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Court : Guwahati

Decided On : Aug-18-2003

Judge : Ranjan Gogoi, J.

Acts : Assam Public Services (Ad hoc) Appointment Rules, 1986

Appeal No. : WP(C) No. 388 of 1999

Appellant : Dilip Kumar Paul and ors.

Respondent : State of Assam and ors.

Advocate for Def. : B.J. Talukdar, Adv.

Advocate for Pet/Ap. : N. Dhar and T. Dhar, Advs.

Disposition : Petition allowed

Judgement :

Ranjan Gogoi, J.

1. Heard Mr. N. Dhar, learned counsel for the petitioners and Mr. B.J. Talukdar, learned Government Advocate, Assam.

2. The petitioners were appointed as Junior Engineers under the Directorate of Panchayat and Rural Development, Government of Assam by an order dated 26.11.1986. The aforesaid appointments were made under the provisions of the

Assam Public Service (Ad hoc) Appointment Rules, 1986 (since repealed). The petitioners joined service and as it would be evident from the materials brought on record, they were granted increments of pay from time to time by orders passed by the concerned authority. Thereafter, by an order dated 31.1.1990, the petitioners' services were regularized on the recommendation of the Assam Public Service Commission. As by a series of identical orders dated 2.3.1993, the petitioners were granted the initial pay in the revised scale of pay applicable to Junior Engineers effective, from 1.1.1989 and the benefits of increments earned had not been granted to the petitioners in the revised scale of pay, the instant writ petition has been filed.

3. No affidavit has been filed by the State opposing the claims made in the writ petition.

4. Mr. Dhar, learned counsel for the petitioners submits that as the appointment of the petitioners as ad hoc employees were made under the provisions of the Rules in force and such ad hoc service was regularized on the recommendation of the Assam Public Service Commission, the petitioners would be entitled to the benefit of increments earlier granted to them, while fixing their pay in the revised scale. This is particularly so because the services rendered by the petitioners have been continuous and without any break. In this regard, the learned counsel for the petitioners has placed reliance on an Apex Court judgment in the case of State of Haryana v. Amarjit Singh, reported in (1996) 11 SCC 725. Another judgment of the Apex Court in the case of Raj Kishore Vishwakarma and Ors. v. Union of India and Ors., reported in (1997) 11 SCC 619 has also been cited.

5. In the case of State of Haryana v. Amarjit Singh (supra), the respondent Amarjit Singh was successively appointed on ad hoc basis as a Sub-Inspector in the department of Food and Supplies of the Government of Haryana. Each time, the ad hoe appointment was terminated and he was re-appointed. The ad hoc appointment made in such circumstances, on 15.11.1971, continued till the time of the respondent's regularization in service on 27.6.1972 following the selection made by the Subordinate Services Selection Board. The respondent filed a civil suit praying for the benefit of past service rendered by him both for fixation of pay

as well as for seniority. The suit was partly decreed granting the benefit of past service from 15.11.1971 (the date of continuous service) for fixation of pay but the same was dismissed in so far as the claim of seniority is concerned. The High Court in second appeal having granted full benefits to the respondent, the State carried the matter to the Apex Court and it was held by the Apex Court that while the incumbent concerned would not be entitled to the benefit of the ad hoc service rendered, for determination of seniority, he would be entitled to the limited relief of the benefit of the past service rendered by him from 15.11.1971 for purpose of fixation of pay.

6. In the case of Raj Kishore v. Union of India (supra), the ad hoc appointments in question were made in relaxation of the Service Rules in force. The Apex Court held that such appointments, even if on ad hoc basis, will have to be taken to have been made under the Rules and, therefore, the incumbents would be entitled to the period of ad hoc service for computation of seniority. The facts in Raj Kishore (supra) are different and the decision does not assist the petitioners in the present case.

7. Mr. Talukdar, learned Government Advocate, Assam opposing the grant of relief prayed for in the present case, has submitted that the entitlement of incumbents to have their ad hoc services counted for determination of seniority, has been negatived by the Apex Court in the Direct Recruit Engineering Case. Learned State counsel has argued that if ad hoc service cannot be counted for seniority, such service cannot also be counted for purposes of fixation of pay. That apart, the grant of the benefit of ad hoc service to the petitioners for fixation of their pay, may have the effect of disturbing seniority of other persons, it is argued.

8. The rival submissions have been duly taken note of. The initial appointments of the petitioners, on ad hoc basis, were made under the provisions of the Rules in force empowering the State to make such ad hoc appointments. The said appointments continued until the regularization made by order dated 31.1.1990. The petitioners were also granted the benefit of increments during the period of ad hoc service by the concerned authority. In view of the similarity of facts of the present case with the facts in the case of State of Haryana v. Amarjit Singh

(supra), I am of the considered view that the petitioners would be entitled to the benefit of the previous increments earned during the period of ad hoc service rendered by them and they would be entitled to have the period of their service recovered for the purposes of fixation of pay. Accordingly, the order dated 2.3.1993 shall stand set aside and the matter remanded to the authority for fresh decision in accordance with the principles laid down herein.

9. The writ petition stands allowed as indicated above.

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