

Regular List

WP(C) No. 457 of 2018

Date of Decision: 28.05.2021

Shri. Biswanath Nath & 5 Ors. Vs. State of Meghalaya & 4 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. N. Saikia, Adv.
For the Respondent(s) : Mr. B. Bhattacharjee, AAG with
Ms. Z.E. Nongkynrih, GA.

i) Whether approved for reporting in Law journals etc.:		Yes/No

ii)	Whether approved for publication in press:	Yes/No
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1. The case of the Petitioners herein as could be understood from the averments made in this writ petition is but a continuation of a process which has started in the year 1989 which has its genesis in the judgment and order dated 03.07.1990 passed by the Division Bench of the Gauhati High Court in Civil Rule No. 1186/1989 in the case of ***Shri Matilal Bhattacharyya & Ors v. State of Meghalaya & Anr*** and which order is annexed as Annexure -3 of this instant petition.

2. The Petitioners herein, being six in numbers, one of them, Putul Ch. Sarma is said to have expired on 21.10.2013, (his son, Shri Hiren Sarma is one of the Petitioners herein having been engaged as a Muster Roll (MR) Labourer in place of his deceased father on 12.12.2013), are amongst the original Petitioners in the said Civil Rule No. 1186/1989.

3. The Petitioners who were working as M/R Labourers in the Public Works Department(PWD), Government of Meghalaya came to know of a letter No. 3/ST/87-88/2599 dated 19.11.1989 written by the Sub Divisional Officer, PWD(R&B) Store, Sub Division Shillong to the Sectional Officer, PWD, Central Store, Zoo Road, Guahati wherein inter alia, it was instructed that with effect from 01.12.1988, the total number of M/R Labourers in the said Store shall be 22(twenty two) in numbers and no extra labour to be entertained w.e.f. 01.12.1988. This accordingly prompted them to approach the Hon'ble Gauhati High Court by way of a writ petition which was numbered as Civil Rule No. 1186/1989 and the High Court vide the said judgment and order dated 03.07.1990 has directed the respondents to prepare within 31.02.1991 a scheme on rational basis for absorption as far as possible, of the petitioners who have been working continuously for more than one year in the department and further that the arrears of wages payable to any of the petitioners be paid within two months from the date of the said judgment and order. Again, it was directed that the petitioners be provided with employment till the scheme for their absorption is prepared in any of the establishments in Assam and if the respondents do not provide the petitioners with work, the petitioners shall be paid Rs. 450/- per month from the said date, that is, 03.07.1990 till the scheme is framed.

4. The State of Meghalaya went on appeal before the Hon'ble Supreme Court challenging the said Order dated 03.07.1990 and the Hon'ble Supreme Court vide order dated 14.08.1991 in Civil Appeal No. 13623/1991 has disposed of the appeal, holding as under:

“...In the circumstances we allow this appeal set aside the direction of the High Court to the effect that the respondents employees will be absorbed in any of the establishments in Assam. We direct the appellant State to absorb them at Khanapara in Meghalaya within fifteen days from today. The statement made by the learned Attorney General before this Court will be taken as an offer and if any of the respondents fail to avail of it he will have to thank himself. The rest of the directions regarding salary, etc. given by the High Court will remain unaltered...”

5. The Petitioners have also brought on record the letter No. GENL.ESTT/91-92/1/PT-II/2923-33 dated 19.08.1991 wherein the Executive Engineer, PWD(Roads), Shillong Central Division, Shillong have made an offer to the Petitioners to join duty as Muster Roll Labourers for the maintenance of a road from Khanapara to Pilangkata on a daily wage of ₹25/- that is, ₹750/- per month on all working days. This communication was purportedly issued as due compliance of the Hon'ble Supreme Court's order dated 14.08.1991.

6. The Petitioners alleging that the order of the Hon'ble Supreme Court has not been complied with have preferred a Contempt application before the High Court which was registered as Civil Orgl. Petition(Contempt) No. 76/1991 and the High Court vide order dated 20.01.1994 has directed the respondents to appoint the petitioners on regular basis at the pay of ₹750/- per month subject to revision of pay, if any, and that they shall be posted at Byrnihat or in any suitable places. It was also made clear that payment of arrears of salary to the petitioners, if any, shall be duly considered by the respondents.

7. Again, it is the case of the Petitioners herein that some of the original petitioners have yet again moved the High Court in Civil Rule No. 80(SH) 96 with a prayer to direct the respondents to regularize their services and for payment of their arrears salary. The High Court vide order dated 18.08.1998 while referring to the earlier orders dated 03.07.1990 in Civil Rule No. 1186/1989, order dated 14.08.1991 passed by the Hon'ble Supreme Court in Civil Appeal No. 3168 of 1991 and the order dated 20.10.1994 in Civil Orgl. Petition(Contempt) No. 76 of 1991 have directed the respondents to afford regular appointment to the petitioners by issuing appointment orders within a period of one month from the date of receipt of the judgment and secondly, to re-examine the matter of payment of arrear wages to the petitioners.

8. Referring to the Office Order No. Estt/16/94-95/3901-80 dated 16.08.1997 issued by the Executive Engineer, PWD(R& B) wherein a list of

names of those who have rendered continuous service for more than ten years have been published which also included the names of the petitioners at Sl. Nos. 59, 60, 61, 62 & 63, the Petitioners have once again asserted that the Respondents have failed to implement the orders of the High Court as well as that of the Hon'ble Supreme Court to absorb the Petitioners and to regularize their service and as such, they are compelled to approach this Court with this instant petition with a prayer for direction to the Respondents to regularize the services of the Petitioners within fifteen days of the date of the judgment dated 14.08.1991 of the Hon'ble Supreme Court and to pay the salary of the last six months with immediate effect.

9. Ms. N. Saikia, learned counsel for the Petitioners have, at the outset submitted that in this case, the Petitioner No. 6 herein is not one of the original Petitioners in Civil Rule No. 1186/1989, but he was engaged as a M/R Labourer on 12.12.2013 in place of his father late Putul Ch. Sarmah who died on 21.10.2013 who was also one of the original petitioners.

10. As to the Petitioner No. 3, Shri Gagan Deka, it is submitted that during the pendency of this writ petition, he was released from service on the ground of superannuation on attaining the age of 58 years. This Petitioner has however preferred a Misc. Case No. 26 of 2021 with a prayer for grant of all financial benefits including scale of pay and arrear salary since 14.08.1991.

11. The learned counsel for the Petitioners has taken this Court to the many judgments related to the case of the Petitioners, particularly pointing out that till date the directions of the Hon'ble Supreme Court dated 14.08.1991 has not yet been fully complied with, inasmuch as, the services of the Petitioners have not been regularized and that their salary and arrears from the year 1991 till date have not yet been given to them. It is maintained that the Petitioners were paid only daily wage of about ₹200/- per day, except for the fact that on intervention of this Court, they have now been paid about ₹17000/- per month.

12. On the averment made at paragraph 7 of the Affidavit-in-opposition filed by the State Respondents, to the extent that it is stated that the respondent did not violate any of the judgments pronounced by the Hon'ble Supreme Court of India with respect to the absorption of the petitioners as Regular Casual Worker, the learned counsel has submitted that the Respondents have failed to produce any evidence to this effect.

13. On the reference of the Respondents to the applicability of the case of *Secretary, State of Karnataka & Others v. Uma Devi(3) & Others: (2006) 4 SCC 1*, the learned counsel for the Petitioners have submitted that the same have no relevancy to the case in hand as the relief sought for emanates from the order of the Hon'ble Supreme Court dated 14.08.1991 which was passed almost 25(twenty five) years before the *Uma Devi's case* came into being and that there is no retrospective application of the said judgment in Uma to the case of the Petitioners herein.

14. In support of the case of the Petitioners, the learned counsel has cited three judgments and has reiterated the prayer made in this writ petition, that is to cause direction for regularization of the services of the Petitioners from fifteen days of the order of the Hon'ble Supreme Court dated 14.08.1991. The three judgments cited are:

- i) DAILY RATED CASUAL LABOUR employed under P& T Department through *Bharatiya Dak Mazdoor Manch v. Union of India* and
National Federation of P&T Employees through its Secretary General and another v. Union of India: (1988) 1 SCC 122, paragraphs 8 & 9;
- ii) *Grih Kalyan Kendra Workers Union v. Union of India and Ors:* (1991) 1 SCC 619, paragraph 6;
- iii) *Bharat State Government Secondary School Teachers Association v. Ashok Kumar Singha and Ors:* (2014) 7 SCC 416, paragraphs 24, 39.

15. Mr. B. Bhattacharjee, learned AAG on behalf of the State Respondents have expressed his dissent from the contention and submission of the learned counsel for the Petitioners by submitting that the prayer of the Petitioners in this instant writ petition is redundant, inasmuch as, the claim for regularization of the Petitioners' service as Regular Casual Workers have already been fulfilled vide Office Order dated 03.02.1998 issued by the Respondent Authorities, whereby the Petitioners herein, except Petitioner No. 6, who was inducted in service only in the year 2014, have been regularized and absorbed as Regular Casual Workers as per the provisions of "*The Meghalaya Regular Casual Workers Scheme, 1996*" published vide Office Memorandum dated 16.09.1996. This has been further fortified by the issuance of the '*Seniority List of Casual Muster Roll Labourers brought to Regular Casual Worker Status*' as on 28.02.2019, it was further submitted.

16. Another argument advanced by the learned AAG is that the Petitioners have come before this Court for implementation of the Order of the Hon'ble Supreme Court dated 14.08.1991. However, the said Order was never challenged by the Petitioner on account of non-compliance if any, before the appropriate authority and now, they have approached this Court after a gap of 27(twenty seven) years, which have thus rendered this instant petition barred by waiver, acquiescence, delay and laches as the Petitioners have slept over their rights.

17. The learned AAG has reiterated that the Respondents at paragraph 7 of the Affidavit-in-opposition has refuted the allegation of the Petitioners on the issue of regularization of their services and has categorically stated that their services have been duly regularized. However, in reply to this in the affidavit-in-reply, at paragraph 6 of the same, the Petitioners while referring to the averments made at paragraph 7 of the Affidavit-in-opposition have not refuted this assertion of the respondents and has however averred that the Petitioners have not been paid the arrear as well as the current salary. To this, the learned AAG has replied that in compliance with the Order dated

05.07.2019 of this Court, the Respondents have filed the detailed record of the salary statements of the Petitioners herein marked as Annexure-1, 2, 3, 4, 5 & 6 by way of an additional affidavit dated 14.08.2019.

18. Lastly, the learned AAG has submitted that the constitutional scheme of appointment is to be followed as far as regularization of casual employees is concerned, and the authority laid down by a Constitutional Bench of the Hon'ble Supreme Court in the case of *Uma Devi (supra)* cannot be abandon even while considering the issues raised in this instant writ petition. The learned AAG went on to cite paragraphs 43, 45, 49 & 52 of the said judgment to press his point.

19. It is finally submitted that there is no violation of any legal or fundamental rights of the Petitioners and this writ petition is not maintainable and devoid of merits and is liable to be dismissed.

20. Having heard the parties, this Court has given due consideration to the submissions made. What is noticed here is the prayer of the Petitioners before this Court for implementation of the judgment and order dated 14.08.1991 passed by the Hon'ble Supreme Court as cited above. The Respondents' answer to this is that the said direction of the Hon'ble Supreme Court has been duly complied with and as such, there is nothing left in this petition to be decided.

21. A look at the direction of the Hon'ble Supreme Court dated 14.08.1991 will reveal that a direction was issued to the Respondents to absorb the Petitioners at Khanapara, Meghalaya within 15(fifteen) days of the said Order. The Petitioner has maintained that this was not yet complied with.

22. In answer to this, the Respondents in their additional affidavit dated 28.06. 2019 has asserted that firstly, in response to the direction of the High Court's Order dated 03.07.1990, the Government of Meghalaya has formulated a Scheme particularly for the Petitioners for maintenance of a

road from 9th Mile G.S. Road, Khanapara to Pilangkata via Killing and vide letter No. MR/MCS/G-30 dated Guahati the 14th May 1991, the Petitioners were accordingly informed and directed to report for duty. It has also been stated that the Petitioners failed to report for duty as directed. Again, in compliance with the Order of the Hon'ble Supreme Court dated 14.08.1991, the State Respondent has again issued a similar letter dated 19.08.1991 informing the Petitioners of the requirement for maintenance of the road from Khanapara to Pilangkata with an offer to them to join as Muster Roll Labourer on payment of ₹750/- per month as wages (Annexure-B of the Additional affidavit). The Petitioners had joined duty on 14.09.1991 and worked upto 26.09.1991 and thereafter, failed to report for duty at the work site. Yet again in compliance with the Order dated 17.08.1992 of the High Court (probably referring to the Order in the Contempt Petition No. 76 of 1991), the Petitioners were once again called to work as Muster Roll Labourers for the road from Khanapara to Pilangkata vide letter dated 01.09.1992, but only five of them joined on 19.09.1992 and these too thereafter did not report for duty at the work site.

23. As submitted by the learned AAG, it is seen that under the “Meghalaya Regular Casual Workers Scheme, 1996”, the services of the Petitioners were regularized as casual workers and they were paid daily wages as was prevalent at the relevant time.

24. What is noticed here, as observed above is the fact that on the strength of the Order dated 14.08.1991 of the Hon'ble Supreme Court, the Respondents have brought out a scheme for maintenance of the Khanapara-Pilangkata road to accommodate the original petitioners, some of whom have approached this Court in this writ petition. Since the related correspondence in this regard referred to the said Order of the Hon'ble Supreme Court, it may be assumed that the Petitioners have been actually absorbed at Khanapara.

25. The next issue is with regard to the regularization of their services on

permanent basis, the Respondents have argued that this too have been complied with, inasmuch as, the Petitioners along with other deserving Muster Roll Labourers have been brought under the said "*The Meghalaya Regular Casual Workers Scheme, 1996*" and consequently, their seniority was maintained as per the seniority list dated 28.02.2019.

26. As to the payment of arrear wages or salary, the Respondents at Annexure-B of the additional affidavit have clearly stated that the total amount involved in payment of arrear of wages is ₹26,500/- (Rupees twenty six thousand, five hundred) only which was duly received by all the 11(eleven) original petitioners, including the Petitioners No. 1, 2, 3, 4 & 5 herein.

27. The above steps taken by the Respondents appears to have satisfied the directions dated 03.07.1990 issued by the High Court Court in Civil Rule No. 1186 of 1989 and order dated 20.01.1994 in Civil Original (Contempt) No. 76 of 1991 and even in order dated 18.08.1998 in Civil Rule No. 80(SH) of 1998. Since the Petitioners have chosen to remain quite for a long time even for about 20(twenty) years or so, as it is, but natural to expect that having pursued the matter relentlessly during the initial years of litigation, if they are aggrieved by any action of the Respondents in this regard, they would surely have approached the courts at the earliest. The fact that they have approached this Court after a gap of almost more than 20(twenty) years or so, the contention of the learned AAG that there has been a conscious act of waiver, acquiescence, laches and delay on the part of the Petitioners which cannot be condoned by this Court has relevance.

28. Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily writ petition should be filed within a reasonable time. The conduct of the Petitioners in approaching this Court at such a belated stage, after more than 20(twenty) years or so, without affording any plausible explanation or reasons for such delay, clearly establishes the fact that they have accepted

the terms and conditions of their employment and are therefore estopped from raising the same dispute at this juncture.

29. The rulings cited by the learned counsel for the Petitioners would not be relevant under the circumstances as there is no requirement to go into the merits of the case of the Petitioners, the same having been dealt with by the High Court and the Hon'ble Supreme Court (*supra*). Even in the case of *Uma Devi (supra)* referred to by the learned AAG would not be applicable in this case as the matter relates to a pre-Uma Devi situation and as observed above, the case of the Petitioners as decided by the Hon'ble Supreme Court has not been used or cited as a precedent which would make it covered by the *Uma Devi's case*.

30. Be that as it may, this Court on consideration of the argument advanced by the parties and the materials on record, has come to the conclusion that the case set up by the learned AAG is justified and believable and that the Petitioners have shown that they are not keen to pursue their interest at the earliest possible time. The maxim "*Vigilantibus, non dormientibus, jura subveniunt*" (Equity aids the vigilant and not the indolent) can be said to apply in the case of the Petitioners herein.

31. As to the case of the Petitioner No. 6, this Court is of the view that no case has been made out in his favour as he is a latecomer to the case and there is no cause of action as far as his employment is concerned.

32. In view of the above, this Court finds that the Petitioners have not been able to make out a case on merits and the same is hereby dismissed.

33. Case disposed of. No cost.

Judge

Meghalaya
28.05.2021
"D. Nary, PS"