

GAHC010212322015



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

Case No. : WP(C)/4710/2015

PRADIP KR. DAS
S/O LT. PARITOSH KUMAR DAS R/O BAKALIA BAZAR BASTI, WARD NO. 3,
P.O. BAKALIA GHAT, P.S. BAKALIA DIST. KARBI ANGLONG, ASSAM.

VERSUS

THE KARBI ANGLONG AUTONOMOUS COUNCIL and 3 ORS
REP. BY ITS SECRETARY, DEPARTMENT OF TOWN AND COUNTRY
PLANNING AND SOCIAL WELFARE.

2:THE BAKALIA TOWN COMMITTEE

BAKALIA DIST. KARBI ANGLONG
REP. BY ITS CHAIRMAN.

3:THE CHAIRMAN
BAKALIA TOWN COMMITTEE
BTC
BAKALIA
DIST. KARBI ANGLONG.

4:SRI MANDAN SINGH BEY
UDA OF BAKALIA TOWN COMMITTEE
DIST. KARBI ANGLONG
ASSAM

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the petitioner : Mr. P.C. Dey, Advocate
For respondent nos.1 to 3 : Mr. J. Chutia,
: Ms. M. Kemprai, Standing Counsel
Date of hearing : 26.02.2021.
Date of judgment : 08.04.2021.

JUDGMENT AND ORDER

(CAV)

Heard Mr. P.C. Dey, learned counsel for the petitioner. Also heard Mr. J. Chutia, assisted by Ms. M. Kemprai, both being learned standing counsel for Karbi Anglong Autonomous Council, respondent nos. 1 to 3. None appears for respondent no.4.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for directing the respondent authorities to allow the petitioner to do his duties as Tax Collector of Bakalia Town Committee pursuant to resolution no. 4 of Bakalia Town Committee dated 30.08.2013, and further direction to the respondent authorities not to appoint any other person till disposal of the writ petition, and for setting aside the order under Memo no. BTC/Audit/Pt-1/83/2010/ 1239(A) dated 11.11.2013 (Annexure-H).

3) The case projected in this writ petition is that in the year 2008 the petitioner was allowed to collect tax on behalf of Bakalia Town Committee and a formal appointment letter as Tax Collector was issued on 17.06.2009. Although the respondent authorities found the accounts submitted by the petitioner to be correct, but the audit conducted by the Office of the Accountant General of Assam for year ending 31.03.2010, found that a sum of Rs.79,721/- was not deposited in the accounts of the Govt. of Assam. It is projected that four member Sub- Committee of Bakalia Town Committee had made enquiry, verified the accounts

and submitted their report to the Chairman on 29.07.2013. The said report was discussed in the meeting of Bakalia Town Committee held on 30.08.2013 and allowed the petitioner to continue in service by depositing security amount of Rs.5,000/-. However, the respondent no.4 did not allow the petitioner to work as Tax Collector in terms of resolution dated 30.08.2013, as such, the petitioner had submitted his representation dated 26.09.2013. Thereafter, projecting that he had been threatened by respondent no.4, the petitioner had lodged an FIR on 26.09.2013 before the Officer- In- Charge of Bakalia P.S. Subsequently, the Director of Municipal Administration, Assam, vide letter dated 28.10.2013 (Annexure-G), informed the respondent no.3 about the objection raised during the audit of accounts of Bakalia Town Committee and that no compliance report was received regarding steps taken with respect to non-deposit of collection amounts to the Municipal Fund. Thereafter, vide letter dated 11.11.2013, the respondent no. 3 wrote to the Director, Municipal Administration Department, Assam regarding action contemplated against the petitioner and by a copy of the said letter sent to the petitioner, he was asked to deposit entire amount within 15 days. The petitioner responded to the said letter by his reply dated 18.11.2013. Thereafter, as the petitioner was not allowed to work, the petitioner served his advocate's notice on the respondent no. 4. Accordingly, it is alleged that the petitioner has been made a scapegoat and that non-assignment of work to the petitioner amounted to dismissal from service without complying with principle of natural justice, the present writ petition has been filed.

4) The learned counsel for the petitioner has submitted that without conducting departmental enquiry, the respondent authorities could not have determined any amount recoverable from the petitioner. It is also submitted that not only the Bakalia Town Committee had verified the accounts submitted by the petitioner and in its meeting it was resolved that the accounts was correct, which was again ratified by a fact finding Sub-Committee of 4 Members, which had exonerated the petitioner and that by resolution dated 20.08.2013, the service of the petitioner was extended. It is submitted that the respondent no.3 had charged the petitioner of not depositing collection amount vide letter dated 11.11.2011 and, as such, the non-allotment of work to the petitioner amounted to punitive termination of petitioner from service. Accordingly, it is submitted that refusal to assign duty to the petitioner at the instance of respondent nos. 3 and 4 amounted to dismissal of the petitioner from service

without holding any enquiry, depriving the petitioner of natural justice to be heard. In support of his submissions, the learned counsel for the petitioner has placed reliance on the case of *Om Prakash Goel Vs. Himachal Pradesh Tourism Development Corporation Ltd., (1991) 3 SCC 291.*

5) Per contra, the learned standing counsel for the respondent nos. 1 to 3 has referred to the statements made in the affidavit-in- opposition filed on behalf of respondent nos. 2 and 3. It is submitted that Bakalia Town Committee had been constituted as per the provisions of Karbi Anglong District (Administration of Town Committee) Act, 1954. The Karbi Anglong Autonomous Council had framed the Karbi Anglong District (Constitution of Town Committee) Rules, 1958 (hereinafter referred to as "1958 Rules"). It is submitted that Rule 52 of the 1958 Rules, empowers the Town Committee to employ and to fix the salaries, allowances and conditions of service, provided that the appointment of any person on pay exceeding Rs.50/- per month shall have to be approved by the Karbi Anglong Autonomous District Council. It is submitted that the petitioner was neither appointed after following any selection process nor his appointment was approved by the Karbi Anglong Autonomous Council. However, subsequently, the work of the petitioner was not continued. It is also submitted that out of 13 receipt books issued to the petitioner, short deposit of Rs.1,25,550/- had been detected, which amounted to embezzlement of public money. Thus, it is submitted that the petitioner was not holding any substantive or sanctioned post and, as such, non-allotment of work to him would not entail any civil liability on the respondent authorities as the engagement of the petitioner was terminable without any notice. In support of his submissions, the learned standing counsel for the respondent nos. 1 to 3 has placed reliance on the following cases, viz., (i) *Union of India & Ors. Vs. A.S. Pillai & Ors., (2010) 13 SCC 448,* and (ii) *Municipal Corpn., Jabalpur Vs. Om Prakash Dubey, (2007) 1 SCC 373.*

6) The materials available on record has been perused and the submissions made by the learned counsel for both sides have received due consideration of the Court.

7) It is seen that the petitioner was appointed on a purely contractual and temporary basis as Tax Collector by the Bakalia Town Committee to collect rent from their commercial building/ market. The petitioner was not entitled to any salary, but he was entitled to get 20% commission against total rent collected. The engagement of the petitioner as *B.T.C. owned Building Rent Monthly Tax Collector* vide order dated 17.06.2009 was purely temporary and terminable at any time. The petitioner has not been able to show that the post in which he was appointed was either a substantive or a sanctioned post. Moreover, there is nothing on record that the appointment was made in substantial compliance with the constitutional scheme of public employment as enunciated in the case of *Secretary, State of Karnataka Vs. Umadevi (3), (2006) 4 SCC 1*. Therefore, the appointment of the petitioner cannot be said to be irregular. Hence, the petitioner is not entitled to the relief of allowing the petitioner to do his duties as Tax Collector of Bakalia Town Committee pursuant to resolution no. 4 of Bakalia Town Committee dated 30.08.2013.

8) As regards projection that refusal to assign duty to the petitioner at the instance of respondent nos. 3 and 4 amounted to dismissal of the petitioner from his service without holding any enquiry, depriving the petitioner of natural justice to be heard and in this regard, reliance was placed on the case of *Om Prakash Goel (supra)*. In this regard, it is seen that no order of termination of service had been passed by the Bakalia Town Committee. Therefore, notwithstanding that a letter dated 11.11.2013 had been sent to the petitioner requiring him to deposit entire collection amount, the non- engagement of the petitioner cannot be terminated as punitive, carrying stigma against the petitioner. It is the case of the petitioner that by resolution no. 4 dated 30.08.2013, the engagement of the petitioner was extended, but he has not been assigned work. This action would not amount to dismissal from service or termination of service.

9) It is the case of the petitioner that was not engaged on any salary, but he was entitled to 20% commission on collection. Although the learned standing counsel for the respondents has submitted that the petitioner could not show any Rules framed by the Karbi Anglong Autonomous Council by which it was permissible for the Bakalia Town Committee to

engage persons on commission basis, but owing to the fact that in spite of coming to about existence of such practice, the competent authority of the Karbi Anglong Autonomous Council appears to have acquiesced to such an arrangement without raising any demur. However, the fact remains that petitioner was not holding any substantive or sanctioned post and that his appointment was not in accordance with the constitutional scheme of giving employment opportunity to the citizens by following due procedure in the matter of public employment. The petitioner is not in regular appointment in any cadre and he does not receive any daily wages or any monthly salary and it appears that his engagement was part-time field employment only to collect rent/ tax from building and other properties of the Bakalia Town Committee. Moreover, as per the letter of initial appointment dated 17.06.2009, the service/ engagement was liable to be terminated without any notice. Hence, in the opinion of the Court, the petitioner does not have any right to continue to be engaged by the respondent authorities.

10) The Court is aware that the petitioner is claiming that directions be issued upon the respondents to allow him to continue to do his duties as Tax Collector of Bakalia Town Committee. However, without establishing his right to continue to hold such a post, the petitioner would not be entitled to any relief in this regard. It would be appropriate to be reminded of the observations made by the Constitution Bench of the Supreme Court of India in para-48 of the case of *Umadevi (3) (supra)*, which is quoted below:-

“48. ... There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. ...”

11) However, in this writ petition, it is being alleged by the petitioner that the respondent authorities are contemplating to engage someone else for the work in which the petitioner was engaged. In this regard, having seen that the stand by the learned standing counsel for the respondent nos. 1, 2 and 3 is two-fold to the effect that (i) Rule 52 of the 1958 Rules, empowers the Town Committee to employ and to fix the salaries, allowances and conditions of service, provided that the appointment of any person on pay exceeding Rs.50/- per month shall have to be approved by the Karbi Anglong Autonomous District Council, and (ii) that appointment of the petitioner was not in accordance with law.

12) Having regard to such stand, the Court is of the considered opinion that it is not permissible for the respondent nos. 2 and 3 to remove the petitioner in his capacity as an *ad hoc* employee and replace it with another *ad hoc* appointment. In this regard, the observations made by the Supreme Court of India in the case of *Umadevi (3) (supra)*, is quoted below:-

“26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent -- the distinction between regularization and making permanent, was not emphasized here - can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in paragraph 50 (of SCC) of Piara Singh [State of Haryana Vs. Piara Singh, (1992) 4 SCC 118] is to some extent inconsistent with the conclusion in paragraph 45 therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be

made permanent.

13) Thus, from the above quoted observations, it leaves no room for doubt that the practice of making *ad hoc* appointments by the instrumentalities of the State has been strongly deprecated. Therefore, taking note of (i) the stand taken by the learned standing counsel for the respondent nos. 1, 2 and 3, (ii) the grievance of the petitioner, and (iii) taking note of the herein before referred observations made by the Supreme Court of India, the Court is inclined to provide that having discontinued the engagement of the petitioner, the respondent nos. 1, 2 and 3 are directed to forthwith refrain from engaging any other *ad hoc* appointee to collect rent/ tax from building and other properties of Bakalia Town Committee without making regular and proper recruitment. This writ petition is allowed to the said limited extent. The rule is made absolute in terms of the relief as allowed herein.

14) In light of the discussions above, the petitioner is not found to have any legal or constitutional right to continue to work as Tax Collector of Bakalia Town Committee, as such, all other reliefs sought for by the petitioner stands rejected.

15) Before parting with the records, it would be appropriate to mention herein that in light of the discussions above, there was no necessity for this Court to examine the merit or otherwise of the allegations made by the respondent nos. 2 and 3 against the petitioner or as regards merit or otherwise of the defence taken by the petitioner on such allegations. Therefore, any Court or authority called upon to decide such matters may decide the same in accordance with law. The parties are left to bear their own cost.

JUDGE

Comparing Assistant