

IN THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extraordinary Jurisdiction)

WP (C) No. 33 of 2018

Shri Rajen Kumar Chettri,
Son of late Kul Bahadur Chettri,
Resident of Jorethang, P.O. & P.S. Jorethang,
South Sikkim.

... Petitioner

Versus

1. State of Sikkim,
Through the Chief Secretary,
Government of Sikkim,
Gangtok.
2. Secretary,
Energy & Power Department,
Government of Sikkim,
Gangtok.
3. Superintending Engineer (South)
Energy & Power Department
South Circle, Jorethang,
South Sikkim.
Dena Bank, Gangtok Branch.

... Respondents

BEFORE
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CJ.

For the Petitioners : Mr. B. Sharma, Sr. Advocate with Mr. B.N. Sharma, Advocate.

For the Respondents : Dr. Doma T. Bhutia, Additional Advocate General with Ms. Tamanna Chhetri, Advocate.

Dates of hearing : 26.11.2019 & 29.11.2019

Date of judgment : 07.12.2019

JUDGMENT

(Arup Kumar Goswami, CJ)

Heard Mr. B. Sharma, learned Senior Counsel assisted by Mr. B.N. Sharma, learned counsel for the petitioner. Also heard Dr. Doma T. Bhutia, learned Additional Advocate General, Sikkim assisted by Ms. Tamanna Chhetri, learned counsel for the respondents.

2. The petitioner was initially appointed on muster roll basis during October, 1979 and thereafter he was brought under work-charged establishment with effect from 01.04.1980 by an order dated 10.04.1980. In pursuance of the notification dated 12.02.2014 issued by the Commissioner-cum-Secretary, Department of Personnel, Administrative Reforms, Training and Public Grievances, Government of Sikkim, by an order dated 20.09.2014 the petitioner came to be appointed as Junior Meter Reader, on probation for a period of one year from the date of joining. It was indicated therein that the appointment shall be governed by the Memorandum No. 1235/Adm. dated 19.09.2014.

3. The prayers made in the writ petition are as follows: -

- “(a) A Rule upon the respondent Nos.1 to 3 and each of them to show-cause as to why the case of the petitioner cannot be regularized w.e.f. 05.08.1984 and on subsequent dates as done in similarly placed incumbents;
- (b) Writ order/direction to the respondent No.2 or each of the respondents to regularize the service of the petitioner without putting him under probation and with retrospective effect by duly computing half of the entire work-charge service rendered by the petitioner;
- (c) A writ order/direction to the respondent No.2 or each of the respondents to grant up gradation pay duly considering the past services;
- (d) A writ order/direction to the respondent No.2 or each of the respondents to regularize the petitioner in the post of Meter Reader or higher post as the case may be duly correcting the office order dated 29.09.2014 with retrospective date and if necessary by relaxing the condition;

- (e) A writ order/direction to the respondent No.2 or each of the respondents to grant all service benefits with retrospective date as prayed above;
- (f) Cost of the case;
- (g) Any other relief or reliefs the petitioner is entitled to."

4. The petitioner in the writ petition has referred to the cases of one Kamal Bahadur Gurung and Tara Lohagan @ Lohar, who were brought under temporary regular establishment with effect from 01.11.1985 and 05.08.1984, respectively. It is pleaded that they were brought to work-charged establishment from muster roll line staff of Power Department along with the petitioner by the very same order dated 10.04.1980. It is on the basis of the order dated 05.08.1984 in respect of Tara Lohagan @ Lohar that the petitioner is claiming regularization with effect from 05.08.1984. The petitioner has also cited the instance of one Tilak Bahadur Rai, Assistant Turbine Operator, who was regularized with effect from 29.07.2004. One more instance, that of one Navin Tamang, is also brought into focus. It is stated that Navin Tamang is the son of one late Passang Tshering Tamang, who was brought into the work-charged establishment along with the petitioner, and while Navin Tamang is enjoying the basic pay of Rs.13,020/-, ironically, the basic pay of the petitioner is fixed at Rs.10,220/-. It is pleaded that the petitioner had been working as Meter Reader but by the order dated 20.09.2014 he was absorbed in the post of Junior Meter Reader.

5. Mr. Sharma has submitted that the respondents acted illegally and arbitrarily in not regularizing the service of the petitioner retrospectively with effect from 05.08.1984, i.e., the date when service of Tara Lohagan @ Lohar was regularized or from 01.11.1985 when Kamal Bahadur Gurung was regularized. He submits that though the order dated 20.09.2014 would show that the petitioner was appointed, that too, on probation, it is, in fact, an order of regularization of his service. Putting the petitioner on probation for

a period of one year is wholly uncalled for, unjustified and arbitrary. He has submitted that the petitioner has been grossly discriminated in the matter of regularization of his service. The petitioner could have been regularized with retrospective effect by taking recourse to Clause 37 of the Work-Charged Establishment Manual brought into force with effect from 01.06.1981 by a Notification dated 21.05.1981. When the petitioner was working as Meter Reader, there could not have been any justification for appointing him in a lower post of Junior Meter Reader. Further contention advanced by Mr. Sharma is that unlike in the orders dated 05.08.1984 and 01.11.1985 in respect of Tara Lohagan @ Lohar and Kamal Bahadur Gurung, respectively, in the order dated 20.09.2014, the benefit of Clause 21 of the Work-Charged Establishment Manual, providing that one half of the continuous service rendered in the work-charged establishment shall be treated as continuous and qualifying service in a regular establishment for purpose of pension and gratuity, was not reflected.

6. Relying on the affidavit dated 12.10.2018 filed on behalf of the respondents 1, 2 and 3, it is submitted by Dr. Bhutia that the Government had taken a sympathetic view in respect of temporary employees working as muster roll, ad hoc, work-charged, etc., who had completed 15 years of service or more as on 31.01.2013, to bring them on to regular establishment and for that purpose, 4002 posts in various Departments were created for appointment of such temporary employees belonging to Group 'C' and Group 'D'. 115 numbers of posts of Junior Meter Reader, which is a post in Group 'C' category, were created in the Energy and Power Department and the petitioner along with 16 others, who were appointed as Meter Readers on muster roll basis, were appointed as Junior Meter Readers.

7. She has submitted that without going to the merits of the writ petition, the writ petition is liable to be dismissed in view of gross and unexplained delay in claiming regularization of service with effect from 05.08.1984 in the

year 2018. The petitioner had voluntarily accepted the offer of appointment contained in the Memorandum dated 19.09.2014 and after accepting the offer of appointment and on being appointed, after a lapse of almost four years, the present petition was filed. In this context, she has relied on a decision of the Hon'ble Supreme Court in the case of ***State of Jammu and Kashmir vs. R.K. Zalpuri and others***, reported in ***AIR 2016 SC 3006***.

8. She further submits that Tara Lohagan @ Lohar and Kamal Bahadur Gurung were holding the post of Line Assistant on muster roll basis and they were brought in temporary regular establishment in the vacant posts of Line Assistant, which are Group 'D' posts. There were no vacant posts for Meter Reader. Since the petitioner was in muster roll in a different post, the petitioner is not similarly situated with the aforesaid employees. The post of Junior Meter Readers were created in which the petitioner was appointed and in absence of challenge to the creation of posts of Junior Meter Readers for the purpose of appointment of temporary employees such as the petitioner, the contention advanced by the petitioner that he has been downgraded is without any basis inasmuch as the petitioner was earlier working as Meter Reader in a work-charged establishment only and not in a regular establishment. By producing a document at the time of hearing, Dr. Doma submits that four verification committees had been constituted by the Energy and Power Department to scrutinize the cases of the temporary employees. Based on the above, she submits that Dhan Bahadur Chettri, who was a Meter Reader and whose name figured above the petitioner in the order dated 10.04.1980, was also appointed as Meter Reader along with the petitioner. Dr. Bhutia also places reliance in the case of ***State of Tamil Nadu Through Secretary to Government, Commercial Taxes and Registration Department, Secretariat and another vs. A. Singamuthu***, reported in ***(2017) 4 SCC 113***.

9. In reply, Mr. Sharma has submitted that the petitioner had demanded justice by submitting a representation for regularization as also for change of designation as Lower Division Clerk from the post of Meter Reader (Annexure P-14) on 27.03.1995, and therefore, this Court may also consider the case of the petitioner for regularization with effect from 27.03.1995.

10. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

11. Perusal of the notification dated 12.02.2014 (Annexure R-1 of the affidavit of the respondents) goes to show that 4002 posts in various Departments were created to exclusively appoint temporary employees belonging to Group 'C' and Group 'D' categories who had completed 15 years of service or more as on 31.01.2013. For Energy and Power Department, 860 posts in Group 'C', 820 posts in Group 'D' and 33 posts of Junior Driver, totaling 1713 posts, were created and categories of Group 'C' and Group 'D' posts were to be in terms of Annexure-VI thereto. Annexure-VI, as aforesaid, goes to show that a total number of 115 posts were meant for Junior Meter Readers. Based on the aforesaid notification dated 12.02.2014, the petitioner was offered appointment on temporary capacity to the post of Junior Meter Reader vide Memorandum dated 19.09.2014. One of the terms of appointment was that the work-charged employee shall draw the new pay structure with protection of pay in the form of personal pay. It was indicated that the permanent absorption of the appointee will be considered strictly in accordance with Rules in force for such appointment.

12. The petitioner had accepted the Memorandum dated 19.09.2014 and thereafter, order of appointment dated 20.09.2014 was issued indicating that he would be on probation for a period of one year from the date of joining.

13. It appears that the petitioner was subsequently regularized by order dated 25.04.2018, which is annexed as Annexure R-10 to the affidavit of the respondents. Though a grievance is raised by the petitioner that the respondents acted illegally in placing the petitioner on probation, it is to be noted that before the writ petition came to be filed in the month of June 2018, the period of probation had long back expired and therefore, this Court need not advert to this aspect of matter any further.

14. In ***R.K. Zalpuri*** (supra), the Hon'ble Supreme Court has emphasized that a writ Court, while deciding a writ petition, is required to remain alive to the nature of the claim and the unexplained delay on the part of the petitioner. Stale claims are not to be adjudicated unless non-interference would cause grave injustice.

15. In the aforesaid case, the employee was dismissed from service in the year 1999 and he did not choose to avail any departmental remedy and had knocked the doors of the High Court after a lapse of five years. In the aforesaid background the Supreme Court had observed that the grievance agitated by the employee did not deserve to be addressed on merits on the ground of delay and laches.

16. ***Singamuthu*** (supra) was a case relating to part-time employees who were working for more than ten years. They were regularized and provided grant of monetary benefits from the date of issuance of the Government Order (G.O.). The High Court had granted regularization to the employees from the date of completion of service of ten years with salary and other benefits. While setting aside the order of the High Court, the Hon'ble Supreme Court held that the employees would be entitled to the monetary benefits only from the date of issuance of the G.O.

17. I am of the considered opinion that the claim made by the petitioner for regularization of service with effect from 05.08.1984 in the post of Meter Reader, on the ground that a similarly placed incumbent had been granted regularization on 05.08.1984, is a stale claim and ought not to be gone into at this point of time. Mr. Navin Tamang was appointed on compassionate ground in the year 1995-96 and therefore, his case stands on a different footing. It also appears that Tilak Bahadur Rai was regularized on the basis of recommendation of the Departmental Promotion Committee. The submission of Mr. Sharma in reply that his case may be considered for regularization from the date of filing the representation, i.e. from 27.03.1995, is also without any merit. If there was any real grievance regarding he being meted out with discriminatory treatment, the petitioner ought to have approached the Court within a reasonable period of time and not after 34 years from 05.08.1984 or after 23 years from the date of filing the representation.

18. It is noticed that the petitioner was regularized as a Junior Meter Reader on 25.04.2018. The writ petition was filed on 29.06.2018, that is, after his service was regularized as Junior Meter Reader, raising a grievance that he ought not to have been appointed as a Junior Meter Reader. By the time the writ petition was filed, more than 3 ½ years had gone by from the date of his appointment on 20.09.2014 and the petitioner had also been regularized in the meantime as Junior Meter Reader and therefore, I am of the considered opinion that even this aspect of the matter, in the attending facts and circumstances of the case, ought not to be considered at this point of time in exercise of discretionary power under Article 226 of the Constitution of India.

19. Prayer (c) to the writ petition, to say the least, is vague and there is no factual foundation also in the writ petition for up gradation of pay.

20. In the affidavit, at paragraph 18, it is stated that since the petitioner falls under Contributory Pension Fund (CPF) Scheme, his service will be recognized only for gratuity benefits and the department will issue orders accordingly as and when the petitioner requires/retires. In that view of the matter, arguments advanced by Mr. Sharma that continuous service rendered by the petitioner in the work-charged establishment shall have to be treated as continuous and qualifying service in the regular establishment for the purpose of gratuity in terms of Clause 21 of the Work-Charged Establishment Manual, is not gone into and considered, reserving liberty to the petitioner to agitate the issue, if need be, in future, by putting forth all contentions in that regard.

21. In view of the above discussion, the writ petition is dismissed with observations as indicated herein above.

22. No costs.

Chief Justice

Approved for reporting : Yes

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