

IN THE GAUHATI HIGH COURT

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

ITANAGAR PERMANENT BENCH

WP(C)638(AP)2016

1. Shri Karto Basar and Others

.....petitioners

-Vs-

1. The State of Arunachal Pradesh and Ors

.....respondents

::BEFORE::

HON'BLE MR. JUSTICE A M BUJOR BARUA

By Advocates:

For the petitioners : Mr. T. T. Tara

For the respondents : Mr. T. Bayor ,
Mr. S. Tapin

Date of Hearing & Judgment : 20.06.2018

JUDGMENT & ORDER (ORAL)

Heard Mr. T. T. Tara, learned counsel for the petitioners and Mr. T. Bayor, learned counsel for respondent No. 3 as well as Mr. S. Tapin, learned counsel for State respondents.

2. All the petitioners herein were appointed pursuant to an advertisement dated 01.03.2002, issued by the Director, Rural Development Department, Government of Arunachal Pradesh, as Extension Officer (Rural Engineering). The

advertisement in question specifically provided that the scale of pay payable to the Extension Officer (Rural Engineering) would be Rs.4500-125-7000/- per month.

3. It is an admitted position of the parties that pursuant to the said advertisement, a selection process was conducted, wherein the petitioners had participated and pursuant thereof, they were selected and appointed. Although as per the advertisement, the petitioners ought to have been appointed against the scale of pay indicated therein, but for reasons best known to the authorities, the petitioners were appointed on a contractual basis against the fixed pay of Rs. 9000/- per month. It is to be taken note of that the appointment on contractual basis were made by various orders or the year 2003.

4. Later on, all the petitioners were appointed on an officiating basis by the order dated 16.11.2007 and on being so appointed, they were paid the scale of pay as applicable to them. Subsequently, by the order of 12.03.2012, the services of all the petitioners were regularized against the scale of pay applicable to Extension Officer (Rural Engineering).

5. It is stated by Mr. T. T. Tara, learned counsel for the petitioner that after the petitioners were regularized in their service, the Director of Audit and Pension, Government of Arunachal Pradesh is required to maintain their respective files. It is at this stage, a question had arisen as to whether the services of the petitioners are to be taken into account from the date of their initial appointment on contract basis in the year 2003 or it is to be taken into consideration from 12.03.2012, when they were regularized.

6. In the resultant circumstances, the Assistant Audit Officer in the office of the Director of Audit and Pension had issued a communication dated 27.08.2015 to the Block Development Officer, CD Block Kurung Kumey District, requiring the authorities to re-examine as to whether the service of the petitioners ought to be considered from their initial appointment in the year 2003 or from the date of actual regularization. The said communication of the authorities in the Director of Audit and Pension has been assailed by the petitioners on the ground that

considering the process by which the petitioners were appointed, their services ought to have been considered from the date of their initial appointment and the period between the date of their initial appointment up to the date of appointment on Ad-hoc basis or the date of regularization, cannot be ignored.

7. To that extent Mr. T. T. Tara, learned counsel for the petitioner refers to the decision of the Supreme Court rendered in the case of ***Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra and Ors.***, reported in **(1990) 2 SCC 715**, wherein in paragraph (47)(A) it has been held thus:

"Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation as the case may be."

8. The law laid down by the Supreme Court is clear to the extent that in the event, the initial appointment was made by following the due procedure of law, as provided in the Rules, the period of service from the date of initial appointment up to the date of actual regularization cannot be ignored and has to be taken into consideration for the purpose of counting the service period.

9. In the instant case, it has already been taken note of that the petitioners were appointed after participating in the selection process pursuant to the advertisement date 01.03.2002. It being so, it has to be construed that the petitioners were appointed by following the Constitutional scheme and their initial appointments were not irregular in any manner.

10. Secondly, it has also been taken note of that the advertisement of 01.03.2002 had specifically provided that the post of Extension Officer (Rural Engineering) would be against the scale of pay prescribed therein. Therefore, for all purpose, the petitioners having been appointed pursuant to the advertisement dated 01.03.2002, they ought to have been appointed against the scale of pay and not on a contractual basis.

11. For both the reasons, i.e. by considering the procedure by which the petitioners were appointed and though the advertisement provided for a scale pay, the case of the petitioners would be covered by the provisions laid down by the Supreme Court in the ***Direct Recruit Class II Engineering Officers Association (supra)*** as indicated above. Accordingly, the services rendered by the petitioners from the date of their initial appointments up to the date on which they were regularized, cannot be ignored and the entire period of service from the date of initial appointment has to be taken into account for determining the service benefits that the petitioners would be otherwise entitled to.

12. However, it is also provided that although the petitioners were initially appointed against a fixed pay, but still as no claim had been made by them earlier, a further claim for grant of the balance of the pay over and above the fixed pay paid to them, shall not be claimed by the petitioners. But in respect of all other service benefits including seniority and counting of the service period for the purpose of pension etc, the period from the date of initial appointment up to the date of regularization shall have to be taken into account.

13. Accordingly, it is directed that the respondent authorities shall notionally fix the pay of the petitioners in the scale of pay as indicated in advertisement dated 01.03.2002 and determine the seniority and service condition of the petitioners accordingly.

14. The aforesaid exercise be done by the respondent authorities within a period of four months from the date of receipt of a certified copy of this order.

In terms of the above, this writ petition stands disposed of.

JUDGE

J. Bam