

(2014) 03 GAU CK 0068
In the Gauhati High Court
Case No : W.P. (C) No. 1 (K) of 2014

Mechumla Anar (Dr.)

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Court Fees Act, 1870 — Section 7(iv)

Citation : (2014) 3 GLD 451 : (2014) 2 GLT 916

Hon'ble Judges : C.R. Sarma, J

Bench : Single Bench

Advocate : C.T. Jamir, Sr. Advocate, Wati Jamir, Imkong Jamir, Amen Anichar and Pokyim Yaden, Advocate for the Appellant; T.B. Jamir, Addl. A.G. and N. Angami, G.A, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

C.R. Sarma, J.—Heard Mr. C.T. Jamir, learned senior counsel, assisted by Mr. Imkong Jamir, learned Counsel appearing for the petitioner. Also heard Mr. T.B. Jamir, learned Additional Advocate General, Nagaland assisted by N. Angami, learned State counsel appearing for State respondents. By this writ petition, the petitioner, in whose favour the judgment and order dated 28.11.2008 in Writ Petition No. 67 (K) of 2007 and judgment and orders dated 30.11.2012 in Writ Petition No. 235 (K) of 2009 and WP(C) No 54 (K) of 2010 were passed, has challenged the Notification dated 13.12.2013 (Annexure-S to the writ petition) and prayed for setting aside the paragraph 3 of the said Notification and give her all consequential service benefit including pay with effect from 28.7.2008.

2. In response to an advertisement for appointment to the post of Medical Officer, the petitioner applied for the said post and submitted her application before the Nagaland Public Service Commission (in short "NPSC"). Subsequently, a selection test (written and oral) was held and the petitioner along with others were selected. But, while recommending the names of other candidates, the case of the petitioner was not recommended for appointment, under the reserved

quota, on the ground that she was found to have used her maternal grandfather's name as her natural father and accordingly she was denied the benefit of reserved quota.

3. Aggrieved by the said decision of the NPSC, the petitioner filed a writ petition, being W.P. (C) No. 67 (K) of 2007. The claim of the writ petitioner, in the said writ petition, was contested by the State of Nagaland and Others. The learned Single Judge of this Court, by judgment and order, dated 28.08.2008 aforesaid allowed the writ petition with the following directions:--

9. Be that as it may, since a disputed question of fact is involved in the present case, this Court is of the considered view that it would meet the ends of justice in directing the State-respondents to conduct an enquiry by appointing an independent Inquiring Officer to determine the paternity dispute of the petitioner, after affording reasonable opportunity of being heard to the petitioner. The State-respondents shall complete the above exercise within a period of 4 (four) months from the dated of receipt of a copy of this order and in such enquiry, if the petitioner's claim is found to be true and correct, the State-respondents and the NPSC shall re-consider the matter of the petitioner for her appointment as a Medical Officer with effect from the date on which the other backward tribe candidates were appointed pursuant to the said advertisement dated 30th August, 2006, with all consequential benefits, Accordingly, I do.

4. On being so directed, the NPSC appointed the Deputy Commissioner, Tuensang for making a through enquiry in to the matter. The Deputy Commissioner, Tuensang submitted his report dated 22.04.2009, indicating therein, that the petitioner's claim was legitimate and that she, being an indigenous citizen of the State of Nagaland, belonged to the Samgtam (Naga) Tribe. Even after receipt of the said report from the Deputy Commissioner, Tuensang, the NPSC did not comply with the direction made by the writ Court and caused another enquiry by a three members Committee headed by the Commissioner, Nagaland and consisting of the A.D.C. Longkhim and the Deputy Secretary Urban Development. This time also the enquiry committee opined that the father of the petitioner as Late Litingse Sangtam and that he was also the father of the mother of the petitioner. Thus, it was established that the petitioner was an indigenous person, entitled to the benefit of reservation. Despite receipt of the said reports, regarding the status of the petitioner (that the petitioner belongs to Sangtam (Naga) Tribe, the NPSC did not recommend her name for appointment.

5. Aggrieved by the said inaction, on the part of the NPSC, the petitioner filed a writ petition being W.P. (C) No. 235 (K) of 2009 against the State of Nagaland, the NPSC and Others. The NPSC also as the petitioner, filed another writ petition being W.P. (C) No. 54 (K) of 2010 against the State of Nagaland, the present petitioner and others. This Court, by the common judgment and order, dated 30.11.2012, passed in the said writ petitions, while dismissing the writ petition, filed by the NPSC, allowed the writ petition filed by the present petitioner. In allowing the writ petition, filed by the petitioner, the learned Single Judge made

the following observation and direction:--

57. In view of that I have discussed herein before and what have emerged therefrom, I am of the opinion that the reliefs sought for in W.P. (C) No. 235 (K) of 2009 need to be granted on declaring the report at Annexure-Q, forwarded to the State respondents under letter dated 4th November, 2009 at Annexure-P as illegal, arbitrary and without jurisdiction.

58. In the result the report at Annexure-Q to the writ petition is declared illegal, arbitrary and without jurisdiction with a further direction to the respondent No. 4 to act in compliance of the order dated 28.11.2008 passed in W.P. (C) No. 67 (K) of 2007 in the terms of the report dated 22.04.2009 at Annexure-O to the writ petition as well as report of the 2nd Enquiry Committee at Annexure-R.

6. After receipt of the said judgment and order, the NPSC recommended the case of the petitioner and the petitioner being so recommended for appointment as Medical Officer, the Commissioner & Secretary to the Government of Nagaland, Health and Family Welfare Department issued offer of appointment to the petitioner asking her to respond within 30 days. On receipt of the said offer, the petitioner, by her letter, dated 01.05.2013, accepted the offer of appointment without prejudice to her other legal rights. Accordingly, the Commissioner and Secretary to the Government of Nagaland by Notification, dated 04.06.2013, issued the appointment letter in favour of the petitioner indicating therein that the appointment would be effective with effect from 28.08.2007. It was also provided, in the said appointment letter, that the appointment was purely on probation basis for a period of two years, subject to regularization depending on their satisfactory performance and that the period from 28.08.2007 to date would be counted for the purpose of pension, increment, leave and seniority etc.

7. On being so appointed the petitioner joined as Medical Officer at PHC, Mopong, Mon against vacancy. By notification, dated 13.12.2013, the Commissioner and Secretary to the Government of Nagaland i.e. the respondent No. 2, clarified that the pay of the petitioner shall be notionally fixed from 28.08.2007 i.e. the date of her appointment and that monetary benefit in terms of salary etc. shall be made effective with effect from 30.11.2012.

8. Aggrieved by the said Notification, the petitioner has come up with the present writ petition. The contention of the petitioner is that this Court by judgment and order dated 28.11.2008 had directed to give all consequential benefits and the said direction being reiterated vide judgment and order, dated 30.11.2012, aforesaid, the petitioner was entitled to get arrear salary from the date of her appointment i.e. 28.08.2007, inasmuch as, there was direction to give her all consequential benefits, on her appointment and that the fixation of date 30.11.2012 for counting pay benefit was arbitrary and illegal.

9. The respondents have contested the petitioner's claim by filing affidavit-in-opposition. In their affidavit-in-opposition also respondents averred that there being no direction to pay back wages/arrear salary, the petitioner was not

entitled to get back wages/arrear salary from the date of appointment. It is also been contended, by the contesting respondents, that the petitioner's pay has been notionally fixed with effect from 28.08.2007 i.e. date of her appointment and that she has been given monetary benefit with effect from 30.11.2012. It has further been contended that, except the arrear pay and allowances, all other benefits including pension, increment, leave and seniority, have been granted to the petitioner in terms of the judgment and order passed by the Court.

10. Mr. C. T. Jamir, learned senior counsel, appearing for the petitioner, referring to the operative part of the judgment and orders, dated 28.11.2008 and 30.11.2012, has submitted that in view of the specific direction to give "all consequential benefits" the petitioner was entitled to get salary i.e. arrear salary with effect from the date of her appointment inasmuch as, pay and salary is also the consequential benefits arising out of her appointment to a post. It is also submitted by the learned senior counsel, that the respondent-authority has arbitrarily fixed 30.11.2012 instead of 28.08.2007 as the date for monetary benefits without any basis. It has been strongly argued by the learned senior counsel, for the petitioner, that there being no direction for giving monetary benefit with effect from 30.11.2012, the petitioner is entitled to get monetary benefit with effect from the date of her appointment i.e. the date from which other similarly situated persons, on their appointment, could get monetary benefit. The learned senior counsel has submitted that the petitioner should not be compelled to suffer for the fault of the respondents.

11. In support of his contentions, the learned senior counsel has referred to the decisions held in the case of Ex-Hav. Satbir Singh Vs. The Chief of the Army Staff, New Delhi and Another, , R.S. Misra Vs. Union of India (UOI) and Others, . The learned senior counsel has also referred to the dictionary meaning of the term "consequential relief, as provided in Biswas on Encyclopedic Law Dictionary and Ventatar-amaiya's Law Lexicon. The learned senior counsel has submitted that as per dictionary meaning the term "consequential relief means some relief which falls directly from the main relief that is declaration and that the petitioner being granted the relief of appointment with all consequential benefits, she should have been given the monetary benefit also from the date of appointment itself and not from an arbitrary date i.e. 30.11.2012.

12. Refuting the said arguments, advanced by the learned senior counsel, appearing for the petitioner, Mr. T.B. Jamir, learned Additional Advocate General, Nagaland has submitted that there being no direction to pay backwages and arrear salary, the respondent-authorities committed no error by granting the petitioner monetary benefit with effect from 30.11.2012. It has also been submitted by the learned Additional Advocate General, Nagaland that all other benefits including pension, leave, increment and seniority etc have been given to the petitioner as per the direction made by the Court. The learned Additional Advocate General, Nagaland has submitted that the term "consequential benefits" as mentioned in the judgment and order, in the said writ petition, does

not include backwages and arrear salary and that there being no specific direction in this regard, the petitioner is not entitled to get pay and salary with effect from the date of appointment.

13. In support of his contention the learned Additional Advocate General, Nagaland has relied on the decisions held in the case of Union of India (UOI) and Others Vs. Miss Pritilata Nanda, , U.P.S.R.T.C. Ltd. Vs. Sarada Prasad Misra and Another, .

14. Having heard the learned counsel for both the parties and carefully perusing the materials on records, more particularly the judgment and order dated 28.11.2008 and 30.11.2012, I find no difficulty in understanding that this Court directed to reconsider the matter regarding appointment of the petitioner as Medical officer with effect from the date on which other similarly candidates were appointed, pursuant to the said advertisement i.e. advertisement dated 30.08.2006 with all consequential benefits. The said judgment and order, not being challenged by the respondent-authorities, attained finality. By the subsequent judgment and order dated 30.11.2012, also the direction made in the judgment and order dated 28.11.2008 was reiterated. This judgment and order also remained unchallenged. In view of the said direction, the respondent-authority, vide Notification dated 05.06.2013, appointed the petitioner to the post of Medical Officer (Class-I Gazetted) in the Nagaland Health and Services in the pay scale of Rs. 15600-39100/- with Grade pay of Rs. 5400/- p.m. plus all other allowances except NPS as are admissible under rules from time to time in Nagaland.

15. The said appointment was made effective with effect from 28.08.2007 and accordingly, the petitioner also joined the post as, Medical Officer. However, by the impugned Notification, dated 13.12.2013, the respondent-No. 2 issued a clarification indicating that the pay of the petitioner would be notionally fixed with effect from 28.08.2007, but the monetary benefits, in term of salary etc would be effective from 30.11.2012.

In the present writ petition, the petitioner has challenged the said Notification by which monetary benefit has been given with effect from 30.11.2012, instead of the date of her appointment i.e. 28.08.2007.

Carefully examining the materials on record I find that there is no basis, on which the said date has been fixed. In their affidavit-in-opposition also the respondent-authorities has not stated as to why the date was fixed on 30.11.2012 for giving monetary benefits. In the above stated writ petitions this Court, nowhere directed to give pay etc. from 30.11.2012. In view of the above, I have no hesitation in holding that the said date has been arbitrarily fixed by the respondent-No. 2.

16. In the case R. S. Misra (supra), the appellant's services were terminated on 5.11.2003 and his date of superannuation was from 3.12.2005. Having failed to get his said termination order quashed, the appellant approached the Hon''ble

Supreme Court. The Supreme Court, while allowing the appeal directed to pay full salary and allowances to the appellant for the period from 05.11.2003 to 31.03.2005. In the Case of Sabir Singh (supra), the appellant was terminated from service. The termination of the appellant was challenged and he was reinstated, upon setting aside the termination order. But he was deprived from termination benefit. He approached the Supreme Court. Notice for the purpose of termination benefit being issued, the Supreme Court granted termination benefit directing to count the intervening period, for which the appellant remained out of job, for the purpose of termination benefit.

17. In the case of Union of India (supra), the petitioner, who was physically handicapped was selected for appointment as Class-in employee in the Railways Division Manager, South Eastern Railways and despite her selection (at Sl. No. 11) she was denied appointment on the ground that she was not sponsored by an employment exchange and her junior i.e. candidates at Serial No. 12 and 13 were offered appointment. The Tribunal dismissed her petition (O.A. No. 198 of 1997). Therefore, she preferred a writ petition and the High Court directed that she be appointed from the date on which her juniors were appointed. The High Court also provided that she be given back wages and seniority. Direction was made to make payment wit in 30 days from the date of order (i.e. 5.8.2008). While modifying the said order, the Hon"ble Supreme Court directed to pay backwages from 5.8.2008 i.e. the date of order. In this case, there was no direction to give all consequential benefits from the date of appointment Therefore, I am of the respectful opinion that the said decision will not help the respondent

18. In the case of UPSRTC Ltd. (supra)., the service of the petitioners were terminated. After about seven years from the date of termination, an application challenging the termination was made. On his reinstatement, the petitioner claimed back wages for the termination period. The Hon"ble Supreme Court held that payment of backwages is a discretionary power which is to be exercised keeping in view the facts and circumstances of each case and neither strait jacket formula can be evolved, nor a rule of universal application can be adopted. The above case being a case of termination, the decision referred in the said case will not be applicable in the present case. Because, in the case at hand there is specific direction to give all consequential benefits following appointment of the petitioner.

19. In the present case, while deciding the above mentioned writ petitions, this Court specifically directed that consequent upon her appointment, the petitioner shall be entitled to get all consequential benefits.

The dictionary meaning of "consequential benefit"/consequential relief as provided in Biswas Law Dictionary are as follows:--

The expression-consequential relief means some relief which follows directly from the main relief (declaration), the valuation of which is not capable of being

definitely ascertained and which is not specifically provided for and cannot be claimed independently of the declaration as a substantial relief.

Similarly, the term "consequential relief has been defined in Law Lexicon as under:--

A consequential relief means a relief which necessarily flows from the principal relief sought. It is a relief which in the circumstances of the case cannot be allowed if the principal relief is refused. The words "relief sought" in Section 7(iv) of the Court-fees Act. 1870) does not refer to the consequential relief merely, but that they may mean the relief sought as a whole, that is, the declaratory decree or order with the consequential relief.

20. In view of above, there is no difficulty in understanding that the term consequential relief means the relief, which follows directly from the main relief. Admittedly in the present case, the petitioner has been appointed with effect from 28.08.2007. The direction to appoint her from the said date was the main relief granted to her. Unless there is anything contract, the appointment of a person carries pay and other service benefits. If an incumbent is not debarred from getting monetary benefits, pay benefit along with such other benefits should follow the appointment. As there is no order depriving the petitioner from getting pay and other benefits from the date of her appointment, she should naturally be entitled to get pay benefit also from the date of such appointment. Fact remains that the petitioner was not appointed by the respondent-authorities illegally holding that she did not belong to the reserved category, i.e. Sangtam (Naga) Tribe. From the enquiry reports, submitted by the Deputy Commissioner and also the Enquiry Committee headed by the Commissioner, Nagaland it has been clearly revealed that she was wrongfully denied appointment with effect from the date on which other similarly situated persons were appointed. The appointment letter issued by the respondent-authorities clearly indicates that appointment was made with effect from 28.08.2007 and the said order was made in pursuance to the order passed by this Court on 28.11.2008. The enquiry report submitted by the Deputy Commissioner and the Enquiry Committee headed by the Commissioner and Secretary of Nagaland leads to understand that the petitioner was entitled to be appointed from the date on which other similarly situated candidates were appointed. Therefore, had the respondent-authorities appointed her, on 28.08.2007, she would have enjoyed all service benefits with effect from the said date. I do not understand on what basis the respondent had given her pay benefit from 30.11.2012. As she has been given such benefit from 30.11.2012, i.e. during the period in which she was not holding the job, there was no reason not to give her the said benefit from the date of her appointment. The said decision is found to be arbitrary. But for the illegal decision, taken by the respondent authority, the petitioner would have joined the job on 28.8.2007 itself and in that case, apart from enjoying the pleasure of getting appointment, she would have got pay and other monetary benefits, arising out of such appointment.

It appears that she has been deprived from enjoying the pleasure of employment and monetary benefit with effect from 28.08.2007 for no fault on her part. The respondent authority by taking an erroneous decision illegally deprived her from enjoying the said service benefit. Therefore, ends of justice demands that she should be given pay and monetary benefits from the date of appointment, as consequential benefits.

21. In view of above considering entire aspect of the matter and the attending facts and circumstances of the case, I have no hesitation in holding that the expression "all consequential benefits" granted to the petitioner, would include monetary benefit also i.e. salary etc. Therefore, she is entitled to get arrear salary from the date of her appointment i.e. 28.08.2007.

22. In view of what has been discussed above, I find sufficient merit in this writ petition. Accordingly, this writ petition is allowed directing the respondent-authorities to pay salary, including arrear pay etc. with the effect from the date of appointment i.e. 28.08.2007 instead of 30.11.2012. The entire exercise be completed within a period of four months from this date.

23. With the above direction, this writ petition is disposed of. No cost.