
(2010) 03 GAU CK 0030

In the Gauhati High Court

Case No : Writ Petition (C) No. 331 (AP) of 2009

Hage Kano

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Citation : (2010) 4 GLR 27

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : D. Lazi, R. Hinda, H.R. Obing, S.V. Donang, L. Tapa and P. Droma, for the Appellant; G. Deka, for the Respondent

Judgement

P.K. Musahary, J.—Heard Mr. D. Lazi, Learned Counsel for the petitioner and also heard Ms. G. Deka, learned Addl. Senior Government Advocate, Arunachal Pradesh, appearing on behalf of the respondents.

2. The challenge made in this writ petition is to the order dated 19th September, 2008 passed by the Commissioner (Home), Government of Arunachal Pradesh so far as it relates to denial of back wages with effect from 8.8.2001 to 29.5.2007.

3. The basis of petitioner's claim for back wages for the said period is on the following facts and circumstances. He has been working as Police Constable in Arunachal Pradesh Police since 1977. He was suffering from chronic Pulmonary Tuberculosis since 1992 and he applied for leave. He was initially granted leave with effect from 18.5.1992 to 5.6.1992 for his medical treatment. As his ailment was not cured, he had to go for further treatment but due to some difficulties, he could not submit application for extension of leave with effect from 6.6.1992. The petitioner could not inform the authorities concerned about his further treatment. As he failed to make any application till 30.6.1999, a departmental proceeding was initiated against him and after completion of the enquiry and on the basis of the enquiry report, he was awarded with punishment of removal from service with immediate effect and accordingly he was removed from service

vide order dated 8.8.2001. Against the aforesaid removal order, the petitioner preferred departmental appeal, which was dismissed vide order dated 1.11.2001 passed by the Dy. Inspector General of Police (W), PHQ, Itanagar. Having no other alternative, the petitioner filed a writ petition being WP(C) No. 41 (AP) 2002. The said writ petition was allowed vide judgment and order dated 10.5.2005 with direction to re-instate the petitioner in service and thereafter regularise the period of absence in accordance with the provisions of the Leave Rules with liberty to the respondents to impose any lesser punishment, if so advised and inclined. Against the said order of the learned Single Bench, the State respondents preferred an appeal namely WA No. 69 of 2006. The learned Division Bench, vide order dated 14.3.2007, upheld the judgment and order of the learned Single Bench with a modification to the effect that

the case of regularization of the period of absence of the respondents/writ petitioner shall be dealt with in accordance with the provisions of Leave Rules.

4. Mr. Lazi, Learned Counsel for the petitioner placing the decision of the Apex Court in *Manorma Verma (SMT) vs. The State of Bihar and Ors.*, 1994 Supp. (3) SCC 671 submits that once termination is declared illegal by the court and the reinstatement order is made, the authorities must issue consequential order granting back wages unless he is found to have been engaged or employed gainfully during the termination period. He argues that this Court while setting aside the termination order made no specific order for payment of back wages for the said absent period but it is implied that the authorities concerned are bound to pay the back wages for the period from the date of termination to reinstatement, i.e., from 8.8.2001 to 29.5.2007. Mr. Lazi further submits that the petitioner has no grievance as regard the period with effect from 18.5.1992 to 7.8.2001 inasmuch as the respondent-authorities have granted the leave to him. As regard the period from 8.8.2001, i.e., the date of termination/removal from service to 29.5.2007, i.e., the date of reinstatement of the petitioner in service, however, he submits that since this Court has already set aside the termination order as illegal vide judgment and order dated 10.5.2005 with direction to reinstate him, there is no justification for not treating the said period as spent on duty.

5. Ms. Deka, learned Addl. Senior Government Advocate counters the above submission and argues that the respondent-authorities have taken lenient view and already regularised the absent period in question by granting him leave as per provisions under the existing Leave Rules. As regard the period from 8.8.2001 to 29.5.2007, she submits that since the petitioner had no leave in his credit, he was granted extraordinary leave without salary giving him the benefit of counting his service for the said period and no injustice has been caused to him. In this regard, she relies on the averments made in paragraphs 4 and 7 of the counter affidavit filed by the respondent Nos. 1 to 4. Since the petitioner has confined his grievance to the period from 8.8.2001 to 29.5.2007, the respondent authorities have committed no illegality in granting the E.O.L for the said period

in compliance with the judgment and orders passed by this Court in the aforesaid writ petition as well as writ appeal. In support of her submissions, she refers to the following cases.

(i) Upekshit Samaj Kalyan Samiti, Ballarpur Vs. Education Officer (Secondary) and Others,

(ii) Coal India v. U.K. Chowdhury (2007) 15 SCC 620

(iii) Babu Lal Vs. Haryana State Agricultural Mkt. Board,

6. Having gone through the pleadings of the parties and findings of the court in the earlier writ petition and writ appeal, I could find that the petitioner was removed from service with effect from 8.8.2001 and the said removal order was set aside and quashed by the learned Single Bench of this Court on 10.5.2005 against which the State preferred an appeal which was also dismissed on 29.5.2007. After the State lost in legal battles, it reinstated the petitioner in service with effect from 29.5.2007. The legal position as regard the claim of back wage is well settled by now and there is no necessity of referring to further cases other than the case relied on by the petitioner. In my considered view, the decision rendered in Monorma Verma (supra) covers the present case inasmuch as it is held in the said case that once termination is found to be illegal consequential order of grant of back wages must follow unless there are reasons justifying a departure from normal order.

7. Relying on the said judgment, this Court in Kiuchamyimchunger v. State of Nagaland and Ors. 2009 (2) GLT 551 wherein it is held that for denial of back wages, the respondent authorities must show justified reason like that the petitioner has been gainfully employed elsewhere during the period of absence. No statement has been made in the writ petition that during the period from 8.8.2001 to 29.5.2007, he was not gainfully engaged or employed elsewhere. Similarly, the respondent authorities also made no statement in this regard. Except this ground, there is no other reason for denying the back wages to the petitioner for the aforesaid period. In my considered view, the petitioner is entitled to back wages for the period from 8.8.2001 to 29.5.2007 subject to finding that he was not gainfully employed or engaged anywhere during the said period. The respondent authority is, therefore, directed to enquire and satisfy itself whether the petitioner was serving or being employed gainfully during the absent period from 8.8.2001 to 27.5.2007 and if it is found that he was not gainfully employed/engaged during the said period, his back wages from 8.8.2001 to 27.5.2007 shall be paid within a reasonable period of time.

8. With the aforesaid observations and directions, this writ petition stands disposed of. No order as to costs.