

(2005) 08 GAU CK 0041
In the Gauhati High Court
Case No : WP (C) No. 177 (K) of 2004

Sako Chang

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 08-08-2005

Acts Referred:

Constitution of India, 1950 — Article 21, 311

Citation : (2006) 1 GLR 410

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : Supu Jamir, for the Appellant; Y. Longkumar, for the Respondent

Judgement

I.A. Ansari, J.—The present writ petition is, somewhat, unusual and this become transparent, when the following facts are noticed.

Petitioner's elder, brother Omang Chang (since deceased), was appointed, on 16.2.1987, as a work charge employee (Mohorrie) under the establishment of the Project Engineer, Police Engineering Division, Alichen, Nagaland. While the said deceased was functioning as a work charge employee, his service was terminated by order, dated 13.9.1988, issued by the appointing authority. Challenging the order of termination, dated 13.9.1988, aforementioned, the said deceased instituted a writ petition, viz., WP(C) No. 93(K) 2003, his case being, in brief, that while he was discharging his duty as Sectional Assistant under the 3rd NAP (Project), Tuensang, he was directed by respondent No. 5 to supervise construction of security fencing in and around the residence of the then Superintendent of Police (DEF), Tuensang and when after completion of the said work, one and half rolls of the barbed wire were left over, the same were kept under the custody of the deceased and, subsequently, the said barbed wires were sent to the departmental store; but, respondent No. 5 informed the Sub-Divisional Officer that it was the said deceased, who had stolen away the said barbed wires, and it was following this accusation and without conducting any inquiry and/or without holding any disciplinary proceeding against the said

deceased, his service was terminated, which is violative of Articles 21 and 311 of the Constitution of India. On the premises of these facts, the said deceased sought for issuance of writs setting aside and quashing the said order of termination, dated 13.9.1988, his reinstatement in service and the benefit of back wages. During the pendency of the said writ petition, the said deceased died on 19.12.2003. The present petitioner filed an application in WP(C) No. 93(K)03 aforementioned which gave rise to Misc. Case No. 60(K)04. This petition was dismissed by this Court, on 11.5.2004, on the ground that the claim of the writ petitioner was for his reinstatement to the post from which he was removed and after his death, the present petitioner cannot ask for being substituted to the post to which the said deceased writ petitioner was claiming reinstatement. It was, thereafter, that the present petitioner has approached this Court, with the help of the present writ petition relying upon the fact that the termination of service of the said deceased, i.e., brother of the petitioner was illegal for the reasons, which have already been mentioned hereinbefore, and that the said deceased was entitled to receive back wages and that the present petitioner, being the sole surviving member of the family of the said deceased, is entitled to receive the monetary benefits, which the said writ petitioner would have received, had he been reinstated in service.

2. Resisting the writ petition, the respondents have filed their Affidavit-in-Opposition, their case being, in brief, thus : The petitioner has no locus standi to maintain this writ petition, for, the said deceased was only a work charge employee and a work charge employee is not a regular employee, but is appointed against a sanctioned project or maintenance thereof under Non-Plan post and the service of such a person stands, automatically, terminated on completion of the project or till such time that his service is required by the department concerned. In the case at hand, the said deceased, being a work charge employee, was not governed by the Nagaland Services Discipline and Appeal Rules, 1967 ; hence, the termination of the service of the said deceased did not require holding of any inquiry or giving of any notice. The termination being in order, the present petitioner is not entitled to any relief.

3. I have heard Mr. Supu Jamir, learned Counsel for the petitioner, as well as Mrs. Y. Longkumer, learned State counsel for the respondents.

4. Before entering into discussion of the merit of the present writ petition, what is important to note is that the petitioner's statement made in the writ petition that he is the sole surviving member of the family of the said deceased has not been disputed by the respondents. The locus standi of the petitioner for maintaining the present writ petition will, therefore, depend upon what relief/reliefs the petitioner is entitled to. For this purpose, it is imperative for this Court to determine as to whether the termination of the service of the said deceased was in accordance with law and valid.

5. While considering the above aspect of the matter, it is important to bear in mind that the writ petition instituted by the said deceased made it clear, in no

uncertain words, that the termination of the service of the said deceased was following the allegation of theft and/or misappropriation of the Government property, viz., barbed wires, without however, giving him any opportunity to have his say in the matter. The petitioner too, in the present writ petition, has alleged that the service of the his said deceased brother was terminated following the allegation of theft/misappropriation of the said government property, but without conducting any enquiry at all. Dealing with this aspect of the matter, the respondents, in their Affidavit-in-Opposition, have submitted to the effect that "the SDO Alichen submitted a letter to the Project Engineer Alichen Division dated 28.7.1988 stating that several report had been received that Shri Ongmang Chang work charge Sectional Assistant had misappropriated government property. He also sought appropriate action to be taken to terminate the service of Shri Ongmang Chang. The termination order was then issued by the Project Engineer on 13th September, 1988 stating that the service of Shri Ongmang Chang W/C S.A was not required by the Division".

6. From a careful reading of what has been stated in the Affidavit-in-Opposition by the respondents, what becomes transparent is that the service of the said deceased was terminated following the accusation of misappropriation of the government property. Though the impugned order, dated 13.9.1988, terminating the service of the said deceased did not assign the reason for the termination, the fact remains that the pleading of the parties and the materials on record leave no room for doubt that the service of the said deceased was brought to an end on account of an allegation of misappropriation levelled against him. Thus, the impugned order of termination, is, undoubtedly, stigmatic in nature.

7. Without entering into the question as to whether the spirit of the provision of Nagaland Services Discipline and Appeal Rules, 1967 are applicable to the case of a work charge employee or not and also as to whether of the Temporary Service Rules, 1965, (Central Civil Service) can be applied to the case of termination of a work charge employee, what is pertinent to note is that when any order and more so, order of termination of service is likely to leave stigma on the person, whose service is sought to be terminated, he must be given an opportunity of, at least, showing cause against the reason, which, in the opinion of the authority concerned, is sufficient to terminate such person's service. This is the least, which is required to be fulfilled in service jurisprudence, for, the principle of natural justice, in appropriate cases, do apply to service jurisprudence. The present one is one of such cases. The order of termination, therefore, being stigmatic was illegal inasmuch as no notice was ever issued to, or served upon, the said deceased giving him any opportunity of showing case or hearing with regard to the allegation of theft/misappropriation leveled against him.

8. Situated, thus, it is clear that the said deceased was entitled to reinstatement. In the present case, however, since the person, who could have been reinstated in service, no longer survives, the fact remains that even if the person concerned

was not reinstated into service, he was entitled to the benefit of wages, which he would have earned till the project remained alive or the maintenance work, in respect of which the said deceased was engaged, had continued. The amount, which the said deceased would have so received, has not been quantified by the petitioner.

9. In the present case, though the petitioner cannot ask for reinstatement into service, yet he, being, admittedly, the sole surviving member of the family of the said deceased, is entitled to receive the back wages or whatever monetary benefits the said deceased was entitled to.

10. Considering, therefore, the matter in its entirety and in the interest of justice, this writ petition is partly allowed. The impugned order of termination, dated 13.9.1988, aforementioned is hereby set aside and quashed. The respondents are hereby directed to determine as to what monetary benefits the said deceased would have received, had he been allowed to continue as work charge employee till his death, but for the impugned order of termination of his service. Whatever amount is found due and payable to the said deceased until the time of his death on 19.12.2003, the same shall be made available to the present petitioner subject to such other legal and statutory formalities as may be required to be followed in this regard. The whole exercise so directed, shall be completed within 6(six) months from the date of receipt by the Chief Secretary to the Govt. of Nagaland of a certified copy of this order along with a copy of the writ petition and Annexures appended thereto. The petitioner shall furnish to the Chief Secretary to the Govt. of Nagaland a certified copy of this order along with a copy of the writ petition along with the Annexures appended thereto.

With the above observations and directions, this writ petition stands disposed of.

No costs.