
(2007) 01 GAU CK 0043
In the Gauhati High Court

Chandradhar Das

APPELLANT

Vs

Assam Backward Classes Commission and Others

RESPONDENT

Date of Decision : 19-01-2007

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2007) 2 GLR 488 : (2007) 2 GLT 813

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Sharma, J.—The petitioner, who was first appointed as a Peon and thereafter as a Driver in Assam Backward Classes Commission is aggrieved by the order of discharge from service.

2. The petitioner was first appointed on daily wage basis with effect from 5.8.1994 by order dated 23.8.1994 issued by the Member Secretary, Assam Backward Classes Commission. Such appointment of the petitioner was followed by regular selection held for the post of Grade-IV. The interview was conducted on 25.8.1994. After the initial appointment on daily wage basis, the petitioner was appointed in regular time scale of pay of Rs. 900 to 1435 per month by order dated 31.8.1994 issued under the signature of the Principal Secretary of the Commission. Such appointment of the petitioner was made for a period of two months with the stipulation that the final appointment would be considered after receipt of the police verification report. His appointment was further continued for another period of two months by order dated 31.10.1994 with the same stipulation. Thereafter, he was given regular appointment on receipt of satisfactory police verification report. The appointment was in the office of the Commission by order dated 31.12.1994.

3. While the petitioner was continued in the capacity of Peon in the office of the Commission, he was engaged in the post of Driver in the Commission by order

dated 28.2.1995. While the petitioner was continued as such, he was placed under suspension by order dated 1.9.2003 pending drawal of departmental proceeding. He had the occasion to approach this court by filing the writ petition being W.P. (C) No. 6883/2004 when the order of suspension was not revoked and no departmental proceeding was initiated. The writ petition was disposed of providing that the petitioner would prefer departmental appeal against the order of suspension and the appellate authority would dispose of the same in accordance with rules. In the writ petition, it was also the grievance of the petitioner that he was not paid the subsistence allowance.

4. After the aforesaid order passed by this court, the petitioner preferred appeal against the order of suspension for payment of subsistence allowance. The appeal was preferred on 22.9.2004. In response to the appeal filed by the petitioner, the Administrative Officer of the Commission intimated the petitioner that he has been discharged from service by order dated 13.9.2004 and the copy of the same was endorsed to the petitioner by letter dated 28.9.2004. The order dated 13.9.2004 by which the petitioner has been discharged from service reads as follows:

No. APC/Per/34/94/25 Dated Guwahati the 13th Sept., 2004

OFFICE ORDER

Shri Chandradhar Das, a personal staff of the Chairperson, Assam Backward Classes Commission, who was temporarily appointed as driver subject to discharge without notice and without assigning any reason thereof vide office order No. ABC/Estt./16/94/95-D dated 28.2.1995, is now hereby discharged from service with effect from this day the 13th September, 2004.

He is entitled to receive his arrear subsistence allowances for the months from March 2004 till 12th September, 2004 excluding two (2) days subsistence allowances, i.e., on 21.3.2004 and 5.4.2004.

This order is in concurrence to the order dated 13.9.2004 passed by the hon"ble Chairperson, Assam Backward Classes Commission.

Sd/-

Administrative Officer,

Assam Backward Classes Commission,

Guwahati-5.

5. Being aggrieved by the aforesaid order dated 13.9.2004, the petitioner preferred appeal to the Government in the Department of Welfare of Plains Tribes and Backward Classes. The appeal was preferred (Annexure-9 to the writ petition) and having not received any response from the Government, the petitioner invoked the writ jurisdiction of this court. However, the Administrative Officer of the Commission had intimated the petitioner by letter dated

19.11.2004 that his appeal cannot be entertained by the Commission as the same does not lie to the Commission. Be it stated here that the appeal preferred by the petitioner before the Government was also preferred to the Commission as well as the Director of Welfare of Plain Tribes and Backward Classes, Assam. The respondents have filed their counter affidavit contending, inter alia, that the petitioner was appointed temporarily as Driver with the condition that his appointment was subject to discharge without notice and without assigning any reason thereof. According to the respondents, the petitioner and other employees like Jamadar, Peon and Mali were appointed as personal staff of the hon''ble Chair Person of the Commission and their continuation and retention in service was on year to year basis and that presently, there is no retention of the post being held by the petitioner.

6. In the counter affidavit, it has been stated that the petitioner was placed under suspension and thereafter, he has been discharged from service by the impugned order. The reason for discharge of the petitioner from service is stated to be the enquiry conducted by the Administrative Officer of the Commission. In this connection, the statement made in Para-5 is reproduced below:

5. That as regards the statement made in Paragraph 3 of the writ petition the deponent begs to state that the order of suspension was passed in pursuance of a direction/note of the hon''ble Chairperson (hon''ble Justice S. Haque) addressed to the deponent (Administrative Officer, Assam Backward Classes Commission) on 1.9.2004. Thereafter, by memo No. ABC/PER/34/94/25 Dated Guwahati 13th of September, 2004 the petitioner Sri Chandra Dhar Das was discharged from service w.e.f. 13.9.2004. The deponent communicated this order in concurrence of the order dated 13.9.2004 passed by the Hon''ble Chairperson, Assam Backward Classes Commission. It may be stated here that the deponent as Administrative Officer to the Assam Backward Classes Commission, on receipt of the note from the hon''ble Chairperson, Assam Backward Classes Commission, held an enquiry into the incidence of gross dereliction of duty and submitted the report to the hon''ble Chairperson, Assam Backward Classes Commission. Thereafter as stated above the order of discharge was communicated in concurrence to the order passed by the hon''ble Chairperson, Assam Backward Classes Commission.

(emphasis added)

7. In Para 6 of the affidavit, the respondents have contended that since the appeal preferred by the petitioner before the Government is pending, the writ petition is premature and liable to be dismissed. In the affidavit, the respondents have annexed the note of the hon''ble Chair Person, the enquiry report furnished by the Administrative Officer and the final order passed by the hon''ble Chair Person on the basis of which the impugned order of discharge has been issued.

8. The petitioner has submitted his affidavit-in-reply denying the contentions raised in the counter affidavit filed by the respondents. Referring to the

provisions of the Assam Backward Classes Commission Act, 1993, the petitioner has contended that he being a public servant, he is entitled to all the rights and privileges and protection guaranteed to a Government servant. It has been stated that the petitioner having rendered 9 years of continuous service, his service could not have been dispensed with in the manner and method in which the same has been done. It has also been stated that the appointing authority of the petitioner being the Member Secretary, an officer in the rank of Secretary to the Government of Assam, he could not have been removed from service by an authority lower in rank, i.e., the Administrative Officer of the Commission which according to the petitioner, is subordinate to the appointing authority. The petitioner has also alleged violation of the provisions of Article 311 of the Constitution of India.

9. The respondents have filed an additional affidavit highlighting to how the post being held by the petitioner had sanction from year to year and thereafter, the post has been surrendered by the Commission and now, ceased to exist with effect from 28.2.2005. Thus, in the additional affidavit, what has been emphasized is that after dispensation of service of the petitioner, the post is no longer in existence.

10. During the course of hearing of the writ petition, Mr. P.K. Mushahary, learned Senior Government Advocate was requested to obtain instructions in respect of the departmental appeal preferred by the petitioner against the order of termination of service. He has produced copy of the order dated 6.5.2006 passed by the Commissioner and Secretary to the Government of Assam in the WPT & BC Department by which the appeal was forwarded to the Commission for review of the order of dismissal on humanitarian ground. On the other hand, the respondents in their affidavit have contended that the appeal does not lie to the Commission and it is up to the Government to consider the appeal. Thus, here is a case in which the appeal preferred by the petitioner has neither been entertained by the Government nor by the Commission. Learned Counsel representing the Commission submitted during the course of hearing, that the Commission is not the authority to consider the appeal of the petitioner.

11. I have heard Mrs. S. Deka, learned Counsel for the petitioner as well as Mr. P.K. Mushahary, learned Senior Government Advocate along with Ms R. Chakraborty, learned State counsel. I have also heard Mr. A.M. Mazumdar, learned senior counsel representing the Commission.

12. As noticed above, the petitioner was first appointed as Peon in the office of the Commission pursuant to a regular selection. He was so appointed by the Member Secretary of the Commission. Be it stated here that the Member Secretary is in the rank of Secretary to the Government of Assam. After such substantive appointment of the petitioner, his service was utilized as Driver by way of an appointment order dated 28.2.1995. It is not known as to under what circumstances, the appointment of the petitioner in the substantive post of Peon was converted to that of Driver. Be that as it may, the petitioner continued in his

service for more than 9 years when he was first placed under suspension by order dated 1.9.2003. His writ petition being W.P. (C) No. 6883/2004 against the same and for payment of subsistence allowance was disposed of by order dated 16.9.2004. Soon thereafter, he was intimated by letter dated 28.9.2004 that he has been discharged from service by order dated 13.9.2004. The petitioner was placed under suspension in contemplation of a departmental proceeding. No such departmental proceeding was held. However, after passing the aforesaid order dated 16.9.2004 in the writ petition and forwarding of a copy of the same to the Commission by the petitioner by his letter dated 22.9.2004, he was intimated by letter dated 28.9.2004 about the order of discharge dated 13.9.2004.

13. No ground has been assigned in the order of discharge as to why the petitioner had to be discharged from service. In the order, it has been stated that the petitioner was appointed on temporary basis subject to discharge without notice and without assigning any reason, The petitioner was appointed way back in 1995 and after continuing for long 9 years, he was no longer a temporary appointee and his service could not have been dispensed with on that ground. Even in the order of appointment as Driver annexed to the writ petition, there was no indication that he was appointed on temporary basis and that his service was liable to be terminated without any notice. Even otherwise also, as has been observed by the Apex Court in *Roshan Lal Tandon Vs. Union of India (UOI)*, while it is true the original of Government service is contractual, but once appointed to his post or office, the Government servant acquires a status and his rights and applicants are no longer determined by consent of both the parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. The concept of status has been reiterated in *Government of Andhra Pradesh and others Vs. Syed Yousuddin Ahmed*, . The petitioner was not appointed for a particular period and his appointment was substantive in nature.

14. The challenge made to the order of discharge will have to be tested keeping in mind the aforesaid position relating to the appointment of the petitioner. As noticed above, he was first appointed in the office of the Commission as Peon pursuant to a regular selection in a substantive capacity and thereafter, he was appointed as Driver without indicating that his appointment was temporary and/or subject to discharge without notice. In the order of appointment dated 28.2.1995 annexed to the writ petition as Annexure-1, there was no indication of "temporary appointment" and/or "liable to be discharged without notice", but in the order of the same date annexed to the counter affidavit filed by the respondents, such expressions are available. Be that as it may, even if such expressions are held to be there in the order of appointment, the same by itself cannot decide the nature of appointment of the petitioner and the status he had enjoyed at the time of discharge from service, more particularly, when the petitioner continued in service for more than 9 years.

15. Although the impugned order by itself is innocuous in nature, but the respondents in their counter affidavit have stated the reason for discharging the

petitioner from service. They have annexed Annexure-"D", "E" and "F" reports and orders dated 1.9.2003, 8.9.2004 and 13.9.2004 in this regard. In Annexure-"D" note dated 1.9.2003, certain purported dereliction of duties and mischief purportedly committed by the petitioner were recorded and endorsed to the Administrative Officer of the Commission. This was never brought to the notice of the petitioner. After the note, the Administrative Officer held the petitioner guilty of the purported mischief committed by him including dereliction of duties. On the basis of the report, Annexure-"F" order dated 13.9.2004 was passed by the Commission directing termination of service of the petitioner. The order reflects that the Commission considered the report furnished by the Administrative Officer, examined and verified documents including the statements of witnesses which according to the Commission, established the commission of dereliction of duties and mischief by the petitioner. The entire order speaks of various "misconducts on the part of the petitioner. Thus, the purported misconducts on the part of the petitioner found pursuant to the enquiry conducted, was the motive behind the termination of service of the petitioner. This has been done without even issuing any show cause notice to the petitioner, but conducting the enquiry behind his back.

16. The petitioner was appointed initially as Office Peon in the Commission in a substantive capacity followed by his appointment as Driver. It will have to be born in mind that the petitioner was a Grade-IV employee. After rendering more than 9 years of service, he was placed under suspension by order dated 1.9.2003. He was placed under suspension in contemplation of a departmental proceeding which however, was never initiated. Things started moving in quick succession after the order dated 16.9.2004 was passed by this court in W.P. (C) No. 6883/2004. With the revelations made from the counter affidavit, the question necessarily arises is as to whether the order of discharge is punitive in nature or termination simpliciter. However, before answering this issue, the first question to be answered is as to whether the service of the petitioner could have been dispensed with in the manner and method in which the same has been done.

17. As noticed above, the initial appointment of the petitioner was substantive in nature. However, later on, his service was utilized as Driver. After continuing for long 9 years, his service was dispensed with by the impugned order dated 13.9.2003 like that of a probationer and/or temporary appointee. After the initial appointment of the petitioner, by efflux of time, the petitioner attained the status of permanent employee and his service was no longer governed by stipulation made in the order of appointment. His rights and obligations were to be determined by the rules holding the field. If the petitioner was guilty of any misconduct, he could have been held to be so only after regular departmental enquiry and giving him opportunity of being heard as contemplated under the rules. In fact, he was placed under suspension in contemplation of such a proceeding/However, immediately after filing of the writ petition, his service was dispensed with by the impugned order dated 13.9.2003 on ground of misconduct

and dereliction of duty.

18. The Apex Court in *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, in somewhat similar circumstances as in the instant case, dealing with the termination of service of a probationer (in the instant case the writ petitioner was not in probation) formulated the following questions for consideration:

18. On the basis of the above contentions, the following points arise for consideration. - (1) In what circumstances, the termination of a probationer's services can be said to be founded on misconduct and in what circumstances could it be said that the allegations were only the motive ?

(2) When can an order of termination of a probationer be said to contain an express stigma ?

(3) Can the stigma be gathered by referring back to proceedings referred to in the order of termination ?

19. Answering the first point, the Apex Court in reference to the various decisions on the issue, observed that -

19. As to in what circumstances an order of termination of a probationer can be said to be punitive or not depends upon whether certain allegations which are the cause of the termination are the motive or foundation. In this area, as pointed out by Shah, J. (as he then was) in *Madam Gopal v. State of Punjab* there is no difference between cases where services of a temporary employee are terminated and where a probationer is discharged. This very question was gone into recently in *Radhey Shyam Gupta v. U.P. State Agro Industries Corporation Ltd.* and reference was made to the development of the law from time to time starting from *Parshotam Lal Dhingra v. Union of India* to the concept of "purpose of enquiry" introduced by Shah, J. (as he then was) in *State of Orissa v. Ram Narayan Das* and to the seven-Judge Bench decision in *Samsher Singh v. State of Punjab* and to the post-Samsher Singh case law. This court had occasion to make a detailed examination of what is the "motive" and what is the "foundation" on which the innocuous order is based.

This court in that connecting referred to the principles laid down by Krishna Iyer, J. in *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha*. As to "foundation", it was said by Krishna Iyer, J. as follows: (SCC p. 617 para 53)

[A] termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case, the grounds are recorded in different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service, the conclusion is dismissal,

even if full benefits as on simple termination, are given and non-injurious terminology is used.

and as to motive; (SCC pp617-18, para 54)

54. On the contrary, even if there is suspicion of misconduct, the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge.

21. If things were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

20. As regards the second point, the Apex Court noticed that as in the present case, the order of termination involved in that case was the appellant's conduct, performance, ability and capacity which were judged and reflected in various documents. Referring to the earlier decisions on the question of stigma, it was held that the point depends on the facts and circumstances of each case to come to the conclusion as to whether the order of termination and for that matter, the word employed towards the same amount to a stigma or not. The following observations are noteworthy:

24. The contention for the appellant is that if the appellant is to seek employment elsewhere, any new employer will ask the appellant to provide, the copies of the letters dated 30.4.1996, 17.10.1996 and 31.10.1996 referred to in the impugned order and that if the said letters contain findings which were arrived at without a full-fledged departmental enquiry, those findings will amount to stigma "and will come in the way of his career.

25. In the matter of "stigma", this court has held that the effect which an order of termination may have on a person's future prospects of employment is a matter of relevant consideration. In the seven-Judge Bench decision in *Samsher Singh v. State of Punjab* Ray, C.J observed that if a simple order of termination was passed, that would enable the officer to "make good in other walks of life without a stigma". It was also stated in *Bishan Lala Gupta v. State of Haryana* that if the order contained a stigma, the termination would be bad for "the

individual concerned must suffer a substantial loss of reputation which may affect his future prospects.

27. As to what amounts to stigma has been considered in *Kamal Kishore Lakshman v. Pan American World Airways Inc.* This court explained the meaning of "stigma" as follows: (SCC p.150, para 8) "8.

According to Webster's New World Dictionary, it (stigma) is something that detracts from the character or reputation of a person, a mark, sign etc. indicating that something is not considered normal or standard. The Legal Thesaurus by Burton given the meaning of the word to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster's Third New International Dictionary gives the meaning as a mark or label indicating a deviation from a norm. According to yet another dictionary "stigma" is a matter for moral reproach.

21. Dealing with the third point, the Apex Court has held that the material which amounts to stigma need not be contained in the order of termination, but might be contained in any document referable to the order of termination. In this connection, the Apex Court observed, thus:

35. The above decision is, in our view, a clear authority for the proposition that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its annexures. Obviously, such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular enquiry was conducted. We shall presently consider whether, on the facts of the case before us, the documents referred to in the impugned order contain any stigma.

36. It was in this context argued for the respondent that the employer in the present case had given ample opportunity to the employee by giving him warnings, asking him to improve and even extended his probation twice and this was not a case of un-fairness and this court should not interfere. It is true that where the employee had been given suitable warnings, requested to improve, or where he was given a long rope by way of extension of probation, this court has said that the termination orders cannot be held to be punitive. See in this connection *Hindustan Paper Corporation v. Purnendu Chakrobarty*, *Oil & Natural Gas Commission v. Dr. Md. S. Iskender Ali*, *Unit Trust of India v. T. Bijaya Kumar*, *Principal, Institute of Postgraduate Medical Education & Research, Pondicherry v. S. Andel* and a Lalbour case *Oswal Pressure Die Casting Industry v. Presiding Officer*. But in all these cases, the orders were simple orders of termination which did not contain any words amounting to stigma. In case we come to the conclusion that there is stigma in the impugned order, we cannot ignore the effect it will have on the probationer's future whatever be he earlier opportunities granted by the respondent-Organization to the appellant to

improve.

37. On this point, therefore, we hold that the words amounting to "stigma" need not be contained in the order of termination but may also be contained in an order or proceeding referred to in the order of termination or in an annexure thereto and would vitiate the order of termination. Point 3 is decided accordingly.

22. As in the said case of Dipti Prakash Banerjee, in the instant case also, the enquiry report furnished against the petitioner and the enquiry conducted which includes verification of evidences and documents including the statements of witnesses which according to the respondents, substantiated the instances of mischief and dereliction of duties, have made use of towards termination of service of the petitioner. Thus, the definite findings were arrived at by conducting an enquiry as to the misconduct of the petitioner, but the same was behind his back and without resorting to any regular departmental enquiry. Thus, the order of termination is to be treated as founded, on the allegations and thus, bad in law. It is not a case of not holding any enquiry and arriving at any findings so as to say that the allegations against the petitioner were not the foundation, but were only motive. The whole basis of termination of service of the petitioner was serious allegations leveled against him pursuant to enquiry conducted behind the back of the petitioner in which even the documentary evidence and statements of witnesses were purportedly verified and scrutinized.

23. Once it is held that the petitioner being in a substantive appointment, his service could not have been dispensed with without following the due procedure and that even otherwise also, the order of termination is stigmatic, the impugned order cannot be sustained in law. Accordingly, I set aside and quash the same.

24. The respondents in their counter affidavit while trying to justify their action towards dispensation with the service of the petitioner have also stated that the post against which the petitioner was appointed is no longer in existence. This plea of the respondents if not at all tenable inasmuch as the post has been surrendered by the Commission to the Government after termination of service of the petitioner, while other posts have been continued. The Government instead of dealing with the departmental appeal preferred by the petitioner, forwarded the same to the Commission for review of the order of termination on humanitarian ground, but the same was not done by the Commission.

25. During the course of hearing, Mr. P.K. Mushahary, learned Senior Government Advocate representing the Government submitted that the post in fact, has not been abolished, but has been discontinued since the same has been surrendered by the Commission and that it would be revived and continued once requisition is placed by the Commission. The post has been surrendered in view of the termination of service of the petitioner and in the event of his reinstatement in service, the same will have to be revived. If the other posts in the Commission could be continued, I see no reason as to why the post being held by the petitioner cannot be continued. The post has been surrendered by the

Commission itself by letter dated 10.5.2005 (Annexure-"E" to the addl. affidavit). Such a course of action was adopted since the petitioner was no longer in service. But once he is reinstated in service, the post will have to be revived. In fact, Mr. Mushahary, learned Senior Government Advocate also submitted that in case of revival of service of the petitioner, the post surrendered by the Commission would also get revived.

26. The Other Backward Classes Commission was established as per the provisions of the Assam Backward Classes Commission Act, 1993. The Commission has been constituted by the Government. As per Section 3(2)(d) of the Act, a Member Secretary who is or has been an officer of the Government in the rank of Secretary to the Government of Assam. As per Section 4 senior (3) of the Act, the Government is empowered to remove a person from the office of the Member of the Commission. In terms of Section 5(1) and (2) of the Act, it is the Government which provides the Commission with such officers and employees, as may be necessary, for the efficient performance of functions of the Commission and the salaries and allowances payable to and other terms and conditions of service of the officers and other employees appointed for the purpose of Commission shall be such as may be prescribed. As per Section 16 of the Act, all the employees of the Commission are public servants. The petitioner was appointed as Driver by the Member Secretary by order dated 28.2.1995. Prior to that also, he was appointed as Office Peon of the Commission by the Member Secretary and the copies of the appointment orders were endorsed to the Commissioner and Secretary and the Director of WPT & BC Department. However, while terminating his service, it is the Administrative Officer who has done so who is admittedly lower in rank than the appointing authority, i.e., the Member Secretary, who is in the rank of Secretary to the Government of Assam. Thus, it is in this context, the learned Counsel for the petitioner emphasized that on this score alone, the impugned order is liable to be interfered with. This aspect of the matter is not gone into in detail, although the argument is weighty one, in view of the finding recorded above in respect of the impugned order.

27. Once the impugned order is set aside, the next question arises for consideration is as to whether he would be entitled to full pay and allowance for the period when he remained out of employment. In case of Dipti Prakash Banerjee (supra), this aspect of the matter has also been dealt with. In that case, in absence of any material that the appellant had been gainfully employed, the direction was issued for reinstatement with full back wages. In the instant case also, there is nothing to show that the petitioner was gainfully employed. However, considering the fact that he is a Driver and it is not unlikely that he was in some kind of employment during the period the order of discharge remained in operation. It is hereby provided that the petitioner would be entitled to 50% back wages from the date of impugned order dated 13.9.2004 till he is reinstated in service.

28. During the course of hearing, having noticed reluctance of the Commission to

take back the petitioner in service as was made known by the learned senior counsel for the Commission, Mr. Mushahary, learned senior Government Advocate was requested to obtain instructions as to whether the petitioner could be accommodated in the department itself, i.e., the Welfare of Plains Tribes and Backward Classes department. However, no response was shown in this regard. Since the petitioner was appointed with due notice to the Government and in view of the fact that it is the Government which is responsible for the pay and allowance and other terms and conditions of service of the employees of the Commission, I am of the considered opinion that it will be appropriate for the Government in the said department to accommodate the petitioner, in case the Commission is reluctant to take back the petitioner in service. Even otherwise also, having regard to the entire episode leading to termination of service of the petitioner, it may not be conducive for continuance in service of the petitioner in the Commission and thus, the respondents may reinstate the petitioner in service either in the Secretariat or in the Directorate. The matter is left to the discretion of the Government. However, it is hereby directed that wherever the petitioner is accommodated, he should be so accommodated on or before 28th February, 2007.

29. For all the foregoing reasons, discussions and conclusions, the impugned order dated 13.9.2004 (Annexure-8 to the writ petition) is set aside and quashed. The petitioner shall be reinstated in service with 50% back wages on or before 28th February, 2007.

30. Writ petition is allowed to the extent indicated above. There shall no order as to costs.