

Mohan Chandra Deka and ors. Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Jan-21-2004

Judge : D. Biswas, J.

Acts : [Government of India Act, 1935](#) - Sections 241(2); [Constitution of India](#) - Article 395

Appeal No. : WP(C) No. 579, 6471 of 2001, 7161 and 7127 of 2000; 832 of 2002, 1309 and 1833 of 2003

Appellant : Mohan Chandra Deka and ors.

Respondent : State of Assam and ors.

Advocate for Def. : Singh, Adv.

Advocate for Pet/Ap. : M.K. Choudhury, M. Dutta and A. Barkakati, Adv.

Judgement :

D. Biswas, J.

1. The petitioner in the all these writ petitions were appointed on ad hoc basis as Deputy Director of Industries and Functional Manager, an equivalent post, by the orders of appointment passed by the competent authority at different point of time from the year 1987 onwards. The petitioners though initially appointed on ad hoc have been allowed to continue without any interruption till date. Subsequently, in

terms of the condition of appointment, the petitioners appeared before the Assam Public Service Commission for selection and the Commission after completion of selection process recommended their case for appointment. The notification dated 19.9.1995 issued by State Government shows that the writ petitioner in W.P. (C) No. 579 of 2001 was regularized in service in the cadre of Assistant Director of Cottage Industries with effect from the date of recommendation, i.e., 29th December, 1994 by the Commission. Similarly, notifications regularizing the services of other writ petitioners have been issued in all other writ petitions with effect from the date of their recommendations.

2. Mr. Choudhury, learned counsel for the petitioners submitted that the petitioners on appointment on ad hoc basis, except the petitioners of W.P.(C) No. 832 of 2002, W.P.(C) No. 7127 of 2000 and W.P.(C) No. 1309 of 2003, were given the benefits of increment on completion of a year of service. According to Shri Choudhury, the writ petitioners who have been allowed to continue since the date of appointment on ad hoc basis are entitled to the benefit of annual increment, particularly because of the fact that their services have been regularized on the recommendations of the Commission. In support of this contention, Shri Choudhury has referred to a judgment delivered by this Court in Tarun Tamuli v. State of Assam and Ors. (2001) 1 GLT 87. It would be apt to quote hereinbelow the relevant observation recorded in the aforesaid judgment :

'7. Ad hoc employees whether appointed in pursuance of Rules or otherwise acquires a status as Government servant on such appointment. They cannot be treated at parts with appointees on contract or fixed pay. Their service conditions will be governed by the Rules and Regulations as may be applicable to other Government servants so long they are retained in service. Fundamental Rules as are applicable to other Government servants should also govern their service conditions in other spheres including pay matters. Here, we may refer to the following provisions of the Fundamental Rules relevant for this purposes :

'F.R. 24. An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by the State Government, or by any authority to whom the State Government may delegate this

power or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments.

F.R. 26(a). All duty in a post on a time scale counts for increments in that time-scale :

Provided that for the purpose of arriving at the date of next increment in the time-scale, the total periods as do not count for increment in that time-scale shall be added to the normal date of increment.'

8. The provisions above clearly show that increment of a Government servant is to be drawn as a matter of course unless it is withheld for misconduct or unsatisfactory performance. The provisions in F.R. 24 and F.R. 26 do not exclude the ad hoc Government servants. The Fundamental Rules were framed under provisions of the [Government of India Act, 1935](#). The said Act was repealed by Article 395 of the [Constitution of India](#), but the Fundamental Rules made under provisions of Section 241(2)(b) of the Act of 1935 have been saved. The Fundamental Rules are the laws for the State and, therefore, any decision of the Government contrary to the provisions of the Fundamental Rules will have to be struck down. The impugned notification dated 23.9.1997 being ultra vires of the Fundamental Rules cannot be sustained. The learned State counsel could not show any statutory provision which has overriding effect so as to enable this Court to uphold the notification.'

3. It is clear from above observation recorded in Tarun Tamuli (supra) that the writ petitioner in the instant case will be entitled to the benefit of annual increment from the date of their initial appointment since they have been regularized in service, though regularization has been with effect from the date of recommendation by the Commission. This decision will not be applicable in respect of seniority of the writ petitioners which for all purposes will have to be computed from the date of their regularization in order of merit as indicated in the recommendations of the Commission.

4. Subject to the above observations, the writ petitions stand disposed of.

No order as to costs.

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