
(2005) 07 GAU CK 0010
In the Gauhati High Court

Md. Jakir Hussain

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 01-07-2005

Acts Referred:

Citation : (2005) 106 FLR 980

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—Heard the petitioner in person as well as Mr. U.K. Nair, learned Amicus Curiae, appointed by the Court. Also heard Mr. H.K. Mahanta, learned Government Advocate, Assam.

2. The present being the third approach to this Court made by the petitioner, it will be necessary to briefly notice what had happened earlier and what has occasioned the repeated approaches by the petitioner to this Court.

Claiming a right of regularization in service the petitioner had approached this Court for the first time in the year 2001 by instituting a writ proceeding registered and numbered as W.P.(C) No. 8140/2001. The claim of regularization made in the aforesaid writ proceeding was on the basis that the writ petitioner had worked as a muster roll employee in the Directorate of Geology and Mining from 1.3.1991 to 31.3.1997 except for a small break from 27.10.92 to 31.3.93. This Court by order dated 3.12.2001 closed the aforesaid writ proceeding by directing the Government to consider the case of the petitioner in accordance with the norms prevailing as circulated by Office Memorandum dated 20.4.1995. The Government considered the case of the petitioner and by an order dated 1.4.2002 rejected the same. The order dated 1.4.2002, it must be noticed, was passed by the Departmental Secretary. Thereafter, the writ petitioner instituted another writ proceeding i.e. W.P.(C) No. 3834/2003. In the said writ petition this Court by order dated 8.4.2004 came to the conclusion that the writ petitioner

was neither entitled to regularization nor to a direction for continuance in service. This Court by its aforementioned order dated 8.4.2004, however, directed the Government to verify the entitlement of the petitioner to his prayer for salary from 1.3.1991 to 31.3.1995 as well as his representation for appointment in view of his past services but only in accordance with Rules and Regulations. Acting pursuant to the aforesaid order of this Court dated 8.4.2004 the Departmental Secretary once again passed an order dated 17th July, 2004 holding the petitioner to be entitled to arrear salary/wages for the period 1.7.96 to 31.3.1997 only. Accordingly, directions were issued for the aforesaid payment. Aggrieved, the present writ petition has been filed.

3. Not surprisingly, the writ petitioner appearing in person has advanced arguments and prayers before this Court to reopen the entire matter and once again consider his entitlement for regularization or at least for continuance in service alongwith his entitlement to arrear wages which was held against him by the order of the Departmental Secretary dated 17th July, 2004. While the arguments advanced by the petitioner appearing in person are understandable, having come from a person out of employments judicial discipline and propriety will require the Court not to enter into the question of regularization and/or continuance of the petitioner In service by ordering his reinstatement in view of the contrary findings already recorded on the above noted two issues by this Court in its order dated 8.4.2004 passed in W.P.(C) No. 3834/2003. The sole question, therefore, that has to be decided by the Court is the correctness of the order of the Departmental Secretary dated 17.7.2004 holding the petitioner to be entitled to arrear wages only for the period 1.7.96 to 31.3.97.

4. The entitlement of the petitioner to salary from 1.3.91 onwards can only be found in his favour if the Court comes to the conclusion that the petitioner had rendered service during the said earlier period, as claimed by him. The aforesaid question stands concluded against the petitioner by this Court's order dated 8.4.2004 passed in W.P.(C) No. 3834/2003. The aforesaid order dated 8.4.2004 was passed by this Court in the writ petition filed after rejection of the claim made by the Departmental Secretary by the earlier order dated 1.4.2002 which was passed in consequence of this Court's order dated 3.12.2001 passed in the first writ petition filed by the petitioner in W.P.(C) No. 8144/2001. The order dated 1.4.2002 passed by the Departmental Secretary was the subject matter of challenge in W.P.(C) No. 3834/2003 in which proceeding, as already noticed, by order dated 8.4.2004 this Court had negated the petitioner's contention of being in service with effect from 1.3.1991. In such a situation, it will hardly be proper for this Court to once again scrutinize the order dated 1.4.2002. Not only that, in the affidavit filed by the Director of Geology and Mining, in the present case, it has been stated that the claim of the petitioner to have rendered service from 1.3.1991 is not established from the materials on record, as found by the Director. In the above situation, there will be hardly any material before this Court to cause, any interference, with the order dated 17th July, 2004 and direct for payment of arrear wages to the petitioner for any other period than what has

already been granted by the said order dated 17th July, 2004.

5. The net result of the above discussion is that this writ petition has to fail. It is accordingly dismissed, however, without any costs.