
(2009) 04 GAU CK 0054
In the Gauhati High Court
Case No : Writ Petition (C) No. 61 of 2008

Sh. K. Lalmalsawma

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Citation : (2010) 1 GLR 495 : (2009) 3 GLT 729

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : C. Lalramzauva, A.R. Malhotra and Haulianthanga, for the Appellant;
Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

H. Baruah, J.—By this writ petition the impugned letters No. C.14011/43/2007-EDN dated 12.6.2008 and No. C. 18011/135/2007-DTE(EDN) dated 3.7.2008 along with advice given by the respondent No. 4 vide I.D. No. GSW.8/2007/287 dated 28.3.2007 are sought to be set aside and quashed together with a direction to the respondent authorities to treat the period of termination as on duty for all purposes with all the consequential benefits such as, seniority, back-wages, increment of pay etc.

2. The petitioner states that he, having been found qualified to be appointed as a teacher as per recruitment rules in the Pukzing Deficit Middle School was appointed by the selection committee vide office Order No. A. 12017/2/96-87 SDEO(W)/9778-80 dated 14.11.1991(Annexure-2) issued by the Chairman, Selection Committee and Sub-Divisional Education Officer, Aizawl West, Aizawl.

3. Petitioner's such appointment was temporarily approved by the office order under Memo No. G.20011/l/91-SDEO(W)/6241-47 dated 28.11.1991 (Annexure-3). Thereafter, the petitioner was selected to undergo training for Middle School Teachers in the year 1993 and he successfully completed the course in the same year and was awarded a Diploma in Teacher Education. In the

meanwhile, the petitioner wanted to sit in B.A. (Hons.) examination and he was allowed to sit in such examination by the Headmaster of the Middle School and granted leave vide order dated 18.1.1994 (Annexure-5A). While the petitioner was in Aizawl for the purpose of the said examination, he was verbally informed in the month of April, 1994 by the office that he had been terminated from service for his absence. In fact, the petitioner was not served a termination order in writing by the respondents even though, he was regularly appointed to the post of teacher. For the termination of his service by the respondents in the manner above, the petitioner filed a representation to the respondent No. 3 praying for his reinstatement in the service contending inter-alia that his termination was illegal since he was granted leave by the Headmaster to sit in the examination. Having found no positive response from the respondent in respect of his representation so made, he was constrained to make several representations to the respondents including the Minister in-charge Education.

4. Subsequently, the respondents realizing their illegality in terminating the petitioner from service, re-instated him in the service vide order Memo No. A.12/93-94/-CM/S dated 15.5.2003 (Annexure-9) and appointed him as a teacher in Chuhvel Deficit Middle School (Annexure-9). On his reinstatement in the service submitted a representation on 16.4.2004 to respondent No. 3 praying him to count his past service for protecting his pay etc. and for payment of back wages from the period of his illegal termination to the date of his reinstatement instead of treating him as a new appointee. Pursuant to the representation dated 16.4.2004, no attention was paid. In the meantime, Chuhvel Deficit Middle School along with some other Deficit Middle Schools was provincialised by the respondents vide Notification No. B.17011/3/2002-EDN dated 28.8.2003 issued by the respondent No. 2 and the services of the incumbents of the Middle School teachers including the petitioner were absorbed as Middle School Teacher on the recommendation of the D.P.C.

5. Respondent No. 3, vide letter No. C.11011/42/2004-DTE(EDN) dated 31.1.2006 addressed to Sub-Divisional Education Officer, Kolasib had requested him to furnish details of pay fixation of the petitioner for the termination period and his subsequent reinstatement along with the detailed proposal for payment of back wages w.e.f. 1.4.1994 to 10.2.2003 (Annexure-15). Some steps were taken in respect of the above matter by the respondent authorities but no positive response in respect of treatment of the period of termination as on duty and also in respect of the back wages and other benefits. The petitioner, therefore, being aggrieved in the acts and omission of the respondent authorities filed this writ petition praying the relief as stated above.

6. The respondent authorities filed an affidavit-in-opposition resisting the case of the writ petitioner. In the counter affidavit, it is contended that the respondents were directed vide judgment and order dated 29.2.2008 passed in WP(C) No. 47/2007 to consider the representation of the petitioner and disposed of the same in accordance with law and accordingly, the representation of the petitioner

was disposed of on merit by the respondent authorities and the result was communicated to the petitioner on 3.7.2008. In regard to the payment of back wages, it was informed that back wages could not be allowed on the principle of "No Work, No Pay" since he was terminated by the Managing Committee, the period of termination cannot be considered/treated as on duty. The respondent authorities, therefore, prays for dismissal of the writ petition.

7. In the context of this writ petition, Mr. A.R. Malhotra, Learned Counsel for the petitioner as well as Mr. N. Sailo, learned Addl. AG assisted by Mrs. Helen Dawngliani and Mrs. Dinari T. Azyu were heard at length.

8. Mr. Malhotra at the very outset of his argument submitted that the termination of the writ petitioner from his service was, apparently, illegal since he was granted leave by the Headmaster to sit in the B.A. (Hons.) examination and such termination order was made verbally without providing any order in writing. Subsequently, having made several representations by the writ petitioner, the respondent authorities could detect the mistake illegality committed, reinstated the petitioner and appointed him as teacher in Chuhvel Deficit Middle School vide appointment order dated 15.5.2003 (Annexure-9) which was later provincialised by the respondent authorities. Since the petitioner was illegally terminated for no fault of him, the period of such termination can be treated as on duty and the petitioner is entitled to all benefits including back wages. The contention of the respondents that the writ petitioner during the termination period did not render his service to the school, on principle of "No Work, No Pay", petitioner is not entitled to have the back wages and other consequential benefits would be illegal and not justified. Mr. Malhotra referring to the provisions of F.R. 54 submitted that the petitioner who was terminated from service, when reinstated, would be entitled to full pay and allowances to which he would have been entitled, had he not been dismissed/terminated from the service. The respondent authorities sensing their error and illegality in causing termination of the writ petitioner reinstated him in service and appointed him in Chuhvel Deficit Middle School on 15.3.2005. In the reinstatement order (Annexure-9) there is nothing adverse against the writ petitioner. The writ petitioner was appointed against the post vacated by Pu Lalbiakmawia on his death. So according to Mr. Malhotra, reinstatement of the writ petitioner was made without any blemish whatsoever. For the illegal action of the respondent authorities, the petitioner had to remain absent from his duty for the period of termination and, therefore, the period of absence from duty during the period of termination should be treated as a period spent on duty for all purposes as per F.R. 54 (3).

9. Mr. Malhotra in support of his contention in the context of rejection of the representations of the writ petitioner on the principle of "No Work, No Pay" relied on a decision in the case between J.N. Srivastava Vs. Union of India (UOI) and Another, and in the case between Jogamaya Saikia (Dr.) and Others Vs. National Institute of Technology and Others, It was argued that the Apex Court and a Division Bench of this High Court, while dealing with the cases (supra) discussed

the principle of "No Work, No Pay". Denial of pay etc. on the ground of "No Work, No Pay" cannot be applied mechanically nor it can be automatic since the petitioner was terminated for no fault of him rather illegally, the period of termination can be treated as on duty.

10. I have given my anxious consideration to the facts averred, the documents annexed with the writ petition and the contentions raised in the affidavit-in-opposition by the respondents. I have also given my anxious consideration to the submissions advanced by the Learned Counsel of both the party. In view of the ratio laid down by the Apex Court and the Division Bench of this High Court in the cases (supra), I find no force in the arguments of Mr. N. Sailo, learned Addl. AG and accordingly, the submissions stand rejected.

11. The principle sought to be applied in case of the writ petitioner by the respondent authorities "No Work, No Pay" is not found fit to the facts and circumstances of the case of the writ petitioner. I find merit in the writ petition filed by the writ petitioner. The writ petitioner cannot be debarred from getting his back wages etc. on account of illegal action of the respondent authorities.

12. In the result, this writ petition is allowed. The impugned letters No. C.14011/43/2007-EDN dated 12.6.2008 and No. C.18011/135/2007-DTE(EDN) dated 3.7.2008 along with advice of the respondent No. 4 offered vide I.D. No. GSW.8/2C07/287 dated 28.3.2007 are hereby set aside and quashed. The period of termination shall be treated as on duty for all purposes. Respondent authorities are also directed to offer all consequential benefits including seniority, back wages, increment etc.

13. No order as to cost.