

GAHC010051942019



2024:GAU-AS:9293

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

Case No. : WP(C)/1664/2019

AJIT DEB BARMAN AND ANR.
S/O. LATE LAKSHMI DEB BARMAN, P/R- VILLAGE- RUPAIBATHAN, P.O.
CHAMATA, P.S. BELCHOR, DIST. NALBARI, ASSAM, PIN- 781306.

2: TAPAN BARMAN
S/O-MAHESWAR BARMAN
VILL. SOLMARA
PO- TENGABARI
PS-TIHU
DIST.- NALBARI
ASSAM
PIN- 781338

VERSUS

THE STATE OF ASSAM AND 8 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPTT. OF HOME AFFAIRS, DISPUR, GUWAHATI-6.

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-7.

3:THE INSPECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-7.

4:THE CHIEF CONTROLLER
VILLAGE DEFENSE ORGANIZATION
ASSAM
GUWAHATI-8.

5:THE SUPERINTENDENT OF POLICE
NALBARI
ASSAM
PIN- 781335.

6:THE OFFICER-IN-CHARGE
BELSOR POLICE STATION
DIST.- NALBARI
ASSAM. PIN- 781304

7:THE OFFICER-IN-CHARGE
TIHU POLICE STATION
DIST.- NALBARI
ASSAM
PIN- 781371.

8:THE OFFICER-IN-CHARGE
BHANGNAMARI POLICE STATION
DIST. NALBARI
ASSAM
PIN- 781126.

9:THE OFFICER-IN-CHARGE
SIALMARI POLICE STATION
DIST.- NALBARI
ASSAM
PIN- 781126

Advocate for the Petitioner : MR. U K NAIR, MR. K R PATGIRI

Advocate for the Respondent : GA, ASSAM,

Linked Case : WP(C)/3925/2023

TAPAN BARMAN
S/O MAHESWAR BARMAN
VILL- TENGABARI
P.O.-SOLMARA
P.S.-BELSOR
DIST- NALBARI
ASSAM
PIN-781338

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
DEPARTMENT OF HOME AFFAIRS
DISPUR
GUWAHATI-6

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-7

3:THE INSPECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-7

4:THE CHIEF CONTROLLER
VILLAGE DEFENSE ORGANIZATION
ASSAM
GUWAHATI-8

5:THE SUPERINTENDENT OF POLICE
NALBARI
ASSAM
PIN-781335

6:THE OFFICER IN CHARGE
SIALMARI POLICE STATION
DIST-NALBARI
ASSAM
PIN-781126

7:KISHOR KUMAR BAISHYA
S/O PRATAP CHANDRA BAISHYA
C/O THE CHIEF CONTROLLER
VILLAGE DEFENSE ORGANIZATION
ASSAM
GUWAHATI-8

8:MANISHA MAYURAKSHI TALUKDAR
C/O THE CHIEF CONTROLLER
VILLAGE DEFENSE ORGANIZATION
ASSAM
GUWAHATI-8

Advocate for : MR. K R PATGIRI
Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 7 ORS

Linked Case : WP(C)/3774/2019

IDRISH ALI
S/O MD. DANESH ALI
VILL. BHAIRAGHUL
P.O. JOYSAGAR
PIN-781126
DIST.-NALBARI
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY
DEPTT. OF HOME AFFAIRS
GOVT. OF ASSAM
DISPUR
GUWAHATI-6

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-7

3:THE INSPECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-7

4:THE CHIEF CONTROLLER
VILLAGE DEFENCE ORGANIZATION
ASSAM
REHABRI
GUWHATI-8

5:THE SUPERINTENDENT OF POLICE
NALBARI
ASSAM

6:THE OFFICER IN CHARGE
BHANGNAMARI POLICE STATION
NALBARI
ASSAM

Advocate for : MS. S G BARUAH
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 5 ORS.

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 18-09-2024

Heard Mr. K.R. Patgiri, learned counsel for the petitioners in WP(C) No.1664/2019 and WP(C) No.3925/2023 and Ms. S.G. Baruah, learned counsel for the petitioner in WP(C) No.3774/2019. Also heard Mr. J.K. Goswami, learned Additional Senior Govt. Advocate, Assam for the State respondents and Mr. H.K. Das, learned counsel for the respondent Nos.7 & 8, in WP(C) No.3925/2023.

2. By filing these Writ Petitions, the petitioners have prayed for a direction to regularize their services against the sanctioned vacant posts of Circle Organiser, Village Defence Organization (in short COVDO) under Nalbari District at Tihu, Beslor and Bhangnamari Police Stations in the District of Nalbari, Assam. The petitioners have also challenged their engagement orders dated 25.01.2018 and 05.11.2018 and discharged from service as Home Guards. The petitioners further challenges the appointment of respondent Nos.7 & 8, dated 24.05.2022, as COVDO.

3. Having regard to the similarity of the factual background and the issue raised, these Writ Petitions were heard analogously and the same are disposed of by this common judgment and order.

4. The petitioners in WP(C) No.1664/2019 were appointed as casual employee on 01.06.1993 and 01.03.1996 respectively, on temporary basis and were attached to Belsor and Tihu Police Stations as COVDO. Their services were extended from time to time and they have been discharging the service from their respective places of posting. The petitioners have submitted representations from time to time for regularization of their services as

COVDO.

5. While the petitioners were serving as COVDO, a W.T. Message dated 28.11.2005 was issued to the Belsor and Tihu Police Stations, by which the services of the petitioners were terminated. Against such termination, the petitioners filed the WP(C) No.540/2006. On issuance of notice in the WP(C) No.540/2006, the petitioners were allowed to serve as COVDO under the aforesaid Police Stations. Therefore, they have withdrawn the said Writ Petition on 24.02.2006, with a liberty to approach the Court again, if occasion arises, which this court had allowed. After serving for a long time as COVDO, again the petitioners were terminated from their services vide order dated 07.02.2015, issued by the Superintendent of Police, Nalbari, treating the petitioners as Home Guard.

6. Being aggrieved, again the petitioners have approached this Court challenging the termination order dated 07.02.2015, which was registered as WP(C) No.1804/2015. During the pendency of the said Writ Petition, the Additional Director of Police (A), Assam issued an advertisement dated 01.03.2016, for filling up the vacant posts of COVDO in different Districts of Assam, including the Nalbari District. This court directed the respondent authorities that the advertisement dated 01.03.2016, be kept in abeyance in respect of Nalbari District till the disposal of the WP(C) No.1804/2015.

7. This Court, vide order dated 02.02.2017, has disposed of the WP(C) No.1804/2015 and set aside the termination order dated 07.02.2015 and directed the respondents to reinstate the petitioners. Thereafter, the petitioners were reinstated, however, under different police stations, namely, in Bhangnamari and Sialmari Police Stations as fresh appointees. In fact, the petitioners ought to have been reinstated as COVDO under the same police station i.e. Belsor Police Station and Tihu Police Station. The petitioners having reinstated as COVDO under police stations, other than the police stations i.e. Belsor and Tihu, a Contempt Case was filed before this Court being Cont. Case (C) No.233/2017, whereby this Court closed the Contempt Case by observing that the direction by the Court was to reinstate the petitioners and not to reinstate the petitioners with the same place of posting. It has been held that as to where a person is to be posted, is within the domain of the authority. The petitioners were appointed as honorary COVDO but not under Belsor and Tihu Police Stations, thereafter, vide order

dated 26.12.2017, they were appointed as Home Guard for a period of six months.

8. Thereafter, vide the impugned W.T. Message dated 01.02.2019, the petitioners have been again discharged from their services and place of posting at Bhangnamari Police Station and Sialmari Police Station, on the ground that they have completed six months of deployment, w.e.f. 31.01.2019.

9. Mr. K.R. Patgiri, learned counsel for the petitioners submits that the Village Defense Organization and the Home Guard are two different organizations and the Superintendent of Police of the concerned district is the district head of those organizations. The Respondents mixed up those two organizations by issuing different appointment orders to the petitioners. The petitioners initially appointed as COVDO of Tihu and Belsor Police Stations and after more than 20 years of service, they were terminated vide impugned order dated 07.02.2015. The said order of termination dated 07.02.2015 was set aside by this Hon'ble Court vide order dated 02.02.2017. Thereafter, ignoring the long length of service of the petitioners, appointed a fresh at different Police stations as Honourary COVDO and were also shown as appointed as Home Guards. Again, the respondent No-5 sent an impugned WT Message whereby discharged the petitioner No-1 from service after closing of the contempt petition filed by the petitioners. Therefore, now the petitioners have a reasonable apprehension that at any time the respondent Authorities oust the petitioners from service ignoring their long continuous service as COVDO at Tihu and Belsor Police Stations and now at Bhangnamari and Sialmari Police Station under the administrative control of the Respondent No-5.

10. It is further contended by Mr. Patgiri, learned counsel for the petitioners that the petitioners ought to have considered for regularization their post as COVDO, as per the Judgment of the Apex Court in Secretary, **State of Karnataka -VS- Uma Devi**, reported in **(2006) 4 SCC 1** and Office Memorandum dated 27.06.2013 issued by the Govt. of Assam and as observed by this Hon'ble Court vide order dated 02.02.2017 in the earlier round of litigation, however, due to only challenging the impugned termination order dated 07.02.2015, no direction of regularization of the petitioners was issued by this Hon'ble Court.

11. Mr. K.R. Patgiri, learned counsel, submits that the petitioners have assailed the

impugned termination dated 02.02.2015 before this Hon'ble Court vide W.P.(C) No-1804/2015. During pendency of the said writ petition, the Respondent No-2 issued an advertisement dated 01.03.2016 for filling up the two post of COVDOs under the Nalbari District. However, in the intervention of this Hon'ble Court, the said advertisement was stayed till disposal of the W.P.(C) No- 1804/2015 vide order dated 18.03.2016 passed in IA (C) No-1038/2016. The posts of COVDO under Tihu and Belsor police stations are sanctioned posts in which the petitioners were appointed earlier and served till their termination. Pursuant to the direction of this Hon'ble Court, the Respondent No-5 reinstated them but posted at Bhangnamari and Sialmari Police Stations.

12. In the WP(C) No.3925/2023, the petitioner (who is one of the petitioners in the WP(C) No.1164/2019), has challenged the appointment of respondent Nos.7 & 8, on the two posts of COVDO in the Nalbari District. The contention of the petitioner is that the appointment of respondent Nos.7 & 8 as COVDO at Belsor and Tihu Police Station, on the two vacant sanctioned posts under Nalbari District, without considering the claim of the petitioner for regularization, that too during the currency of the interim order passed by this Court in WP(C) No.1664/2019, is illegal and arbitrary.

13. The case of the petitioner in WP(C) No.3774/2019 is that the petitioner was appointed as casual employee on 14.06.2010, in contingency expenditure of Rs.9,000/- per month. Accordingly, he joined as COVDO at Bhangnamari Police Station w.e.f. 14.06.2010. The petitioner was discharged from his service vide order dated 07.02.2015, along with other Home Guard personnel from the service. Accordingly, the petitioner filed the WP(C) No.2927/2017, whereby this Court has allowed the Writ Petition, as the case of the petitioner is covered by the judgment and order dated 02.02.2017, passed in WP(C) No.1804/2015, with a direction to reinstate the petitioner. Thereafter, after several requests, the petitioner was reinstated vide order dated 05.11.2018, as Home Guard w.e.f. 01.11.2018.

14. Ms. S.G. Baruah, learned counsel for the petitioner in WP(C) No.3774/2019, while adopting the submissions of Mr. K.R. Patgiri, learned counsel, submits that petitioner is entitled to be considered for regularization as COVDO as per the Judgment of the Apex Court in Secretary, **State of Karnataka -VS- Uma Devi**, reported in (2006) 4 SCC 1 and Office

Memorandum dated 27.06.2013 issued by the Govt. of Assam as observed by this Hon'ble Court vide order dated 02.02.2017 in the earlier round of litigation. The learned counsel for the petitioners submits that the respondent authorities may be directed to regularise the service of the petitioners as COVDO.

15. Mr. J.K. Goswami, learned Additional Senior Govt. Advocate, Assam while referring to the affidavit filed on behalf of the Respondent No.5, has submitted that the petitioners were discharged as honorary COVDO in compliance of Government order issued vide HMB 386/2014/4 dated 05.02.15 where all untrained Home Guards engaged by Superintendent of Police were to be discharged. The learned Additional Senior Govt. Advocate, submits that the petitioners withdrew the petition W.P. (C) No. 540/2006 on their own desire and there was no order issued by the office of the respondent no. 5 for allowing the petitioner to continue as COVDO of concerned police stations. The formal proposal for COVDO at Tihu and Belsor Police Station were submitted vide the Office Memo No. PNB/VD/92- 93/82, dated 24.09.1993 and Memo No. PNB/VD/94-95/1063 dated 02.03.1995 and Memo No. PNB/VD/96-97/1346, dated 06.01.1997 by the office of the respondent No. 5.

16. Mr. J.K. Goswami, learned Additional Senior Govt. Advocate, submits that the petitioners were drawing their salaries as Home Guards and appointed as honorary COVDO and as Home Guards when they were in service. They were discharged as Home Guards as per Government order issued vide HMB 386/2014/4 dated 05.02.2015, where all untrained Home Guards engaged by Superintendent of Police were to be discharged w.e.f. 01.02.2015. It is contended that although the advertisement dated 01.03.2016 was issued by Addl. Director General of Police (A) for COVDO in different district of Assam, but the same was stayed in respect of Nalbari district by the Hon'ble High Court.

17. Mr. J.K. Goswami, learned Additional Senior Govt. Advocate, further submitted that the petitioners were reinstated as honorary COVDO vide office Memo No. PNB/VD/2017/153-155 dated 25.04.2017 of the respondent No. 5 in compliance of the order dated 02.02.2017 of the Hon'ble Court. The Hon'ble Court ordered for appointing the petitioners again to the same post without any direction as to their place of posting. There is no direction for regularisation of their services. The petitioners were discharged from service as Home Guards in compliance

of the Government order issued vide HMB 386/2014/4 dated 05.02.2015, as they were reinstated as Home Guards as per approval of the government vide letter No. 33 HMA.463/2017/87 (eCF 13152) dated 26,12,2017 and discharged on expiry of after 6 (six) months.

18. Mr. Goswami, the learned Additional Senior Govt. Advocate, further submitted that the advertisement for the post of COVDO's was issued by the Additional Director General of Police (A). The petitioners were reinstated in service in compliance of Hon'ble High Court order dated 02.02.2017, in WP(C) 1804/2015. They were shown as appointed Home Guards as per order of Additional Secretary to the Government of Assam vide Memo No. HMA 463/2017/87 dated 26.12.2017. The Respondent No. 5 has acted in compliance of Hon'ble High Court order and government order issued from time to time.

19. Mr. J.K. Goswami, learned Additional Senior Govt. Advocate, relying upon the affidavit filed on behalf of the Respondent No.1, submits that the Hon'ble Court vide order dated 02.02.2017, in WP(C) No.1804/2015 directed the respondent to reinstate the petitioners and to decide the payment of back wages and other benefits to the petitioners. Pursuant thereto, Govt. approval was conveyed vide letter No.HMA.463/2017/87 (eCF 13152) dated 26.12.2017 for reinstating Shri Ajit Deb Barmen and Shri Tapan Barman as Home Guards and for calculating and paying their back wages as admissible on their reinstatement. Vide order dated 29.01.2019 passed in the Contempt Case (C) No. 233/2017 (filed by the same petitioners), this Hon'ble Court has observed that the direction by this court was to reinstate the petitioners and not to reinstate the petitioners with the same place of postings. Accordingly, the respondent authority have complied with the court's order by reinstating the petitioners in their earlier posts of Home guards.

20. Learned Additional Senior Govt. Advocate, placing reliance on the case of **Uma Devi (3)** (Supra), submits that the petitioners having not been engaged against the sanctioned vacant posts and/or recruited through any due process of selection, do not have any legitimate right to be regularized as COVDO.

21. I have considered the submissions advanced by the learned counsel for the parties and

perused the materials available on record.

22. The petitioners, admittedly were appointed/engaged on casual basis by the Superintendent of Police, Nalbari vide order dated 31.05.1993, w.e.f. 01.06.1993, and dated 21.03.1996, w.e.f. 01.03.1996 under contingency expenditure of Rs.9000/- per month. The petitioners were allowed to work as COVDO at Belsor and Tihu Police Stations vide the order dated 31.05.1993 the order dated 21.03.1996. The petitioner in WP(C) No.3774/2019 was appointed as casual employee on 14.06.2010, and he joined as COVDO at Bhangnamari Police Station w.e.f. 14.06.2010. The petitioners, thereafter, continued to work as COVDO until the impugned order dated 07.02.2015, by which the petitioners were discharged from their employment, w.e.f. 31.01.2015. The petitioners. being aggrieved by their discharge, filed writ petitions being WPC) No.1804/2015 and WP(C) No.2927/2017, challenging the impugned order dated 07.02.2015 on the ground that no notice had been issued to the petitioners prior to their discharge. Further, no reason has been given in the impugned order giving reasons as to why the petitioners have been discharged.

23. This Court, on 02.02.2017 has disposed of the WP(C) No.1804/2015 and allowed the writ petition. This Court has observed and held, which is quoted here-in-under:

“13. A perusal of the appointment order of the petitioners goes to show that the petitioners have not been appointed as Home Guards, but have been appointed as causal employees.

14. Nothing has been brought before this Court to show that the petitioners could not have acted as COVDO. It is also not disputed that the petitioner No.1 had been discharging the work of COVDO for 22 years, while the petitioner No. 2 had been discharging the work of COVDO for 19 years, prior to the impugned discharge order.

15. It is settled law that all administrative action should be informed by reasons as held in Style (Dress Land) Vs. Union Territory Chandigarh. reported in (1999) 7 SCC 89. However, a perusal of the impugned discharge order shows that no reason has been given in the said discharge order giving reasons for discharge of the petitioners. Nothing has been brought before this Court to show the reasons why the discharge order has been issued. Furthermore, no notice has been issued to the petitioners prior to the issuance of the impugned discharge

order, thereby, violating the principles of natural justice.

16. A perusal of the impugned advertisement dated 01.03.2016. inviting applications for filling up two posts of COVDO in Nalbari district, clearly goes to show that a pay scale has been prescribed for the said post. The appointment to the said post is also to be purportedly made by the Additional Director General of Police (A). In view of the fact that the impugned advertisement dated 01.03.2016 implies that the police are going to appoint as COVDO, there does not seem to be any infirmity in the appointment of the petitioners by the office of the Superintendent of Police, Nalbari in 1993 and 1996. There is also nothing brought on record to show that the work of the petitioners have not been satisfactory, while working as COVDO for the last so many years.

17. The impugned advertisement implies that the post of COVDO is a sanctioned post. If that is the case, there is no reason why the State respondent should not have considered the petitioners for regularization as per paragraph-53 of the judgment of the Apex Court in Secretary, State of Karnataka Vs. Uma Devi (3) reported in (1996) 4 SCC 1 and in the case of State of Karnataka Vs. ML Kesari & Others, reported in (2010) 9 SCC 247 and Office Memorandum dated 27.06.2013 issued by the Government of Assam. The affidavit of the respondent No. 4 at paragraph-9 is to the effect that no orders have been received from the Court regarding regularization of the petitioners in the post of COVDO.

18. However, the issue of the present case is basically limited to the question of the legality of the discharge order dated 07.02.2015. In view of the fact that the petitioners have not been issued any notice prior to the discharge order and as the same is bereft of any reason. this Court finds that the said impugned order dated 07.02.2015 is illegal due to the reasons stated above. Accordingly, the same is set aside.

19. The respondents are directed to reinstate the petitioners immediately. The question of payment of back wages and other benefits will be decided by the State respondent within three months from today."

24. On consideration of the materials and perusal of the above judgement and order dated 02.02.2017 passed by this court, reflects that the appointment order of the petitioners does not indicate that the petitioners have been appointed as Home Guards, but have been appointed as casual employees initially and thereafter, allowed to serve as COVDO. No materials have been brought neither in the present proceeding nor in the earlier proceedings

to show that the petitioners could not have acted as COVDO. It is also not disputed that the petitioners had been discharging their service as COVDO for many years, prior to their discharge.

25. It is further reflected that this court has observed that the impugned advertisement implies that the post of COVDO is a sanctioned post. If that is the case, there is no reason why the State respondent should not have considered the petitioners for regularization as per paragraph-53 of the judgment of the Hon'ble Supreme Court **Uma Devi (3)** (Supra) and in the case of **State of Karnataka Vs. ML Kesari & Others**, reported in **(2010) 9 SCC 247** as well as Office Memorandum dated 27.06.2013 issued by the Government of Assam. The affidavit of the respondent authorities is to the effect that no orders have been received from the Court regarding regularization of the petitioners in the post of COVDO.

26. The petitioner in WP(C) No.3774/2019, filed the WP(C) No.2927/2017, whereby this Court has allowed the Writ Petition, as the case of the petitioner is covered by the judgment and order dated 02.02.2017, passed in WP(C) No.1804/2015, with a direction to reinstate the petitioner.

27. The above judgement and order dated 02.02.2017 has not been taken to appeal which has attained finality. Since the judgement and order dated 02.02.2017 has attained finality, I am of the considered view that no further deliberation on the same issue is required as this court has clearly observed that the appointment order of the petitioners shows that the petitioners have not been appointed as Home Guards, but have been appointed as casual employees. Nothing has been brought to show that the petitioners could not have acted as COVDO. As noted above, this court has also observed that the impugned advertisement implies that the post of COVDO is a sanctioned post. If that is the case, there is no reason why the State respondent should not have considered the petitioners for regularization as per paragraph-53 of the judgment of the Hon'ble Supreme Court **Uma Devi (Supra)** and in the case of **ML Kesari (Supra)** as well as Office Memorandum dated 27.06.2013 issued by the Government of Assam. It further held that, the affidavit of the respondent authorities is to the effect that no orders have been received from the Court regarding regularization of the petitioners in the post of COVDO.

28. In view of what has been noted and discussed herein above, I am of the considered view that the authorities have illegally discharged the petitioners by treating them as Home Guards. Thus, the discharge of the petitioners are hereby set aside and quashed.

29. Consequently, the respondent authorities are directed to reinstate the petitioners as COVDO. The respondent authorities are further directed to consider the case of the petitioners for regularisation in accordance with law in terms of the observation made in the judgement and order dated 02.02.2017, within a period of three (3) months, from the receipt of copy of this order.

30. The writ petitions are allowed and disposed in terms above. However, parties to bear their own costs.

JUDGE

Comparing Assistant