

GAHC010008072015



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

Case No. : WP(C)/584/2015

TRAILOKYA BORAH and ANR.
S/O SRI NIRMAL BORAH, R/O VILL. ANGARKHOWA, P.O. ANGARKHOWA
CHARIALI, DIST. LAKHIMPUR, ASSAM.

2: JOGEN DUTTA S/O LATE KAKIDHAR DUTTA
R/O VILL. BARKAMALABORIA
P.O. PHUKANORHAT DIST. LAKHIMPUR ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECY. TO THE GOVT. OF ASSAM, WATER
RESOURCES DEPTT., DISPUR, GUWAHATI-6, ASSAM.

2:THE CHIEF ENGINEER WATER RESOURCES DEPTT.
CHANDMARI GUWAHATI-3 ASSAM

3:THE EXECUTIVE ENGINEER
NORTH LAKHIMPUR WATER RESOURCES DIVISION
P.O. and DIST. NORTH LAKHIMPUR ASSAM

4:THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT. DISPUR GUWAHATI-

Advocate for the Petitioner : MR.D BORAH
Advocate for the Respondent : MR.B GOGOIR-4

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 13.06.2024

Heard Mr. D. Baruah, learned counsel for the petitioners. Also heard Mr. C. Sarma, learned standing counsel, WRD, Government of Assam, appearing on behalf of respondents No. 1, 2 & 3; and Mr. R. Borpujari, learned standing counsel, Finance Department, appearing on behalf of respondent No. 4.

By instituting the present proceeding, the petitioners have presented a challenge to a speaking order, dated 07.11.2007, by which their prayer for re-engagement in their services as well as for regularization of their muster roll services, came to be rejected by the appointing authority holding that their such prayer was not governed by the policy of the Government in this connection.

At the outset, Mr. Baruah, learned counsel for the petitioners, has submitted that the petitioner No. 2, herein, had expired in the year 2022. However, his legal heirs have not stepped forward for substituting themselves in the present proceeding in place of the petitioner No. 2. Accordingly, the present proceeding be limited to the petitioner No. 1, herein.

The petitioner No. 1 was initially engaged as Chowkidaar-cum-casual worker, vide order, dated 01.07.1985 and his such engagement in terms of the said order, was to continue till 31.08.1985.

It is seen that the service of the petitioner No. 1 was extended from time to time by the respondent authorities. However, there is nothing available on record to demonstrate that the petitioner No. 1 was so engaged after 1992.

A forwarding, dated 20.11.1992, was brought on record by the petitioner No. 1 to demonstrate that the application as made by him, was forwarded by the Executive Engineer, North Lakhimpur, E & D Sub-Division, to the Government for consideration of his prayer for re-engagement and regularization of his service. The said forwarding also notes that the petitioner No. 1 had worked as a muster roll worker from 1985 for 4 months and thereafter, during the flood period, upto 1992.

The petitioner No. 1 has contended that he had approached this Court by way of instituting a writ petition being WP(c)8960/2005 before this Court and this Court, vide order, dated 23.12.2005, was pleased to dispose of the said writ petition with a direction that the respondent authorities shall consider the case of the petitioner No. 1 for engagement as a muster roll worker and also for regularization of his service in accordance with the existing rules, guidelines, etc..

In the said order also, it was also noted that the petitioner No. 1 was working continuously as a muster roll worker till 1992 and thereafter, it was recorded that he was engaged from time to time as muster roll worker in the Water Resources Department, Government of Assam.

The order, dated 23.12.2005, not being complied with by the respondent authorities, the petitioner No. 1, thereafter, instituted a contempt petition being Cont. Case(c)176/2008, and this Court vide order, dated 24.01.2014, had disposed of the said contempt petition, extending the date for consideration of the grievance of the petitioner No.1 in terms of the said order, dated 23.12.2005, passed by this Court in WP(c)8960/2005, by a period of further 6(six) months.

The petitioner No. 1 has also contended that after the passing of the said order, the respondent authorities had vide communication, dated 05.05.2014, forwarded to him a speaking order purportedly to have been issued on 07.11.2007, wherein, the Executive Engineer, North Lakhimpur, WR Division, had proceeded to reject the case of the petitioner.

It is this speaking order, dated 07.11.2007, that is presently under challenge in the present proceeding.

I have heard the learned counsels appearing for the parties and also perused the materials available on record.

A perusal of the speaking order, dated 07.11.2007, reveals that the case of the petitioner No. 1, herein, for regularization of his service was not favourably considered on the ground that his service came to be terminated/discharged/disengaged on or before 20.04.1995, and accordingly, it was contended that the

policy of the Government in place pertaining to regularization of services of work-charged/muster roll/casual workers engaged prior to 01.04.1993, mandated that such workers were not to have been disengaged/discharged/terminated from their services before 20.04.1995.

The petitioner No. 1, in his pleadings, has not brought on record any material to demonstrate that he was in service as of 20.04.1995 and his service was terminated after the said date.

The case of the petitioner not being covered by the policy pertaining to regularization of the services of muster roll workers/work charged employees prior to 01.04.1993, as adopted by the Government in the matter; this Court is not in a position to direct for consideration of the case of the petitioner No. 1, herein, for regularization of his service in the absence of any material being brought on record that he after being engaged prior to 01.04.1993, on work-charged/muster roll basis, had continued to remain in service after 20.04.1995.

In view of the above conclusion, in the considered view of this Court, the speaking order, dated 07.11.2007, does not require any interference and the petitioner No. 1, herein, having not been able to demonstrate continuance by him in service upto 20.04.1995 and thereafter; the writ petition is held to be devoid of any merit and the same accordingly stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant