
(2004) 06 GAU CK 0002
In the Gauhati High Court
Case No : WP (C) No. 10 of 2003

Nikhumi

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 10-06-2004

Acts Referred:

Citation : (2005) 104 FLR 225 : (2004) 3 GLR 693

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : C. Laramzauva, A.R. Malhotra, Halen Dawngliani and R. Lalduhawani, for the Appellant; N. Sailo, for the Respondent

Judgement

B. Lamare, J.—Heard Mr. C. Lalremzauva, learned counsel for the petitioner as well as Mr. N. Sailo, learned counsel for the respondents.

2. The petitioner was appointed as Teacher of Thenzawl Council L.P. School vide order dated 21-6-63. Since the appointment, the petitioner has served in the school till the month of March 1967 when she was dismissed from the service on her alleged link with the MNF movement. The petitioner was also arrested by the Assam Rifles on 13-9-67 and she was kept in their custody for about a month and later on released her. The State Government in the Home Department issued a circular dated 27-8-93 addressed to the Head of the Departments for reinstatement of the Government servant who were dismissed/removed due to the alleged link with the MNF. By this circular the Government has decided to reinstate on compassionate ground all those who were removed from service with retrospective effect, i.e., 17-12-90.

3. Pursuant to this circular the petitioner submitted her application to the authorities. The petitioner was also asked by the respondent No. 4, the Director of School Education vide letter dated 13-8-96 to meet the respondent No. 4 with her documents viz; appointment order and dismissal order. On verification, the case of the petitioner along with 11 other were forwarded to the Deputy

Secretary, Education Department for reinstatement/re-appointment as Teachers.

4. As the Government had not taken any action for re-instatement, the petitioner approached this Court in W.P.(C) No. 64 of 2001 and this court by order dated 25.7.2001 while issuing notice of motion has directed that the Secretary, Home Department shall consider the case of the petitioner in accordance with the Government policy for re-instatement was done in the case of those persons who were dismissed/ removed from service and re-instated by the State Government.

5. After the said order was passed by this Court, the Government in the Education & Women Resources Development Department has issued a letter dated 3-9-2002 to the, respondent No. 4 the Director of School Education stating that the petitioner may be reinstated into service without back wages., in compliance with the instruction from the State Government, the Director of School Education issued an order dated 16-9-2002 by which the petitioner was reinstate in the service as Primary School Teacher. But in the said reinstatement order the petitioner was not granted back wages for the period between her dismissal/removal from service to her reinstatement. The period, between her removal and the subsequent re-instatement will be treated as on duty for pensionary benefit and fixation of pay. It is this order by which the petitioner is aggrieved as it was not given in accordance with the Government policy dated 27-8-1993.

6. The case of the petitioner is that as stated in paragraphs 2, 3 and 4 of the writ petition that she was appointed; as L.F. School Teacher in 1963 and continued her service till 1967 but she was dismissed from service on her alleged link with the MNF. However, after the said circular was issued by the Government for re-instatement of those persons who were dismissed from service due, to alleged link:with the MNF, the petitioner has submitted her application to the respondents and also approached this court for re-instatement of her service. On the basis of the order of this Court, her case was duly examined by the Home Department and re-instatement of the service.of the petitioner was directed by, the respondent Government.,The respondent,No. 4 has also issued the re-instatement orders

7. In support of her case, the petitioner has cited the case of Shri Laitinchhawna who had approached this Court in Civil Rule No. 27 of 1998 and this Court by order dated 7-1-1999 disposed of the petition with a direction to consider the case of the petitioner in terms of the Government policy. In respect to the direction of this Court the said Shri Laitinchhawna was re-instated vide order dated 15-4-1999 by granting him the benefit as per the Government policy with effect from 17-12-1990.

8. Another case cited by the petitioner in support of her case is the case of Shri Hmangaihzuava who has apprpacled this Court in W.P. (C) No. 10 of 2001. The petition was disposed of by this Court by order dated 7-2-2001 with a direction that the case of the that petitioner should also be considered by the respondents.

The case of Shri Hmangaihzauba was duly considered on the basis of the order passed by this Court and the order dated 24-5-2001 was issued re-instating the said petitioner and granted him the benefit with effect from 17-12-1990 as per the Government policy.

9. In order to appreciate the matter, the Govt. policy with regard to the re-instatement is re-produced below:

GOVERNMENT OF MIZORAM HOME DEPARTMENT

Dated Aizawl, the 27th August, 1993

1. The Inspector General of Police, Mizoram, Aizawl.
2. Chief Engineer, Public Works Departments.
3. Director, School Education/Industries/Agriculture/Transport.

Sub : Re-instatement of Government Servants dismissed/Removed due to alleged link with the MNF.

Sir,

In continuation and in partial modification to this Department's letter No. 41017/452/38HMP/PT; dated 5.2.1993, I am directed to convey the decision of the Govt. for your information and necessary action as given below:-

All the dismissed Government Servants in the list enclosed are to be re-instated on compassionate ground with retrospective effect i.e. 17/12/ 1990 if not already done. But they will not be entitled to arrear pay for the period prior to 17/12/1990. The gap period will be counted only for pensionary benefit including fixation of pay.

With regard to creation of post in Education Department, it is decided that for the accommodation of the reinstated Government Servants, the Department may re-instates the dismissed Government servants" against the existing posts and create supernumerary, posts for the present incumbent. After the reinstated. Government Servants retire on superannuation, the supernumerary posts will stand abolished

In case of loss of Service Book, the Head of the Department may re-construct Service Book of the re-instated Government servants in accordance with DP & AJI (GSW) O.M. No. 21011/I/93-P&AR(GSW) dated the 18th May, 1993, and fixation of pay may also be done in consultation with the Chief Controller of Accounts on the basis of the guidelines issued by Home Department.

Service Books submitted to Home Department are returned herewith. List of Government servants to be re-instated are enclosed.

End: List.

Yours faithfully,

Home Commissioner."

10. Clause 1 of the Circular clearly indicates that all dismissed Govt. servants due to alleged link with the MNF are to be re-instated on compassionate ground with retrospective effect i.e. 17-12-1990 if not already done but they shall not be entitled arrear pay for the period prior to 17-12-1990.. The gap period will be counted only for the pensionary benefit including fixation of pay. This policy decision was made by the Govt. in order to accommodate all those Government servants who were dismissed/removed due to alleged link with the MNF.

11. The petitioner has made clear statements in paragraphs, 2,3 and 4 that she was appointed as School Teacher in the year 1963 in Thenzawl Council L.P. School and she had served in the School till March 1967 and that she was dismissed from service due to her link with the MNF. She was also arrested by the Assam Rifles on 13-9-1967 and she was kept in their custody for about a month and later on released her. This statement of the petitioner has not been denied by the respondents in their Affidavit-in-Opposition. Admittedly, the petitioner is the victim of alleged with the MNF.

12. The contention of the respondents in paragraph 4 of the Affidavit-in-Opposition that there was no evidence to show that the petitioner was terminated due to her alleged involvement in the activities of the MNF runs contrary to the statement made in paragraph 2 of the Affidavit-in-Opposition where they did not denied the statement of the petitioner in paragraphs 2,3 and 4 of the writ petition. Therefore, this contention cannot be accepted.

13. The respondents in their Affidavit-in-Opposition have also alleged that there was no direction from this Court to mention anything about the arrear salary of the petitioner. With regard to this contention, the order issued by this Court on 25-7-2001 in W.R(C) No. 64 of 2001 is clear that the case of the petitioner has to be considered as per the Government policy for re-instatement of those persons who were dismissed or removed from service for alleged link with the MNF. Therefore, the respondents cannot take shelter on the ground that no direction was given for granting her arrear pay.

14. The next contention of the respondents is that the case of the petitioner was examined by a Committee but her case was not recommended by the Committee held on 24-7-1995 wherein only 15 persons were recommended. From the minutes of the Committee there is nothing to show that the case of the petitioner was considered as the name of the petitioner does not appear in the minutes of the Committee held on 24-7-1995. Therefore, this contention cannot be accepted.

15. The next contention of the respondents is that as per the resolution No. 4 of the said minutes of the meeting of the Committee held on 24-7-1995 wherein it was decided that henceforth no fresh application/claim for re-instatement should be entertained by the Government. The Circular dated 27-8-1993 which is a

policy decision of the Govt. never authorised any Committee to make such decision with regard to the period of operation of the Circular. Therefore, the resolution No. 4 of the Committee cannot supersede the Govt. policy. Therefore, this contention also holds no water.

16. Summing up the facts and circumstances as narrated above, this Court is of the opinion that since the Govt. has made a policy decision to accommodate all those persons who were dismissed/removed from service due to alleged link with the MNF, the petitioner admittedly being the victim of the alleged link with the MNF, she is entitled to all the benefits under the Govt policy. Moreover, this facts also finds support in the letter dated 24-8-1999 (Annexure-VII to the writ petition) issued by the Joint Director of School Education in his report With regard to the case of the petitioner which reads as follows :

"CASE OF NIKHUMI PRIMARY SCHOOL TEACHER, THENZAWL

As recorded in her application Smt. Nikhumi Primary School Teacher, Thenzawl was servicing as Primary School Teacher from 1st July, 1963, and served in this capacity up to March 1967. She was verbally informed; by the Education Officer that she was dismissed from service from March 1967.

As per her own written application, her service as a typist was utilised by the MNF Volunteers probably against her own will as the school remained closed under the order of the underground MNF and thus, became a member of underground MNF. She was arrested by the Assam Rifles on 13th Sept., 1967, she was remanded under custody. When she was released she applied for re-instatement that with any result. As recommended by President, MNF, Kulikawn, Smt. Nikhumi deserve a special consideration for re-instatement into service as Primary School Teacher w.e.f. March 1967 with all monetary benefit and seniority by . the Government of Mizoram.

(V.RALLIANA) Jt. Director of School Education, Mizoram: Aizawl."

Therefore, there is no doubt that the petitioner comes under the policy framed by the Government.

17. For the aforesaid reasons, the petitioner is entitled to all the benefit under the policy framed by the Government. This petition is, therefore, disposed of with a direction to the respondents, particularly the respondents 3 and 4 to modify the office order dated 16-9-2002 by granting the petitioner the benefit as per the Government policy. In other words, the respondents 3 and 4 shall issue an order re-instating the petitioner with retrospective effect i.e. from 17-12-1990). She will be entitled to all the arrear pay from that date till the date of re-instatement. This shall be done within a period of 3 (three) months from the date of receipt of this order by the respondents 3 and 4.

With the above directions this petition is disposed of.