

GAHC010122522019



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

Case No. : WP(C)/3710/2019

C. H. GOVINDA
S/O- LATE C BAIRAGI, R/O- CENTRAL DIGBOI QTR NO. 1022A, DIGBOI,
DIST- TINSUKIA

VERSUS

THE INDIAN OIL CORPORATION LTD. AND 4 ORS
REP. BY THE CHAIRMAN CORPORATE OFFICE, CORE-2, 7 INSTITUTION
AREA, LODI ROAD, NEW DELHI- 110003

2:INDIAN OIL CORPORATION LTD (ASSAM OIL DIVISION)
DIGBOI
REP. BY THE CHIEF GENERAL MANAGER
P.O- DIGBOI
DIST- TINSUKIA
ASSAM
PIN- 786171

3:THE GENERAL MANAGER (HR)
INDIAN OIL CORPORATION LTD (ASSAM OIL DIVISION)
DIGBOI
DIST- TINSUKIA
ASSAM
PIN- 786171

4:THE CHIEF EMPLOYEE RELATION MANAGER (ER AND S)
INDIAN OIL CORPORATION LTD (ASSAM OIL DIVISION)
DIGBOI
DIST- TINSUKIA
ASSAM
PIN- 786171

5:THE SENIOR EMPLOYEE RELATION MANAGER
IOCL (ASSAM OIL DIVISION)
DIGBOI
P.O- DIGBOI
DIST- TINSUKIA
ASSAM
PIN- 78617

Advocate for the Petitioner : MR C BARUAH, MR. B BARUAH

Advocate for the Respondent : SC, I O C, MR A SARMA,MR. K KALITA,MR. M HUSSAIN,MR S
N SARMA SENIOR ADVOCATE

Linked Case : WP(C)/3719/2019

KAMALAKSHA DUTTA AND ANR.
SON OF LATE KSHIRESH CHANDRA DUTTA
RESIDENT OF KALI BARI AREA
G.M. PLOT NO. 875
P.O. DIGBOI
DISTRICT- TINSUKIA
ASSAM
PIN- 786171.

2: SMT. SITA THAPA
DAUGHTER OF LATE BHUTO THAPA
RESIDENT OF NEAR DIGBOI CLUB
IOCL (AOD)
QTR. 839-A
P.O. DIGBOI
DISTRICT- TINSUKIA
ASSAM
PIN- 786171.
VERSUS

THE INDIAN OIL CORPORATION AND 4 ORS.
REPRESENTED BY THE CHAIRMAN CORPORATE OFFICE
CORE-2
7 INSTITUTION AREA LODI ROAD
NEW DELHI-1100003.

2:INDIAN OIL CORPORATION LTD (ASSAM OIL DIVISION)
DIGBOI

REPRESENTED BY THE CHIEF GENERAL MANAGER
P.O.- DIBGOI
DISTRICT- TINSUKIA
ASSAM
PIN- 786171.

3:THE GENERAL MANAGER (H.R.)
INDIAN OIL CORPORATION LTD (ASSAM OIL DIVISION)
DIGBOI
P.O. DIGBOI
DISTRICT- TINSUKIA
ASSAM
PIN- 786171.

4:THE CHIEF EMPLOYEE RELATION MANAGER (ER AND S)
INDIAN OIL CORPORATION LTD (ASSAM OIL DIVISION)
DIGBOI
DISTRICT- TINSUKIA
ASSAM
PIN- 786171

5:THE SENIOR EMPLOYEE RELATION MANAGER
INDIAN OIL CORPORATION LTD (ASSAM OIL DIVISION)
DIGBOI
P.O. DIGBOI
DISTRICT- TINSUKIA
ASSAM
PIN- 786171.

Advocate for : MR. C BARUAH
Advocate for : SC
OIL appearing for THE INDIAN OIL CORPORATION AND 4 ORS.

Linked Case : WP(C)/4349/2019

KISHAN KR. CHHETRY
S/O- LATE PUSPA LAL CHHETRY
R/O- B/22 CMH AREA DIGBOI
P.O- DIGBOI
DIST- TINSUKIA
ASSAM
PIN- 786171

VERSUS

THE INDIAN OIL CORPORATION LTD. AND 4 ORS
REP. BY THE CHAIRMAN CORPORATE OFFICE
CORE-2
7 INSTITUTION AREA
LODI ROAD
NEW DELHI- 110003

2:INDIAN OIL CORPORATION LTD
ASSAM OIL DIVISION
DIGBOI
REP. BY THE CHIEF GM
P.O- DIGBOI
DIST- TINSUKIA
ASSAM
PIN- 786171

3:THE GENERAL MANAGER(HR)
INDIA OIL CORPORATION LTD (ASSAM OIL DIVISION)
DIGBOI
P.O- DIGBOI
DIST- TINSUKIA
ASSAM
PIN- 786171

4:THE CHIEF EMPLOYEE RELATION MANAGER (ER AND S)
IOCL ASSAM OIL DIVISION
DIGBOI
DIST- TINSUKIA
ASSAM
PIN- 786171

5:THE SENIOR EMPLOYEE RELATION MANAGER
IOCL ASSAM OIL DIVISION
DIGBOI
P.O- DIGBOI
DIST- TINSUKIA
ASSAM
PIN- 786171

Advocate for : MR. C BARUAH
Advocate for : SC
I O C appearing for THE INDIAN OIL CORPORATION LTD. AND 4 ORS

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

JUDGMENT

Date : 17-09-2024

Heard Mr. B. Baruah, learned counsel for the petitioner. Also heard Mr. A. Sarma, learned Standing Counsel, IOC appearing for the respondents.

2. Since the issue involved in the present proceedings are identical, the writ petitions are taken up together for disposal.

3. By way of filing the writ petitions being WP(C) 3710/2019 and WP(C) 3719/2019 under Article 226 of the Constitution of India, the petitioners inter alia seeking regularization to the post of Sweeper Grade-I and in WP(C) 4349/2019 to the post of Primary School teacher, Grade-IV under the respondent authorities w.e.f. the date of their initial appointment.

4. The facts of the case is that on being requisition made by respondent corporation i.e. Indian Oil Corporation Limited (Assam Oil Division) to fill up several vacancies of Grade- I including sweepers, the petitioners name were sponsored by the local employment exchange, Digboi for the posts of shramik Grade- I and for the post of teacher respectively. Thereafter, the petitioners were duly selected by the selection committee of Indian Oil Corporation Limited (AOD) against the vacant sanction and permanent post of sweeper Grade- I and teacher respectively.

5. Accordingly, in WP© 3710/201, the petitioner was appointed by the respondent authorities as Shramik (Grade- I) on compassionate appointment on 24.02.1995 and accordingly, he continued as temporary employee and presently is posted in the security deparment under the IOCL (AOD), Digboi Refinery as Security Guard (Grade- I).

6. In WP(C) 3719/2019, the petitioner No.1 was appointed by the respondent authorities as Shramik (Grade- I) on compassionate appointment on 24.02.1995 and accordingly, he continued as temporary employee and presently is posted in the security department under the IOCL (AOD), Digboi Refinery as Security Guard (Grade- I) and the petitioner No.2 was appointed by the respondent authorities as Sweeper-cum-attendant (Grade- I) on compassionate appointment on 04.02.1995 and accordingly, he continued as temporary employee and presently is posted in the medical department under the IOCL (AOD), Digboi Refinery as Attendant (Grade- I).

7. In WP(C) 4349/2019, the petitioner was appointed by the respondent authorities as Teacher-Primary School (Hindi Medium) (Grade IV) AOD HS School on compassionate appointment on 24.02.1995 and accordingly, he continued as temporary employee and presently is posted in the Hindi section (Corporate Communication) under the IOCL (AOD), Digboi Refinery .

8. It is the specific case of the petitioners that at the time of their initial engagement along with other similar candidates who were appointed in pursuance of the written test and interview, the Chief Personal Manager (ERNS) told them that regular appointment letters would be issued within a very short time and accordingly they were advised to continue in their engagement. But as the process of issuing the regular appointment letter to the candidates were not completed as promised and assured the petitioners and other candidates appointed like that of the petitioners had submitted several representation for regularization of their service from time to time before the respondent authorities. Whereas some of the candidates selected and appointed under the same selection were already confirmed and regularized and the petitioners are not yet regularized.

In a recent decision passed by Division bench of Hon'ble High Court in Writ

Appeal No. 56/2018 had directed regularization along with service benefit accrued thereof to be given to the candidates like that of the petitioners by the respondent authorities. In a Special Leave to Appeal (C) 27071/2018 carried to Hon'ble Supreme Court by respondent corporation expressing dissatisfaction to the Judgment dated 06.06.2018 passed in Writ Appeal 56/2018 of Hon'ble High Court and after hearing the parties the Hon'ble Supreme Court of India vide Order dated 22.10.2018 dismissed the Special Leave Petition of Corporation. Despite the said decision of this Court in the aforesaid writ appeal and the subsequent dismissal of special leave petition, the services of the writ petitioners are not regularized and therefore, the present writ petitions have been filed.

9. Mr. B. Baruah, learned counsel for the petitioners submits that the Division Bench of this Court in WA 6/2019 by the Judgment and Order dated 26th July, 2022 has regularized the service of similarly situated employees and accordingly, submits that the said judgment and order covers the issue involved in the present */is* in hand.

10. Per-contra, Mr. A. Sarma, learned Standing Counsel, IOC submits that the Judgment and Order dated 26th July, 2022 is based on an earlier Judgment of this Court in WA 56/2018, which was not in the context of regularization of employees appointed temporarily on the basis of compassionate appointment. He further submits that against the Judgment and Order dated 26th July, 2022 relied upon by the petitioners, the respondent IOCL has preferred a Special Leave Petition before the Apex Court, wherein, the Apex Court though did not interfere with the said Judgment and Order, however, kept the question of law

involved therein open. He accordingly submits that the Judgment of the Division Bench of this Court ought not to be treated as a precedent.

11. I have given my prudent consideration to the arguments made by the learned counsel for both parties and have perused the materials available on record.

12. It appears that by an order dated 24.01.1995 in terms of the request for temporary engagement from various group including the AOC, Labour Union, the petitioners i.e. Smti. Sita Thapa, CH Govinda Prasad, Kamalaksha Dutta and Krishan Kr. Chetry were appointed to the post of Sweeper-cum-attendant, English Medium Primary School, Shramik (labour) and Teacher AOD HS school respectively.

13. It appears that pursuant to temporary engagement, the petitioners have been working till date on temporary basis. It further appears that representation has been filed before the respondent authority for regularizing their services, however, the same has not been considered.

It further appears that similarly situated employee of the respondent organization i.e. Dipak Bhuyan having filed writ petition under Article 226 before this Court, the Coordinate Bench of this Court was pleased to dismiss the writ petition and the said dismissal order of this Court was taken before the Appellate Court, whereupon, the Division Bench of this Court by the Judgment and Order dated 26.07.2022, provided as hereunder:-

“It would be appropriate to refer to the judgment & order passed by the

Division Bench in Writ Appeal No.56/2018, which was filed by the original petitioners of WP(C) No.5065/2009, which was disposed of along with the writ petition being WP(C) No.5068/2009 filed by the present appellant. The original petitioners of WP(C) No.5065/2009 have approached the Division Bench of this Court as the learned Single Judge did not consider their claim for regularisation. The Division Bench of this Court, while considering the employment Notification dated 07.04.1995, came to the conclusion that the action on the part of the respondent authorities in not considering the case for regularisation is violative of Article 14 of the Constitution of India. The Division Bench has observed thus:-

“14. Accordingly, it is concluded that the conduct of the respondent authorities in confirming/regularizing eleven of the similarly situated candidates who were selected and appointed along with the appellants, while refusing to regularize the service of the appellants in a similar manner, violates Article 14 of the Constitution of India.

The differential treatment on the basis of the position in the select list do not form a reasonable classification for the purpose of regularizing or not regularizing in the service.

15. It is further taken note of that the employment notification of 07.04.1995 clearly indicates that the appointments were made against sanctioned vacancies, although they were indicated to be temporary vacancies. But the factual situation is such that all the appointees pursuant to the said employment notification continues to remain in employment till date i.e. approximately more than 20 years and it by itself is an indication that the sanctioned vacancies had lost its status to be claimed as a temporary vacancies.

16. Further it is also taken note of that the recruitment of the appellants were made by following the constitutional scheme i.e. through an employment notification and selection, where others have also participated. In paragraph 53 of the judgment rendered in Secretary, State of Karnataka –vs- Umadevi & Ors,. reported in (2006) 4 SCC 1, it was provided that even in cases where appointments are irregular, i.e. without following the constitutional scheme, but where the appointees continued to remain in service for more than 10 years as of the date of the said judgment without any aid of any order from any Court but against sanctioned vacant post, are entitled to a consideration for regularization as one time measure. In comparison thereof, the factual situation of the appellants is much better off, inasmuch as, they were appointed against sanctioned vacant post by following the procedure of constitutional scheme and therefore, a right of regularization had accrued to them.

17. Mr. R. Dubey, learned counsel for the respondent IOC-AOD has produced the information that some of the candidates who were selected and appointed

along with the appellants were confirmed/ regularized on 13.05.1997. The information provided is that Khargadhar Sonowal appointed under the ST category, Hema Kanta Gogoi and K. Nagbhusan Verma appointed under the OBC category and Bir Bahadur Sonar and A.U. Rao appointed under the unreserved category, were all regularized/ confirmed on 13.05.1997.

18. As we have already arrived at a conclusion that there does not exist any intelligible differentia between the candidates selected and appointed under the same selection, there cannot be a differential treatment as regards their regularization and confirmation and further such differential treatment cannot be sustained by stating that it was done on the basis of the order of merit of the selection. Even such stand is unacceptable, inasmuch as, persons below in the select list have been regularized and confirmed, whereas, those above in the order of merit are yet to be regularized/confirmed. No other reason has been disclosed by the respondent authorities for meting such differential treatment. In the circumstance, the only conclusion that can be arrived is that there was discrimination and biasness in effecting the regularization/confirmation and the procedure adopted by the respondent authorities violates Article 14 of the Constitution of India.

19. In the circumstance, we are of the considered view that ends of justice will be met, if the respondent authorities in the IOCAOD regularize the services of the appellants and that such regularization along with the benefits accrued thereof be given w.e.f. the same date as to when the last of the eleven candidates was so confirmed or regularized. Accordingly, the respondent authorities are directed to regularize the services of the appellants from the date when the last of the eleven candidates were confirmed or regularized and all the consequential benefits of being regularized be provided to them from the said date.

20. The aforesaid be done within a period of three months from the date of receipt of the certified copy of the order.

Writ appeal is accordingly disposed of.”

14. From the aforesaid observations made by the Division Bench of this Court, it clearly appears that the appellant is also similarly situated employee. Only because he was given a compassionate appointment, fact remains that he has worked all throughout from the date of his appointment and initial entry in service of the respondent Corporation. In fact as can be seen from the order passed by the Division Bench in Writ Appeal No.56/2018, the respondent Corporation produced information that some of the candidates, who were selected and appointed along with the appellant before this Court in the said appeal, were already regularised/confirmed on 13.05.1997. The respondent Corporation has not been able to point out any difference in the case of the present appellant and, therefore, the appellant being similarly situated employee, would be entitled to regularisation/confirmation as done in the

case of the appellants of Writ Appeal No.56/2018. On the same premises, the appellant, therefore, would be entitled to regularisation, as prayed for.

15. Accordingly, we allow this writ appeal and direct the respondent authorities in IOC-AOD to regularise the service of the appellant and such regularisation along with the benefits accrued thereof be given to the appellant with effect from the date the same was given to the other similarly situated candidates and more particularly, the appellants of Writ Appeal No.56/2018. The case of the appellant is squarely covered by the decision taken by the Division Bench of this Court in Writ Appeal No.56/2018. The respondent authorities shall implement this order within a period of 3(three) months from the date of receipt of a certified copy of this judgment & order.”

14. On perusal of the aforesaid decision of the Division Bench, it appears that by relying upon the decision of this Court in WA 56/2018, the benefit given by the Division Bench of this Court to the employees in that case has also been extended to the writ appellant in WA 6/2019, who was appointed on compassionate ground initially. The petitioners involved in the present *lis* in hand appears to be also similarly situated person. Therefore, this Court is of the considered view that the aforesaid Judgement and Order dated 26.07.2022 squarely covers the case of the petitioners and therefore, they are entitled for regularization.

15. The argument of Mr. A. Sarma, learned Standing counsel, IOC, to the effect that the Judgment and Order dated 26.07.2022 in WA 6/2019 cannot be considered as a precedent in view of the fact that the Apex Court while dismissing the said writ appeal against the said Judgment kept the question of law open involved therein is a total fallacy.

16. Pertinent that the Apex Court has not interfered with the decision of the Division Bench of this Court in WA 6/2019 and as such, this Court is bound by the decision of the Division Bench. Merely because the question of law involved

is kept open does not mean that the decision of the Division Bench, which has now attained finality in view of the order of the SLP, is not binding on this Court.

17. In view of the above, this Court allows the writ petitions and directs the respondent authority in IOC-AOD to regularise the services of the petitioners and such regularization along with the benefits accrued thereof be given to the petitioners w.e.f. the date the same was given to other similarly situated candidates and more particularly, the appellant in WA 6/2019. The case of the petitioners being squarely covered by the decisions taken by the Division Bench of this Court both in WA 56/2018 and WA 6/2019. The respondent authority shall implement this order within a period of 3 (three) months from the date of receipt of the certified copy of the Judgment and Order.

18. With the above observation and directions, the writ petitions are allowed.

No order as to costs.

JUDGE

Comparing Assistant