
(2008) 11 GAU CK 0031

In the Gauhati High Court

Case No : Writ Petition (C) No. 183 (K) of 2008

Kiucham Yimchunger

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 07-11-2008

Acts Referred:

Citation : (2009) 2 GLR 383 : (2009) 2 GLT 551

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

Bench : Single Bench

Advocate : Limawapang and K. Lotan, for the Appellant; P. Pius Lotha, Addl. AG, for the Respondent

Judgement

P.K. Musahary, J.—Heard Mr. Limawapang, learned Counsel for the Petitioner and Mr. P. Pius Lotha, the learned Addl. Advocate General, Nagaland for the State Respondents.

2. The Petitioner was initially appointed as NCE (Water carrier) by appointment order dated 31.5.2002 issued by Commandant, 3rd NAP Bn. Tuensang on purely temporary basis, but subsequently his appointment was converted to the post of Constable (GD) against the existing vacancy vide order dated 28.2.2007 issued by the said Commandant (Annexure-C to the writ petition). The Petitioner was discharged from service w.e.f. 17.5.2007 having found that he was physically below the minimum required height. Being aggrieved by the aforesaid discharge order dated 22.5.2007 the Petitioner earlier approached this Court by filing WP(C) No. 53(K)/2008 and the said petition was disposed of by order dated 23.4.2008 with a direction to the Petitioner to submit representation and the same should be considered by the Respondent authorities within a period of 3(three) months. In compliance to the aforesaid order, the Respondent No. 2, Director General of Police, after examining the records/documents, come to the conclusion that the said discharge order dated 22.5.2007 was not justified and directed to reinstate the Petitioner in service as NCE with immediate effect taking the period of absence from 17.5.2007 till his joining as Extra Ordinary Leave

without break of service. Accordingly, Respondent No. 3, the Commandant, 3rd NAP Tuensang reinstated the Petitioner in service as NEC (Cook) w.e.f. 1.8.2008 (FN) and posted him to "D" Coy. Shamator vide order dated 1.8.2008. In the said reinstatement order, it has been made clear that the absent period w.e.f. 17.5.2007 to 31.7.2008 shall be treated as Extra Ordinary Leave without break of service.

3. The Petitioner is aggrieved by aforesaid order dated 6.6.2008 passed by the Respondent No. 2, the Director General of Police, Nagaland and order dated 1.8.2008 passed by the Respondent No. 3, Commandant, 3rd NAP, Tuensang, so far as they relate to treating the absent period from 17.5.2007 to 31.7.2008 as Extraordinary Leave without break of service. The Petitioner claims the back wage for the aforesaid absent period.

4. Mr. Limawapang, learned Counsel for the Petitioner submits that, since the discharge order has been held by the Director General of Police as not justified and directed his reinstatement, it is incumbent upon the Respondents to pay him the back wage for the absent period. In support of submission, the learned Counsel relied upon the case of Union of India (UOI) Vs. Madhusudan Prasad, , Manorma Verma (SMT) vs. The State of Bihar and Ors., 1994 Supp. (3) SCC 671 Lianchhawana v. State of Mizoram and Ors. 1999 (1) GLT 589.

5. Mr. P. Pius Lotha, learned Addl. Advocate General, Nagaland submits that the matter requires examination and consideration by the Respondent authorities in regard to payment of back wage to the Petitioner for the absent period, and hence the court may like to issue necessary directions to the Respondent authorities to examine the matter and pass appropriate order.

6. Going through the averments made in the writ petition it is found that although the Petitioner is aggrieved by the aforesaid impugned order he has not represented before the Respondent authorities claiming the back wage and instead he served a legal notice through his counsel to the Respondent Nos. 2 and 3 on 7.8.2008. Since no response having been received to the aforesaid legal notice, the Petitioner filed the present writ petition.

7. It is submitted at the bar by Mr. Limawapang learned Counsel for the Petitioner that no representation has in fact been submitted before the Respondent authorities claiming the back wage.

8. The legal position is settled by the Apex Court in several cases including the aforesaid cases cited by the learned Counsel for the Petitioner. The legal position is that, once termination order is found to be illegal consequential order of grant of back wages must follow unless there are reasons justifying a departure from normal order. For denial of back wages, the Respondent-authorities must show justified reasons like that the Petitioner has been gainfully employed elsewhere during the period of absence.

9. At this stage, this Court is not in a position to come to a conclusion that the

refusal of back wages to the Petitioner is not grounded as justified reasons. The Respondent authorities may have some justified reasons for denial of back wages to the Petitioner. The Respondent-authorities, in my considered opinion should be given an opportunity to look into the matter and decide as per the existing provision of law.

10. In view of the above, this writ petition is disposed of with a direction to the Petitioner file a representation about his claim of back wages before the appropriate authority within a period of two weeks from today and the concerned authority particularly the Director General of Police, Respondent No. 2 shall consider and dispose of the representation so submitted by the Petitioner within a period of one month from the date of receipt of the representation.

11. Petition stands disposed of accordingly.