
(2002) 05 GAU CK 0010
In the Gauhati High Court
Case No : Writ Petition (C) No. 6 of 1999

Ngurzakhuma

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 17-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 LLJ 281

Hon'ble Judges : S.K. Kar, J

Bench : Single Bench

Advocate : H. Lalrinthanga and Lalthlamuani, for the Appellant; A.A.G., for the Respondent

Final Decision : Partly Allowed

Judgement

S.K. Kar, J.—This is a petition by one Ngurzakhuma who was appointed admittedly on October 4, 1972 temporarily as Soil Conservation Demonstrator vide Order No. ESSTT-2/72/ 2544 dated October 4, 1972 and posted at Buarpui after serving for sometime at Haulawng.

2. The petitioner contended, inter alia, that his pay and allowances were withheld since 1976 on the plea of Government that he did not join his place posting at Barapansury pursuant to the transfer order. That in fact no transfer order was served on him. On making inquiry he found in 1977 that a transfer order was lying in file without service on him. He wanted to join thereafter to the new posting but was not allowed to do so. That the Respondent No. 3 (Director, Soil and Water Conservation Department, Government of Mizoram) to his surprise issued articles of charges vide his Memo No. DS-/79/10797- 8 dated November 14, 1979 regarding non-joining of duty at place of posting. Petitioner submitted in defence that he was not served with any order of transfer. Thereafter a departmental inquiry was conducted by Divisional Soil Conservation Officer, Sri M.N. Omar and he co-operated with the enquiry. The witnesses were summoned more than once by the Inquiring Officer but none appeared. Petitioner was

summoned to appear before Inquiring Officer and he did appear accordingly on October 12, 1981 and nothing more than his appearance happened. In 1984 petitioner was again summoned to appear before the Inquiring Officer. He did but no witness turned up this time also. Presenting Officer stated to have made a spot verification and submitted report stating the defence statement vide Articles 1, 2, 3 and 4 were true. In spite of best effort from his side nothing came out and neither the inquiry was completed nor his pay and allowance were released. Department did not put him under suspension also. That he was informed by Respondents Nos. 4 and 3 that he (petitioner) has drawn his pay and allowance upto December, 1976 and no inquiry report was traceable and this he came to know vide LSC-5/92-93/712 dated January 20, 1993 addressed to him. That the petitioner being aggrieved by non-payment of his salary in absence of either suspension or termination or removal order from service had no other alternative but to file writ petition which was numbered as Civil Rule 18/96 praying amongst others his reinstatement in service and releasing all his benefits due from the employer including seniority promotion etc.. That on service of notice of civil rule the Respondent No. 3 issued threatening letter vide his memo No. C. 18014/96-DTE (S & WC) dated June 27, 1996.

3. Respondents filed counter-affidavit to writ petition No. 18/96 contending, inter alia, that petitioner was removed from service after conducting inquiry on allegation of misconduct and he was treated as out of service from November 1, 1976 till July 4, 1994, the date of order of removal.

4. The writ petition CR. 18/96 was disposed of with directions to Respondents to dispose his appeal. That the respondents were lacking the sincerity and honesty to deal with the case of the petitioner. That petitioner is entitled to all service benefits including arrears of back-wages, seniority, promotion fixation of pay and allowances from January 1977 till date, That the impugned order dated September 24, 1998 of the Chief Secretary removing from service was void and illegal and liable to be set aside.

5. Thus contending, without reproducing the details, it was prayed that memorandum dated June 14, 1996, order of removal of petitioner from service dated July 4, 1994 and rejection of appeal by order dated September 24, 1998 are to be set aside and he may be reinstated into service with all benefits.

6. Respondents, through Under Secretary Department of Soil and Water Conservation, Government of Mizoram filed counter-affidavit in this case contending, to reproduce briefly, that petitioner was appointed in the post as stated by him on October 4, 1972. That he was not attending his duty regularly. Later on he was released on April 1, 1977 for joining at Barapansuri. But petitioner never joined at Barapansuri and quit service thereafter on and from April 1, 1977 voluntarily. That due to ignorance the petitioner alongwith others were made quasi- permanent on November 7, 1978, although proceeding was pending against him. That the petitioner did not render any service to Government since January, 1977 and hence payment of salary does not arise.

That he came with representation only when L.P.C. Ralte, retired from post of Director as said Mr. Ralte used to know his activities and quitting the service. That the petitioner was removed vide departmental order passed on July 4, 1994 Memo No. C/14012/I/94DTE(SC)/pt.I. That petitioner did not perform his duty for longtime for which termination of his service was legal and valid. Interestingly in para 20 of the counter-affidavit Respondents state that petitioner was in service from 1972 till November 24, 1977 (Earlier it was stated till January 1977). They prayed for dismissal of the petition with costs. Petitioner replied to counter-affidavit also.

7. I have heard both sides in detail. Following case-laws were referred

(1) TMA Pai Foundation and Others Vs. State of Karnataka and Another,

(2) State of Maharashtra Vs. Digambar,

(3) 1997 (11) GLT 213

(4) The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others,

The substance of the law given by these citations may be noted briefly as below without entering into details. There is no statutory time limit prescribed for filing writ petition . In State of Maharashtra Vs. Digambar, it was held -Unless the facts and circumstances of the case clearly justified the laches or undue delay, the writ petitioner, be he a citizen or otherwise, held not entitled to relief against any body including the State. However petitioner referred to Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, and Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and submits that delay and laches are not ground for rejecting unless third party rights were affected and in the instant case there was no third party. In The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, also it was held that "delay defeats security" has the fullest application in petition under Article 226 of the Constitution. That equity favours vigilance rather than an indolent litigant. Here, however, there is nothing specific to show delay being one sided. If there is delay caused by the petitioner by not asking immediate relief there is also laches on the part of Respondents in not timely taking action of removal of the petitioner from service on the allegation of non-attendance of duty since 1977, It was only in 1994 the order of removal was passed that too lingering the inquiry from 1981 onwards and unto 1994 also the petitioner was not paid his salaries. TMA Pai Foundation and Others Vs. State of Karnataka and Another, speaks also on matter of delay.

8. Summarising and balancing the rival contentions we would find that petitioner was not paid anything, although he was admitted in service till his removal, as claimed by Respondent in 1994. That there was no order of suspension or removal till July 4, 1994. Petitioner also could not suggest convincing evidence to affirm discharging his duty from January 1977. But admittedly the inquiry was

pending from 1981 till 1994. The petitioner approached Court in 1996 with petition for writ and thereafter his appeal was rejected on September 24, 1998. The respondents failed to produce inquiry proceedings before this Court in spite of requisition and order to do so. Therefore, validity of inquiry cannot be approved by this Court under facts and circumstances available before Court in connection with this petition. There is thus ground to order that petitioner be taken into service, even if the benefit of pay and allowance is not permissible on the principle of "No work no pay". Undeniably petitioner was not discharging any duties since January 1977 onwards, his assertion to the contrary notwithstanding. There is no bar to approach the Civil Court for getting pay and allowances because High Court Bench was not there at Aizawl at that time. Petitioner could not affirmatively convince the Court how and in what manner he was discharging his duties on his transfer to Barapansuri after either 1977 or after 1981, as the case may be.

9. Petition is allowed partially. The petitioner will be taken into service to the original post he was holding with the benefit of counting year of service since appointment. His pay will be fixed as per Rules for the time being in force as today. His arrears of pay up to January 1977 will be cleared if anything due has remained unpaid.

10. The petitioner will not claim pay and allowances for the period from February 1977 till date of this order or till he is posted to new assignment and he actually joins there, whichever is reasonably practicable.

11. Impugned order of Chief Secretary dated September 24, 1998 (Annexure-XXV) removing him from service is set aside. The period of his absence from duty may be dealt with as per prevalent leave rules passing appropriate orders to that effect.

12. No costs.