

(2018) 05 GAU CK 0249
In the Gauhati High Court
Case No : Civil Writ Petition No. 17 of 2018

Lalrammuana

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 23-05-2018

Acts Referred:

Central Civil Services (Leave) Rule, 1972 — 32(6)

Citation : (2018) 05 GAU CK 0249

Hon'ble Judges : Nelson Sailo, J

Bench : Single Bench

Advocate : Victor L. Ralte, Linda L. Fambawl

Final Decision : Disposed Off

Judgement

NELSON SAILO

1. Heard Mr. Victor L. Ralte, the learned counsel for the petitioner as well as Mrs. Linda L. Fambawl, the learned Govt. Advocate for all the respondents.

2. The petitioner is before this Court for the second time. Earlier, by filing WP(C) No. 24/2014, the petitioner who is an Excise Constable had challenged the order of his removal from his service vide Order dated 10.09.2009 as well as the rejection of his appeal against the order of removal.

This Court upon considering the arguments put forth by the rival parties came to the conclusion that the respondent authorities had violated the

principles of natural justice and that the enquiry proceedings drawn against the petitioner also suffered from procedural defects and thus, the impugned

order of removal of the petitioner was set aside. The petitioner was directed to be reinstated without back wages but however, liberty was granted to

initiate de-novo enquiry, if so advised vide Judgment & Order dated 02.08.2017.

3. Pursuant to the aforesaid direction, the petitioner was reinstated vide Order dated 17.08.2017 (Annexure-5) without back wages but his

reinstatement was by way of a fresh appointment. He was denied the continuity of service for the period of his absence from duty and assigned a

new Constable number placing him junior to all the existing Excise & Narcotics Constables. By the same order, further enquiring against him was

dispensed with.

4. Pursuant to the order of reinstatement, the petitioner was allotted a PPAN No. by which, he was made to subscribe to the New Defined

Contributory Pension Scheme instead of the Pension Scheme provided under the CCS Rules, 1972 which he had been subscribing prior to his removal

from service.

5. Aggrieved, the petitioner filed a representation before the Commissioner of Excise & Narcotics Department on 14.11.2017 (Annexure-7) and in

response, the petitioner was informed vide communication dated 16.11.2017 (Annexure-8) that under the CCS (CCA) Rules, 1965, the disciplinary

authority is not authorized to alter his own order and he could file an appeal if so advised.

6. Aggrieved, the petitioner is before this Court again through the instant writ petition.

7. Appearing for the State respondents, Mrs. Linda L. Fambawl by referring to the affidavit-in-opposition filed on 03.05.2018 submits that the

Commissioner of Excise & Narcotics Department regretfully committed a mistake in giving the petitioner a fresh appointment while this Court after

interfering with the order of his removal from service had directed his reinstatement without back wages. Though, liberty for initiating de-novo enquiry

was granted, the disciplinary authority decided not to draw fresh departmental proceeding and therefore, the petitioner was only entitled to continuity in

service without back wages.

8. The learned Govt. Advocate further submits that pursuant to the filing of the writ petition, the petitioner preferred an appeal before the Appellate

Authority i.e., the Secretary to the Government of Mizoram, Excise & Narcotics Department and the same was received on 21.02.2018. Since the

petitioner approached this Court through the present writ petition, the Appellate

Authority has kept the consideration of the appeal in abeyance. She therefore submits that the writ petition may be disposed of with a direction to the Appellate Authority to consider and dispose the appeal of the petitioner.

9. The submissions advanced by the parties have been duly considered. As may be noticed, this Court vide Order dated 02.08.2017 in the earlier writ petition filed by the petitioner had directed the reinstatement of the petitioner without back wages and at the same time gave liberty to draw de-novo enquiry proceeding against the petitioner, if so advised.

10. Pursuant to the said direction, the petitioner was reinstated back into service and the disciplinary authority declined to draw fresh departmental enquiry against him. However, a fresh appointment was given to the petitioner and was directed to be placed as the junior-most Constable under the Excise & Narcotics Department. In the affidavit-in-opposition filed by the respondents, the following stand has been taken in paragraph No. 4. The same may be abstracted below:-

4. That with regard to the statements made in paragraph Nos. 4 & 7 of the writ petition, I say that it is regretted that Commissioner of Excise & Narcotics Department had reinstated him with break in service for all purposes including seniority and pay & allowance. That he should be re-instated in service without back wages and without losing his seniority as per procedure laid down in FR 54-A(1) of the FR &SR. All the unauthorized Leave period and suspension period should be regularized by granting him Extraordinary Leave as per Rule 32 (6) of the CCS (Leave) Rules, 1972 and he should also be allowed to continue to enjoy the old pension scheme and also his initial Constable number be allotted to him.

11. What can be noticed is that the State respondents themselves have admitted that the petitioner could not have been given a fresh appointment on his reinstatement into service. It was also mentioned that the petitioner would be entitled to regularization of his absence period by grant of Extraordinary Leave to him, as per the relevant provisions of law and also entitled to enjoy the old pension scheme, which he was enjoying under the CCS Pension Rules, 1972 prior to his removal from service. Therefore, when such is the stand of the State respondents, there is no occasion for directing the Appellate Authority to consider the appeal of the petitioner.

12. In that view of the matter, there is no difficulty in disposing of the writ petition with a direction to the State respondents to grant the petitioner all

the benefits including arrear of pay from the date of his reinstatement i.e., 17.08.2017 as entitled to him, as per law, except the back wages restricted

by this Court vide Order dated 02.08.2017 in the earlier round of writ petition.

13. In the result, the Order dated 17.08.2017 (Annexure-5), in so far as, the same relates to giving the petitioner a fresh appointment, denial of

seniority as well as the period of absence being treated as "Dies Non" shall stand set aside.

14. Consequently, the respondent authorities more particularly, the respondent No. 3 shall pass an appropriate order, by which the benefits entitled to

the petitioner as observed herein above, shall be given to him. Such exercise should be completed within the outer limit of six weeks from the date of

receipt of a certified copy of this order.

15. The writ petition accordingly stands allowed and disposed of. No cost.