
(2008) 06 GAU CK 0005

In the Gauhati High Court

Case No : Writ Petition (C) No. 333 (AP) of 2007

G. Deka

APPELLANT

Vs

A. Mannan

RESPONDENT

Date of Decision : 12-06-2008

Acts Referred:

Citation : (2008) GLT 536 Supp

Hon'ble Judges : K. Meruno, J

Bench : Single Bench

Advocate : G. Deka, for the Appellant; A. Mannan, for the Respondent

Judgement

K. Meruno, J.—Heard Ms. G Deka, learned Counsel appearing for the Petitioner. Also heard Mr. A. Mannan, learned CGC, who submits that he accepted notice on behalf of the Respondent-Union of India and when he served the notice to the said Respondents, they refused to accept the same and therefore, he has no other option but to withdraw himself from the case. In the above circumstances, the learned Counsel for the Petitioner has served notice on the Respondent Nos. 2, 3 and 4 by registered A.D. Office Note dated 23.11.2007 indicates that A.D. cards have been received back after causing service of notice upon Respondent Nos. 2, 3 and 4. In this view of the matter, with regard to the service of notice upon Respondent Nos. 2, 3 and 4, the same is considered duly served. No counter has also been filed on behalf of the aforesaid Respondents.

2. Ms. G. Deka, learned Counsel appearing for the Petitioner submits that non-filing of affidavit-in-opposition by the Respondents should not stand in the way of the Petitioner for disposal of the instant writ petition. In support of her contention, she has relied upon a decision of the Apex Court as reported in Smt. Naseem Bano Vs. State of U.P. and others, in the case of Smt. Naseem Bano v. State of Uttar Pradesh and Ors. The learned Counsel for the Petitioner has also relied on the decision of this Court as reported in (2001) 3 GLT 262 in the case of Rejia Khatun v. State of Assam and Ors. which has followed the decision of the Apex Court rendered in Smt. Naseem Bano Vs. State of U.P. and others, as

referred above. Ms. Deka, learned Counsel for the Petitioner has further relied on a decision of the Apex Court as reported in *Bir Singh Chauhan Vs. State of Haryana and Another*, in the case of *Bir Singh Chauhan v. State of Haryana and Anr.* and also relied upon a decided case of the Division Bench of this Court as reported in 1997 (2) GLT 150 in the case of *Dhairya Nath Kakati @ Dhairya Ram Kakati v. Union of India and Ors.* In all the above cited cases, it is now well-settled law that as regard the non-filing of affidavit-in-opposition by the Respondents, it has been held that the averments made in the writ petition are deemed to have been accepted by the Respondents. In this view of the matter and in view of the law laid down by various decisions of the High Court as well as Apex Court, in the present case also, the Respondents have not filed any affidavit-in-opposition and therefore, the averments made in this writ petition are deemed to have been accepted.

3. In the present writ petition, the Petitioner states that he is serving as Senior Telephone Operator in the O/o G.M., Telephone Department, Itanagar. In pursuance of the Government of India's Notification No. 1-71 /83/ NLG (Vol.-III) dated 20.11.1990, some of the Senior Telephone Operators of the Department who completed 16/10 years service in the basic cadre are entitled to the benefits of higher scale under the scheme of "One Time Bound Promotion" (in short, "O.T.B.P.") and the Petitioner being eligible under the O.T.B.P. Scheme, vide Order No. 136/ 2003-04 dated 12.05.2003, issued by the Sub-Divisional Engineer (Admn.), O/o G.M.T.D./BSNL/Arunachal Pradesh, was also placed in the higher scale of pay w.e.f. 01.04.1999. The pay-scale of the Petitioner, thereafter, was fixed at Rs. 5000-150-8000/-w.e.f. 01.04.1999-01.10.2000 vide Order No. E-37/2003-04/142 dated 19.05.2003 by the Senior Accounts Officer (Cash), O/o GMT, BSNL, Itanagar. In pursuance to the above said order, annual increments were also granted w.e.f. 01.04.2001 till April, 2006, based on which the pay-scale of the writ-Petitioner was Rs. 8500/- p.m. and while he was availing such pay-scale, the increment due on 01.04.2007 could not be availed by him as he had taken medical leave for the month of February, 2007, due to severe illness. On the basis of the aforesaid fixation of pay, the Petitioner continued to get his salary with all other allowances to the tune of Rs. 15,895/- p.m. till May, 2006. But, to the utter shock and surprise of the writ-Petitioner, his salary for the month of June, 2006, has been reduced to Rs. 14,181/- p.m. without intimating any reason thereof and as a result of which, the basic pay of the Petitioner has been reduced from Rs. 8500/- p.m. to Rs. 7500/- p.m.. On receiving the reduced salary for the month of June, 2006, immediately on 14.06.2006, the Petitioner submitted a representation before the Chief Accounts Officer but no response has been made by the concerned authorities to that effect. Thereafter, on 31.01.2007 and 13.03.2007, the Petitioner, once again, submitted representations, however, till date the Respondents have not cared to reply to the said representations. It is the further case of the Petitioner that from the month of June, 2006, till date, i.e. for the last 14 months, the Petitioner is being paid salaries at the reduced rate, as aforementioned, which is far less than his actual salaries per month. The

learned Counsel for the Petitioner further contends that the action of the Respondents in deducting the long-drawn salaries of the Petitioner in such a whimsical way is most arbitrary and is in gross violation of the Rules of principles of natural justice. That apart, the Respondents have not even bothered to intimate the reasons for such deductions not to speak of serving show-cause notice and affording opportunity of hearing before such a dramatic decision was taken by them. The learned Counsel for the Petitioner further contends that reduction of such salary amounts to reduction in the rank and status of the Petitioner and as such, the Respondents are liable to pay back to the instant writ-Petitioner what they had deducted from his pay and salaries.

4. After hearing the learned Counsel appearing for the parties and on perusal of the writ petition as well as the documents relied upon, it is crystal clear that the Petitioner was receiving his pay and allowances at the rate in the scale of pay of Rs. 8500/- p.m. in terms of the orders/notifications issued by the Respondents from time to time. However, without passing any order or as a matter of fact, any show-cause notice, the pay-scale of the Petitioner has been reduced to Rs. 7500/-p.m. It is also crystal clear that against such reduction of pay-scale and total salaries thereof, the writ-Petitioner submitted several representations but the same were not attended to by the Respondent authorities nor the Respondent authorities have filed any affidavit-in-opposition to counter the contentions of the writ-Petitioner, in the instant case.

5. Ms. G Deka, learned Counsel for the Petitioner has relied upon some decided cases pertaining to deduction of salaries without issuing show-cause notice and as such, has relied on the decisions of this Court as reported in *Rajesh Basfor Vs. Tura Town High School and Others*, in the case of *Rajesh Basfor v. Tura Town High School and Ors.* (2003) 1 GLR 654 in the case of *jibeswar Das and Ors. v. State of Assam and Ors.* and (2004) 2 GLT 571 (Aizawl Bench) in the case of *Van Khuma v. State of Mizoram and Anr.* The learned Counsel for the Petitioner has also relied upon a decision of the Division Bench of this Court as reported in (2004) 2 GLT 41 in the case of *Binod Saharia v. Prag Bosimi Synthetics Ltd. and Ors.*

In all the above quoted reported cases, it has been held that the reduction of pay-scale without giving any opportunity of hearing is violation of principles of natural justice and hence, impugned orders were quashed.

6. It is well-settled law that a right being given once to a person or persons, if the same is to be withdrawn or taken-away by the authority concerned under certain reasons and circumstances, no doubt, it can be withdrawn but only after affording reasonable opportunity of being heard or say to the person or persons by assigning reasons concerned. This is, what, we call principles of natural justice. In the instant case, however, it was not done so by the concerned authority while reducing the pay-scale from Rs. 8500/- p.m. to Rs. 7500/- p.m.. The said action of the Respondents, according to me, is, therefore, not fair, rather, it is unjust and the same is not tenable in the eye of law.

7. As discussed above, once a right has been conferred and given upon a person or persons, if the same is to be withdrawn, at least those persons or person should be given a chance or opportunity of being heard or say in the matter and if such opportunity is not given before withdrawing such rights conferred upon him or her then the action of the Respondents amounts to violation of principles of natural justice. This is the law of the land. In the instant case in hand, according to me, the reduction of scale of pay of the writ-Petitioner from a higher pay to a lower pay amounts to reduction in rank and status of the writ-Petitioner.

8. In view of the above position, this Court has no alternative left but to protect a righteous and poor citizen like the Petitioner, herein, with the aid of law. This Court, need not go more into the depths as the subject suffixed, herein the writ petition, is made with the above quoted observations so as to protect the legal rights of the writ-Petitioner. For the reasons, observations and discussions as made above, I am of the view that the writ-Petitioner has enforceable legal rights in the instant case and accordingly, it is directed that the Respondents shall restore back the scale of pay of the writ-Petitioner to Rs. 8500/-p.m.. The amount so deducted for the periods, as specified above, shall also be reimbursed back to the writ-Petitioner by the Respondent authorities. The entire exercise of restoring the pay-scale of the writ-Petitioner from Rs. 7500/- p.m. to Rs. 8500/- p.m. and payment of the amount so deducted by the Respondents till date, should be completed by the Respondent authorities within a period of 30 (thirty) days from the date of receipt of a copy of this Judgment & Order.

In case, the said amount so calculated and payable as reimbursement to the writ-Petitioner, is not paid within the stipulated period, an interest at the rate of 9% per annum shall be added to the said amount from the date of default till such payment is made to the writ-Petitioner.

9. With the above observations and directions, the writ petition stands disposed of. There shall be no order as to costs.