
(2006) 03 GAU CK 0050
In the Gauhati High Court

State of Nagaland and Others

APPELLANT

Vs

Raj Bhandar Gurung

RESPONDENT

Date of Decision : 06-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 2 GLR 369

Hon'ble Judges : Maibam B.K. Singh, J;Iqbal Ahmed Ansari, J

Bench : Division Bench

Judgement

I.A. Ansari, J.—Heard Its. Y. Longkumer, learned Government Advocate appearing on behalf of the appellants and Mr. T. Koza learned Counsel appearing on behalf of the writ petitioner/respondent.

2. The writ petitioner was initially appointed as a workcharge Painter by order, dated 9.7.1975. This engagement of the petitioner was converted into contract service, with effect from 30.1.1981, by order, dated 26.3.1981. On attaining the age of superannuation, the petitioner was, on the strength of this order, dated 26.9.2001, issued by the Project Engineer, Police Engineering Project Division, Chumukedima, Nagaland released as having retired with effect from 30.9.2001. After retirement of the petitioner, a letter was issued, on 21.2.2002, by the Inspector General of Police (HQ). Nagaland, addressed to the Home Commissioner, Government of Nagaland, requesting regularisation of the service of the petitioner so as to enable the petitioner to receive pension and pensionary benefits on the ground that the petitioner had already put in more than 26 years of service before his retirement on superannuation. However, due to non-regularisation of the service of the petitioner, the petitioner was not granted pensionary benefits. It was in such a situation that the petitioner came to this court with a writ petition made under Article 226 of the Constitution of India, which gave rise to WP(C) No. 175(K)03. By order, dated 31.3.2004, aforementioned, the learned Single Judge disposed of the writ petition by making the following observations and directions:

In a similar situated case this court by following the judgment rendered by a Division Bench of this court in the case of State of Manipur and Ors. v. Ksh Ibohal Singh and Anr. connected case reported in 1997 (2) GLT 209 has disposed of the case by regularisation of the service of the petitioner in W.P.(C) No. 126(K)02. Since the present case is also similarly situated, I dispose of the same in the same line as per the judgment and order in the said W.P.(C) No. 126(K)/02.

Accordingly, this petition is disposed of with the direction that the respondents shall regularize the service of the petitioner and grant him all the pensionary benefits in accordance with the rules governing the service of the petitioner. The process shall be completed within a period of 3 (three) months from the date of receipt of a copy of this order.

3. While considering the directions mentioned above, what is pertinent to note is that no regularisation in absence of any law or in the absence of an appropriate scheme for regularisation framed by the Government is possible, barring in exceptionally deserving circumstances. In the case at hand, though there is a decision reached, on 14.5.2001, in a meeting, which was attended to by the Chief Secretary of the State, Addl. Chief Secretary 85 Commissioner, Director General of Police, Addl. Chief Secretary & Principal Secretary, P&AR and Special Secretary, Home, adopting the scheme of regularisation prevalent in the State in respect of teachers, there is nothing, in the record, to show that this decision had received the concurrence of the Finance Department and for approval of the Cabinet. In such a case, it is difficult to treat the decision reached in the meeting on 14.5.2001 as a Government policy for regularisation. This apart, in the case at hand, the petitioner had approached the court only after his retirement. If the petitioner's service had not been regularized during ins period, when he had been working on contractual basis, the petitioner had the liberty to come to this court for appropriate directions. The petitioner, however, remained idle and approached this court only after his retirement. In a case of this nature, the prayer for regularisation of service cannot be readily agreed.

4. However, in the facts and circumstances of the present case, we find that since the learned single Judge has exercised the discretionary jurisdiction under Article 226 of the Constitution of India, we should not interfere with the directions so given. We, however, make it clear that the regularisation of the service of the petitioner shall not entitle him to receive back wages and that his regulansation with retrospective effect, if any, shall only entitle him to receive pension and pensionary benefits. The process in terms of the directions given hereinbefore shall be completed within a period of 3 (three) months from the date of receipt of a copy of this order by the appellant No. 1 herein, namely, the Commissioner and Secretary (Home) Government of Nagaland, Kohima. We further make it clear that the giving of the relief to the writ petitioner, in the case at hand, shall not be treated as a precedent and shall remain confined to the facts of the case in hand.

5. With the above observations and directions, this writ appeal shall stand

disposed of.

No order as to costs.