GAHC010092862018

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

Case No. : WP(C)/2838/2018

SMTI. KALPANA BALA DAS
W/O SHRI DIBYAJYOTI KALITA
H/O 64, VIDYA MANDIR PATH,
BHETAPARA
GUWAHATI, PIN - 781028,
DIST. KAMRUP (M), ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS.
REP. BY THE SECRETARY , GOVT. OF INDIA, MINISTRY OF SCIENCE AND TECHNOLOGY, DEPARTMENT OF SCIENCE AND TECHNOLOGY, TECHNOLOGY BHAVAN, NEW MEHRAULI ROAD, NEW DELHI-110016.

2:THE INSTITUTE OF ADVANCED STUDY IN SCIENCE AND TECHNOLOGY

REP. BY THE DIRECTOR
IASST
VIGYAN PATH PACHIM BORAGOAN
GARCHUK
GUWAHATI- 781035.

3:THE DIRECTOR

THE INSTITUTE OF ADVANCED STUDY IN SCIENCE AND TECHNOLOGY
VIGYAN PATH
PACHIM BORAGAON
GARCHUK
GUWAHATI-781035.

4:THE CHAIRMAN

ACADEMIC COMMITTEE

THE INSTITUTE OF ADVANCED STUDY IN SCIENCE AND TECHNOLOGY
VIGYAN PATH
PACHIM BORAGAON
GARCHUK
GUWAHATI- 781035.

5:THE REGISTRAR

THE INSTITUTE OF ADVANCED STUDY IN SCIENCE AND TECHNOLOGY
VIGYAN PATH
PACHIM BORAGAON
GARCHUK

GUWAHATI- 781035

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri S. Bharali, Advocate.

Advocates for the respondents : Ms. B. Sharma, CGC
Shri D. Gogoi, [R-2 to 5]

Date on which judgment is reserved : **12.11.2026**

Date of pronouncement of judgment : **12.11.2026**

Whether the pronouncement is of the operative part of the judgment? : NA
Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER

The present application under Article 226 of the Constitution of India has been filed seeking the following relief:

"*In the premises aforesaid, it is, therefore, respectfully prayed that Your Lordships may be pleased to admit this petition, call for the records and issue a Rule calling upon the Respondents to show cause as to why:-*

1) A writ in the nature of Certiorari shall not issued to set aside/quash the impugned order vide Memo No. IASST/PF/17-18/16791-16796 dated 14/03/2018 issued by the Respondent no. 5 to the extent that "no further extension will be made after expiry of the two months period" (Annexure-K) and/or;

2) A writ in the nature of Mandamus shall not be issued directing the Respondents to forthwith cancel/recall/rescind/forbear from giving affect to the impugned order vide Memo No. IASST/PF/17-18/16791-16796 dated 14/03/2018 issued by the Respondent no. 5 to the extent that "no further extension will be made after expiry of the two months period" (Annexure-K) and/or;-

3) A writ in the nature of Mandamus shall not be issued directing the respondents to consider the representation dated 12.03.2018 (Annexure-J) submitted by the Petitioner by giving her an opportunity of hearing.

4) A writ in the nature of Mandamus shall not be issued directing the respondents to consider the appeal dated 09/04/2018(Annexure-L) submitted by the petitioner

5) A writ in the nature of Mandamus shall not be issued directing and commanding the Respondents not to terminate the service of the Petitioner and not to replace the Petitioner's service by another ad-hoc employee and/or-

Upon cause(s) that may be shown, after hearing the parties and perusal of records, Your Lordships may be pleased to make the Rule absolute and/or to pass any other appropriate order(s) or direction as Your Lordships may deem fit and proper.

-AND-

Pending disposal of the Rule, Your Lordships may be pleased to -

a) Direct the Respondents to not to terminate the service of the Petitioner and/or not to replace the service of the Petitioner by another ad-hoc employee.

And/or

b) Stay/Suspend the operation of the impugned order. vide Memo No.

IASST/PF/17-18/16791-16796 dated 14/03/2018 issued by the Respondent no. 5 to the extent that "no further extension will be made after expiry of the two months period" (Annexure-K). And/or to pass such further or other order(s) as Your Lordships may deem fit and proper.

And for this act of kindness, the petitioner as in duty bound shall ever pray."

2. As per the facts projected, an advertisement was issued by the Institute of Advanced Study in Science & Technology (herein after IASST) on 09.11.2013 for various posts including the post of Office Assistant. The petitioner being eligible had applied for the said post. The recruitment consisted of written test followed by *viva-voce* and in the same, the petitioner was selected and was initially appointed vide an order dated 12.08.2014 for a period of 3 (three) months. The said services were however on contractual basis. On 13.08.2014, the petitioner had joined the services. It is the case of the petitioner that the services were extended from time to time for various durations and before such extension, there was a requirement to have the views of the Supervising Officer. Vide the extension dated 26.08.2015, the services were extended by a period of one year. It is also the case of the petitioner that on completion of every year of service, there was an enhancement of the salary by 10%. For the year 2017, the remarks by the Supervising Officer was in favour of an extension for one year. However, such extension was given for a period of 6 (six) months. The petitioner contends that such action was only because of the fact that in the meantime, the petitioner was having pregnancy. It is also the case of the petitioner that she had pregnancy related ailments and her expected date of delivery was 25.06.2018. On 16.02.2018, the petitioner had applied in the prescribed format for extension of service. However, for the first time, there was an adverse remark regarding performance and regularity and accordingly, the

last extension though given vide the impugned order dated 14.03.2018 was for 2 (two) months only. It was also stated that there will be no further extension.The petitioner had preferred an appeal against the impugned order dated 14.03.2018 which was not considered and accordingly the instant petition has been filed.

3. I have heard Shri S. Bharali, learned counsel for the petitioner. I have also heard Ms. B. Sharma, learned CGC and Shri D. Gogoi, learned counsel for the respondent nos.2 to 5.

4. Shri Bharali, the learned counsel for the petitioner has submitted at the outset that while the petition was moved, this Court vide order dated 09.05.2018 had passed an interim order and the said interim order was extended from time to time. He however hastens to add that in spite of such interim orders, the petitioner was not allowed to discharge her duties.

5. Coming to the merits of the case, the learned counsel for the petitioner has submitted that though her induction in the services of the respondent no.2 was contractual in nature and for a particular duration, such duration was extended after timely review on the performance. He also submits that though such durations were for various period, vide the order dated 26.08.2015, the extension was given for a period of one year with the further grant of enhancement of pay by 10% per year. He submits that as per the requirement, there is a formaton which applications for extension are to be submitted and there is a requirement of the remarks of the Supervising Officer. He submits that in all such extension formats, there were favourable remarks by the Supervising Officer recommending for grant of extension. However, the attitude of the respondent no.2 had changed when the petitioner had become pregnant and in spite of there being a favourable remark for granting extension for one year,

such extension was given by only 6 (six) months. He has submitted that the last application for extension dated 16.02.2018 was not considered in the proper perspective and the Supervising Officer had made an adverse remark regarding her performance and regularity. He submits that apart from the aspect that such remarks were not communicated, those remarks *ex facie* appears to be made without any application of mind to the relevant factors, namely, that the petitioner was suffering from ailments related to her pregnancy. This culminated in the impugned order dated 14.03.2018 whereby though the services of the petitioner though extended, was only for a period of 2(two) months with a further stipulation that there would be no further extension. By drawing the attention of this Court to the Maternity Benefit Act, 1961, he has submitted that the impugned action is in violation of the provisions of the said Act, more particularly, Section 5 and 12. In this regard, he has placed reliance on the case of the Hon'ble Supreme Court reported in ***(2024) 1 SCC 421 (Dr. Kavita Yadav vs. Secretary, Ministry of Health and Family Welfare Department and Ors.)***. He has submitted that the benefits has to be granted even to a contractual employee and the impugned action clearly appears to be in violation of the aforesaid provision wherein the Hon'ble Supreme Court has deprecated the practice of discharging employees, who were pregnant and suffering from pregnancy related ailments.He has also submitted that similarly situated persons have been given the benefit of regularisation of service.

6. The learned counsel for the petitioner has submitted that there is a requirement for consideration of the case of the petitioner by proper application of mind which has not been done and accordingly, appropriate directions are required to be issued.

7. *Per contra*, Shri Gogoi, the learned counsel for the respondent nos.2 to 5

has defended the order dated 14.03.2018. At the outset, he has submitted that there is no violation of the interim order dated 09.05.2018 and as there was no direction as such to continue with the services of the petitioner. He otherwise submits that such continuation would be within the discretion of the Institute.

8. On the merits of the case, the learned counsel for the respondents has submitted that the last extension dated 14.03.2018 was based on the remarks made by the Supervising Officer which is one of the relevant factors. Since there was an adverse remark regarding the performance and regularity, the order dated 14.03.2018 was passed whereby, there was no discharge as such but an extension which was for 2 (two) months. He has submitted that there is no *mala fide* involved in the aforesaid action and there is no violation to the provisions of the Maternity Benefit Act, 1961.

9. So far as the aspect that certain contractual employees were regularized in service, the learned counsel for the respondents has denied the same and has drawn the attention of this Court to the additional affidavit filed on 25.08.2026 whereby such recruitment has been done after a fresh advertisement issued in the year 2023. He has submitted that in the said recruitment, the petitioner did not participate and therefore, the present claim would not be maintainable. He has also submitted that in future, if any need arises, the petitioner would be considered, if she applies for the same.

10. In his rejoinder, Shri Bharali, the learned counsel for the petitioner has submitted that the advertisement of the year 2023 contains a specific clause on the age and it was only for in-house candidates for whom the upper age was relaxed and therefore, the petitioner could not participate in the same due to over age. He reiterates that the impugned order dated 14.03.2018 is nothing but an order of discharge from service which is in violation of the law as well as

based on irrelevant factors.

11. The rival contentions advanced in the Bar have been duly considered and the materials placed before this Court have been carefully perused.

12. There is no manner of doubt that though the initial appointment of the petitioner was in contractual service for a particular duration, the same was preceded by a recruitment process in which the petitioner was found to be successful. A perusal of the duties and responsibilities which have been assigned in the order of appointment would also give an idea that such duties are not for a particular period. The fact that the contractual appointment was extended from time to time which also included an extension for a period of one year vide order dated 26.08.2015 would also fortify the impression given that such services were not limited by any particular duration or was not connected with any project which has come to an end. This Court has also noticed that in all extension, there was a requirement for a remark by the Supervising Officer and such remarks were found to be consistently in favour of the petitioner. The problem arose when the petitioner had become pregnant and was also suffering from pregnancy related ailments.

13. Under those circumstances, the application for extension dated 16.02.2018 in which there were adverse remarks regarding performance and regularity requires to be carefully examined. It is also the case of the petitioner that such adverse remarks have not been communicated to her. The aforesaid remark,when viewed in the light of the previous remarks, which were in favour of the petitioner, coupled with the fact that the petitioner was having pregnancy related ailments and was entitled to the protection of the Maternity Benefit Act, 1961, does not appear to be consistent and reasonable. At the same time, this Court by taking into consideration the facts and circumstances is also of the

opinion that an employer cannot be forced to employee the petitioner on contractual grounds unless such service is required. The subsequent recruitment drive for similar nature of work, however gives the idea that the services cannot be said to be not required. The long duration of service rendered by the petitioner since her appointment in the year 2014 till the last extension in the year 2018 would also give an idea that the services cannot be treated to be temporary in nature.The appeal submitted by the petitioner has also not been considered and communicated to the petitioner.

14. At this stage, the affidavit-in-opposition filed by the respondent nos.2 to 5 on 06.01.2021 is required to be taken into consideration. In paragraph 7 of the said affidavit, a general proposition has been laid down that the said posts are retained after extension of their services for further period if their services are required in the said section and if their performance is satisfactory in the previous period as well as if the employees fulfil some other relevant conditions otherwise their services are not extended. For ready reference, the relevant averments are extracted herein below:

> "*7. That with regard to the statements made in paragraph 6 of the petition, your deponent begs to state that all the statements are not true and correct and hence same are denied by the answering deponent. The answering deponent begs to state that in her appointment letter, the duties and responsibilities of the petitioner as Office Assistant had been assigned to her. Be it mentioned here that in the Academic Section of the Institute, there are regular employees to perform the day to day works. But in some period of time, due to certain short-term over work load in the section, additional men power is required to mitigate the work load. It is not true and correct that post of Office Assistant is very essential post in Academic Section to run the work in the said section of the Institute. In fact, the contractual employees are appointed for a specific work for a specific period to manage the work load in the various sections of the Institute and all are equally essential. The said posts are retained after*

extension of their services for further period if their services are required in the said section and if their performance is satisfactory in the previous period as well as if the employees fulfil some other relevant conditions otherwise their services are not extended."

15. Upon consideration of the facts and circumstances, this Court is of the opinion that the matter is required to be re-looked by the employer, namely, the respondent no. 2 by taking into consideration the relevant factors. Amongst others, the performance of the petitioner for the period 2014 till the last extension order including the remarks which were favourable for the petitioner are to be taken into consideration. The consideration would also be on the aspect on the petitioner's, plea to have the benefit under the Maternity Benefit Act, 1961. It is needless to state that if the decision is against the petitioner, appropriate reasons are to be assigned and communicated. To facilitate such consideration, the petitioner is required to file a detailed representation within a period of 2 (two) weeks from today and if the same is done, the respondent authorities is directed to consider the same within a period of 3 (three) weeks from the date of receipt of such representation. During such consideration, the petitioner is also required to be given a personal hearing so as to enable her to place her case in the proper perspective. As mentioned above, the outcome of such consideration be communicated to the petitioner in writing. It is needless to state that if the petitioner is aggrieved by such consideration, she would be at liberty to approach this Court.

16. Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant