

GAHC010042182017



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

Case No. : WP(C)/6013/2017

MONTU HUSSIAN
S/O LATE ANOWAR HUSSAIN, R/O HOUSE NO. 731, CHRISTIAN BASTI,
GMCH ROAD, NEAR IGNOU REGIONAL OFFICE, GUWAHATI, KAMRUP M,
PIN-781005

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
GUWAHATI DEVELOPMENT DEPTT., DISPUR, GUWAHATI-6, ASSAM

2:THE PROJECT DIRECTOR
ASSAM URBAN INFRASTRUCTURE INVESTMENT PROGRAM AUIIP
3RD FLOOR TRIPTI TOWER GANESHGURI GUWAHATI-781005 ASSA

Advocate for the Petitioner : MRS.S P HUSSAIN, MR. B SARMA,MR.S A AHMED

Advocate for the Respondent : MS. M BHATTACHARJEE, SC, GHY. DEV. DEPTT., GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 29.07.2024

Heard Ms. S. P. Hussain, learned counsel for the petitioner. None has appeared for the respondents.

2. The petitioner by way of instituting the present proceeding, has presented a challenge to an order, dated 22.05.2017, which has the effect of discontinuing his contractual engagement under the Assam Urban Infrastructure Investment Program(hereinafter referred to as AUIIP, for short).

3. The petitioner, herein, on execution of an agreement, dated 19.01.2015, was engaged on contractual basis as an Accounts Officer in the Office of Project Management Unit(PMU) of the AUIIP. The said engagement of the petitioner was for a period of 11 months. Before conclusion of the said period of contractual engagement; it was contended that the contractual service of the petitioner was extended and the same so stood extended till 19.12.2016. While the petitioner was so serving during his second term of his contractual engagement, his service came to be terminated vide issuance of an order, dated 23.11.2016. Being aggrieved, the petitioner had approached this Court by way of filing a writ petition being WP(c)2494/2017. While the said writ petition was so pending; the respondent authorities vide order, dated 22.05.2017, proceeded to recall the order of termination, dated 23.11.2016, and further, released to the petitioner, his remuneration till the completion of the extended period of contract i.e. till 19.12.2016.

4. It is to be noted at this stage that the service of the petitioner was not continued after 19.12.2016, by way of execution of a fresh contract agreement or by way of extension of the earlier agreement.

5. Posed thus; the respondent authorities proceeded to issue an

Advertisement, dated 04.04.2017, and therein, also put up the post of Accounts Officer, hitherto so held by the petitioner, for recruitment.

6. It has been contended that the petitioner, as a measure of abundant caution, had also applied for the said post of Accounts Officer in terms of the said Advertisement, dated 04.04.2017. Thereafter, the petitioner approached this Court by way of instituting the present proceeding presenting a challenge to the order, dated 22.05.2017.

7. The learned counsel for the petitioner has contended that the order, dated 22.05.2017, requires to be interfered with by this Court with a further direction be issued to the respondent authorities to continue the petitioner in his service, in-as-much, as the recruitment process as initiated would have the effect of replacement of an *ad hoc* with another *ad hoc*. The learned counsel for the petitioner has further submitted that the respondent authorities on their own notion; having withdrawn the order of termination of the services of the petitioner, any lacunae as noticed with regard to the services being rendered by the petitioner, also stood negated and as such, there was no impediment in the respondents permitting the petitioner to continue in his services in the organization.

8. I have heard the learned counsel for the petitioner and also perused the materials available on record.

9. What is to be noted here is that the petitioner was so engaged in the said organization on contractual basis and the said contractual engagement having come to an end on 19.12.2016, there was no further extension

thereof by way of either an order of extension and/or by way of execution of a fresh agreement. On the date, the present proceeding was initiated; there was no order extending the services of the petitioner. Accordingly, it is required to be examined as to whether it would be permissible for this Court to direct the respondent authorities to re-engage the petitioner as an Accountant in the AUIIP; in terms of his earlier contractual engagement.

10. The issue pertaining to the legal rights of a contractual appointee came up for consideration before the Hon'ble Supreme Court in the case of ***GRIDCO Limited & anr. v. Sadananda Doloi & ors.*** [reported in **(2011) 15 SCC 16**]. The Hon'ble Supreme Court upon noticing the earlier decisions on the issue, held as follows:

“38. A conspectus of the pronouncements of this Court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review.

39. A writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the armchair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ court would do well to respect the decision under challenge.”

11. The decision of the Hon'ble Supreme Court in the case of ***U.P. State Textile Corporation Limited v. Suresh Kumar*** [reported in ***(2011) 15 SCC 180***] being relevant to the issue arising in the present proceeding, is being noticed. The Hon'ble Supreme Court, in the said case; considering the effect of non-extension of the period of contractual engagement, held that the contractual engagement of the respondent, therein, having come to an end, no relief beyond that period, could have been granted. Accordingly, the directions passed in the matter by the High Court allowing the respondent(before Hon'ble Supreme Court) to continue in his services, came to be modified and the respondent was deemed to be in service till the currency of his contractual engagement. The relevant paragraphs of the decision of the Hon'ble Supreme Court in the case of ***Suresh Kumar***(supra) is reproduced hereinbelow :

“4. The learned counsel for the appellant has raised primarily two arguments before us. He has contended that the reference to the unauthorised absence of the respondent could not in any manner be said to be stigmatic and that the finding to the contrary was unsustainable. Alternatively, he has contended that the respondent had joined the post on 7-9-1987 for a period of three years which would have come to an end on 6-9-1990 and as such the direction for reinstatement could not have been granted to him. It has been pleaded that as a consequence of the order of the Tribunal and of the High Court, the respondent has been put back into service.

5. The learned counsel for the respondent has however supported the judgments of the Tribunal and the High Court.

6. In the facts of the case we need not examine the effect of the order dated 26-4-1989 whereby the services of the respondent had been terminated as being stigmatic or not as we are of the opinion that in the light of the fact that appointment itself was for a fixed period of three years which would have come to an end on 6-9-1990, no relief beyond that period could have been given to the respondent by the Tribunal or the High Court. We accordingly feel that these orders need to be modified to the extent that the appellant shall be deemed to be in service up to 6-9-1990 and not thereafter.”

12. Applying the decisions of the Hon'ble Supreme Court, noticed

hereinabove, to the facts as arising in the present proceeding, it being crystal clear that the contractual engagement of the petitioner had come to an end on 19.11.2016 and thereafter, admittedly, there being no order extending such contractual engagement of the petitioner; this Court in the guise of exercise of the power of judicial review, would not substitute its decision, for the decision of the executive authority on the ground that the decision of this Court is more reasonable. This Court cannot extend the period of the contractual engagement of the petitioner, herein, after the same had come an end.

13. If the period of contractual engagement of the petitioner was in currency, and a termination of the engagement had occasioned, it would have been open to this Court by exercising its power of judicial review, to examine the legality, or, otherwise of such termination, but, in the facts involved in the present case; that is no longer permissible in view of the expiry of the period of the contractual engagement of the petitioner on 19.11.2016, which was, thereafter, not extended.

14. If any breach has occasioned with regard to the discontinuation of the services of the petitioner, it would only give rise to a cause of action for damages/compensation, for which, the remedy available is institution of a Civil Suit and not a writ petition.

15. In view of the conclusions as drawn hereinabove, the prayer of the petitioner for a direction towards continuation of his contractual engagement, cannot be accepted.

16. However, noticing the fact that in pursuance of the Advertisement, in

question, the petitioner has submitted his application and further, in view of the interim directions passed by this Court, in the present proceeding, the recruitment process as was initiated by the respondent authorities was kept in abeyance; this Court requires the respondent authorities to now proceed with the process of the recruitment and therein, to consider the case of the petitioner, on merits.

17. It is to be noted that although the services of the petitioner was terminated basing on certain allegations so levelled against him, but, on account of withdrawal of the order of termination, dated 22.05.2017; the said allegations be not now held against the petitioner, herein, and his case be considered strictly on merits in the selection process as initiated vide the Advertisement, in question.

18. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant