

GAHC010064042023



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

Case No. : WP(C)/1729/2023

PRANAB DAS AND 2 ORS
S/O- PANKAJ KUMAR DAS, R/O- WARD NO. 3, AMGURI, DIST.- CHIRANG
(BTR), ASSAM

2: BITTU GHOSH
S/O- ARJUN CHANDRA GHOSH
R/O- VILLAGE NO. 1
BHETAGAON
BIJNI
DIST.- CHIRANG (BTR)
ASSAM

3: PHUNU DAS
W/O- DIPAK KUMAR DAS
R/O- WARD NO.3
PANBARI ROAD
NEAR KALI MANDIR
BIJNI
DIST.- CHIRANG (BTR)
ASSA

VERSUS

THE BODOLAND TERRITORIAL COUNCIL AND 4 ORS.
REP. BY THE PRINCIPAL SECRETARY BTC, BODOFA NWGWR,
KOKRAJHAR, BODOLAND TERRITORIAL REGION (ASSAM)

2: THE JOINT SECRETARY
URBAN DEVELOPMENT DEPTT.
BTC
BODOFA NWGWR
KOKRAJHAR
DIST.- KOKRAJHAR

3:THE JOINT DIRECTOR CUM COUNCIL HEAD OF DEPTT.
URBAN DEVELOPMENT DEPTT.
BTC
BODOFA NWGWR
KOKRAJHAR
DIST.- KOKRAJHAR

4:THE CHAIRMAN
BIJNI MUNICIPAL BOARD
BIJNI
DIST.- CHIRANG
BTR
ASSAM

5:THE EXECUTIVE OFFICER
BIJNI MUNICIPAL BOARD
BIJNI
DIST.- CHIRANG
BTR
ASSA

Advocate for the Petitioner : MR. B J MUKHERJEE, MS R SAHA,MS D DEVI,MR. S BISWAS

Advocate for the Respondent : SC, BTC,

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

05.08.2024

Heard Shri BJ Mukherjee, learned counsel for the petitioners. Also heard Shri RK Musahary, learned Standing Counsel, BTC.

2. Considering the subject matter and the aspect that the respondent authorities (BTC) has filed the affidavit-in-opposition followed by a rejoinder affidavit by the petitioners, the writ petition is taken up for disposal at the admission stage.

3. Shri Mukherjee, learned counsel for the petitioners, who are 3 in numbers, has contended that they were employees in various Grade III posts in the Bijni

Municipal Board. Their services were regularized w.e.f., 01.03.2020, whereafter, they had continued to serve in regular capacity. However, vide the impugned order dated 16.02.2023 their regularization of services was cancelled with a further direction that they were released from their services.

4. The learned counsel for the petitioners has submitted that the regularization of the services of the petitioners was done by a duly adopted resolution of the Board and without affording any opportunity or notice, such regularization could not have been cancelled. He has also submitted that apart from the cancellation of regularization order, the services of the petitioners have also been discontinued by the impugned resolution order and such action has been taken without any opportunity or notice to the petitioners. He submits that as the impugned order has adverse civil consequences, there was a necessity to follow the principles of natural justice which has not been done and accordingly calls for interference from this Court.

5. Shri Musahary, learned Standing Counsel, BTC by drawing the attention of this Court to the affidavit-in-opposition filed on 24.05.2023 has submitted that the order of regularization of the petitioners was not in accordance with law and the petitioners had got undue benefit by such regularization order. On a direction of this Court passed in the last occasion i.e. 29.07.2024, the learned Standing Counsel has also placed on record the copies of the written instructions along with the copies of the resolution of the initial order of regularization of services. On a perusal of the resolution no. 6 adopted in the meeting dated 06.02.2020, it appears that 7 incumbents were given the benefit of regularization. However, such regularization order does not appear to have preceded by any exercise done to verify and examine as to whether the incumbents had met the requirements for such regularization.

6. After hearing the learned counsel for the parties and on perusal of the materials on record including the resolution dated 06.02.2020 pertaining to the regularization of service, this Court is of the opinion that their initial order of regularization of the services of the petitioners does not appear to be in accordance with law. Consequently, it would be difficult on the part of this Court to interfere with the decision cancelling such order of regularization. At the same time, this Court has noticed that while the decision was to cancel the order of regularization, even the temporary service of the petitioners were discontinued and they were released from service. This Court has also put on a query on the learned Standing Counsel regarding the manning to those posts which he had replied that the said posts are lying vacant. The above situation may not be in the interest of justice of the Bijni Municipal Board.

7. In view of the aforesaid discussion, this writ petition is disposed of by holding that while the order to cancel the regularization of the services of the petitioners is not interfered with, the decision to discontinue which was without any opportunity or notice is interfered with. The petitioners are accordingly directed to be reinstated in their respective services forthwith. The petitioners are however would not be entitled to the back wages for the period in question. It is further observed that in any exercise for regular appointments, the petitioners' case would be considered fairly along with other similarly situated persons.

8. The copies of the relevant document placed before this Court are made part of the records.

JUDGE

Comparing Assistant