

MD. ABDUL KADIR & ANR.

v.

DIRECTOR GENERAL OF POLICE, ASSAM & ORS.
(Civil Appeal No. 7922 of 2002)

APRIL 22, 2009

[R.V. RAVEENDRAN AND B. SUDERSHAN REDDY, JJ.]

Service Law:

Ad hoc appointments under specific scheme/project – Claim for regularisation and salary at par with regular counterparts – Prevention of Infiltration of Foreigners Scheme, 1960 – Appointments of ex-servicemen made under Additional PIF Scheme, 1987 formulated by Government of India for Assam – Circular dated 17.3.1995 issued by Inspector General of Police (Border) Assam, laying down for reappointment of ad hoc employees under the Additional PIF Scheme, every year after giving them termination notice – Held: When the ad hoc appointments are under a scheme and are in accordance with the selection process prescribed by the Scheme, there is no reason why those appointments under the Scheme should not be continued as long as the Scheme continues – Single Judge of High Court was justified in observing that the process of termination and reappointment every year should be avoided and the appellants should be continued as long as the Scheme continues, purely on ad hoc and temporary basis, co-terminus with the scheme – The Circular dated 17.3.1995 being contrary to the PIF Additional Scheme and the principles of service jurisprudence, is quashed – Those appointed in a time scale of pay shall be entitled to annual increments – As regards the appointments on fixed salary, if the State Government has treated such appointments on a time scale and claims reimbursement from the Government of India on that basis, the State Government should, in all fairness, pass

A *on the benefit of such time scale of pay to the employees concerned – When persons are engaged under the same scale, discriminatory treatment i.e. extending benefit of increments to some and denying the same to others should be avoided – Constitution of India, 1950 – Articles 14 and 16.*

B *Administrative Law*

Policy matters – Jurisdiction of court to suggest change in policy – Prevention of Infiltration of Foreigners Scheme, 1960 and Additional PIF Scheme 1987 for Assam – Ex-servicemen appointed on various additional posts on ad hoc basis through regular selection process – Continuing for decades – Claim for regularisation and consequential monetary benefits – Held: Though the issue is a matter of policy having financial and other implications, but where an issue involving public interest has not engaged the attention of those concerned with policy, or where the failure to take prompt decision of a pending issue is likely to be detrimental to public interest, Courts will be failing in their duty if they do not draw attention of the authorities concerned to the issue involved in appropriate cases – While cannot be and should not be makers of policy, they can certainly be catalyst, when there is a need for a policy or a change in policy – In the facts and circumstances of the case, if those working as ad hoc or temporary staff for decades on, are converted to regular permanent staff that would boost their moral and efficiency.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7922 of 2002.

G From the Judgment & Order dated 01.09.2000 of the High Court of Gauhati in Writ Appeal No. 154 of 1996.

P.K. Goswami, S.K. Dubey, Rajiv Mehta, A. Henry, Sudha Pal, Shreekant N. Terdal and Avijit Roy, (for Corporate law Group) for the Appearing Parties.

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The following Order of the Court was delivered :

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ORDER

R. V. RAVEENDRAN, J. 1. The Government of India formulated the Prevention of Infiltration of Foreigners Scheme (PIF Scheme for short) for Assam, for strengthening the Assam Governmental machinery for detection and deportation of foreigners in the year 1960. The scheme has been extended from time to time and is in force even now. By communication dated 3.6.1987, the Government of India informed the Govt. of Assam about the sanction of the following additional posts by the President under the PIF Scheme: Inspectors-5, Sub-Inspectors-323, Head Constables-306 and Constables-646. Under the said PIF Additional Scheme, the Government of India agreed to reimburse the cost of pay and allowances of persons employed in the additional posts provided all the additional posts were filled by only ex-servicemen. It also agreed to reimburse all other expenditure incurred by the State for the said Additional Scheme. The PIF Additional Scheme provided that the sanction will be valid for the period of two years from the date of its issue (3.6.1987), to be reviewed thereafter along with the main PIF Scheme.

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2. A selection board was constituted for selection of ex-servicemen to the various posts which were sanctioned under the Additional Scheme dated 3.6.1987. The first appellant, an ex-serviceman, was selected and appointed as a sub-Inspector on 1.9.1988 after undergoing the selection process in the time scale of pay of Rs.620-25-745-EB-30-895-EB-35-1315 plus allowances. The second appellant, also an ex-serviceman, was selected and appointed as a sub-Inspector on 17.3.1995 on a fixed basic pay of Rs.1375/- (being the minimum in the pay scale applicable to Sub-Inspectors) plus allowances. The appointment letters issued to them by the Inspector General of Police (Border) Assam made it clear that the appointments were purely on ad hoc and temporary basis and that they could be discharged without assigning any reason or notice, in any

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A contingency in future.

3. The Inspector General of Police, (Border) Assam issued a Circular dated 17.3.1995 laying down the following procedure for appointment/continuation of ex-serviceman as ad hoc Border staff:

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(i) All appointments shall be for a contract period of one year.

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(ii) Termination notice should be issued to every ad-hoc employee at least 45 days before the date of expiry of one year from the date of appointment.

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(iii) The ad hoc employee, on receiving information regarding termination from service, shall, if he desires to continue, send an application seeking fresh appointment for a further term of one year. The application should reach the office of IGB (B), Assam at least 30 days before the date of expiry of one year.

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(iv) The concerned DIGP (Range)/Superintendent of Police shall send a performance report and medical certificate in respect of each ad hoc employee to whom such termination notice has been issued at least 30 days before the date of such termination while forwarding the applications for fresh appointment.

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(v) The applications for fresh appointment shall be considered with reference to the respective performance report and medical certificate, and those found fit and suitable will be re-appointed at least 20 days before the date of expiry of the contract period of one year.

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(vi) Such fresh appointment letters shall be issued by the Superintendent of Police (Border) Assam and the ad hoc employees cleared for fresh appointment shall sign an agreement and submit his joining report.

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(vii) If application for fresh appointment is not received in due time, it will be taken that the ad-hoc employee has not sought fresh appointment and he will not be considered for fresh appointment.

4. Aggrieved by the process of termination and reappointment introduced by the said circular dated 17.3.1995 and the consequences thereof appellants 1 and 2 filed Civil Rule Nos.2065/1995 and 1698/1995 in the Gauhati High Court. According to them, but for such yearly artificial terminations, the ad-hoc employees would have the benefit of continuous service and those who were appointed in a time scale of pay would have also got annual increments. The procedure contemplated by the circular dated 17.3.1995, it was submitted, introduced an element of uncertainty in regard to their service and gave room for nepotism and corruption. The appellants pointed out that the original PIF Scheme had continued from 1960 and the Additional Scheme was continued from 1987 without break, and having regard to the importance of border security requirements, it was a misnomer to call them as ad hoc appointees; and as the posts were sanctioned by the President and the scheme was continuing for long number of years, their services should be regularized. They also pointed out that three-fifth of Assam Police Border Organisation(PIF Additional Scheme) was earmarked for regular police personnel and two fifth was reserved for ex-servicemen; and that though they discharged the same functions as their police-brethren, they were discriminated by terming them as ad-hoc employees thereby denying them security of tenure, benefit of pay scales and other service benefits. They also pointed out that ex-servicemen recruited in Assam Special Peace Keeping Force were extended several benefits available to regular employees and they should also be extended such benefits. They therefore prayed that (i) the system of appointing them on one year contract basis be quashed; (ii) the various benefits extended to ex-servicemen appointed to Assam Special Peace Keeping Force under Office Memorandum dated 14.6.1984 may also

A be extended to them; and (iii) they should be regularized in service of the Border organization of Assam Police with all consequential benefits including yearly increments in pay.

B 5. A learned Single Judge of the High Court allowed the writ petition by order dated 29.2.1996. He held that the appellants should be allowed to continue as long as the scheme was continued by the Government of India and they shall be entitled to all service benefits as regular employees so long as the scheme continued. He also held that the appellants shall be entitled to the benefits extended under the State
C Government Scheme for enrollment of ex-service personnel in Assam Special Peace Keeping Force, vide Official Memorandum dated 14.6.1984. Feeling aggrieved the Director
D General of Police, Inspector General of Police (Border) and Superintendent of Police (Border), Assam, filed a writ appeal (WA No.154/1996). The appeal was allowed by a division bench of the High Court by the impugned order dated 1.9.2000. The Division Bench held that the Scheme contained in the Office Memorandum dated 14.6.1984 of the State Government relating to Assam Special Peace Keeping Force will not apply
E to those who were inducted under the PIF Additional Scheme dated 3.6.1987, which is a completely different scheme. The Division Bench therefore set aside the order of the learned Single Judge and dismissed the writ petitions. The said judgment is under challenge in this appeal by special leave.

F 6. At the outset, the learned counsel for the appellants stated that the prayer for relief based on the Scheme dated 14.6.1984 relating to Assam Special Peace Keeping Force, was not pressed. Therefore only two issues arise for our
G consideration: (i) whether the persons engaged under the PIF Additional Scheme, 1987, are entitled to be regularized in service; (ii) whether the procedure introduced by circular dated 17.3.1995 is valid.

H 7. The fact that the appellants were employed under the PIF Additional Scheme is not disputed. The duration of PIF Additional Scheme under which they are employed was initially

two years, to be reviewed for continuation along with the original PIF Scheme. The said scheme is being extended from time to time and is being continued. If the temporary or ad-hoc engagement or appointment is in connection with a particular project or a specific scheme, the *ad hoc* or temporary service of the persons employed under the Project or Scheme would come to an end, on completion/closure/cessation of the Project or the Scheme. The fact that the Scheme had been in operation for some decades or that the employee concerned has continued on ad hoc basis for one or two decades would not entitle the employee to seek permanency or regularization. Even if any posts are sanctioned with reference to the Scheme, such sanction is of ad hoc or temporary posts co-terminus with the scheme and not of permanent posts. On completion of the project or discontinuance of the scheme, those who were engaged with reference to or in connection with such Project or Scheme cannot claim any right to continue in service, nor seek regularization in some other project or service. (See *Bhagwan Dass v. State of Haryana* – 1987 (4) SCC 634, *Delhi Development Horticulture Employees Union v. Delhi Administration* – 1992 (4) SCC 99, *Hindustan Steel Works Construction Ltd., vs. Employees Union* – 1995 (3) SCC 474, *UP Land Development Corporation vs. Amar Singh* – 2003 (5) SCC 388, *Madhyamik Shiksha Parishad UP v. Anil Kumar Mishra* – 2005 (5) SCC 122, *Secretary, State of Kamataka v. Umadevi* – 2006 (4) SCC 31, *Indian Council of Medical Research vs. K. Rajyalakshmi* – 2007 (2) SCC 332, and *Lal Mohammed vs. Indian Railway Construction Co. Ltd.* – 2007 (2) SCC 513). In view of this settled position, the appellants will not be entitled to regularization.

8. We may next consider the challenge to the procedure of annual termination and reappointment introduced by the circular dated 17.3.1995. The PIF Scheme and PIF Additional Scheme were introduced by Government of India. The scheme does not contemplate or require such periodical termination and re-appointment. Only ex-servicemen are eligible to be selected

A under the scheme and that too after undergoing regular selection process under the Scheme. They joined the scheme being under the impression that they will be continued as long as the PIF Additional Scheme was continued. The artificial annual breaks and reappointments were introduced by the state

B agency entrusted with the operation of the Scheme. This Court has always frowned upon artificial breaks in service. When the ad-hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not

C be continued as long as the scheme continues. Ad-hoc appointments under schemes are normally co-terminus with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the

D length of their ad hoc service or the scheme, they will not be entitled to regularization nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing selection process, need not be

E subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments. We are therefore of the view that the learned Single Judge was justified in observing that the process of termination and re-appointment every year should be avoided and the appellants should be

F continued as long as the Scheme continues, but purely on ad hoc and temporary basis, co-terminus with the scheme. The circular dated 17.3.1995 directing artificial breaks by annual terminations followed by fresh appointment, being contrary to the PIF Additional Scheme and contrary to the principles of service jurisprudence, is liable to be is quashed.

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9. Before parting we may however refer to two aspects. One is with reference to the term of the scheme itself. Second is with reference to the pay.

H (9.1.) PIF Scheme has been in force for nearly five

decades. PIF Additional Scheme has been in force for more than two decades. The object of the Scheme is detection and deportation of illegal immigrants/fresh infiltrators/re-infiltrators, establishment of second line of defence on Assam Bangladesh Border to man the areas not covered by Border Security Force and monitoring the occurrences on international border. The staff entrusted with such sensitive functions and duties can work wholeheartedly and with commitment in adverse and hostile conditions only if they have security of tenure, without having to constantly worry about their future. If the task under the scheme is perennial, there is no point in executing it, as a 'temporary' Scheme, though to start with it might have been thought that the task was a short term task. Another aspect to be noticed is that duties discharged by the Border staff belonging to Assam Police Border Organization under the PIF Scheme is said to be somewhat similar or parallel to the duties discharged by regular forces like Border Security Force and Assam Special Peace keeping Force. Further, part of the very same Border Organization under PIF Scheme is manned by regular police personnel. Therefore, if those working as ad hoc or temporary staff for decades on, are converted to regular permanent staff, that would boost their morale and efficiency. We are conscious of the fact that the issue is a matter of policy having financial and other implications. But where an issue involving public interest has not engaged the attention of those concerned with policy, or where the failure to take prompt decision on a pending issue is likely to be detrimental to public interest, courts will be failing in their duty if they do not draw attention of the concerned authorities to the issue involved in appropriate cases. While courts cannot be and should not be makers of policy, they can certainly be catalysts, when there is a need for a policy or a change in policy.

(9.2.) Another issue requiring consideration by the respondents is the question of pay. The order of appointment in the case of first appellant shows that he was appointed in a time scale of pay. First appellant and similarly placed will

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A therefore be entitled to increments in terms of the pay scale.
B Second appellant was appointed on a fixed pay. But even in
C the case of second appellant and others appointed on fixed pay,
it is alleged that the State Government had treated their
D appointments as being in a time scale of pay and claiming
E reimbursement from the Central Government on that basis. If
F the State Government has treated the appointments on fixed
G salary as appointments on a time scale, and claimed
H reimbursement from the Government of India on that basis, the
State Government should, in all fairness, pass on the benefit
of such time-scale of pay to the employees concerned. When
persons are engaged under the same Scheme, discriminatory
treatment, that is extending benefit of increments to some and
denying the said benefit to others, should be avoided.

(9.3.) We hope that the respondents will endeavor to
address the aforesaid two grievances of the border staff
promptly and in an appropriate manner.

10. The appeal is allowed in part accordingly as follows:

- (i) The circular dated 17.3.1995 is quashed. The appellants shall not be subjected to annual terminations and re-appointments (subject to observations in para 8 above).
- (ii) The benefit of this order will be available to other similarly situated ad hoc border staff, even if they have not approached the court for relief. In view of the above, the interlocutory applications for impleading are disposed of as having become infructuous.
- (iii) This order will not however come in the way of ad hoc employees working as Border staff, being subjected to any periodical medical examination or service review to assess their fitness and suitability for continuation.

H. R.P.

Appeal partly allowed.