
(1998) 11 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 222 of 1997

Thongam Binod Kumar Singh	Vs	APPELLANT
Commissioner/Secretary, Govt. of Manipur and Others		RESPONDENT

Date of Decision : 04-11-1998

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10(5)

Citation : (1998) 4 GLT 474

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : I. Lalit Kr. Singh, for the Appellant; R.K. Sanajaoba Singh, for the Respondent

Judgement

J.N. Sarma, J.—The Petitioner herein was put under suspension vide order dated 8th July, 1986. There after that order of suspension was ultimately revoked on 27.2.91 and it was decided by the authority that the period of suspension of the Petitioner will be treated as on duty for all purposes that is Annexure-A/3 to the writ application. The Annexure A/3 is quoted below:

GOVERNMENT OF MANIPUR PUBUC WORKS DEPARTMENT OFFICE ORDER No. 409 Dated/Imphal, the 27th Feb. 91.

Whereas an order placing Shri Th. Bindodkumar Singh, Section Officer Gr-II of Civil Division Finance Commission, P.W.D. Manipur under suspensicm was made vide this office order No. 107 dated 8.7.86 in respect of a criminal offence and said order or suspension was revoked under this office order No. 407 dt. 18.11.86 without prejudice to departmental enquiry against him.

Whereas after careful examination by the Court of the Chief Judicial Magistrate and the O.C. Lamphel police station has made aclearance report that the case has been finally returned vide F.R. No. 26/87 Dt. 24.2.87.

Whereas, the undersigned has considered the matter carefully and decided that since there is no sufficient evidence to prove the charges against the Section

officer Gr-II and the case be closed.

Now, therefore the undersigned in exercise of the power's conferred by Clause (c) of Sub-rule (5) of Rule 10 of the C.C.S. (Classification Control) and Appeal Rules, 1965 and hereby modified the said revocation order with immediate effect and the period of his suspension will be treated as on duty for all purposes.

2. During this period the persons junior to the Petitioner were promoted and the result of the interview of the Petitioner was kept under sealed cover and when the suspension order was revoked it was open and he was also promoted and was placed above his juniors. But the authority did not pay him the arrears salary for that period.

3. The law regarding this point has been laid down in Union of India Vs. K.V. Jankiraman, etc. etc., where the Supreme Court pointed out that when sealed cover procedure is adopted and the sealed cover is opened in case of complete exoneration of the employee from all charges and national promotion is to be given from the date of his juniors were promoted and the arrears of salary may also be granted from the date of national promotion having regard to the circumstances of the case. There was also an argument made before the Supreme Court that the employee shall not be entitled to arrears salary on the principle of "No work no pay". In paragraphs 24 and 25 of the judgment that was negated. That paragraph are quoted below:

It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

The same situation is in the case in hand. Here is a case where the employee was willing to work but he was not allowed to work without his fault.

4. Sri R.K. Sanajaoba, learned Counsel for the Respondents relied on a decision reported in Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others, There a bench of two judges pointed out that when a public servant is put under suspension pending criminal trial and there is subsequent acquittal, consequential relief of reinstatement will follow, but back wages should not be granted as a matter of course if the conduct alleged is the foundation for prosecution, the disciplinary authority may take appropriate action thereon. That is not the situation in the present case. Here, the authority did not take any disciplinary action against the Petitioner and the Petitioner now has retired from service. So, only he now will get the money for the period.

5. That being the position, this writ application is allowed with a direction that the writ Petitioner shall be paid his arrears salary. w.e.f. 10.3.87 as Section officer Gr-I (Civil). This shall be done within a period of three (3) months from the date of receipt of certified copy of this order. The Petitioner shall obtain the certified copy of this order and shall produce the same before the authority to do the needful in terms of the order.

6. This disposes of the writ application. I have heard Mr. I. Lalitkumar, learned Counsel for the Petitioner and Mr. R.K. Sanajaoba, learned Counsel for the Respondents.