

JUDGMENT & ORDER (CAV)

[1] Heard Mr. AP. Sahu, learned counsel for the petitioners and Mr. Shyam Sharma, learned G.A. for the respondents.

[2] The case of the petitioners is that they were initially appointed as Assistant Project Officer (APO) on contract basis in the NREGA Wing of DRDA, Senapati vide order dated 04.01.2010. Vide another order dated 12.01.2010 issued by the Deputy Commissioner/Chairman, DRDA, Senapati, in partial modification of the earlier order dated 04.01.2010, engaged the petitioners as APO on contract basis in DRDA, Senapati. The Deputy Commissioner/Executive Director, DRDA, Senapati submitted details of the officials in DRDA, Senapati to the Joint Secretary (RD & PR), Govt. of Manipur vide letter dated 17.10.2014. The Joint Secretary (RD & PR) sent a letter to the Executive Director (DRDA), Senapati on 18.10.2014 wherein it was stated that there was excess number of staff at various positions under DRDA, Senapati and further requested to fill up the vacant positions through duly constituted DPC from amongst the existing personnel, if found eligible against the vacant posts and any excess manpower remaining after taking the above steps to be terminated forthwith.

[3] On 06.04.2016, the Deputy Commissioner/Executive Director, DRDA, Senapati sent a letter to the Principal Secretary (RD & PR), Government of Manipur thereby submitting the proceeding of DPC for filling up of vacant post of DRDA, Senapati and it was stated in the said letter that

after the Committee examined carefully the service records and ACRs of the APOs, the petitioners (having completed 6 years of service) were fit for promotion to the post of Project officer. As per the letter dated 07.05.2016 of the Additional Secretary (RD & PR), Government of Manipur to the Deputy Commissioner/Executive Director, DRDA, Senapati, the proceedings of the DPC for filling up the vacant post of DRDA, Senapati was approved. Consequent upon the said order, the Deputy Commissioner/Executive Director issued an order dated 09.05.2016, whereby the petitioners were appointed as Project Officers on promotion on regular basis in DRDA, Senapati.

[4] The Secretary (RD & PR), Government of Manipur issued an order dated 18.11.2016 whereby as many as 80 direct recruited contract employees of various categories of various DRDA were absorbed and regularized in RD & PR Department against the posts created. However, the petitioners were absorbed and regularized to the initial post of APO and not to the promoted higher post of Project Officer. However, the other similarly promoted incumbents were absorbed and regularized in their respective promoted posts. Being aggrieved, the petitioners submitted a common representation dated 26.12.2016 to the DC/Executive Director, DRDA, Senapati for absorption as Project Officer as done in the case of similarly situated incumbents. The DC/Executive Director, DRDA, Senapati wrote a letter dated 28.12.2016 to the Secretary (RD & PR), Government of Manipur for absorption of the petitioners to the post of Project Officers in RD & PR, as they had already been promoted to the post of Project Officer from the

post of APO by a duly constituted Committee and further stated that the proceedings of the DPC was approved by the State Government on 07.05.2015 and accordingly, the appointment orders had been issued for all the staffs including the petitioners. The representation submitted by the petitioner is still pending with the authorities.

[5] Respondent No. 5 filed counter affidavit stating that the present petitioners had already joined to the post of APO on the communication made by the Screening Committee Meeting held on 17.11.2016, they cannot claim for regularising their services to the post of Project Officer by promotion, as for promotion to the post of Project Officer requires 4 years of regular services in the post of APO. It is stated that the experience gained by the petitioners as APO in the DRDA, Senapati on contract basis cannot be counted as experience for promotion to the post of Project Officer in the Department of RD & PR. It is also stated that since the petitioners were appointed to the post of APO in the RD & PR by an order dated 18.11.2016, their appointment by promotion by an order dated 18.11.2016 were treated as cancelled on the ground of being appointed as APO on regular basis in the RD & PR, DRDA-Wing by clarification letter dated 21.11.2016 issued by the DC/Executive Director, DRDA, Senapati.

[6] The petitioners filed rejoinder affidavit stating that the recommendation of the petitioners for appointment to the post of Project Officer was made duly after holding the proper DPC. Therefore, it is stated that the letter dated 21.11.2016 and termination order dated 30.11.2016 issued by the DC, Senapati are in total violation of the established principle

of law. Further, it is stated that the letter dated 28.12.2016 issued by the DC, Senapati superseded the earlier orders and clearly explained that all anomalies/irregularities have been rectified according to the approved staffing pattern of the DRDA Guidelines thereby the petitioners may be absorbed as Project Officers by modifying the earlier orders. It is also stated that all the absorbed employees were contract employees of DRDA Department and as such, all the employees are in the same footing and therefore, the question of the petitioners being different from other employees does not arise. It is prayed that the writ petition be allowed.

[7] Mr. Anjan Prasad Sahu, learned counsel for the petitioners submits that except for the petitioners herein, all other employees of the erstwhile DRDAs have been absorbed in promoted posts. However, the petitioners are treated differently and they have been absorbed to the lower post even though they were duly promoted to the higher post of Project Officer. This anomaly was pointed out by the DC/Executive Director, DRDA, Senapati to the Secretary (RD & PR), Govt. of Manipur in its letter dated 28.12.2016 (Annexure-16) recommending the absorption of the petitioners as Project Officer. It is plea of the learned counsel for the petitioners that as a model employer, the State respondents ought to have treated all similarly situated persons while conferring certain service benefits including promotion. It is prayed that the State respondents be directed to upgrade the absorption of the petitioners from the post of Assistant Project Officers to the post of Project Officers in parity with other employees.

[8] In the written submission of the petitioners, it is relied on the decision of Hon'ble Supreme Court in **Civil Appeal No. 6994 of 2021: Dr. G. Sadasivan Nair vs Cochin University of Science and Technology represented by its registrar & others.**

“Para 33. Therefore, we are of the view that if the respondent university sought to deny the benefit of Rule 25(a), in light of the proviso which was subsequently inserted thereby limiting the benefit of the Rule, it ought to have done so uniformly. The proviso could have been made applicable in relation to all employees who retired from service of the respondent University following the introduction of the proviso, i.e. after 12th February 1985. However, the action of the respondent University of selectively applying the proviso to Rule 25(a) in relation to the appellant, while not applying the said proviso in relation to similarly situated persons, is arbitrary and therefore illegal, Such discrimination, which is not based any reasonable classification, is violative of all canons of equality which are enshrined in the Constitution of India.

[9] Another decision of Hon'ble Supreme Court in **Union of India and Others vs Munshi Ram :2022 LiveLaw (SC)891** where the employees working under the same employer-Railway Board working in different Zones/Divisions are required to be treated similarly and equally and are entitled to similar benefits and are entitled to the same treatment.

Para 7. “It cannot be disputed that employees working in different divisions/zones in the railways are under the very same employer-

Railway Board which is under the Ministry of Railways. There are 16 zones and 68 Divisions in the Railways. Therefore, the employees working under the same employer-railway Board working in different zones/ divisions are required to be treated similarly and equally and entitled to similar benefits and are entitled to the same treatment. As rightly submitted on behalf of the respondents, there cannot be any discrimination inter-se. Under the circumstances, on the ground of parity, the Commission Vendors/ Bearers working in the Northern Railway entitled to the same benefits which are held to be entitled to all similarly situated Commission Vendors/ Bearers working under different Zones/Divisions. There cannot be different criteria/ parameters with respect to similarly situated employees - Commission Vendors/bearers working in different Zones/Divisions, but working under the same employer”.

Para 8. “The Railways/ UOI/ Railway Board cannot be permitted to repeat the same arguments which were raised before different Tribunals, High Courts and also before this court. Under the circumstances, the respondents Commission Vendors/bearers working in the Northern railway shall also be entitled to the same benefits which the other Commission Vendors/bearers working in different Zones/Divisions are held to be entitled to. There cannot be discrimination among the similarly situated Commission Vendors/ Bearers. To deny similar benefits would tantamount to discrimination and in violation of Articles 14 and 16 of the Constitution of India.

[10] The petitioner counsel also submitted that The Document dated 09/06/2016 which is a letter to the Hon'ble Minister (RD&PR) Manipur, by the Direct Recruit District Rural Development Agency Employees' Union that the respondent counsel has been referring to, wherein the signature of the Petitioners has also been given is inconsequential as it is a letter praying for absorption. It does not specify for what post. The petitioners wanted to be absorbed in the post they were promoted to as Project Officer like all other similarly situated persons.

[11] Mr. Shyam Sharma, learned Government Advocate tries to justify the absorption of the petitioners to the lower post of Assistant Project Officers in RD & PR, as they did not have requisite service length for promotion to the Project Officer. It is the contention of the respondents that the contractual service rendered by the petitioners in DRDA, Senapati cannot be considered. Referring to the original Govt. file for Absorption of DRDAs staffs in various Line Departments [File No. 2/92//2007-RD(MC)Pt. submitted to the court], learned GA draws the attention of this Court to a representation dated 09.06.2016 submitted by Direct recruit District Rural Development Agency Employees' Association to the Minister (RD & PR), Manipur for absorption of direct recruit contract staff of DRDAs. It is pointed out that in the List of DPC faced contractual staff of DRDA, Manipur enclosed with the representation, the designation of the petitioners herein is shown as "APO", ie, Assistant Project Officer. It is emphasised that the Association itself prays for absorption of the petitioners as APO. Accordingly, it is prayed that the writ petition be dismissed devoid of any merit.

[12] This Court peruses the materials on record including the original government file, considers the submissions made at bar and the relevant case laws. The short question involved in the present petition is whether the petitioners herein are also entitled to be absorbed in the higher promoted post in RD & PR as done in the case of other similarly situated employees of DRDA.

[13] The admitted facts necessary for consideration in the present case are: (i) the petitioners and others were initially appointed in various levels of post in DRDA; (ii) vide order dated 09.05.2016 issued by DC/Executive Director, DRDA, Senapati, the petitioners were promoted to the post of Project Officer from the post of Assistant Project Officer in DRDA, Senapati on regular basis on the recommendation of a duly constituted DPC; (iii) the recommendation of the DPC was accepted by the State Government; (iv) vide order dated 18.11.2016 issued by the Secretary (RD & PR), Govt. of Manipur, 80 direct recruit contract employees of various categories of DRDAs including the petitioners were absorbed in RD & PR; (v) except the petitioners herein, all staff of DRDA were absorbed in the promoted post and the petitioners were absorbed in the lower post of Assistant Project Officer even after their promotion to the post of Project Officer; (vi) vide another order dated 24.12.2016 issued by the Secretary (RD & PR), Govt. of Manipur, 249 staff of various categories of 9 DRDAs were absorbed and regularised in RD & PR at the same posts held by them; (vii) only the petitioners were absorbed to and regularised at the lower posts and this anomaly was explained by DC/Executive Director, DRDA, Senapati to the

Secretary (RD & PR) vide letter dated 28.12.2016 (Annexure A-16) for absorption as Project Officer.

[14] The State respondents try to justify the absorption of the petitioners to the lower posts mainly on the ground that they were not eligible as per RR, the contractual service in DRDA could not be counted for calculating minimum service tenure for promotion, and the Association itself prayed for their absorption as Assistant Project Officer. Surprisingly, such scrutiny was not made in case of other staff of various DRDAs who were regularised along with the petitioners and afterwards. This Court has perused the representation dated 09.06.2016 submitted by the Association to the concerned Minister for their absorption in line department as regular employees. In the list of “List of the DPC faced contractual staff of DRDA, Manipur”, against the names of the petitioners, “APO” was mentioned. Learned GA presumes that the request was for absorption as “APO”. This Court is of the opinion that such presumption is preposterous and without any substance. The list is nothing but name of those contractual staff who appeared in the DPC. It is an admitted fact some of the staff who appeared in the DPC were subsequently promoted. The petitioners were also promoted from the post of Assistant Project Officer to the post of Project Officer in pursuance to the recommendation of the DPC. The submission of learned GA in this regard is rejected without any force.

[15] At the expenses of repetitions, it may be emphasised that similarly placed persons are to be treated equally. In a recent decision passed by the Hon’ble Supreme Court in the case of **The State of Madhya Pradesh v.**

Shyam Kumar [Order dated 22.07.2024; SLP(C) No.25609/2018]:
MANU/SCOR/87335/2024 @ Para 5, it has been held that benefits must be extended to all those who fall within the parameter of a policy. Para 5 is reproduced below:

“5. It is true that an employee engaged on daily wages has no legally vested right to seek regularisation of his services. However, if the competent authority takes a policy decision within the permissible framework, its benefit must be extended to all those who fall within the parameters of such a policy. Authorities cannot be permitted to pick and choose in such circumstances.”

[16] This Court is of the view that the ratio of the above-cited case is exactly applicable to the facts of the present case. Here also, by making a comprehensible scheme, staff of the various DRDAs in Manipur have been absorbed in RD & PR on regular basis. Except for the petitioners, all other similarly situated staff were absorbed and regularised to their promoted post. However, the petitioners were absorbed and regularised to the lower post of Assistant Project Officer, even after their promotion to the post of Project Officer on regular basis on the recommendation of a duly constituted DPC. The anomaly was explained in Annexure A-16 by the DC/Executive Director, DRDA, Senapati. There is no reason to deny the petitioners from their absorption as Project Officer in RD & PR. Singling out the petitioners cannot be sustained.

[17] Accordingly, the writ petition is allowed. The designation of the petitioners as shown in column III at serial number 26 and 27 in the **WP(C) No. 500 of 2018**

absorption order dated 18.11.2016 (Annexure A-13) issued by the Secretary (RD & PR), Govt. of Manipur is to be treated and read as “Project Officer” in place of “Assistant Project Officer” for all purposes. The petitioners will be entitled to the appropriate pay and allowances attached to the post of Project Officer with all consequential service benefits wef 18.11.2016. If vacant posts were not available on the relevant date, State respondents are at liberty to create supernumerary posts to adjust the petitioners, if so required. With these directions and observations, the writ petition is disposed of. Interim orders, if any, merge with this final order. Pending applications, if any, stand disposed of.

[18] Return government file.

JUDGE

FR/NFR

Kh. Joshua Maring

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