
(2005) 08 GAU CK 0066
In the Gauhati High Court
Case No : Writ Petition (C) No. 21 (K) of 2005

Arenthung Yanthan

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision : 08-08-2005

Acts Referred:

Citation : (2005) 107 FLR 575 : (2006) 2 LLJ 470

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : Supu Jamir, for the Appellant; Y. Longkumer, G.A., for the Respondent

Judgement

I.A. Ansari, J.—Heard Mr. Supu Jamir, learned Counsel for the petitioner, and Mrs. Y. Longkumer, learned Government Advocate, appearing on behalf of respondent Nos. 1, 2 and 3.

2. The present writ petition arises out of peculiar set of facts, for, the order of appointment of the petitioner as well as of others, termination of their services, re-appointment of some of the persons, whose services were terminated along with the service of the petitioner, and appointment of the private respondents, namely, respondent No. 4, have all been contrary to law.

3. The material facts, which are not in dispute before me, may be noticed as follows:

By order, dated February 7, 2003, issued, by the respondent No. 3, the writ petitioner was appointed in the office of the Directorate of Printing and Stationary, Government of Nagaland, as a Counter against an existing vacancy caused by promotion of its incumbent. By similar orders passed, on February 7, 2003 and March 6, 2003, five more persons were appointed in similar manner, these appointees being Smti Roselin, Shri, Ponathung Ngullie, Smti Lozano Lotha and Smti Zasitsonuo. By an order, dated April 11, 2003, issued by the respondent No. 3, the services of the petitioner and also of the persons mentioned hereinbefore were terminated. Notwithstanding this termination order,

while Smti Roselin, Shri Ponathung Ngullie, Smti Lozano Lotha and Smti Zasitsonuo were re-appointed by orders issued by the respondent No. 3 on April 25, 2003, April 15, 2003, April 25, 2003 and April 15, 2003 respectively, the petitioner was not re-appointed.

4. Aggrieved the order, dated April 11, 2003, whereby his service was terminated, the petitioner has approached this Court seeking issuance of appropriate writ(s) setting aside and quashing the impugned termination order, dated April 11, 2003, and also the impugned order, dated April 25, 2003, whereby the respondent No. 4 was appointed, with further prayer to issue direction to the respondents to re-appoint the petitioner in the post of Counter and to allow him to continue to work in the said post of Counter, the case of the petitioner i being, briefly stated, thus : The termination of his service without giving notice of one month, as had been stipulated in his appointment order, dated February 7, 2003, was illegal and against the principles of natural justice. The said order of termination is also discriminatory inasmuch as other persons, similarly situated, has been re-appointed, but the petitioner has been kept out of service and, more so, when the respondent No. 4 has been appointed in the post against which the present petitioner was appointed. The petitioner also submits that another person, namely, Shri Rembemo Lotha, who was similarly situated as the petitioner is and whose service was also terminated in the manner as had been done in the petitioner's case, the said Shri Rembemo Lotha had challenged the legality of the said termination order in WP (C) No. 49 (K)/2003, but the said writ petition was withdrawn, on October 17, 2003, on the basis of the assurance given by the State respondents that he would be re-appointed and, thereafter, following the withdrawal of the writ petition, the State respondents have re-appointed the said Rembemo Lotha on November 3, 2003.

5. While not disputing the facts relating to the appointment of the petitioner and the persons mentioned hereinabove, the termination of their services and re-appointment of some of them except, of course, the petitioner, the respondents, particularly, respondent Nos. 2 and 3 have submitted that on, June 4, 2003, following announcement of General Election to the Legislative Assembly of Nagaland, an order was issued by the Election Department, Government of Nagaland, on June 14, 2003, making it clear that the Election Commission of India had directed the persons/authorities concerned not to make any ad hoc appointment in Government and Public Sector Undertakings after June 11, 2003. However, the present petitioner and the persons mentioned hereinabove were appointed on different dates after the said directions of the Election Commission of India were issued. The appointments, so made, were violative of the Model Code of Conduct of Elections and, therefore, the said appointments were illegal. On noticing this illegality, the impugned order, dated April 11, 2003, terminating the services of the petitioner and some others were passed. The State respondents do not, however, dispute that some of the persons, who were similarly situated as the petitioner is and whose services were also terminated on the same ground on which the service of the petitioner stand terminated, have

been re-appointed and that the appointment of the respondent No. 4 is, in fact, against the post, which the petitioner was holding at the time, when the said order of termination was issued.

6. When the appointments of the petitioner and the persons aforementioned were, undisputedly, and ex facie in violation of the Model Code of Conduct of Elections, the mere failure to give notice to the petitioner before the termination of his service would not have warranted interference by this Court. The impugned order of termination, dated April 11, 2003, cannot, therefore, be interfered with. However, in view of the fact that after terminating the services of the petitioner and also, amongst others, of the respondent No. 4 on the ground that their appointments had been made after the Model Code of Conduct of Elections had come into force, the respondents could not have re-appointed any one without a due selection process and restoring to pick and choose policy. Viewed from this angle, the State respondents could not have appointed respondent No. 4 in place of the petitioner and, hence, the appointment of the respondent No. 4 cannot be allowed to stand good on record.

7. What is also disturbing is that even the re-appointment of the persons, whose names have been mentioned above, was, as indicated hereinabove, without following any norms and absolutely arbitrary. Though the petitioner calls these re-appointments as discriminatory, the fact remains that in order to remove such discrimination, the State-respondents cannot be directed to perpetuate illegalities by appointing the petitioner in the same manner as has been done in the cases of the persons named hereinbefore.

8. In view, however, of the peculiar facts and circumstances of the present case, when the respondent No. 4 has been appointed in the post from which the petitioner had been removed by similar order as the respondent No. 4 was, this Court has no option but to interfere though for limited purpose, with the impugned order of termination, dated April 11, 2003, so far as the same concerns the present petitioner and also the impugned order, dated April 25, 2003, whereby the respondent No, 4 has been re-appointed.

9. Considering, therefore, the matter in its entirety and in the interest of justice, the impugned order, dated April 25, 2003, aforementioned is hereby set aside and quashed and the service of the petitioner is directed to be restored against the post, which the respondent No. 4 was holding in terms of the order, dated April 25, 2003, but the petitioner shall not be entitled to any back wages. The respondents are hereby directed to undertake recourse to appropriate selection process in terms of the relevant rules/guidelines/policies and make appointments in respect of those vacancies, which have been filled up by appointing persons, whose services had been terminated on the ground that their appointments were in violation of the Model. Code of Conduct of Elections. The exercise of the selection process, as directed, shall commence within a month from today and the whole exercise of the selection process, so directed, shall be completed within a period of six months from today. The State-respondents may approach

this Court for extension of the said period of six months if the situation, for reasons beyond the control of the State-respondents, so warrant. The petitioner and the persons similarly situated including the respondent No. 4 shall be at liberty to appear in such selection process provided that they are, otherwise, eligible for consideration for selection and appointment for the post to which they may apply.

10. Furnish a copy this judgment and order to the learned Government Advocate.

11. With the above observations and directions, this writ petition shall stand disposed of.

12. No order as to costs.