
(2000) 01 GAU CK 0015
In the Gauhati High Court
Case No : Writ Petition (C) No. 30 of 1999

Lalzarzoliani (Smti)

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 05-01-2000

Acts Referred:

Central Services (Temporary) Services Rules, 1965 — Rule 5(1)
Constitution of India, 1950 — Article 14, 21, 226

Citation : (2000) 1 GLT 497

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : H. Lalrinthanga, for the Appellant; N. Sailo, for the Respondent

Final Decision : Allowed

Judgement

P.C. Phukan, J.—By this application under Article 226 of the Constitution the Petitioner prays for an appropriate writ for quashing and setting aside the notice dated 26.3.98 terminating his service and also for payment of his back wages for the period between January, 1997 to April 1998 with all service benefits.

2. I have heard Mr. H. Lalrinthanga, learned Counsel for the Petitioner, as well as Mr. N. Sailo, learned Government Advocate appearing for the State Respondents. I have also considered the records of the case.

3. The facts of the case may be stated briefly. The Petitioner was appointed as officiating teacher in Govt. M/S vide order dated 12.4.93 (Annexure-I to the writ petition). Her service as teacher was regularised and posted at Zamuang Primary School vide Government order dated 23.12.96 (Annexure-VI to the writ petition).

4. In the writ petition the Petitioner has claimed to have joined in Zumuang Govt. Primary School on 10.1.97 and in support thereof she has submitted a photocopy of her joining report (Annexure-VII to the writ petition). Subsequently, by an order dated 6.3.97 (Annexure-X to the writ petition) she was transferred and posted at Sailutar Primary School. As per report of the Headmaster addressed to

the Sub-Divisional Education Officer, Aizawl North, she joined at Sailutar on 18.3.97. In the, meantime by another order dated 13.3.97 (Annexure-C-3 to the affidavit-in-opposition), the earlier order transferring her to Sailutar was cancelled. According to the Petitioner, as she did not receive the cancellation order, she continued to work in Sailutar Primary School. For not returning to Zamuang Primary School a show cause notice dated 01.5.97 (Annexure-XII to the writ petition) issued to her charging her of unauthorised absence from duties as a teacher in Zamuang Govt. Primary School. This was followed by a reminder dated 20.5.97 (Annexure-XIII to the writ petition). In her reply dated 27.5.97 (Annexure-XIV to the writ petition) she said that on 1.3.97 she received the order transferring her from Zamuang Primary School to Sailutar Primary School, she joined at Sailutar Primary School on 18.3.97. As she did not receive the official order of cancellation of the transfer order, she continued to work at Sailutar Primary School. She had not yet been released from Sailutar Primary School to enable her to join at Zamuang Primary School. In her reply she assured that she would join at Zamuang Primary School immediately after her release from Sailutar Primary School. Then came the notice of termination from service dated 26.3.98 (Annexure-XV to the writ petition). The full text thereof is quoted below:

Dated Aizawl, the 25th March, 1998.

In pursuance of Sub-rule (1) of Rule 5 of the Central Services (Temporary Service) Rules, 1965,1, F. Lalluna, Director of School Education, hereby give notice to Pi. Lalzarzoliani, Teacher, Zamuang Primary School that her service shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to her.

Sd/- F. Lalluna, Director of School Education, Mizoram, Aizawl.

5. On receipt of the above termination notice the Petitioner submitted a representation dated 5.4.98 (Annexure-XVI to the writ petition) to the Director, School Education, Mizoram. In her representation she said, inter alia, that since she was transferred from Zamuang Primary School to Sailutar Primary School, she was working at Sailutar Primary School and no order of cancellation of transfer was received by her. She requested the authority concerned to revoke the notice of termination from service. Unable to get any relief she come up before this Court in the instant writ petition.

6. Mr. H. Lalrinthanga, learned Counsel for the Petitioner, submits that the impugned order is stated to have been issued in pursuance of the provisions of Central Civil Services (Temporary) Service Rules, 1965, but the said Rules are not applicable in case of the present Petitioner inasmuch as her services were regularised by the Government order dated 23.12.96 (Annexure-VI to the writ petition). Be that as it may, the fact remains that-her services were terminated on the ground of her unauthorised absence from duties as a teacher. This is

evident from the show cause notice dated 1.5.97 (Annexure-XII to the writ petition) followed by the reminder (Annexure-XEQ to the writ petition). That being the position, her services could not have been terminated without holding formal disciplinary proceedings against her under the relevant Rules. Mr. Lalrinthanga, learned Counsel for the Petitioner, in this regard has referred to the decision in D.K. Yadav Vs. J.M.A. Industries Ltd., wherein it has been held that the certified standing orders have statutory force and therefore same must be in consonance with principles of natural justice and mandates of Articles 14 and 21 and that automatic termination under certified standing orders for absence without or beyond the period of sanctioned leave without holding any domestic enquiry or affording any opportunity to the workman is violative of principles of natural justice. Mr. Lalrinthanga, learned Counsel for the Petitioner has also relied upon a recent decision of this Court reported in 1999(3) GLT 90 Tabong Pasar v. State of Arunachal Pradesh and Ors. wherein it has been held:

From the perusal of the decisions referred to above it clearly emerges out that in case where the performance of a probationer is found to be not satisfactory during the period of probation, his services are liable to be dispensed with, without any legal obligation to provide him any opportunity of hearing. But in case the order terminating the services of a probationer is not based on his unsatisfactory performance during the period of probation, but on an alleged act of misconduct which has direct nexus with the action taken by the authorities, it would be punitive in nature which will require opportunity of hearing before passing of the order.

7. In the instant case, it is absolutely clear that the Petitioner's misconduct of unauthorised absence from duty had direct nexus with the action taken by the authority in terminating her service. Hence such termination was punitive in nature and termination notice could not have been issued without holding disciplinary proceedings against her. No such proceedings were held. The impugned termination notice dated 26.3.98 therefore cannot be allowed to stand. The same is set aside and quashed. The Petitioner shall be entitled to the back wages, arrears and other service benefits.

8. It shall however, be open to the authority concerned to initiate disciplinary proceedings against the Petitioner and on completion of such proceedings the authority may pass appropriate orders in this regard.

9. This writ petition is allowed to the extent indicated above.