Petitioner : MR A DASGUPTA

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

01.06.2023

Heard Mr. A. Dasgupta, learned senior counsel assisted by Ms. B. Das, learned counsel appearing for the applicants. Also heard Mr. R. K. D. Choudhury, learned Deputy Solicitor General of India (DSGI) appearing for the respondents. Aggrieved by the Notification dated 17.02.2022 issued by the Executive Engineer, Department of Water Resources, Ministry of Jal Shakti, River Development & Ganga Rejuvenation, Brahmaputra Board, the instant interlocutory application has been filed seeking appropriate directions. The facts of the case, in a nutshell, as apparent from the statements made in the I.A., are that the six applicants herein, along with several others were earlier engaged under the Brahmaputra Board during the period from 1997 to 2021 as casual workers. While rendering their services as master roll employees those workers had approached the Brahmaputra Board with a request to grant them temporary status or to regularise their services by extending the benefit of Office Memorandum dated 10.09.1993 issued by the Government of India on the ground that all of them had rendered continuous services for more than one years before being disengaged as casual workers. When the request made by the workers were not considered by the respondent authorities, an industrial dispute was raised, based on which, a Reference was registered in the Central Government Industrial Tribunal –cum- Labour Court at Guwahati being Reference Case No.02/2015. The Reference was ultimately decided in favour of

the workmen including the present applicants wherein, an award dated 20.03.2018 was passed with a direction to reinstate the applicants in the capacity of casual workers on the same wages as was applicable to them at the time of their disengagement. The management was also directed to pay a lump-sum compensation of Rs.50,000/-.

Aggrieved by the Award dated 20.03.2018 the Management of Brahmaputra Board has approached this Court by filing WP(C) No.7845/2018 which is pending disposal before this Court. By the interim order dated 16.11.2018, the learned Single Judge has stayed the operation of the impugned Award dated 20.03.2018.

During the pendency of the aforesaid writ petition, as many as 22 applicants had filed different interlocutory applications under Section 17B of the Industrial Disputes Act, 1947. The individual applications filed by the present applicants were registered and numbered as I.A.(Civil) Nos.2249/2019, 462/2019, 436/2019, 455/2019, 461/2019 and 458/2019. All the six applications filed by the present applicants, including the other applications filed by similarly situated workers, were considered by the learned Single Judge and were disposed of by the common order dated 14.05.2019 by making the following observations :-

“16. In view of the above, all these applications are allowed directing the Management to pay full wages last drawn by the applicants inclusive of any maintenance allowance as provided under the Rules, if any and the Management would be at liberty to deploy the applicants to any other project under the Management.”

Pursuant to the order dated 14.05.2019 the impugned order dated 17.02.2022 has been issued whereby the applicants have been deployed as labourers

under the Guwahati Division of the Brahmaputra Board at a rate of monthly remuneration of Rs.5000/- . In the notification dated 17.02.2022 it has also been mentioned that since the remuneration of these casual workers at the rate of Rs.5000/- was stopped with effect from 16.11.2020 therefore, a request was made to make arrear payments as well as monthly remuneration available to all the employees at the above rate.

Mr. Dasgupta submits that since the applicants have been re-deployed by the Management they are entitled to get the wages as is applicable to the similarly situated workers as on date and the direction of the respondents to pay a sum of Rs.5000/- by the notification dated 17.02.2022 is ex-facie illegal and in violation of the order dated 14.05.2019 passed by this Court.

It is to be noted herein that the order dated 14.05.2019 was passed by the learned Single Judge on the applications filed by the applicants and other similarly situated workers under Section 17B of the Industrial Disputes Act, 1947 which provides that payment of full wages to workmen pending proceeding in higher courts. The payment of wages under section 17B is required to be made to the workmen during the pendency of such proceeding if he had not been employed in any establishment during the said period. In other words, payment under Section 17B is required to be made in lieu of employment of the workmen and that too during the period of pendency of a proceeding in a higher court. It was in such context that the learned Single Judge had passed the order dated 14.05.2019 with the above directions. However, the fact remains that by the Notification dated 17.02.2022 the applicants have been deployed under the Guwahati Branch of the Brahmaputra Board. Therefore, the wages that they would be entitled to receive will be for the work rendered by them as

casual employees and not under section 17B of the Industrial Disputes Act. To that extent, this Court finds sufficient force in the submission of Mr. Dasgupta that the amount of remuneration mentioned in the notification dated 17.02.2022 is arbitrary.

A copy of the order dated 03.04.2023 issued by the Ministry of Labour & Employment, Government of India has been placed before this Court. A perusal of the said order goes to show that the current minimum wages payable to the unskilled workers for the category to which the applicants belong is Rs.616/- per day. Therefore, if the applicants have been redeployed, they cannot be denied the minimum wages as notified by the Government of India in the Ministry of Labour & Employment.

In view of the above, this applications succeeds and is hereby allowed with a direction upon the respondents to pay the minimum wages payable to a casual employee under notification dated 03.04.2023 issued by the Ministry of Labour & Employment, Government of India with effect from the date on which the notification came into effect i.e. 01.04.2023. For the services rendered prior to that the applicants would be entitled to receive wages as per the existing notification at the relevant period and not at the rate of Rs.5000/- per month. With the above observation, this I.A. stands disposed of.

JUDGE

Comparing Assistant