

GAHC010047152023



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

Case No. : WA/127/2023

SALAM UDDIN KHAN
S/O AFTAB UDDIN KHAN, RESIDENT OF BIDYAPARA, ALTAB UDDIN LANE,
WARD NO. 10, DHUBRI, 783324

VERSUS

THE STATE OF ASSAM AND 4 ORS. H
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, POWER (ELECTRICITY)DEPARTMENT, DISPUR, GUWAHATI
781006

2:THE ASSAM POWER DISTRIBUTION COMPANY LIMITED

REPRESENTED BY THE CHAIRMAN
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI 781001

3:THE CHAIRMAN
SELECTION COMMITTEE- B
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI 781001

4:THE SUB DIVISIONAL ENGINEER

DHUBRI ELECTRICAL SUB DIVISION APDCL
LAZ
DHUBRI
783324

5:THE ASSISTANT GENERAL MANAGER

DHUBRI ELECTRICAL DIVISION
GAURIPUR
DIST DHUBRI
ASSAM 78333

Advocate for the Petitioner : MS. T SOM

Advocate for the Respondent : SC, APDCL

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGMENT

Date : 15-09-2023

(Susmita Phukan Khaund, J.)

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Heard Mr. R P Sarmah, learned Senior Counsel, appearing on behalf of the appellant.

Also heard Mr B Choudhury, learned Standing Counsel, APDCL.

2. This appeal is preferred against the Judgment and Order dated 08.08.2022, passed by the learned Single Judge in WP(C) No. 6236/2021. The appellant, in this case is Salam Uddin Khan. The State of Assam, the Assam Power Distribution Company Limited, the Chairman, the Sub-Divisional Engineer (Electrical), Dhubri, the Assistant General Manager (Electrical), Dhubri, are arrayed as respondent Nos. 1, 2, 3, 4 and 5 respectively.

3. Brief facts of this case are that the appellant was engaged as a Muster Roll Worker by the respondents in place of one Shri Indrajit Das, since September 2012. However, neither any appointment letter was issued nor was any agreement signed for the said appointment and the appellant was appointed without following any recruitment process. The respondent

No. 4, vide letter dated 25.10.2013 (Annexure-3 of the Writ Petition) communicated to the respondent No. 5 that as the appellant was working as an outsourced Meter Reader since September 2012, in absence of Shri Indrajit Das, and as his performance was satisfactory, he could be appointed in place of Shri Indrajit Das. The respondent No. 5 had accordingly asked the respondent No. 4 to submit details with address/particulars of the appellant against the said proposal of respondent No. 4 and the same was submitted vide letter dated 05.11.2013 to the respondent No. 5. Furthermore, the respondents, more particularly, the respondent No. 2, vide employment Notice No. MD/APDCL/HR/REC(2017-18)/85/120 dated 14.08.2018, published an advertisement for appointment to the post of Office-cum-Field Assistant/Sahayak/Mali. As the appellant claimed to be possessed of work experience as per the job description, he applied for the aforementioned post and upon applying, the status for his application was shown as "Success". The written examination was conducted on 28.04.2019, but no call letter was issued to the appellant. When the appellant queried about the written examination in the month of March, 2020, the respondents handed over a notice dated 10.02.2020 and through that notice, the appellant learnt that the examination had already been conducted on 28.04.2019 and the document verification was held on 24.02.2020. The respondent authorities informed the appellant that there are still sufficient vacancies available in the department and further he was asked to continue working as before and to stay vigilant for further advertisements to be published in the near future.

4. It is averred that the candidature of the appellant was illegally and in a clandestine manner, rejected by the respondent authorities without issuance of a call letter. When the appellant questioned about the reasons for not calling him for the aforementioned examination, he was handed over a letter dated 07.12.2018 (Annexure-13), wherein, it was

mentioned that only experienced candidates with wage payment record were allowed to sit for the written examination. The appellant then realized that, from the first month of his engagement as a Muster Roll Worker, the respondent authority credited his salary in the bank accounts of his co-workers. As there was no wage payment record in his name, he was unjustly deprived of the opportunity of regularization of his services. It was not mentioned in the advertisement dated 14.08.2018 that, there was any requirement of wage payment record of the applicants. Some of his colleagues have been regularized in terms of the selection process conducted on the basis of the advertisement dated 14.08.2018 and others are still working as muster roll workers.

5. The appellant claims that although he was discharging his duties sincerely, his salary was not credited to his account, instead his salary was always credited to the accounts of other co-workers, namely, Probir Sarma, Anuj Kr. Deb, Sheikh Abdullah, Munjit Hussain, Rajesh Saha etc. As it was cumbersome to collect his salary in this manner, the appellant had approached the respondent authorities on several occasions and submitted representations to the respondent authorities, with prayer to credit the salary directly into his account, but his representations were ignored by the respondent authorities. The appellant, vide letter dated 23.11.2020 (Annexure-14 of the writ petition) implored the respondent authorities for issuance of payment voucher relating to his salary since 2012. The authorities were also apprised of the order of the Chief General Manager (HRA), APDCL, Bijuli Bhavan to the Chief Executive Officers of all electric circles, about the direction of this Court, allowing some employees/workers to file application asking for payment records against their period of work and the respective officers were directed to allow the employees/workers to inspect the payment records and take photographs of the same, if such records are available against

their working period. The Chief Manager (HRA) vide the same order dated 12.11.2020 directed that if no payment records are available, the employees/workers may be informed in writing that "no payment records are available" to substantiate the claims of working in the office, as per format at Schedule-A.

5.1. The appellant submitted another representation dated 03.03.2021, addressed to the respondent No. 5, apprising that as services of Sri Probir Sarmah had already been regularized, his (appellant's) salary, which used to be credited to the account of Probir Sarmah may now be credited to his own account. All these representations and requests of the appellant were ignored by the respondents.

5.2. Although the appellant has been continuously serving under the respondent's department since 2012, but in the month of April, 2021, the respondent authorities abruptly stopped paying his salary, without assigning any reasons. The appellant found out that his salary was not being credited to any of his co-worker's account and subsequently, he was not allotted his regular duties as a Meter Reader –cum- Bill Distributor but he was engaged in other miscellaneous duties in the office, whereas his colleagues, namely, Sahidur Rahman, Mostafa Hussain, Azmal Warish Mollah, Mahbubar Rahman, Golam Mosrafizur Ali Ahmed and Rajesh Saha were still working with the respondents under Dhubri Electrical Sub-Division as Meter Reader and they have been drawing their monthly wages. The appellant also submitted a representation dated 03.11.2021 to the respondent No. 4, with a copy to the respondent No. 5, but to no avail.

6. On being aggrieved, the appellant preferred a writ petition being Writ Petition (Civil) No. 6236/2021, which was dismissed vide order dated 08.08.2022.

7. The respondents have filed an affidavit-in-opposition, refuting the contentions. It is submitted that as per the information received from the Sub-Divisional Engineer, Dhubri Electrical Sub-Division, vide letter dated 02.02.2022, the appellant was not a regular employee of Assam Power Distribution Corporation Limited (APDCL). He was never appointed in a permanent post by the competent authority and no official record to the contrary could be submitted by him in his defence. The appellant was engaged as a temporary outsourced bill despatcher 'as and when required' at the fixed rate of Rs. 3/- per bill. As the appellant had not dispatched any bills w.e.f. April, 2021, the question of payment of wages/salary for the said period does not arise at all.

8. It is argued on behalf of the appellant that he was continuously engaged as an outsourced employee at the time of his appointment since the month of September, 2012. His wages were paid into the accounts of his peers, namely, Probir Sarma, Anuj Kr. Deb, Sheikh Abdullah, Munjit Hussain, Rajesh Saha etc. However it is admitted that the appellant was appointed without following any recruitment process.

9. Although the appellant had applied for the post of Office-cum-Field Assistant/Sahayak/Mali, he was not short-listed for the written examination. The appellant who was not appointed as a regular employee was still desirous to continue his work on contractual basis with the respondent No. 4, at par with his counterparts, namely, Sahidur Rahman, Mostafa Hussain, Azmal Warish Mollah, Mahbubar Rahman, Golam Mosrafizur Ali Ahmed and Rajesh Saha who are still working with the respondents and drawing their monthly wages.

10. The learned counsel for the respondents has vehemently denied that the respondent

authorities have abruptly stopped paying wages to the appellant w.e.f. April 2021, without assigning any reasons. The respondents have also denied that the appellant, who was not allotted his regular duties from April 2021, as a Meter Reader-cum-Bill Distributor, was engaged in other miscellaneous duties in the office. It is contended that the appellant who was hired on "as and when required basis" did not render his services and therefore no wages were paid to him from April, 2021. He was never appointed in a permanent post by the competent authority and no official record to the contrary could be submitted by the appellant in support of his claim. It is also averred that the appellant was never a regular employee of the APDCL.

11. On the other hand, it appears that the respondents are reluctant and they do not require the services of the appellant any further.

12. We have given our thoughtful consideration to the submissions at the Bar. Admittedly the appellant was engaged as a Muster Roll Worker without any formal appointment being made. He was working as an outsourced Meter Reader since September, 2012 in absence of one Indrajit Das. It is also admitted that his salary was credited to the accounts of his co-workers. The appellant failed to agitate when he was not short-listed to appear for his written-examination to be selected as Office-cum-Field Assistant/Sahayak/Mali. Although the appellant has averred that his candidature for the post was illegally rejected in a clandestine manner, he did not agitate against such action of the respondent authorities. The controversy whirls around the fact that the services of the appellant was abruptly retrenched in the year 2021

despite the fact that he was continuously rendering his services since the year 2012. His counterparts have however been regularized. We find that the appellant has failed to substantiate the allegation of discriminatory approach by the authorities or that there was any scheme of the Department for regularization of Muster Roll workers. The fate of the letter dated 25.10.2013 relating to the regularization of the appellant is also not known. At present, the appellant is willing to continue to work even on contractual basis. The appellant has however not impleaded his co-workers as parties in the Writ Petition No. 6263/2001 as well as in this appeal. Nothing has been brought on record to show how the appellant has been prejudiced by not being treated at par with his counterparts. It is not clear under what terms and on what basis the appellant's salary was deposited in his co-workers bank accounts and not credited to his own account without any protest being raised. Without any material being placed on record, this issue cannot be considered in this appeal.

13. The appeal fails as the appellant has failed to bring on record in what manner he has been prejudiced by an act which is alleged to be arbitrary and in violation of statutory provisions or Constitutional mandate. Appellant has also failed to substantiate if any of his legally enforceable right has been violated by the respondents. The prayer of the appellant is opaque and vague.

14. It has been appositely held by the learned Single Bench that the appellant's prayer for a direction to be issued to the respondents to allow him to continue on contractual basis is not sustainable, in as much as no legally enforceable right of the appellant has been violated by the respondents, in not engaging the services of the appellant any further. There was nothing to show as to who replaced the appellant by way of contractual engagement.

15. In the wake of the discussions made hereinabove, we find no infirmity in the order passed by the learned Single Judge and, hence, the writ appeal fails and the same is dismissed as being devoid of merits.

15.1. The learned Single Bench has observed that:-

“In the event, the respondents are in need of the petitioner’s services on ‘as and when required’ basis, the respondents may consider the case of the petitioner.”

16. It would thus be expected of the respondents to give preference to the appellant while making any fresh selection or appointment for the post of Daily Wager or Work Charged Employee or Muster Roll in future vacancies.

17. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant