

(2002) 01 GAU CK 0043

In the Gauhati High Court

Case No : Writ Appeal No. 341 of 2001 in Miscellaneous Case No. 161 of 2001 and W.A. No. 343 of 2001 and WP (C) No. 892 (AP) of 2001

Mahesh Chandra Gupta

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 08-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 1 GLT 73

Hon'ble Judges : R.S. Mongia, C.J.; P.G. Agarwal, J

Bench : Division Bench

Advocate : B.K. Sharrna and P.K. Tiwari, in WA No. 341 of 2001 and G. Deka, Government Advocate in WA No. 343 of 2001, for the Appellant; R. Hussain, J. Siram and G. Sutradhar, for the Respondent

Judgement

R.S. Mongia, C.J.,

1. This judgment and order of ours would dispose of the Writ Petition (C) No. 892(AP)/2001, Writ Appeal No. 341/2001, Writ Appeal No. 343/2001 as well as the Misc Case No. 161/2001.

2. The brief facts for the disposal of these cases may be noted. On 25.07.2001 the appellant. Sri Mahesh Chandra Gupta, appellant in Writ Appeal No. 341/2001; who was working as Agronomist at Tawan was ordered to be transferred as Deputy Director (Plant Protection) under the Directorate of Agriculture, Naharlagun vice Sri Jombom Padu, the petitioner in Writ Petition (C) No. 892 (AP)/2001. On 26.07.2001 the writ petitioner Joniboni Padu was relieved from Naharlagun and the appellant Mahesh Chandra tookover on 30.07.2001 at: his new place of posting. However, on 26/27.07.2001 the writ petitioner Jombom Padu (who is respondent No. 3 in W.A. No. 341/2001) made representation against his transfer. Since nothing was heard regarding the representation Sri Jombom Padu filed a writ petition in this Court being W.P. (C) No. 524/2001. It may be observed here that the appellant in Writ Appeal No. 341/2001, Shri

Mahesh Chandra Gupta was not made a party in Writ Petition (C) No. 524/2001. On 01.08.2001 the writ petition was disposed of by a learned Single Judge of this Court. No interference was made with the order of transfer. However, a direction was given that the representation of the writ petitioner dated 26/27.07.2001 be decided within seven days. On 14.08.2001 the representation of the writ petitioner Jombom Padu was rejected by a speaking order running into about 5 typed pages. In other words, the order of transfer dated 25.07.2001 was affirmed. Thereafter, the Writ Petition (C) No. 892(AP)/ 2001 was filed on 17.08.2001 by the writ petitioner Jombom Padu at Itanagar Bench and on the same very day an order was passed staying operation of the transfer order dated 25.07.2001. The appellant Mahesh Chandra Gupta was not made a party by the writ petitioner. However, by an order of the Court he was impleaded as respondent. In the order dated 17.08.2001 it was mentioned by the learned Judge that even if Shri Mahesh Chandra Gupta had joined at the new place of posting, he would be reverted back to his original place of posting. It is against the interim order dated 17.08.2001 that two separate appeals No. 341/2001 and 343/2001 have been filed by Shri Mahesh Chandra Gupta and the State Government respectively.

3. By order of this Court dated 28.11.2001 passed in Misc Case No. 161/2001 arising out of Writ Appeal No. 341/2001, we had sent for the original Writ Petition (C) No. 892/2001 so that the same may also be disposed of along with the appeals. While admitting the appeal the operation of the order dated 17.08.2001 was stayed by the Motion Bench on 06.09.2001 and the same order was repeated on 14.09.2001 in Writ Appeal No. 343/ 2001. The Misc. Case No. 161/ 2001 has been filed for vacating the stay order granted by this Court on 06.09.2001.

4. Learned counsel for the appellant in W. A. No. 341/2001 has submitted that the order of the authorities rejecting the representation of the writ petitioner Jombom Padu vide order dated 14.08.2001 was not subject matter of challenge in the said writ petition No. 892(AP)/2001. Not only that, there is no whisper made by the writ petitioner of having filed the earlier writ petition W.P (C) No. 524/ 2001 challenging the transfer order dated 25.07.2001. There was also no mention that the writ petition was disposed of on 01.08.2001 wherein without interfering with the transfer order directions were given that the representation of the writ petitioner against the transfer order be decided within 7 days.

4. Learned counsel for the writ petitioner in WP (C) 892(AP)/2001 submitted that a possibility cannot be ruled out that by 17.08.2001 when the writ petition was filed the order dated 14.08.2001 rejecting the representation had not been served on the writ petitioner. This statement of fact has even been not made in Misc Case No. 161/ 2001 in Writ Appeal No. 343/2001. Be that as it may, no mention of filing the W.P.(C) No. 524/2001 challenging the transfer order dated 25.07.2001 has been made in the latter writ petition nor there is any reference to the order of the Court dated 01.08.2001 passed in the said writ petition

disposing of the same. The aforesaid facts go to the root of the matter and according to us suppression of aforesaid facts would disentitle the petitioner to seek relief from this Court under Article 226 of the Constitution of India. In the latter writ petition without mentioning about the dismissal of the representation and the challenge made earlier to the order of transfer dated 25.07.2001 in the earlier writ petition No. 524/2001. the writ petitioner did not come to the court with clean hands and does not deserve any sympathy. He has disentitled himself from getting any relief under Article 226 or 227 of the Constitution of India. The impugned order, in all probability, has been passed because of suppression of the aforesaid material facts. The learned counsel for the writ petitioner at this stage submitted that he should be allowed to withdraw the writ petition with liberty to file a fresh petition. We decline this prayer, inasmuch as, the petitioner was in the know of the earlier writ petition which he filed challenging the transfer order and also the order dated 01.08.2001 passed by this Court. Even if it is assumed that he had not received the order dated 14.08.2001 by the time of filing of the writ petition (though there is no such basis for drawing such assumption), no such mention has been made in the Misc application for vacating the stay order dated 06.09.2001 passed in W.A. No. 341/2001.

5. For the foregoing reasons, we allow the writ appeals and quash the order dated 17.08.2001 passed in W.P (C) No. 892(AP)/2001 and dismiss the writ petition.

6. In view of the above, no orders are required to be passed in Misc. Case No. 161/2001 as it has become infructuous .