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In the Gauhati High Court

Case No : Writ Appeal No. 476 of 1994 (in Civil Rule No. 33 (K) of 1993)

State of Nagaland and Another — APPELLANT

Vs

L. Morantemjan Aier and Others — RESPONDENT

Date of Decision : 13-06-1996

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1997) 1 GLR 299

Hon'ble Judges : M. Sharma, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : D.K. Misra, P. Khataniar and C. Jamir, for the Appellant; P. Borthakur and B. Acharjee, for the Respondent

Judgement

A.K. Patnaik, J.—This is an appeal against the common judgment dated 13.1.94 of the learned single Judge in Civil Rule No. 33(K)93 and Civil Rule No. 58(K)93 of the Kohima Bench of this Court filed by the State of Nagaland in so far as the directions in the said judgment relate to Civil Rule No. 33(K)93.

2. The facts briefly are that in the year 1981, the Government of Nagaland in the Agriculture Department selected the Respondent L. Mermentenjan Aier alongwith others for training in Coffee culture in the Central Coffee Research Institute, Chikamagalur in the State of Karnataka and on completion of such training, the Respondent was to serve under the Nagaland Plantation Crops Development Corporation (for short "the Corporation"). After the said training, the said Respondent along with others were appointed as Assistant Plantation Managers for looking, after Coffee plantation farms in the State of Nagaland by order dated 3.2.82 of the Managing Director of the Corporation. When the Coffee plantation projects of the Corporation failed, a committee under the Chairmanship of the Director of Agriculture, Govt. of Nagaland was appointed by the Board of the Corporation to examine the performance of the Assistant Plantation Managers and on the basis of the report of the said committee, the Board of the Corporation took a decision to terminate the services of the Assistant Plantation

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Managers. Pursuant to the said decision of the Board, the Chairman of the Corporation by his notice dated 6.4.88 informed the said Respondent and 5 other Assistant Plantation Manager''s that their services would be terminated after a month with effect from 10.5.88. The Respondent submitted representation before the Chairman of the Corporation on 5.5.88 for reconsideration of the entire matter but to no avail and their services stood terminated with effect from 10.5.88. The Respondent thereafter submitted representations dated 25.4.89 and 8.6.92 to the Secretary of the Food and Civil Supplies Department and to the Director of Food and Civil Supplies, Government of Nagaland but did not gel any favorable response from them. In the meanwhile, two of the Assistant Plantation Managers who had also been served with the notice of termination dated 6.4.88 challenged the said notice in Civil Rule No. 68(K)89 and a learned single Judge of the Kohima Bench of this Court by judgment dated 30.9.91 set aside the said notice terminating their service and directed their reinstatement in service. Pursuant to the said judgment dated 30.9.91, the said two Assistant Plantation Managers were reinstated in service with effect from 16.1.92 but not with retrospective effect from the date of termination of their service. They filed Civil Rule No. 59(K)92 contending that they should have been reinstated with retrospective effect from 10.5.88 when they were terminated from service instead of 16.1.92 and they should be paid their back wages for the period from 10.5.88 to 16.1.92. By judgment dated 24.2.93 in the said Civil Rule No. 59(K)92, the learned Single Judge directed that the reinstatement of the said two Assistant Plantation Managers would take effect from 10.5.88 for the purpose of seniority, increment of pay, pension etc., but no back wages shall be paid to them. Coming to learn of the said judgment, the Respondent in this appeal filed Civil Rule No. 33(K)93 contending that he is also entitled to the same relief as has been grained to the said two Assistant Plantation Managers by the Court in the aforesaid Civil Rule No. 68(K)89 and Civil Rule No. 59(K)92, in which similar notices of termination of service issued under similar circumstances were challenged. By the impugned common judgment dated 13.1.94 in Civil Rule No. 33(K)93 and Civil Rule No. 58(K)93, the learned single Judge held Unit the Respondent shall also be entitled to have the benefit of the directions given in Civil Rule No. 68(K)89 and 59(K)92 and directed the Appellants to take back the Respondent into service at the earliest and at any rate not later than 3 months. By interim order dated 22-11-94 passed at the time of admission of this appeal, the operation of the impugned common judgment of the learned single Judge has been stayed by the Division Bench.

3. Mr. Khataniar, learned Counsel for the Appellant stated that the Respondent No. 1 had been terminated from his service with effect from 10.5.88 by notice dated 6.4.88, but the Respondent did not challenge the said notice for long 5 years. During these 5 years the Corporation was wound up with effect from 1.4,92 on account of financial crisis. At the time when the Corporation was wound up, there were 108 employees in the Corporation who were paid their pay and allowances by virtue of an interim order of status quo passed by the Kohima

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Bench of this Court dated 10.4.92 in Civil Rule No. 65(K)92 filed by the Stall association of the Corporation. Thereafter, the Governor''s Executive Council in its meeting held on 18.12.92 agreed to absorb these employees in various departments of Government of Nagaland. Mr. Khataniar explained that the two writ Petitioners in Civil Rule Nos. 68(K)89 and 59(K)92 had been reinstated in service pursuant to judgment dated 30.9.91 of this Court when the Corporation was in existence and had not been wound up but the Respondents approached this Court in the year 1993 when the Corporation stood wound up. On these facts no direction could have been given for reinstatement of the Respondents in the service of the Corporation and the learned single Judge should have dismissed the writ petition on the ground of delay and laches. Mr. Khataniar cited the judgment of the Supreme Court in the case of State of Maharashtra Vs. Digambar,

4. In reply, Mr. P. Borthakur, learned Counsel for the Respondents, explained that the delay in filing the writ petition by the Respondent had been adequately explained before the learned single Judge. Several representations had been filed by the Respondent before the authorities and the same had not been disposed of and further the Respondent was looking for alternative employment. But when lie came to learn about the judgments of this Court of Civil Rule Nos. 68(K)89 and 59(K)92 the Respondent approached this Court in writ petition for similar reliefs as had been granted to his colleagues by the Court in the said judgments. Mr. Borthakur cited the decision of a Division Bench of this Court in the case of Dr. Khagendra Nath Baishya v. State of Assam 1994(2) GLJ 318, wherein It has been held that once a writ petition is admitted for consideration on merits, justice and fairplay should not be denied by dismissing the writ petition on the ground of delay. He also cited the judgment of Division Bench of this Court in the case of Surendra Nath Talukdar v. Senior Regional Manager 1992(1) GLJ 21 In which this Court observed that there would not be justification for penalising the Petitioner for not having conic to the Court early and the benefits of an order passed by the Court in an earlier case was extended to the Petitioner in a later case in consonance with justice, fairplay and equity. He also relied on the judgment of the Apex Court in the case of K.I. Shephard and Others Vs. Union of India (UOI) and Others, wherein a direction was issued to take back in employment some of the employees excluded from employment under a scheme of amalgamation of some Banks even though they had not approached the Court as the Court felt that there was no justification to penalize them for having not litigated. Mr. Borthakur also brought to our notice the notification dated 23rd February, 1993 of the Government of Nagaland, Personnel and Administrative Department, according to which the ex-employees of the Corporation were to be given appointment in Government service or Public Sector Undertakings under the State Government.

5. It is true that it is not always that the Court dismisses a writ petition on the ground of delay and laches and that in several cases in consonance with the principles of fairplay, justice and equity, Courts have granted the same reliefs to a party who has approached the Court belatedly as have been granted to others

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under an earlier judgment if the facts of the two cases are similar, But whether delay in approaching the Court under Article 226 of the Constitution would disentitle the Petitioner to reliefs granted to another party in an earlier similar case would depend on the facts and circumstances of each ease. In the case of Surendra Kumar v. Industrial Tribunal (1981) SCC (LAS) 16, the Supreme Court has observed that the Court may deny the relief of reinstatement where reinstatement is impossible because the industry was closed down. In the facts of the instant case, the Respondent was terminated from service with effect from 10.5.88 but he did not choose to challenge the notice of termination and instead sought for alternative employment in different establishments of the Government. In the meanwhile, the Corporation was wound up with effect from 10.4.92 and it was only in the year 1993 that the Respondent approached this Court challenging the notice of termination dated 6.4.88 and praying for relief of reinstatement in service as was granted to the two Petitioners in Civil Rule Nos. 68(K)89 and 59 (K)92. In our opinion, the relief of reinstatement of the Respondent in the service of the Corporation which stood wound up with effect from 10.4.92 was impossible and on these peculiar facts the direction of the learned single Judge that the Respondent would be entitled to the same benefit as the two Petitioners in Civil Rule Nos. 68(K)89 and 59(K)92, namely reinstatement of service with effect from 10.5.88, was not at all justified.

6. Coming now to the contention of Mr. Borthakur that the Respondent was entitled to relief on the basis of the notification dated 23.2.93 issued by the Government of Nagaland in the Personnel and Administrative Reforms Department, from a reading of the aforesaid notification, it appears that the decision of tine Government of Nagaland to provide opportunity for appointment in Government service and in any Public Sector Undertaking of the Government of Nagaland is only in respect of the ex-employees of the Corporation who have been named in t the staff list in the annexure attached to the said notification. The said annexure to the notification has not been produced before us, but we can safely conclude that the name of the Respondent could not have been mentioned in the annexure attached to the notification as his service in the Corporation was terminated with effect from 10.5.88 by the impugned notice of termination, Hence on the basis of the said notification dated 23.2.93, the Respondent cannot claim as of right to an appointment in Government service or in any other Public Sector Undertaking of the Government of Nagaland.

7. This is however not to say that the Respondent should not be considered by the Government of Nagaland for fresh appointment as a direct recruit in the manner indicated in the said notification in any suitable vacancy that may arise in future under the State Government or in any Public Sector Undertaking of the Government of Nagaland. The impugned notice of termination on the face of it is only a termination simpliciter and not a dismissal from service with a stigma disentitling the Respondent from further service under the Government or a Public Sector Undertaking. Further under the aforesaid notification an ex-employee of the Corporation has to go through a proper interview or selection

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and in case the Respondent was not suitable for employment, it is always open for the interview or selection Board to turn down his case for appointment on the ground that he is not suitable. The Respondent must have crossed the maximum upper age limit for Government employment and therefore, cannot be considered for Government service unless his age is relaxed as is sought to be done under the aforesaid notification in respect of the ex-employees of the Corporation. Further on account of the fact that the Government has spent considerable amount of money for his training and he has already rendered about 5 years of service in the Corporation, a preference should be given to the Respondent as is sought to be given to other ex-employees of the Corporation under the aforesaid notification. We are thus of the considered opinion that although the Respondent cannot claim re-employment in Government service or in the service of Public Sector Undertakings of the State of Nagaland as of right, on the peculiar facts of the case indicated above, the Government of Nagaland should consider the case of the Respondent for re-employment in Government service or in any other Public Sector Undertaking of the State of Nagaland in the manner indicated in the aforesaid notification and it will be contrary to principles of fairplay, Justice and equity if such consideration is denied to the Respondent only on the ground that the Respondent had not litigated earlier regarding his termination from service under the Corporation and was looking for alternative employment under the State Government and else where.

7. In the result, the impugned judgment dated 30.1.94 in Civil Rule No. 33(K)93 in so far as it directs the Appellants to lake back the Respondent into service and to give him the benefits of direction given In Civil Rule No. 68(K)89 and 59(K)92 is set aside, Bui the Appellants are directed to consider the case of the Respondent in the manner indicated in the aforesaid notification dated 23.2.93 for fresh appointment in Government service or in any Public Sector Undertaking of the Government of Nagaland as soon as suitable vacancy is available either under the State Government or under any Public Sector Undertaking of the Government of Nagaland, But considering the facts and circumstances of the case the parties shall bear their own costs.

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