

GAHC010109992021



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

Case No. : WP(C)/3857/2021

SRI SASHI SAIKIA
S/O LT. JIBAKANTA SAIKIA, R/O BATIGAON, P.O.-LILABARI, ARABASTI,
DIST-LAKHIMPUR

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT,
ASSAM, DISPUR, GUWAHATI-781006

2:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONAL (B) DEPARTMENT
DISPUR
GHY-06

3:THE CHIEF EXECUTIVE OFFICER
LAKHIMPUR ZILLA PARISHAD
PIN- 787001.

4:THE DEPUTY COMMISSIONER
NORTH LAKHIMPUR
LAKHIMPUR

5:ZILA PARISHAD LAKHIMPUR
REPRESENTED BY ITS CHAIRMAN

6:ANCHALIK PANCHAYAT NORTH LAKHIMPUR
REPRESENTED BY ITS PRESIDEN

Advocate for the Petitioner : MR MINTU SAIKIA

Advocate for the Respondent : SC, PNRD

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 25-01-2024

Heard Mr. M. Saikia, learned counsel for the writ petitioner. Also heard Mr. P. Handique, learned standing counsel, P&RD Department, Assam appearing for the respondent Nos. 1, 3, 5 and 6. Mr. A. Chakraborty, learned Govt. Advocate, Assam is present on behalf of respondent Nos. 2 and 4.

The writ petitioner herein was engaged as a muster roll worker under the North Lakhimpur Anchalik Panchayat, on 01-03-1993 and he is presently serving as In-charge Secretary of the Panigaon Gaon Panchayat. The grievance of the petitioner is that although he has been continuously working as a muster roll worker/ casual employee since 01-03-1993, his services have not been regularised till today as per the policy decision of the Govt. of Assam although service of other similarly situated persons have been regularised.

There is a policy decision of the Govt. of Assam to regularise the services of all M.R. Worker/ Casual Employee/ W.R. Employees who were engaged prior to 01-04-1993. The petitioner's service was, however, not regularised since the department had reflected in the record that the petitioner was engaged on 01-04-1993.

From the communication dated 31-10-2005 issued by the Director of P&RD Department, Assam, it is established beyond doubt that the date of joining of the

petitioner as a casual employee was 01-03-1993 but while furnishing the particulars regarding the petitioner at the time of consideration of similarly situated employees for regularisation of their services, the petitioner's date of engagement was erroneously shown to be 01-04-1993, as a result of which, the services of the petitioner was not regularised. It has been categorically admitted by the departmental authorities that there was a mistake in mentioning the date of joining of the petitioner as 01-04-1993 although the actual date was 01-03-1993. It is also not in dispute that since 01-03-1993 the petitioner has been continuously working as a casual employee.

It would be significant to note herein that facing demand for regularisation in service coming from a large number of casual workers/ muster roll workers/ WC employees serving in various Govt. departments in Assam, the State Cabinet took a decision on 22-07-2005 to regularise the services of all muster roll worker/ work charge employees/ casual worker who were engaged prior to 01-04-1993. Pursuant to the aforesaid cabinet decision, the services of a large number of such temporary/ casual/ muster roll workers were regularised. Although the petitioner was also entitled to the benefit of such regularisation as per the cabinet decision, his case was not considered as it was erroneously shown by the department that the petitioner had joined as a casual worker only on 01-04-1993.

Mr. Handique, learned standing counsel, P&RD Department, Assam submits that although the petitioner was entitled to be considered and his services ought to have been regularised as per the cabinet decision as he had joined prior to 01-04-1993, yet, due to a mistake committed by the department, the same could not be done. However, at this

point of time vacancies are not available and therefore, the prayer of the petitioner may not be accepted.

In exercise of extra ordinary jurisdiction conferred under Article 226 of the Constitution of India this Court would have a bounden duty to protect the right of every citizen from arbitrary and discriminatory treatment at the hands of the authorities. Since the petitioner was admittedly engaged prior to 01-04-1993 and since there was a cabinet decision to regularise the services of all casual employees/ work charge employees/ muster roll employees who were engaged prior to 01-04-1993, the respondents ought to have regularise the services of the petitioner also. By not doing so, the petitioner has been arbitrarily and illegally deprived of the benefit of the cabinet decision for no fault on his part. Therefore, the prayer of the petitioner cannot be declined by this Court merely on the ground that presently, there is no vacancy. Since the right of the petitioner is firmly established and his entitlement is not denied by the department, his services will have to be regularised, if necessary by creating a supernumerary post, by giving effect to such regularisation from the date on which, other similarly situated candidates were regularised in service.

This writ petition is, therefore, disposed of by directing the respondent authorities to take appropriate steps in the matter for regularisation of services of the petitioner in the light and observations made hereinabove.

The exercise be carried out and completed as expeditiously as possible, but not later than 08 weeks from the date of receipt of a certified copy of this order.

Writ petition stands allowed.

Parties to bear their own cost.

JUDGE

GS

Comparing Assistant