
(1995) 02 GAU CK 0016
In the Gauhati High Court
Case No : Civil Orig. Cont. 9 (k) of 1993

Dr. Arun Bhandari	Vs	APPELLANT
Mrs. Banuo Jamir and Others		RESPONDENT

Date of Decision : 14-02-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 41

Citation : (1995) CriLJ 3836

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : R.S. Bedi, for the Appellant; Government Advocate, for the Respondent

Judgement

H.K. Sema, J.—This Contempt petition has been filed for initiating a contempt proceeding against the respondent for alleged wilful violation of this Court's order dated 16-11-92 passed in Civil Rule 100 (k) 90.

2. The petitioner in Civil Rule No. 100(k) 90 has assailed the impugned order of termination dated 20th September, 1990. The impugned order of termination runs as under :-

"No. MED-13/82/G : In the interest of Public Service, the Governor of Nagaland is pleased to terminate the contract services of Dr. Arun Bhandari, Dental Surgeon appointed vide Notification of even number dated 20-7-82 with effect from 21-10-90 i.e. on the expiry of the leave granted to him.

Sd/- E. T. SUNEP Commr. & Secretary to the Govt. of Nagaland.

3. This Court after hearing counsels of both sides on 16-11-92 quashed the impugned order dated 20th September, 1990 for the reasons stated therein. This Court further observed in para 5 of its Judgment as under :-

"5. This apart, I am constrained to note that the petitioner has rendered his service on contract basis w.e.f. 20-7-1982 and that the petitioner has submitted the

representation for regularisation and absorption of his service by its petition dated 15th Jan" 88 (Annexure-2) duly recommended by the Director of Health service by its letter dated 28th January, 1988 (Annexure-3) and that another representation of the petitioner dated 4-8-1990 (Annexure-8) were pending before the authority. It was incumbent on the part of the competent authority to dispose of the petition filed by the petitioner before the impugned order was rendered. Considering the fact that the petitioner has now become over-aged and is unable to seek another fresh employment in any other department, the authority may, subject to the availability of vacancy consider the petitioner's case and dispose of his representation as early as possible."

4. This petition has been filed for initiating a contempt proceeding against the contemner on the ground that :-

(1) Pursuant to the order of the Court, petitioner" has not been reinstated into the service and consequently, no pay and allowances has been paid to the petitioner.

(2) That the representation filed by the petitioner for regularisation of his service has not been disposed as directed by this Court in paragraph 5 of its Judgment.

5. A counter on behalf of the respondents have been filed. It is averred in paras 4 and 7 of the counter that the representation of the petitioner has been disposed of and as there was no post of Dental Surgeon vacant, the case of the petitioner could not be considered for regularisation. It is also the case of the respondents that there was no direction from this Court to reinstate the petitioner, and therefore, it was not necessary to reinstate the petitioner, however, a direction has been issued to clear all outstanding bills of the petitioner.

6. The stand taken by the respondents in my view is to circumvent the order "passed by this Court. When the impugned order of termination is quashed by this Court, it is implicit in it that the petitioner must be reinstated into the service forthwith. There need not be any express direction. It is implied in it that the petitioner ought to have been reinstated in his post forthwith pursuant to the order passed by this Court.

7. The second stand taken by the respondents that the representation filed by the petitioner has been disposed of by the respondents and as there was no post vacant of Dental Surgeon, the request of the petitioner for regularisation of his post could not be considered is also been belied by the facts of this case. The statement of the respondents that the representation of the petitioner has been considered and disposed of is disputed by Mr. R. S. Bedi, learned counsel for the petitioner on the ground that no such order has been communicated to the petitioner.

8. This Court has made an observation in para 5 as quoted above that, the petitioner has rendered his service on contract basis w.e.f. 20-7-82 and now the petitioner is over aged and cannot secure any fresh employment in other

department, and keeping in view that the petitioner has served long 9 (nine) years on contracts basis. It is in this circumstance, the respondents were directed to consider the representation of the petitioner for regularisation of his service. This direction has been thoroughly misunderstood by the respondent authority. The direction of the Court's order should always be interpreted in meaningful way and favour of the petitioner if there is any ambiguity. In the instant case the direction of this Court has been misconstrued and interpreted against the petitioner.

9. Regularisation of service, contract, ad-hoc or otherwise who has put in long years of service are ordered to be regularised by a Catena of decision of this Court as well as of the apex Court. Avoiding multiplicity, I may quote few decisions. In a Catena of decision, the apex Court had also been held that the State is a model employer and State should frame a scheme to employ and regularise the service of its citizen.

10. In Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, it was pointed out by the apex Court in para 15 of its Judgment as under:-

"But once the appointments continued for long, the, services had to be regularised if the-incumbent possessed the requisite qualifications as was down by sub-rule (e). Such an approach alone would be consistent with the constitutional philosophy adverted to earlier. Even otherwise, the rule must be so interpreted; if the language of the rule permits, as , will advance this philosophy of the Constitution. If the rule is so interpreted it seems clear to us that employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment, must be allowed to continue or) their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since some time as such removal has serious consequences. The family of the employee which had settled down and accommodated its needs to the emoluments received by the bread Winner, will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered "age barred" for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution." (Emphasis supplied)

11. It was further observed by the apex Court as under:-

"If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his service. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to ado(pt a

positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job."

12. Keeping in view, the Law laid down by the apex Court as aforesaid, we now advert to the facts of the case at hand. The petitioner was working as Dental Surgeon on contract basis w.e.f. 20-7-82. He has already rendered regular service as Dental Surgeon for about 9 (nine) years the time when his service was terminated by an order dated 20th September, 1990. This Court quashed the order of termination. This Court also observed in para 5 of its Judgment as quoted above that, the representation of the petitioner for regularisation of his service should be disposed of keeping in view of long years of service rendered by the petitioner and keeping in view that the petitioner has now become over aged and is unable to seek another fresh employment in other department. This direction should not have been taken as a casual and a lip sympathy. One should not forget the responsibility that in such a situation he is dealing with the Job's security and survival of a citizen. At the cost of repetition, I re-emphasize that the petitioner has spent his long active life in rendering his service to the State on contract basis, the State has utilised the cream of his service, he is now over-aged and not eligible for seeking re-employment anywhere because of age bar. If he is thrown out of the Job at this stage, it would not be only arbitrary and violative of Articles 14 and 16, but it will put the entire family of the petitioner in jeopardy.

13. The stand taken by the respondent that there is no post lying vacant of Dental Surgeon is belied by the facts of the case. The fact that the petitioner was allowed to continue on contract basis for about nine years would show that there is a need for the post and in such event, it was obligatory on the part of the respondents to have regularised the service of the petitioner in the post held by him, of course, subject to his possessing requisite qualification at the time of initial appointment.

14. In view of what has been stated above, this petition is disposed of with a direction to the respondents to regularise the service of the petitioner within a period of one month from the date of receipt of this order after reinstating him pursuant to the direction of this Court on 1.6.11-92.

15. It is open to the respondents to decide in accordance with the relevant financial rules to treat the period that the petitioner was not on duty.

With the aforesaid direction, this Contempt petition is closed.