
(2003) 06 GAU CK 0042
In the Gauhati High Court
Case No : Writ Petition (C) No. 1096 of 2002

Laishram Amujao Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 13-06-2003

Acts Referred:

Citation : (2004) 3 GLR 561

Hon'ble Judges : S.K. Kar, J

Bench : Single Bench

Advocate : Kh. Binoy Kumar Singh, for the Appellant; Th. Ibohal Singh, for the Respondent

Final Decision : Allowed

Judgement

S.K. Kar, J.—The petitioner, Laishram Amujao Singh was initially appointed as Warder in the Central Jail, Imphal on regular basis on 11.2.1964. Then his service, on completion of 36 years, came to an end on 30.4.2000. When in service in the year 1983 he was put under suspension and thereafter following an inquiry his service was terminated in the year 1985. The order of termination was challenged by filing writ petition registered as C.R. No. 662/1996 and on hearing the parties the said petition was allowed on 29.5.1997 quashing the order of termination and directing reinstatement of the petitioner into service within one month from the date of receipt of the order. However, Hon"ble High Court left within the consideration of the authority to decide the question of backwages in accordance with law. The petitioner was taken back into service thereafter on 23rd June, 1997.

2. The petitioner, however, again was put under suspension on 9.8.1997 in order to hold further inquiry, his suspension being continued without conclusion of the inquiry. He again approached this Court filing another writ petition being CR No. 82/98 praying for quashing the suspension order which was allowed but it was directed that the Departmental proceedings should continue. The petitioner was reinstated in service on 6.10.1998 on the strength of the order of the Hon"ble

High Court and departmental inquiry was closed on 10.5.1999 holding that there is no evidence to sustain the charges brought against the petitioner. That in the year 1997 the petitioner was permitted to draw his back wages from 14.5.1983 till 30.7.1997 amounting to Rs. 2,19,926 (Rupees two lakhs nineteen thousand nine hundred and twenty six) and long after his retirement on 16.5.2001, the Superintendent, Manipur Central Jail, issued a letter (Annexure-7/13) asking him to refund the said amount on the allegation that the amount was drawn by him by Office Bill No. 189 dated 5.9.97 against the instruction of the Home Department, Government of Manipur, vide the Department's Memo No. 5/12(5)/95-H(J) dated 19.6.97. That no charge was established against him and he being an employee of the lowest grade had no part in getting the back-wages sanctioned in his favour but it was paid to him by his higher authority as per the provisions of FR 54-B of the fundamental and Subsidiary Rules. That the order of the Jail Superintendent asking for the refund of the amount drawn as back wages is without jurisdiction and liable to be struck down as pension papers are not being settled on this plea causing hardships and accordingly he filed this writ petition for quashing the impugned letter, dated 16.5.2001, (Annexure-A/13) and for a direction in the nature of mandamus to the respondents for making payment of his retiral benefits and for any other appropriate orders as the Court may think fit and proper.

3. Respondents No. 1 to 4 contested the case by their affidavit-in-opposition submitted through one S. Vaiphei, IPS. In addition to denial of some of the allegations respondents contended, inter alia, that they are taking steps for payment of the pensionary benefits to the petitioner and pension papers have been forwarded to the Accountant General, Manipur, for necessary action ; but, there was a case of recovery of back wages amounting to Rs. 2,19,926 drawn for the period of 14.5.83 to 30.7.97. That there was a Government order to reinstate the petitioner without back wages on the principles of "no work no pay" basis for the period he was under suspension and accordingly the letter for recovery of the amount was issued, as such drawing of back wages was not permissible as per the relevant Government Treasury Rules, etc.

4. I have heard the learned counsel on both sides, perused the relevant materials.

5. From the pleadings of the parties it will be seen that the only dispute in this writ petition is regarding the permissibility or validity of the order of the Superintendent of Jail, asking the petitioner to deposit the amount of Rs. 2,19,926 undisputedly drawn by him as his back wages. The learned counsel appearing for the petitioner has led me through various case laws reported as (1) AIR 2001 SC 2819 ; Sahib Ram Vs. State of Haryana and Others, ; Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, ; Shyam Babu Verma and Ors. v. Union of India and Ors. 1989 (2) UJ S1Q7 ; State of Andhra and Ors. v. G. Sreenivasa Rao and Ors., and (5) Deokinandan Prasad Vs. The State of Bihar and Others, The relevant Editorial notes of these citations, consecutively, go as

follows -

"(1) Pension and other retiral benefits cannot be adjusted or appropriated for satisfaction of any other outstanding against the retired employees.

(2) no recovery can be made from the employee if the over payment was due to wrong consideration on the part of the administration and not because of any mis-representation on the part of the employee concerned."

(3) Since the petitioners received the higher pay scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them.

(4) Refund of more drawn salary shall be too harsh.

(5) Pension is not a bounty payable on the sweet will and pleasure of the Government and that on the other hand, the right to pension is a valuable right resting in a Government servant."

6. In view of the pleadings of the parties, I find that detailed discussions of these laws cited are neither necessary nor warranted. The moot question is whether the letter at Annexure A/13 issued on 16.5.2001 by the Superintendent, Manipur Central Jail, Imphal to the petitioner is valid and enforceable. It will be convenient to reproduce the said letter before commenting upon its efficacy. The letter goes as follows:

To, Imphal, the,

16th May, 2001

Shri L. Amujao Singh (Retd.) Warder, Manipur Central Jail, Imphal, S/o L. Lila Singh of Sekmaijin, P.O. Sekmaijin.

Subject : Recovery of Rs. 2,19,926

I am to state that a sum of Rs. 2,19,926 (Rupees two lakhs nineteen thousand, nine hundred and twenty six) only had been drawn by you as back wages for the period w. e. f. 14.6.83 to 30.7.97 vide this Office Bill No. 189 dated 5.9.97 against the Instruction of Government of Manipur, Secretariat, Home Department No. 5/12(5)/95-H(J) Dated 19.6.97.

You are, therefore, directed to deposit the same amount on or before 31/5/2001, failing of which it will be reflected in the pension case which is duly pending with this office. Matter be treated as most urgent one.

Superintendent, Manipur Central Jail, Imphal."

7. It is the admitted position that when ordering reinstatement of the petitioner to his post by this High Court made the following comments:

"The payment of back wages is left to the discretion of the authority to be decided in accordance with law."

The petitioner, in this case is not the Drawing and Disbursing authority of his pay. He is a person in the lowest grade and had claimed himself as a half-literate person. He has neither authority nor power to draw the pay by himself unless the same is sanctioned by passing appropriate orders by the higher authority. The allegation on Annexure A/13 (quoted above) that he has drowned the amount has, therefore, no substance. Moreover, the letter at Annexure-A/13 had referred to the letter of the Home Department, a copy of which letter is annexed as Annexure A/3 in the counter, which I quote as below :

"To

The I.G. of Prisons, Manipur.

Subject : Reinstatement of Shri L. Amujao Singh Jail Warder.

Sir,

I am directed to refer to your letter No. 7/99/94-IC(J) Pt-II/323 dated 20.6.1997 on the above subject and to say that the matter has been considered carefully and it has been decided by the Government or in the light of Hon"ble Gauhati High Court's order that action may be taken as under:

1. Afresh D. E. against Shri L. Amujao Singh Warder should be initiated after his reinstatement of service immediately.
2. Back wages should not be paid to Shri D. Amujao Singh, Warder by adhering to the principle of "No Work No pay".

You are therefore, requested to take immediate action on para 1 above and submit the proceedings of the Departmental Enquiry in due course.

Yours faithfully, Sd/- (H. Gyan Prakash) Deputy Secretary (Home), Government of Manipur."

Therefore, the letter at Annexure-A/3 in the counter has left it to the I.G. Prisons, Manipur, to take decision on the matter of back wages. Accordingly, either I.G., Prisons or his subordinates will be entrusted with the task and will be responsible for passing any order either by way of entitlement or dis-entitlement of back wages to the petitioner. The respondent has failed to show anything to convince the Court that the petitioner had any part in getting the amount sanctioned or making arrangement for payment of back wages in his favour. Without fixing the responsibility to the person who facilitated such payment, the respondents have taken a cut short method asking the petitioner to deposit/ refund the amount of back-wages "drawn by him". In my opinion, instead of using the words "drawn by him" the appropriate words should have been "paid to him". In that case the citation relied upon by the petitioner Sahib Ram Vs. State of Haryana and Others, will come to his assistance. The allegation of the petitioner being in collusion in effecting drawal of beck wages has neither been specifically pleaded nor asserted by any type of evidence produced before the court.

8. Be that as it may, the laws cited before me by the writ petitioner will bring out a convincing point that the retiral benefits to the petitioner cannot be withheld on flimsy ground. Facts remains that no charge of misconduct could be proved against the petitioner and matter was unnecessarily dragged and he was unduly kept under suspension for a long period on a petty charge of procuring a woollen blanket worth about Rs. 70 at a barter value of Rs. 20 from a prisoner. There was absolutely no meaning to keep the petitioner in protracted suspension and that too repeatedly on same allegation and thereby depriving him from discharging his duties and claiming his salaries. At any rate, the respondent could not produce before the Court any material to show that the petitioner was in any way guilty of any misconduct or a party to any mis-representation or collusion to claim back wages.

9. In the result, the petition is allowed, the impugned letter at Annexure-A/13 stands quashed. It is directed that the respondents will go ahead to settle and finalise the retiral benefits admissible to the petitioner by taking the issue on a priority basis.

10. No costs.