

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 23rd September, 2021

SINGLE BENCH: THE HON'BLE ACTING CHIEF JUSTICE MRS. JUSTICE MEENAKSHI MADAN RAI

W.P.(C) No.34 of 2018

Petitioners : Garja Man Subba and Others

versus

Respondents : State of Sikkim and Others

Petition under Article 226
of the Constitution of India

Appearance

Mr. A. Moulik, Senior Advocate with Ms. K.D. Bhutia, Advocate for the Petitioners.

Dr. (Ms.) Doma T. Bhutia, Additional Advocate General with Ms. Tamanna Chhetri, Advocate (Standing Counsel), Energy and Power Department, for the State-Respondents.

J U D G M E N T

Meenakshi Madan Rai, ACJ.

1. The Petitioners are aggrieved by the alleged arbitrary State action of hand picking Employees for regularization of Services and granting them Salaries higher than the Petitioners, despite the Petitioners having performed similar works as the aforementioned Employees, thereby violating the doctrine of Equal Pay for Equal Work.

2.(i) The Petitioners' case is that the Services of select Employees similarly situated with them were illegally and selectively regularized in the months of March, 2014 and September, 2014, whereas the Services of the Petitioners were regularized only in June, 2016, along with that of Employees junior to them. That, they have been receiving their Salaries in the new Pay Scale after their regularization from June, 2016 but not the Arrears of Salary due to them since September, 2014, which

Employees whose Services were regularized in September, 2014 have been granted.

(ii) To comprehend the matter in its entirety, it is essential to retrace the averments in the Writ Petition. The Petitioners' case is that they were initially employed by the Government of Sikkim on Muster Roll/Work Charge Basis and after having worked in various capacities, acquired sufficient experience in their respective Posts. They had a legitimate expectation that the State-Respondents would regularize their Services in due course of time. This was in view of the Notification No.264/GEN/DOP, dated 12.02.2014, (Annexure-P2), according to which regularization was to be given to Employees who had completed fifteen years or more of Service on 31.03.2013. However, this was not to be, although the Services of many Temporary Employees similarly situated and in some cases, junior to the Petitioners, were arbitrarily regularized in the months of March, 2014 and September, 2014 vide four different Office Orders viz. **(i)** Office Order bearing No.2215/Adm, dated 01.03.2014 (Annexure-P4); **(ii)** Office Order bearing No.96/Adm, dated 20.09.2014 (Annexure-P5); **(iii)** Office Order bearing No.200/Adm, dated 20.09.2014 (Annexure-P6); and **(iv)** Office Order bearing No.1009/Adm, dated 20.09.2014 (Annexure-P7). Being thus aggrieved, the Petitioners were before this High Court in W.P.(C) No.05 of 2016 (*Purna Lall Subba and Others vs. State of Sikkim and Others*). During the pendency of the said Writ Petition, the State-Respondents regularized their Services from 30.06.2016.

3.(i) Learned Senior Counsel for the Petitioners advanced the contention that this High Court, vide its Order, dated

01.07.2016, disposed of the said Writ Petition with liberty to the Petitioners to take up the matter for their Incidental Reliefs. That, the names of the Petitioners although included in the List of Employees whose Services were to be regularized as per the Notification, dated 12.02.2014 *supra*, were left out without assigning any reason.

(ii) It was next urged that eleven digit Contributory Provident Fund (for short, "CPF") numbers meant only for regular Government Employees, were issued to the Petitioners from the month of September, 2014, itself when Services of the other Employees were regularized thus recognizing the rights of the Petitioners also to obtain the same Salary as that of the regularized Employees. Hence, the Petitioners are entitled to Arrears of Salary from September, 2014 to 30.06.2016. That, although their period of Probation after regularization in June, 2016 was completed in June, 2017, they were not paid the said Arrears. That, the State action is in violation of the provisions of Articles 14, 16 and 21 of the Constitution of India.

(iii) Learned Senior Counsel further urged that Prayer "A." of the Writ Petition *viz.*, "A writ or order or direction or declaration that the services of the Petitioners be treated under regular establishment with retrospective effect from September, 2014, instead of since 30.06.2016." is not being pressed by the Petitioners. That, the reliefs being sought for by the Petitioners and which may be granted by this Court, are extracted hereinbelow;

- "B.** *In the alternative, to pay to the petitioners arrears of salary as well as service benefits w.e.f. September 2014 like those who have been regularised in the month of September 2014;*
- C.** *Difference of salary from September 2014 till the year 2016 to the petitioners;*
- D.** *Cost of the proceedings;*

E. Any other writ or order or direction or declaration as this Hon'ble Court may deem fit and proper."

4. The State-Respondents No.1, 2 and 3 filed a Joint Counter-Affidavit denying and disputing the claims of the Petitioners. Learned Additional Advocate General, in her submissions, contended that during the month of March, 2014, vide Notification No.264/GEN/DOP, dated 12.02.2014, (document of the Petitioners, Annexure-P2) the Government of Sikkim, sanctioned and created 4,002 (four thousand and two) Posts in various Government Departments exclusively for appointment of Temporary Employees belonging to Groups "C" and "D" category, who had completed Service of fifteen years and more as on 31.01.2013. Pursuant thereto, Memoranda of the Petitioners and all others who were entitled to regularization, were issued. On 01.10.2014, vide Office Order bearing No.1060/Adm (Annexure R-2), all Memoranda of Appointments and Office Orders issued prior to the Code of Conduct stood cancelled. The said Office Order also clarified that all persons whose Services were regularized vide Notification, dated 12.02.2014 (*supra*) would now be issued fresh Memorandum and Office Order. The Petitioners were consequently requested to resubmit documents as per the revised Guidelines issued by the Department of Personnel, Administrative Reforms, Training and Public Grievances, vide Circular No.1547/GEN/DOP, dated 20.08.2014. That, the Petitioners, to their detriment, failed to submit the required documents within the stipulated period and hence their Personal Files were not forwarded in the month of September, 2014 along with the other Employees and their Services consequently not regularized in the year 2014. That, this action of the State was challenged by the Petitioners in the

previous Writ Petition No.05 of 2016 and during the pendency of the matter, the Department of Energy and Power, Government of Sikkim, regularized the Services of 257 (two hundred and fifty seven) Employees of the Department, with effect from 30.06.2016, which included the Petitioners in the said Writ Petition *supra*. The Petitioners, having obtained regularization of their Services from 30.06.2016, sought to withdraw the Writ Petition which was accordingly permitted, as reflected in the Order of this Court, dated 01.07.2016. Now, the Petitioners have again raised similar issues praying for regularization of their Services with retrospective effect from 2014 instead of 2016 and in the alternative, for Arrears of Salary. The delayed regularization arose on account of non-action by the Petitioners, hence no allegation of arbitrary action can be foisted on the State-Respondents qua the Petitioners. That, the CPF numbers were allotted to the Petitioners after receiving their respective Memoranda and Office Orders in the month of March, 2014, which were cancelled due to non-submission of genuine and proper documents. Moreover, the Petitioners have not been directed by the State-Respondents to obtain their CPF numbers without receiving their Office Orders. That, neither can their case be compared to that of the Employees whose Services were regularized in the month of September, 2014, nor can they claim Salaries of Regular Employees from September, 2014, when their Services were regularized only in 2016 and the Petition also being barred by *res judicata* deserves a dismissal. In support of her contentions, Learned Additional Advocate General sought to garner strength from the ratio in ***State of Tamil Nadu through Secretary to Government, Commercial Taxes and Registration Department,***

Secretariat and Another vs. A. Singamuthu¹, State of Rajasthan and Others vs. Daya Lal and Others², Vijay Kumar Kaul and Others vs. Union of India and Others³ and U.P. State Sugar Corporation Ltd. and Others vs. Kamal Swaroop Tandon⁴.

5. In rebuttal, Learned Senior Counsel for the Petitioners submitted that consequent to the Circular, dated 20.08.2014 (*supra*), notifying that fresh Memorandum would be issued, another Addendum Circular bearing No.1567-69/GEN/DOP, dated 21.08.2014, was issued by the Department of Personnel, explaining the meaning of Citizenship Certificate. That, the allegations of non-submission of documents is untrue. That, when the Petitioners' Services were regularized in February, 2014, before the afore-stated cancellation, the authorities were satisfied that the Petitioners had submitted their relevant documents, such as Sikkim Subject Certificate/Certificate of Identification/Indian Citizenship Certificate, which were already in their Personal Files and hence the Memoranda had been issued to them in March, 2014. That, the Orders of regularization were cancelled vide Office Order, dated 01.04.2014, on the ground that the same were issued before enforcement of the Code of Conduct. That, after cancellation of the Appointment Memoranda, the State-Respondents did not indicate that fresh Memorandum and Office Order of regularization of Service would be issued only upon submission of Sikkim Subject Certificate or Certificate of Identification or Indian Citizenship Certificate. That, for this reason the Petitioners cannot be blamed for alleged non-production of relevant documents. That, it is wrong

¹ (2017) 4 SCC 113

² (2011) 2 SCC 429

³ (2012) 7 SCC 610

⁴ (2008) 2 SCC 41

to state that the Petitioners had accepted regularization Order issued by the State-Respondents which, in fact, is not reflected in the Order of this High Court which had granted liberty to the Petitioners to take up the matters afresh for their Incidental Reliefs, if so advised, hence this Petition. To buttress his arguments, Learned Senior Counsel placed reliance on ***Surinder Singh and Another vs. Engineer-in-Chief, C.P.W.D. and Others***⁵, ***Bhagwan Dass and Others vs. State of Haryana and Others***⁶ and ***Secretary, Minor Irrigation Department and Rds. vs. Narendra Kumar Tripathi***⁷.

6. The submissions of Learned Counsel for the parties were heard at length and all documents on record perused meticulously as also the citations made at the Bar.

7. The crux of the case which requires determination by this Court is whether the Petitioners, who allegedly performed similar duties as Employees whose Services were regularized in September 2014, are entitled to Salary, Service Benefits and Arrears of Salary from September 2014, when the Petitioners' Services were regularized only from 30.06.2016.

8.(i) It needs no reiteration that the Constitution enshrines equality and equal treatment in matters of Public Employment as guaranteed under Articles 14 and 16 of the Constitution. Under the umbrella of Article 16, similarly situated persons are to be treated equally and afforded equal opportunities in matters of Employment. The provision, however, does not bar a reasonable classification by the State for selection of Employees, although I hasten to clarify that such classification must not produce artificial inequalities. The

⁵ (1986) 1 SCC 639

⁶ (1987) 4 SCC 634

⁷ (2015) 11 SCC 80

classification must be founded on a reasonable basis and bear nexus to the object and purpose sought to be achieved to pass the scrutiny of Articles 14 and 16. On the bedrock of these principles, it is necessary to examine whether the Petitioners have been able to make out a case of Equal Pay for Equal Work.

(ii) That having been said, in the first instance, it is imperative to refer to the Order of this Court, dated 01.07.2016, in W.P.(C) No.05 of 2016. The Order is extracted hereinbelow for easy reference;

"....."

The Petitioners, stated to be working under Muster Roll/Work Charge establishment, have come up with the instant petition, seeking for a direction of regularization of their services with retrospective effect and further grant of consequential benefits, thereon. The petitioners have also sought for other incidental reliefs of fixation of the date of regularization and also seniority, accordingly.

The Learned Additional Advocate General, appearing for the Respondents, would submit that the services of all the Petitioners have been regularized.

In such view of the matter, no adjudication is required at this stage, reserving liberty to the petitioners to take up the matter a fresh (*sic*) for their incidental reliefs, if so advised.

For the reasons above-stated, no further adjudication is required at this stage and as such, the petition has become infructuous and is disposed of accordingly.

"....."

The Order *supra* reflects that the Learned Advocate General had submitted that the Services of all the Petitioners had been regularized and the Petition being infructuous thereafter was disposed of with liberty to the Petitioners to approach the Court for fixation of Incidental Reliefs.

(iii) In the ratio of ***Dhirendra Chamoli and Another vs. State of U.P.***⁸, the Hon'ble Supreme Court was considering the case of Equal Pay for Equal Work. The Writ Petitions were initiated on the basis of two Letters addressed by Employees of the Nehru Yuvak Kendra, Dehradun. The Complaint made therein was that a number of persons were engaged by the Nehru Yuvak Kendra as Casual

⁸ (1986) 1 SCC 637

Labourers on Daily Wage basis and though they were doing the same work as performed by Class IV Employees appointed on Regular basis, they were not being given the same Salary and Allowances paid to the Class IV Employees. The Hon'ble Court, in consideration of the facts placed before it, allowed the Writ Petitions and directed the Central Government to pay the same Salary and extend the same Conditions of Service as were being received by the Class IV Employees, to those Employees who were concededly performing the same duties as the Class IV Employees.

(iv) In *Surinder Singh and Another (supra)* relied on by Learned Senior Counsel for the Petitioners, the Petitioners therein were employed by the Central Public Works Department on a Daily Wage Basis and had been working for several years and they demanded that they should be paid the same Wages as permanent Employees employed to do identical work. The Hon'ble Court made reference to the decision of *Dhirendra Chamoli and Another (supra)* and allowed the reliefs sought by the Petitioners.

(v) In the case of *Bhagwan Dass and Others (supra)*, the Petitioners were appointed as Supervisors by a competent Selection Committee constituted by the Education Department of Haryana from time to time since 02.10.1978. Their grievance was that they had been given a deliberate break of one day after a lapse of every six months and thus treated as Temporary Government Servants, notwithstanding the fact that they had been continuously working ever since the dates of their respective appointment, subject to the aforesaid break of one day at intervals of six months instead of absorbing them as Regular Employees in Regular Pay Scales. The second grievance was that although the

Petitioners worked as Supervisors in the Education Department and performed the same works as done by their counterparts, the Respondents absorbed in regular Government Service also as Supervisors, they were paid less. The Hon'ble Supreme Court, while allowing the Petition, concluded *inter alia* that;

"14.the petitioners are entitled to be paid on the **same basis of same pay scale** as per which respondents 2 to 6 who are discharging similar duties as Supervisors just like the petitioners, are being paid."

[Emphasis supplied]

9. The facts in this case can be distinguished from those of *Dhirendra Chamoli and Another, Surinder Singh and Another* and *Bhagwan Dass and Others (supra)* relied on by the Petitioners. The Petitioners therein had worked with other Employees similarly situated and continued to do so, at no stage of their Employment were they afforded the opportunity as extended to the Petitioners herein, who after having filed the Writ Petition (C) No.05 of 2016, their Services were regularized and after having accepted regularization from September, 2016 and working for a whole year thereafter, they had a sudden disgruntlement about their Salaries and Benefits. In the instant matter, it is relevant to point out that vide Notification No.264/GEN/DOP, dated 12.02.2014, 4,002 (four thousand and two) Posts were created in various Government Departments for the exclusive purpose of appointing Temporary Employees belonging to Groups "C" and "D" category, who had completed fifteen years and more of Temporary Service on 31.01.2013. Pursuant thereto, admittedly, Memoranda of Appointment were issued to the Petitioners and others who were entitled for regularization of their Services. The Appointments were to be effective from 01.04.2014 but on 20.08.2014, a Circular bearing No.1547/GEN/DOP was issued by the Department of

Personnel, Administrative Reforms, Training and Public Grievances wherein it was informed that a Task Force comprising of Officers of the rank of Additional Secretary, Secretary and Special Secretary was constituted. The Task Force was entrusted with the duty of verification of the details of Temporary Employees for which Guidelines were provided. The Guidelines therein were *inter alia* as under;

“1. Sikkimese Origin of the employee

- (a) The Male employee should be in possession of Sikkim Subject Certificate or Certificate of Identification or Indian Citizenship Certificate in his/her name.
- (b) In case of a married Female employee, both she and her husband should be in possession of Sikkim Subject Certificate or Certificate of Identification or Indian Citizenship Certificate.
- (c) In case of an unmarried Female employee, Unmarried Certificate should also be produced in addition to Sikkim Subject Certificate or Certificate of Identification or Indian Citizenship Certificate in her name.

2. Length of Service (15 years or more) as on 31/1/2013

In order to ascertain whether an employee has rendered 15 years or more service as a temporary employee, one of the following documents available in the official file/records of the department can be relied upon:

- (a) Office Order of Appointment
- (b) Salary payment voucher dated on or before 31st January 1998
- (c) Joining Report
- (d) Application for job with the endorsement of appointment with date
- (e) Copy of Note Sheet/Process Sheet of appointment
- (f) Authentic Seniority List
- (g) Application or Order for Quarters Allotment
- (h) Application or Order for Transfer
- (i) Any other credible evidence available in the official file
- (j) For cases not covered by any of the options (a) to (i) given above any other document dated before 31.1.2013 which in the view of the Committee can be considered as a credible evidence of the length of service.”

Thus, the Task Force had to verify whether the necessary documentation was available with the concerned Temporary Employee. So far as the length of Service of the Employee was concerned, the Task Force was to examine whether one of the documents listed in Serial No.2(a) to (j) of the Guidelines *supra* were available in the Office File/Records in the Department of the concerned Temporary Employee. Guidelines for asserting the age

of the Employee was also detailed therein. On 21.08.2014, an Addendum to the above Circular, bearing No.1567-69/GEN/DOP, dated 21.08.2014, was issued by the Department of Personnel, pertaining to the Citizenship of the Employees concerned. The Addendum also detailed *inter alia* as follows;

"2. Date of Completion:

- | | |
|-------------------------------------|-------------------------------------|
| (a) Completion of verification | : 10 th September, 2014. |
| (b) Issuance of Appointment Letters | : 15 th September, 2014. |
| (c) Disbursal of regular Salary | : 1 st October, 2014." |

The Guidelines indicate that the criteria for regularization was to be submission of the relevant documents and a time line for this purpose was also laid down as detailed *supra*.

10. Although the Petitioners claim that all relevant documents were submitted by them as per the requirements, an alternative argument was also put forth by them that even if they did not submit the documents as required, the documents were already included in their respective Files on the basis of which, in fact, their Services had been found to be eligible for regularization from 01.04.2014 thus it was only an unnecessary obstacle created by the State-Respondents. That, after cancellation of the Memorandum of Appointment vide Office Order, dated 01.10.2014, the State-Respondents did not indicate that fresh Memorandum and Office Order of regularization of Service was to be issued unless Sikkim Subject Certificate, Certificate of Identification or Indian Citizenship Certificate was submitted. In my considered opinion, this submission is belied by the very existence of Circular No.1547/GEN/DOP, dated 20.08.2014 and the subsequent Addendum bearing No.1567-69/GEN/DOP, dated 21.08.2014. Further, despite claims of their documents being on record and also subsequent submission of documents, the Petitioners have not filed

such documents for the perusal of the Court to establish that either the documents were in the File of the Petitioners or that they filed it along with the other Employees who thus availed of regularization of Services from September, 2014. The Petitioners cannot take advantage of their own error and lackadaisical attitude, as administrative discipline is required to be adhered to.

11. The Petitioners have also failed to fortify their claim of Equal Pay for Equal Work by any documentary evidence. There are no Appointment Orders or Office Orders to indicate the equality of designations or the tasks/works performed by them being similar or equivalent to those Employees whose Services were regularized in September, 2014 and who they seek to be placed at par with. A meticulous examination of the documents do not reveal the Posts held by them prior to regularization or the Posts held by the Employees regularized in September, 2014. In the absence of such documents, this Court is hard pressed to reach a finding of equality, as insisted upon by the Petitioners. That apart, when the Petitioners had filed the earlier Writ Petition No.05 of 2016 before this Court, although specific date of their regularization was not divulged to the Court by the Learned Additional Advocate General therein, the Petitioners of their own volition withdrew the Petition and accepted regularization granted by the State-Respondents from June, 2016. No issue was raised at all in this context with the State-Respondents and the contention that they waited for one year till completion of probation and when Arrears of Salary were not forthcoming, they have filed the second Writ Petition, is to say the least incongruous. If regularization was granted from June, 2016, it is beyond comprehension as to why they would expect

regular Salary from the month of September, 2014. This Court is conscious that the Order in the earlier Writ Petition No.05 of 2016, dated 01.07.2016, permits the Petitioners to approach the Court for "Incidental Reliefs," if so advised. The doors of the Courts are definitely not closed for aggrieved persons when they perceive violation of their rights. Thus, on this aspect, I have to disagree with the submissions of Learned Additional Advocate General that the Petition is barred by *res judicata* as the principle of *res judicata* is applicable to subsequent Suits where the same issues by the same parties have been decided in an earlier proceeding under Article 226 of the Constitution but in the instant matter, this Court itself had permitted them to approach it, if so advised, for Incidental Reliefs. It is also necessary to mention that the doctrine of *res judicata*, as envisaged by Section 11 of the Code of Civil Procedure, 1908 does not *stricto sensu* apply to the proceedings under Article 226 of the Constitution. Yet, the Petitioners herein are reminded that the Order *supra* merely permitted them to approach the Court but the reliefs can be obtained by them only on establishing their case, not only by averments but also by way of documentary evidence which substantiates their stand, which is lacking herein. The documents relied on by the Petitioners fail to lend succour to their case.

12. The Petitioners contend that they do not seek to press Prayer "A." of the Writ Petition which provides as follows, "A writ or order or direction or declaration that the services of the Petitioners be treated under regular establishment with retrospective effect from September, 2014, instead of since 30.06.2016." However, while pressing Prayer "B." viz. "In the alternative, to pay to the petitioners

arrears of salary as well as service benefits w.e.f. September 2014 like those who have been regularised in the month of September 2014," an insidious attempt is being made to press "Prayer A." If they seek Salary from September, 2014, along with Service Benefits which would also thereby include yearly Increments, it would, in effect, tantamount to regularization of their Services from September, 2014. This is unacceptable as the Petitioners, besides having surrendered their prayer of regularization have failed to make out their entitlement to the claims put forth.

13. The Petitioners' claim of arbitrary action by the State-Respondents and hand picking of Employees for regularization of Services, evidently emanates from the fact that Employees who acted promptly and submitted the relevant documents required by the Task Force were regularized immediately. It is worth noticing that the Petitioners have not assailed Circular No.1547/GEN/DOP, dated 20.08.2014, or the subsequent Addendum of 21.08.2014, or Office Order bearing No.1060/Adm, dated 01.10.2014, in any proceeding.

14. In light of the discussions above, lacking in merits, the Writ Petition deserves to be and is dismissed and disposed of accordingly.

15. No order as to costs.

(Meenakshi Madan Rai)
Acting Chief Justice

23.09.2021