



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

Case No. : WP(C)/38/2023

SHRI. ARVIND SINGH
AGED ABOUT 54 YEARS,
S/O LATE SHRI. CHHOTAY LAL,
PRESENTLY SERVING AS TECHNICAL CONSULTANT, CENTRAL
INSTITUTE OF HORTICULTURE, MEDZIPHEMA, NAGALAND

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF
INDIA, MINISTRY OF AGRICULTURE AND FARMERS WELFARE,
KRISHI BHAWAN, NEW DELHI - 110001

2:THE HORTICULTURE COMMISSIONER

DEPARTMENT OF AGRICULTURE

COOPERATION AND FARMERS WELFARE
MINISTRY OF AGRICULTURE AND FARMERS WELFARE
GOVERNMENT OF INDIA
KRISHI BHAWAN

NEW DELHI - 110001

3:THE ADDITIONAL COMMISSIONER(HORT-FRUIT)

DEPARTMENT OF AGRICULTURE

COOPERATION AND FARMERS WELFARE

MINISTRY OF AGRICULTURE AND FARMERS WELFARE

GOVERNMENT OF INDIA
KRISHI BHAWAN
NEW DELHI - 110001

4:THE DIRECTOR

CENTRAL INSTITUTE OF HORTICULTURE

DEPARTMENT OF AGRICULTURE AND FARMERS WELFARE
MINISTRY OF AGRICULTURE AND FARMERS WELFARE
GOVERNMENT OF INDIA

MEDZIPHEMA
DIMAPUR
NAGALAND

5:THE UNION PUBLIC SERVICE COMMISSION

REPRESENTED BY ITS CHAIRMAN

DHOLPUR HOUSE
SHAHJAHAN ROAD

NEW DELHI - 110006

Advocate for the Petitioner : T. B. JAMIR, R ALEMWATI JAMIR,I JAMIR

Advocate for the Respondent : CGSC,

Linked Case : WP(C)/39/2023

SHRI. ANJANI KUMAR SINGH
AGED ABOUT 51 YEARS

S/O SHRI RAM NARAYAN SINGH

PRESENTLY SERVING AS HORTICULTURE SPECIALIST
CENTRAL INSTITUTE OF HORTICULTURE
MEDZIPHEMA
NAGALAND

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF

INDIA
MINISTRY OF AGRICULTURE AND FARMERS WELFARE

KRISHI BHAWAN
NEW DELHI - 110001

2:THE HORTICULTURE COMMISSIONER

DEPARTMENT OF AGRICULTURE

COOPERATION AND FARMERS WELFARE
MINISTRY OF AGRICULTURE
GOVERNMENT OF INDIA
KRISHI BHAWAN

NEW DELHI - 110001

3:THE ADDITIONAL COMMISSIONER(HORT-FRUIT)

DEPARTMENT OF AGRICULTURE AND FARMERS WELFARE
MINISTRY OF AGRICULTURE
GOVERNMENT OF INDIA
KRISHI BHAWAN
NEW DELHI - 110001

4:THE DIRECTOR

CENTRAL INSTITUTE OF HORTICULTURE

DEPARTMENT OF AGRICULTURE AND FARMERS WELFARE
MINISTRY OF AGRICULTURE AND FARMERS WELFARE
GOVERNMENT OF INDIA

MEDZIPHEMA
DIMAPUR
NAGALAND

5:THE UNION PUBLIC SERVICE COMMISSION

REPRESENTED BY ITS CHAIRMAN

DHOLPUR HOUSE
SHAHJAHAN ROAD

NEW DELHI - 110069

Advocate for : T. B. JAMIR
Advocate for : CGSC appearing for THE UNION OF INDIA AND 4 ORS

::: PRESENT:::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioners : Mr. T.B. Jamir,
Advocate.

For the Respondent
Nos.1 to 4 : Mr. Yangerwati,
Central Government Counsel.

For the Respondent No.5 : Mr. Pfosekho Pfotte,
Advocate.

Date of Hearing : 25.11.2024.

Date of Judgment : 27.11.2024.

JUDGMENT AND ORDER (CAV)

These two writ petitions are filed under Article 226 of the Constitution of India challenging the Advertisement No.05/2023 inviting applications for filling up the Vacancy Nos.23030503311 & 23030502311, one post of Assistant Horticulture Specialist & one post of Horticulture Specialist at Central Institute of Horticulture, Department of Agriculture & Farmer's Welfare, Ministry of Agriculture & Farmer's Welfare, Government of India, Medziphema, Dimapur, Nagaland.

2. I have heard Mr. T.B. Jamir, the learned counsel appearing for both the petitioners. Also heard Mr. Yangerwati, the learned Central Government Counsel representing the Respondent Nos.1, 2, 3 and 4. Mr. Pfosekho Pfotte, learned counsel appears for Respondent No.5.

3. In the year 2006, applications were invited by the Central Institute of Horticulture (CIH) for appointment as Consultants on contract basis for a period not exceeding 12 (twelve) months for undertaking various activities of the CIH. The consolidated pay was fixed at ₹20,000/- per month. An interview was held

for selection of the Consultants (Technical). After completion of the recruitment procedure, both the present petitioners were selected. On 9th August, 2006, the Dy. Commissioner (Hort.) & OSD, CIH (Nagaland) approved the selection of the petitioner Anjani Kumar Singh. His monthly salary was fixed at ₹20,000/-. Similarly, on 4th July, 2007, the selection of the petitioner Arvind Singh was approved for appointment as Consultant (Technical) on contractual basis for a period of 1(one) year. His salary was fixed at ₹20,000/- per month.

4. Although both the petitioners were initially appointed for a period of 1(one) year, their appointments were renewed several times till 2023. On some occasions, their salaries were also increased to ₹25,000/- per month.

5. In the meantime, on 03.12.2020, both the present two petitioners along with some other employees filed a representation before the Additional Commissioner (Hort.-Fruit), Department of Agriculture, Co-operation & Farmer's Welfare, Ministry of Agriculture & Farmer's Welfare, Government of India, Krishi Bhawan, New Delhi praying for absorption of their services as regular employees of CIH.

6. While their representation was still pending before the authority, in the year 2023, the impugned Advertisement No.05/2023 was published by the Union Public Service Commission inviting applications for filling up the posts of Assistant Horticulture Specialists & Horticulture Specialists in CIH, Nagaland.

7. The grievances of the petitioners are that the petitioners Anjani Kumar Singh had already worked for 17 years continuously and Arvind Singh has been working for 16 years continuously. Arvind Singh is now 55 years old and Anjani Kumar Singh is now 52 years old. In this way, Arvind Singh has now 5 years of service left, after which he will retire. Anjani Kumar Singh has 8 years of service left and he would retire after 8 years from now.

8. Both the petitioners have pointed out that for filling up posts of Assistant

Horticulture Specialists, the relevant Rule says that 67% shall be directly recruited and 33% by promotion, failing which by deputation (including short term contract).

9. Both the petitioners have submitted that when they were initially appointed as Consultants (Technical), the posts of Assistant Horticulture Specialists was already created. Even then, they were appointed on contract basis, after a regular process of recruitment.

10. For the aforesaid reasons, both the petitioners prayed to quash the aforementioned Advertisement. They also prayed that a direction needs to be issued to the respondents to absorb them permanently in the posts of Horticulture Specialist in CIH pursuant to the letter dated 07.12.2011 issued by the Department of Agriculture & Co-operation, Ministry of Agriculture, Government of India.

11. The Respondent Nos.1 to 4 have admitted everything in their affidavit-in-opposition. They simply said that since the petitioners were appointed on contract basis, therefore the aforesaid Advertisement was published through UPSC to recruit regular staff, in CIH as per Recruitment Rules.

12. The respondent UPSC simply submitted that according to the request made by the Respondent Nos.1 to 4, they published the Advertisement.

13. In order to buttress his point, Mr. Jamir has relied upon a judgment of the Hon'ble Manipur High Court which was delivered in WP(C) No.519/2018. The aforesaid judgment was passed by the High Court on a similar situation like the present one. In the case before the Manipur High Court, a similar advertisement issued by the Registrar of Manipur Technical University was quashed and the University was directed to provide regular appointment to the contract employees from the date of their initial appointments.

14. The learned counsel Mr. Jamir has submitted that both the petitioners

were recruited after a regular process of recruitment and even then, they were appointed on contract basis and on fixed pay. Mr. Jamir has submitted that for the last 16/17 years both the petitioners contracts were extended and they have been regularly providing their services to CIH. The petitioners had the legitimate expectations that their services would be regularized one day. Mr. Jamir has pointed out that the petitioner Arvind Singh has only 5 years of service left and after which he will retire. The learned counsel has submitted that if he is now removed and a new person is recruited in his post, he will never get any other job anywhere because of his age. Similar is the case of Anjani Kumar Singh.

15. The learned counsel Mr. Jamir has relied upon three other decisions of the Hon'ble Supreme Court which were delivered in *National Buildings Construction Corporation vs. S. Raghunathan & Ors.*, reported in (1998) 7 SCC 66; in *WG CDR A.U. Tayyaba (Retired) & Ors. vs. Union of India & Ors.*, reported in (2023) 5 SCC 688 and in *Pradip J. Mehta vs. Commissioner of Income Tax, Ahmadabad*, reported in (2008) 14 SCC 283.

16. Paragraphs 18, 20, 21, 22 and 23 of *National Buildings Construction Corporation* (supra) are quoted as under:

“**18.** The doctrine of "Legitimate Expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is making to violation of natural justice. It was in this context that the doctrine of "Legitimate Expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "Legitimate Expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.

20. Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* (1985) AC 374 laid down that doctrine of "legitimate Expectation" can be invoked if the decision which is challenged in the Court has some person aggrieved either (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some

benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he had received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn. (Emphasis supplied).

21. The Indian scenario in the field of "Legitimate Expectation" is not different. In fact, this Court, in several of its decisions, has explained the doctrine in no uncertain terms.

22. In *Navjyoti Coop. Group Housing Society and others vs. Union of India and others*, (1992) 4 SCC 477, the decision of the House of Lords in *Council of Civil service Unions v. Minister for the Civil Service* (supra) was followed and that decision was summarised in the following words:-

" It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons."

23. This Court further observed as under:- (SCC pp. 494-95), paras 15 and 16)

" The existence of 'legitimate expectation' may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reason of public policy to justify its doing so. In a case of 'legitimate expectation' if the authority proposes to defeat a person's 'legitimate expectation' it should afford him an opportunity to make representations in the matter.

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It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation' the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in."

17. Paragraph 29, *WG CDR A.U. Tayyaba (Retired)* (supra) is quoted as under:

“**29.** A person is said to have a reasonable or legitimate expectation if a representation or a promise made by an authority, either expressly or impliedly, gives room for such expectation in the normal course. While applying the doctrine of legitimate expectation, the primary considerations are reasonableness and fairness of the state action. In *State of Jharkhand v. Brahmaputra Metalics Ltd., Ranchi*,¹⁰ this Court speaking through of one us (D.Y. Chandrachud J) elaborated on the doctrine of legitimate

expectation in the following terms:

“**50.** ...The state must discard the colonial notion that it is a sovereign handing out doles at its will. Its policies give rise to legitimate expectations that the state will act according to what it puts forth in the public realm. In all its actions, the State is bound to act fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary state action which Article 14 of the Constitution adopts.”

18. Paragraph 23 *Pradip J. Mehta* (supra) is quoted as under:

“Although, the [judgments referred to above](#) were cited at the Bar in the High Court, which were taken note of by the learned Judges of the Bench of the High Court, but without either recording its agreement or dissent, it answered the two questions referred to it in favour of the Revenue. Judicial decorum, propriety and discipline required that the High Court should, especially in the event of its contra view or dissent, have discussed the aforesaid judgments of the different High Courts and recorded its own reasons for its contra view. We quite see the fact that the judgments given by a High Court are not binding on the other High Court(s), but all the same, they have persuasive value. Another High Court would be within its right to differ with the view taken by the other High Courts but, in all fairness, the High Court should record its dissent with reasons therefor. The judgment of the other High Courts, though not binding, have persuasive value which should be taken note of and dissented from by recording its own reasons.”

19. According to Mr. Jamir, the State must discard the colonial notion that it is a sovereign handing out doles at its will. Mr. Jamir has submitted that it is an elementary requirement of the guarantee against arbitrary State actions which Article 14 of the Constitution adopts. He has further submitted that doctrine of legitimate expectation has its genesis in the field of administrative law. The Government and its Departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion.

20. The learned C.G.C. has relied upon the decision of the Hon’ble Supreme Court that was delivered in *Secretary, State of Karnataka & Ors. vs. Umadevi (3) & Ors.*, reported in (2006) 4 SCC 1. Paragraph 47 of the judgment is quoted as under:

“**47.** When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

21. In reply to the submission of learned C.G.C., Mr. Jamir has pointed out that the decision in *Umadevi (3) & Ors.* (supra), is not applicable in the present case. The learned counsel has relied upon a decision of the Hon’ble Supreme Court that was delivered in *Vinod Kumar & Ors. Etc. vs. Union of India & Ors.* arising out of *SLP(C) Nos.22241-42 of 2016*.

22. In *Vinod Kumar & Ors.* (supra), the appellants filed writ petitions before the Hon’ble High Court challenging judgments of the Central Administrative Tribunal. The Tribunal negated the appellants’ plea for regularization and absorption into the post of Accounts Clerk against which they were temporarily appointed. In spite of working more than 25 years, their services were not regularized. When they approached the High Court against the judgment of the Tribunal, the High Court held that since the appellants were under a temporary scheme, that could not confer upon them the rights akin to those held by permanent employees. That view of the High Court was based on *Umadevi (3) & Ors.* (supra).

23. The Hon’ble Supreme Court has held that the judgment passed in *Umadevi (3) & Ors.* (supra), distinguished between “irregular” and “illegal appointments” underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed rules and

procedures, cannot be said to have been made illegally if they had followed the procedure of regular appointments such as conduct of written examination or interviews.

24. Mr. Jamir has pointed out that when the present two petitioners were selected for appointments in the CIH, a thorough process of recruitment including interviews were held as in the case of *Vinod Kumar & Ors.* (supra) and therefore, *Umadevi (3) & Ors.* (supra) is also not applicable in the present case.

25. I have considered the submissions made by the learned counsel of both sides.

26. Both the petitioners were recruited after an exhaustive process of interview. They have worked continuously for 16/17 years. Their monthly salaries were also increased from time to time. Naturally, they had the legitimate expectations that they would be absorbed into regular service. Both of them are in their 50s. Now, they are not eligible for getting another service at this age. Our country is a welfare State. It is the duty of the State to do good for its citizens. This is an elementary requirement of the guarantee against arbitrary State action which Article 14 of our Constitution adopts. Every act of the State must be reasonable and fair. The State and its Departments in administering the affairs of the country are expected to honour their statements of policy or intention and treat the citizens with full personal considerations without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice.

27. In the case in hand, the intention of the Respondent Nos.1 to 4 to fill up the posts of Horticulture Specialists in CIH before regularizing the present 2(two) petitioners in their services is absolutely arbitrary and unfair, as well as against the mandate of our Constitution. Allowing the Respondent Nos.1 to 4 to

recruit Horticulture Specialists would destroy the lives of the present two petitioners.

28. Now, this Court is of the opinion that the Advertisement No.05/2023 inviting applications for filling up the Vacancy Nos.23030503311 & 23030502311 is a violation of the principles of natural justice and administrative fair play. Therefore, Advertisement No.05/2023 inviting applications for filling up the Vacancy Nos.23030503311 & 23030502311 is quashed. The respondent UPSC is at liberty to start the procedure of recruitment for other posts.

29. The Respondent Nos.1 to 4 are directed to regularize the services of the present two petitioners from the date of their initial appointments.

With the aforesaid direction, both the writ petitions are disposed of.

JUDGE

Comparing Assistant