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**(2005) 04 GAU CK 0055**

**In the Gauhati High Court**

**Case No : Writ Petition (C) No. 188 (AP) of 2003**

Abing Pertin

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

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**Date of Decision : 05-04-2005**

**Acts Referred:**

**Citation : (2005) GLT 152 Supp**

**Hon'ble Judges : P.G. Agarwal, J**

**Bench : Single Bench**

**Advocate : T. Pertin, Tago Basar and B. Loya, for the Appellant; B.L. Singh, for the Respondent**

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## **Judgement**

P.G. Agarwal, J.—Heard Mr. Tony Pertin, learned Counsel for the Petitioner and Mr. B.L. Singh, learned Senior Government Advocate for the State Respondents.

2. The Petitioner was appointed as Conductor under the State Transport Department, Government of Arunachal Pradesh in the year 1993 on ad hoc basis. Thereafter, as per the recommendation of the DPC, the ad hoc service of the Petitioner was regularized against the sanctioned post by order dated 10.10.1997. While the Petitioner was serving as Conductor, State Transport Services, Roing his services were terminated by passing the following order:

GOVERNMENT OF ARUNACHAL PRADESH STATE TRANSPORT SERVICES:  
NAHARLAGUN No. STD(E) 946/93 Dated Naharlagun, the 29.5.1998

ORDER

WHEREAS a show-cause notice had been served Shri A. Pertin, Conductor under the establishment of Station Superintendent, STS, Roing in connection with misappropriation of Government revenue and where Shri A. Pertin, had been asked to submit his reply of show cause within 20 days vide No. STD (E) 946/93 dated 16.3.1998.

AND WHEREAS Shri Abin Pertin has failed to submit his reply of show cause

within stipulated period nor informed the reasons about inability of submission of his reply which clearly shows that he has nothing to say in his defence.

AND WHEREAS to maintain natural justice a reminder letter into that effect was also issued to Shri A. Pertin for submission of reply of show cause vide even No. dated 29.4.1998 but there is no response.

AND WHEREAS it is ascertained that Shri A. Pertin Conductor is still continuing such irregular practices even after giving him ample of chances for improvement of his conduct but to no avail.

NOW THEREFORE, the undersigned on careful examination of the case do hereby order that Shri Abin Pertin, Conductor is not a fit person to retained in service for further period and hence his services is no more required under STS with effect from 31.5.1998 (AN).

Sd/-K. Kholie, General Manager, State Transport Services, Naharlagun.

3. It is mentioned here that the Petitioner, on an earlier occasion, filed a writ petition being No. W.P. (C) 361 (AP) 2002 before this Court but due to some technical defects, it was allowed to be withdrawn with liberty to file a fresh writ petition and hence the present writ petition.

4. The Respondents-State has filed an affidavit-in-opposition, wherein they have stated that the order passed for regularizing the services of the Petitioner by the recommendation of the DPC was not correct and it is also stated that the Petitioner's appointment was made purely on temporary basis and may be terminated at any time. Being a temporary employee, his services could have been terminated in the above manner. We find that in view of the regularization of the services of the Petitioner against the sanctioned post and an existing vacancy, there is no such force in the above submission.

5. Mr. T. Pertin, learned Counsel for the Petitioner has also submitted that even if the Petitioner's service is deemed to be temporary, he cannot be removed by the impugned order dated 29.5.1998 as the said impugned order is astigmatic one and the Respondent authorities were required to proceed with the matter in accordance with the rules.

6. The law on this point has been more or less well settled by the Apex Court in the case of Om Prakash Goel Vs. The Himachal Pradesh Tourism Development Corporation Ltd., Shimla and another, wherein it is provided that where an order of termination of service was although innocuous was a camouflage for dismissal and intended to punish the Petitioner for the misconduct and the termination before conclusion of the enquiry held it was clearly illegal. In a later decision, the Apex Court has decided that the Court will remove the veil and look into the order whether it is astigmatic one or the termination order is a simpliciter.

7. this Court in the case of Managing Director, Trifed Vs. Ashok Kr. Choudhury, held that the dismissal order during probation period, if it is founded on

misconduct, negligence or any inefficiency was not sustainable. The Court in matter and held that the termination order was not a simpliciter and the regularization of service of the Petitioner would not be liable to be thrown out in the aforesaid manner.

8. In the result, the writ petition is allowed and the impugned order of termination dated 29.5.1998 is hereby set aside. The Respondent State is directed to pass a necessary order for reinstatement of the services of the Petitioner within a period of 2(two) weeks from today.

9. It is needless to mention that the Respondent State however, would be at liberty to take any decision in the matter of disciplinary proceeding, if any.

10. The learned Counsel for the Petitioner, Mr. Pertin has also prayed that the Petitioner may be given all the consequential benefits of service and the back wages.

11. We find that the Petitioner's service was terminated by the order dated 29.5.1998 and he remained silent and has approached this Court in the year 2002 with the other writ petition and the present writ petition in the year 2003 and in view of the above, we provide that so far the count of service of the Petitioner is concerned for the purpose of pensionary and other retiral benefits, the entire period of termination till reinstatement shall be considered or deemed to be treated in service. However, the Petitioner shall be paid 50% of the back wages from the date of termination from service to till his reinstatement.

12. The Petitioner shall furnish a certified copy of this order before the Respondent authorities within a period of 5 (five) days from today.