

GAHC010246442019



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

Case No. : WP(C)/969/2020

INDIA BRAHMA AND ANR.
S/O. LT. NINAN BRAHMA, R/O. ALENGMARI (SONAPUR), P.O.
DUMARIGURI, DIST. KOKRAJHAR, ASSAM.

2: BIMAL CHANDRA NARZARY
S/O. SRI PURNA CHANDRA NARZARY
R/O. RUP NAGWAR
KOKRAJHAR TOWN
WARD NO.4
P.O. KOKRAJHAR
BTC
ASSAM

VERSUS

THE STATE OF ASSAM AND 8 ORS.
REP. BY THE UNDER SECRETARY TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST DEPTT., DISPUR, GHY.-06.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST

ARANAYA BHWAN
PANJABARI
GUWAHATI-37.

3:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST DEPTT.
DISPUR
GHY.-06.

4:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
FINANCE (EC-II) DEPTT.

DISPUR
GUWHATI-06.

5:THE BTC
REP. BY THE PRINCIPAL SECRETARY
BTC
KOKRAJHAR
ASSAM.

6:THE ADDL. PRINCIPAL CHIEF CONSERVATOR OF FOREST AND CHD BTC

KOKRAJHAR
ASSAM.

7:A. SWARGOWARI
IFS
ADDL. PRINCIPAL CHIEF CONSERVATOR OF FOREST AND CHD
BTC
KOKRAJHAR.

8:ARADHAN BARMAN
S/O. SRINATH BARMAN
VILL. PAKABETBARI RAM
P.O. SUNDARDIA
DIST. BARPETA
ASSAM.

9:BABUL BARMAN
S/O. SRINATH BARMAN
VILL. PAKABETBARI PAM
P.O. SUNDARDIA
DIST. BARPETA
ASSAM

Advocate for the Petitioner : MR. B P BORAH

Advocate for the Respondent : MR. D. GOGOI, SC, FOREST

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 30-01-2024

Heard Mr. A.K. Maheswari, learned counsel for the writ petitioner. Also heard Ms.

R.B. Borah, learned standing counsel, BTC appearing for the respondent Nos. 5 and 6 and Mr. J.K. Goswami, learned Addl. Sr. Govt. Advocate, Assam appearing for the respondent Nos. 1 to 3. Mr. P. Nayak, learned standing counsel, Finance Department, Assam has appeared for the respondent No. 4. None has appeared for the remaining respondents.

The two writ petitioners herein were originally engaged as muster roll workers under the Forest Department coming within the jurisdiction of the BTC authorities. Their names appeared in the list of muster roll workers published on 13-12-2017. However, on 31-12-2018, a fresh list of muster roll workers was published by the department wherein the petitioners had been replaced by the respondent Nos. 8 and 9. It is the pleaded case of the petitioner that the respondent Nos. 8 and 9 are the close relatives of the respondent No. 6 who was working as Addl. Principal Chief Conservator of Forest & CHD, BTC, Kokrajhar at the relevant point of time. That is why, the private respondents have been engaged in place of two petitioners. Contending that replacing ad-hoc appointees by another set of ad-hoc appointees/ casual workers is impermissible in the eyes of law, Mr. Maheswari has prayed for setting aside the engagement of the respondent Nos. 8 and 9 and for issuance of a direction for restoring the petitioners in the muster roll as per the position obtaining on 13-12-2017. It is also the contention of Mr. Maheswari that this is a clear case of nepotism and the allegation of favouritism made in the writ petition has not been denied by the respondent No. 6, although the said official had also been impleaded in his present capacity as respondent No. 7.

Ms. R.B. Borah, learned standing counsel, BTC has argued that the two petitioners had voluntarily quit their job and that is why they were replaced by the respondent Nos. 8

and 9. In support of the above argument Ms. Borah has placed reliance on the affidavit filed by the respondent No. 6. The stand of the respondent No. 6 is available in paragraph 6 of the affidavit, which is reproduced here-in-below for ready reference:-

“6. That with regards to the statement made in paragraph 8 of the writ petition the deponent admitted that same and begs to state that, a fresh list of casual workers working in the Forest Department under BTC, had been submitted on 31-12-2018 by the Additional PCCF cum CHD BTC to the Joint Secretary to the Govt. of Assam where the names of the petitioner No. 1 Sri India Brahma and petitioner No. 2 Sri Bimal Chandra Narzary had been excluded from the list as the above petitioners were no longer working as casual workers after October, 2018. The No. 1 (one) petitioner left the engagement voluntarily during the month of March, 2018. The No. 2 petitioner was engaged in the year 2014 and he left voluntarily in the month of August, 2018. Both the two petitioners were negligent and unfit for regularisation in service. Further, whereabouts of the both petitioners are unknown, the above 2 Nos. of petitioners are not engaged in the departmental works after October, 2018. The above 2 (Two) Nos. of petitioners were negligent and disobedient in nature. Their names were not included in the list submitted on 31/12/2018 as they had already left the department.”

Mr. Maheswari has, however, strongly refuted the said contention of the respondent No. 6. Questioning the correctness of those averments, Mr. Maheswari submits that the affidavit is not sworn on the basis of information derived from record. Since the deponent was not in office during the relevant point of time, he could not have made those statements based on his personal knowledge. Under the circumstances, Mr. Maheswari has made a request to discard the statement made in the counter affidavit. He has also submitted that his clients had never quit their jobs voluntarily but they were ousted from service due to engagement of respondent No. 8 and 9.

I have considered the submission made at the bar and have also gone through the materials available on record. From the documents annexed to the writ petition it is

established beyond doubt that both the petitioners were engaged as muster roll workers under the department of Forest and Environment, BTC, Kokrajhar and they were also drawing monthly remuneration as per projection made in the relevant notification. However, all of a sudden, both the writ petitioners were disengaged as muster roll workers. Aggrieved thereby they have immediately approached this Court by filing the instant writ petition. Under the circumstances it is not possible for this Court to accept the stand of the department that the petitioners had voluntarily quit their jobs.

Insofar as the allegation of nepotism is concerned, although the petitioners have made specific allegation in the writ petition against the respondent Nos. 7, he has neither appeared nor denied such allegations. Even the departmental authority had not denied the averments made in the writ petition to that effect.

Under the circumstances, this Court will have to accept the allegations as true. If that be so, it is well established on the face of the record that the respondent No. 7, who was holding office of respondent No. 6 at the relevant point of time had exercised his power and authority and ousted the petitioners who were replaced by the respondent Nos. 8 and 9 being motivated by the fact that they are his close relatives.

Since the decision of the Supreme Court in the case of ***State of Haryana & Ors. Vs. Piara Singh & Ors.*** reported in ***(1992) 4 SCC 118***, law is firmly settled that one set of ad-hoc employees cannot be replaced by another. In the present case this is precisely what has happened. Both the petitioners were serving as ad-hoc employees, i.e. as muster roll worker and during their continuances in service they have been replaced by the respondent Nos. 8 and 9 by engaging them on ad-hoc basis. Therefore, the

disengagement of the petitioners so as to engage the respondent Nos. 8 and 9, is found to be illegal, arbitrary and contrary to the law laid down in the decision of the Supreme Court in the case of ***Piara Singh & Ors. (Supra)***.

Consequently, the respondent Nos. 1 to 6 are directed to reinstate the petitioners back in the original roll (muster roll), on the same terms and conditions, on which they were originally engaged, if necessary, by terminating the engagement of respondent Nos. 8 and 9. However, if the authorities can accommodate the petitioner Nos. 1 and 2 without disturbing the respondent Nos. 8 and 9 and without causing any prejudice to the interest of the writ petitioners, then it will be open for them to take appropriate recourse in the matter, on that behalf. This order be complied with within 60 (sixty) days from the date of receipt of a certified copy of this order(s).

With the above observation, this writ petition stands disposed of.

There would be no order as to cost.

JUDGE

GS

Comparing Assistant