



GAHC010234442019

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

Case No. : WP(C)/7253/2019

PRANJAL DUTTA AND 2 ORS.

S/O. SRI R.K DUTTA, ADHOC TEACHER CUM DEMONSTRATOR (PHYSICS AND CHEMISTRY) R/O. QUARTER NO. 68/II/A BVFCL COLONY, NAMRUP, P.O. PARBATPUR, PIN-786623, P.S. NAMRUP, DIST. DIBRUGARH, ASSAM.

2: AFTAB ALI

S/O. MD. S. ALI
ADHOC TEACHER (SCIENCE AND MATHEMATICS)
R/O. HFC QUARTER NO.162/C/I
BVFCL COLONY
NAMRUP
P.O. PARBATPUR
PIN-786623
P.S. NAMRUP
DIST. DIBRUGARH
ASSAM.

3: HIMANTA DOWARAH

S/O. SRI SASHIDHAR DOWARAH
ADHOC TEACHER (ARTS)
VILL. RANGAGORAH
P.O. PARBATPUR
PIN-786623
P.S. NAMRUP
DIST. DIBRUGARH
ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS.

REP. BY THE SECRETARY TO THE GOVT. OF INDIA, DEPTT. OF FERTILIZERS, MINISTRY OF CHEMICAL AND FERTILIZERS, SHASTRI



BHAWAN, NEW DELHI-110001.

2:THE BRAHMAPUTRA VALLEY FERTILIZER CORPN. LTD.
(A PUBLIC SECTOR UNDERTAKING) NAMRUP
REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR
P.O. PARBATPUR
PIN-786623
P.S. NAMRUP
DIST. DIBRUGARH
ASSAM.

3:THE CHAIRMAN AND MANAGING DIRECTOR

THE BRAHMAPUTRA VALLEY FERTILIZER CORPN. LTD. (PUBLIC
SECTOR UNDERTAKING) NAMRUP
P.O. PARBATPUR
PIN-786623
P.S. NAMRUP
DIST. DIBRUGARH
ASSAM.

4:THE DIRECTOR (FINANCE)

THE BRAHMAPUTRA VALLEY FERTILIZER CORPN. LTD. (PUBLIC
SECTOR UNDERTAKING) NAMRUP
P.O. PARBATPUR
PIN-786623
P.S. NAMRUP
DIST. DIBRUGARH
ASSAM.

5:THE GENERAL MANAGER

THE BRAHMAPUTRA VALLEY FERTILIZER CORPN. LTD. (PUBLIC
SECTOR UNDERTAKING) NAMRUP
P.O. PARBATPUR
PIN-786623
P.S. NAMRUP
DIST. DIBRUGARH
ASSAM.

6:THE DY. GENERAL MANAGER (HR)

THE BRAHMAPUTRA VALLEY FERTILIZER CORPN. LTD. (PUBLIC
SECTOR UNDERTAKING) NAMRUP
P.O. PARBATPUR
PIN-786623
P.S. NAMRUP



DIST. DIBRUGARH
ASSAM.

7:THE CHIEF PERSONNEL OFFICER

THE BRAHMAPUTRA VALLEY FERTILIZER CORPN. LTD. (PUBLIC
SECTOR UNDERTAKING) NAMRUP
P.O. PARBATPUR
PIN-786623
P.S. NAMRUP
DIST. DIBRUGARH
ASSAM.

8:THE PRINCIPAL

THE BRAHMAPUTRA VALLEY FERTILIZER CORPN. LTD. (PUBLIC
SECTOR UNDERTAKING) NAMRUP
P.O. PARBATPUR
PIN-786623
P.S. NAMRUP
DIST. DIBRUGARH
ASSAM

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocates for the petitioners : Shri R.P. Sharma, Sr. Advocate.
Shri S. Dihingia, Adv.

Advocates for respondents : Shri A. Sharma, Adv. [Respondent Nos. 2 to 8]
Shri S.S. Roy, C.G.C.

Date of hearing : 23.04.2024

Date of judgment : 23.04.2024

Three petitioners have joined together in this petition filed under Article 226 of the Constitution of India with the primary contention and claim relating to regularisation of their service.

2. The facts projected in the petition are narrated briefly as hereunder.

3. The petitioners are having the qualification to be appointed as Graduate Teachers. The erstwhile Hindustan Fertilizer Corporation Limited (HFCL) was having a School in its campus at Namrup and pursuant to a recruitment drive, the names of the petitioners which were enrolled with the concerned Employment Exchange were forwarded. Pursuant to such forwarding, in the year 1994, the petitioners were appointed, however for a limited period of 40 days. It is the case of the petitioners that such appointments were extended from time to time and as on date, the petitioners have completed more than 30 years of service. Subsequently, the duration of the appointment was enhanced from 40 days to 6 (six) months. The issue regarding regularisation of their service was taken up by the petitioners through the Regional Labour Commissioner, Dibrugarh in the year 2014 and there was a proposal to the Management to fill up the existing permanent post from the enlisted *ad-hoc* teachers if they fulfil the required education qualification. It is contended that no action was taken pursuant to such recommendation. In the meantime, the HFCL was declared sick and under the aegis of the BIFR, a new company was incorporated namely, Brahmaputra Valley Fertilizer Corporation Limited (BVFCL) which took over the unit at Namrup w.e.f from 05.04.2002. The matter was again taken up before the Regional Labour Commissioner, even after which no steps have been taken for their regularisation. The petitioners had earlier approached this Court by filing WP(C)/06/2017 which however was withdrawn

on 06.09.2018 with liberty to file afresh and accordingly the present petition has been filed.

4. I have heard Shri R.P. Sharma, learned Senior Counsel assisted by Shri S. Dihingia, learned counsel for the petitioners. I have also heard Shri A. Sharma, learned counsel for the respondent nos. 2 to 8. Shri S.S. Roy, learned C.G.C. is also present.

5. Shri R.P. Sharma, learned Senior Counsel, by referring to an *inter* office memo of the erstwhile HFCL dated 27.09.1991 has submitted that the said communication was with regard to the Revised Sanctioned Post and in the summary attached thereto, the Revised Sanctioned Strength for teachers was given as 117. He submits that the communications issued by the HFCL to the petitioners on 12.11.1993 would establish that their names were sponsored by the Employment Exchange, Namrup for appearing in an interview before the Selection Committee on 02.12.1993 in the office premises of the Corporation. The petitioners were also directed to bring with them the relevant Degrees, Diploma Certificates and other testimonials including proof of age qualification, experience etc. It is submitted that pursuant to such selection process, the petitioners were appointed in the year 1994 which however was for a period of 40 days. The petitioners were also given a certain employee number. As the appointments were limited by time and had to be extended from time to time, the matter was raised before the Regional Labour Commissioner, Dibrugarh pursuant to which a resolution was adopted on 05.09.2014 wherein certain recommendations were made including the requirement to fill up existing permanent post lying vacant from the *ad-hoc* teachers which however was not done.

6. The learned Senior Counsel for the petitioners has submitted that the

continuation of the petitioners for a period of more than 30 years, who otherwise meet all the requisite qualifications and had entered into the service as teachers through a selection process cannot be denied the benefits of regularisation as that would amount to exploitation of labour. It is also contended that the initial appointment, though termed to be *ad-hoc* would not come into the way for considering the aspect of regularisation of their service inasmuch as the nature of job is perennial and there is no dispute regarding their qualification to hold such a post. It is submitted that the status of the petitioners have been kept uncertain and immediately on their retirement, they would have no means or resource for their survival.

7. The learned Senior Counsel accordingly submits that appropriate directions be issued for regularisation of their service so as to ensure that they are not deprived of the post-retirement benefits.

8. The learned Senior Counsel further submits that the mandate of the Hon'ble Supreme Court laid down in the case of ***State of Karnataka vs. Umadevi (3)*** reported in ***(2006) 4 SCC 1*** would not be an impediment for their regularisation and rather their cases would fall within the scope for such regularisation as laid down in paragraph 53 of the said judgment.

9. *Per contra*, Shri A. Sharma, learned counsel representing the BVFCL has submitted that the present Corporation had come into the picture only in the year 2002 after the erstwhile HFCL was declared sick by the BIFR. He accordingly submits that the induction of the petitioners in service was initially against a different company and therefore the present respondents cannot be saddled with the burden of regularisation of the services, more so when the company is still a loss making company. By referring to the document dated 04.03.2017, the learned counsel has submitted that the respondent- Corporation

is an incipient sick company and any direction for regularisation may not be feasible.

10. By referring to the orders of appointment as projected by the petitioners, he submits that the aforesaid orders were only offers wherein certain conditions were attached and the petitioners on their own volition had accepted such appointment along with such conditions and therefore, they would be estopped from making the present claim. He submits that the initial appointment was not done through an open advertisement and therefore the embargo laid down in the case of ***Uma Devi*** (supra) would still be applicable. The learned counsel, by referring to the communication dated 27.09.1991 has submitted that the interpretation sought to be given by the petitioners may not be a correct interpretation as the same was only to facilitate initiation of promotion exercise in respect of unionized categories and the summary attached thereto cannot be linked with the purpose of the said *inter* office memo.

11. By dealing with the aspect of the conciliation proceedings before the Regional Labour Commissioner, Dibrugarh, the learned counsel for the respondent Corporation has submitted that apart from the proceeding of the year 2014 which has been referred to by the petitioners, there was another round which had culminated in a Minutes dated 27.03.2015. By referring to the resolutions therein, the learned counsel for the respondent-Corporation has submitted that there was no resolution for any regularisation of service and the resolution was only for enhancement of salaries for *ad hoc* / contractual employees which has accordingly been done. He clarifies that there is no dispute or any issue with regard to the salaries presently paid to the petitioners which is at par with the permanent employees.

12. The learned counsel for the respondent Corporation, by referring to the

averments made in paragraph 20 of the affidavit-in-opposition filed on 02.06.2020 has submitted that the defence of the Corporation has been adequately stated in the said paragraph. It is submitted that the fact as to how the present Corporation was incorporated and had taken over the unit at Namrup of the erstwhile HFCL, the temporary engagement of the petitioners which was in the form of an offer, the *ad hoc* appointment and lack of any sanctioned post have been clearly stated in the said paragraph.

13. The learned counsel for the respondent-Corporation has also relied upon the case of ***State of Karnataka & Ors. vs. M.L. Kesari & Ors.*** reported in ***(2010) 9 SCC 247*** and the case of ***State of Assam vs. Upen Das*** reported in ***(2017) 4 GLR 493***. He submits that regularisation cannot be claimed as a matter of right and only on fulfilling the conditions precedent namely holding of adequate qualification, entering into the services by a recognized process of law and existence of sanctioned post in which such accommodation was made are the pre conditions which would have to be fulfilled by an incumbent. He submits that the aforesaid pre conditions are not met by the incumbents.

14. The learned counsel accordingly submits that no relief can be granted to the petitioners and accordingly the writ petition should be dismissed.

15. Shri R.P. Sharma, the learned Senior Counsel for the petitioners in his rejoinder has referred to the averments made in paragraph 18 of the affidavit-in-opposition which is a reply to the averments of the petitioners made in paragraph 4. It is submitted that specific statements were made in paragraph 4 of the writ petition to the extent that the total Sanctioned Strength of the teachers was 117 and there was no denial to the aforesaid aspect.

16. The rival submissions have been duly considered and the materials placed

before this Court have been examined.

17. The induction of the petitioners in their service in the year 1994 was pursuant to a selection process which would be revealed from the communications dated 12.11.1993 issued by the erstwhile HFCL. A bare look at the said communication would reveal that an interview was scheduled on 02.12.1993 for the selection in which the petitioners were directed to appear as their names were sponsored by the concerned Employment Exchange, Namrup. The mode of forwarding names by the concerned Employment Exchange is a recognized mode in law for holding a selection process. The said communication would also reveal that in the said selection, the testimonial of the petitioners pertaining to their educational qualifications and other factors were also examined. There is also no materials on record to suggest that the petitioners are not qualified to hold the post of teachers which they were appointed through the appointment orders of 1994.

18. Though it is a matter of fact that the initial appointment was for a limited period of 40 days which was extended from time to time, this Court is unable to accept the submissions made on behalf of the Corporation that the aforesaid appointment with the stipulation of 40 days was only an offer which was accepted by the petitioners. Such acceptance by the petitioners cannot be construed to mean that they are precluded from raising any claim towards their regularisation of their service. In the present scenario regarding the scarcity of employment, the bargaining power of an incumbent who has been offered a particular post cannot be held to be at par with the employer and therefore, the question of any estoppel coming in the way of such claim would not arise.

19. The issue would therefore boil down to the aspect of the fulfilment of the conditions by the petitioners to justify their claim for regularisation. There is no

dispute that the petitioners are rendering their services as teachers in the school for the last about 30 years. The qualification of the petitioners to work in the said capacity is also not disputed. The only dispute which has been sought to be raised is with regard to the sanctioned post.

20. To examine the said issue, this Court has looked into the *inter* office memo which would reflect that the Revised Sanctioned Strength of teachers in the school is 117. Though the said memo may be with respect to a process of promotion of unionized categories, the aforesaid fact regarding the Revised Sanctioned Strength cannot be ignored or overlooked. The entry of the petitioners in the service was through a method wherein their names were sponsored by the concerned Employment Exchange, Namrup and admittedly, the communications issued to them by the HFCL had mentioned regarding a selection process which was scheduled on 02.12.1993 and only after being successful in such selection, the petitioners were inducted in the service.

21. The contention that the recommendation of the RCL was not in respect of the present claim would not be of much relevance as the issue of regularisation has been independently raised in the present petition.

22. The fact that the petitioners are rendering their services as teachers for a continuous period of 30 years would lead this Court to come to a conclusion that they cannot be left in a position of uncertainty on their retirement from service on attaining the age of superannuation. The entry of the petitioners into the services being through a selection and there being materials on record that the post in which the petitioners are working are sanctioned posts, their claim for regularisation of their services cannot be denied.

23. This Court is also of the view that leaving the petitioners high and dry



without an order of regularisation would amount to exploitation of labour which is not permissible under the law.

24. In view of the aforesaid discussion, the writ petition is allowed by directing that the services of the petitioners as teachers in the Brahmaputra Valley Fertilizer Corporation Higher Secondary School be regularised and accordingly all the consequential benefits be given to them.

25. Writ petition accordingly stands allowed.

26. The aforesaid exercise be undertaken and completed expeditiously and in any case within a period of 4 (four) months from today.

JUDGE

Comparing Assistant