
(2001) 07 GAU CK 0011
In the Gauhati High Court
Case No : Writ Petition (C) No. 70 (AP) of 2001

Tobi Nomuk

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 19-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (2001) 2 GLT 340

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : G. Ete, for the Appellant; N.N. Saikia, AG, for the Respondent

Final Decision : Allowed

Judgement

1. By this application under Article 226 of the Constitution the petitioner prays for quashing the order dated 1.3.2001 (Annexure-11) terminating her services as Laboratory Attendant in the Medical Department under the Government of Arunachal Pradesh.

2. I have heard Mr. G. Ete, learned counsel for the petitioner and Mr. N.N. Saika, learned Advocate General, AP appearing for the State respondents. I have also considered the records of the case.

3. The facts not in dispute may be briefly stated as follows. The petitioner was first appointed as un-skilled contingency staff for a period of six months w.e.f. 1.4.1990 to 30.9.1990 vide Government order dated 26.4.1990 (Annexure-1). The period was extended from time to time by issuing orders (Annexures-2A, 2B, 2C). Thereafter, by an order dated 30.5.1994 (Annexure-3) she was appointed as Laboratory Attendant on ad-hoc basis in the Medical Department. One of the conditions is that her appointment can be terminated giving one month's notice. Admittedly, some time after her joining she fell ill.

4. Now, the petitioner's case is that after prolonged medical treatment she regained her health and reported for joining her duty with medical fitness

certificate dated 1.7.1995 (Annexure-7), issued by the authorised Medical Attendant. But she was told to wait. Unfortunately she again fell ill and suffered for a long time. When she recovered from her illness she came to resume her duties, but was again told to wait. Ultimately, she submitted a representation dated 13.12.2000 (Annexure-8) before the respondent No.2 Director of Health Services, Government of Arunachal Pradesh to allow her to join her duty. Unable to get any response, she filed writ petition W.P.(C) No. 191 (AP)/ 2000 and this court disposed of the same by an order dated 8.1.2001 (Annexure-9) directing the Director of Health Services to consider and dispose of her representation by passing a speaking order and to communicate the result to the petitioner. Pursuant to this order, the Director of Health Services disposed of the petitioner's representation by rejecting her prayer to allow her to join her duty and also by terminating her services vide order dated 1.3.2001 (Annexure-11) impugned in the instant writ petition.

5. The operative portion of the impugned order dated 1.3.2001 reads as under:-

"Her long unauthorised absence has been construed as her un- willingness to continue in service, and accordingly her services as Lab. Attendant (vide office order No. Mest-79/43/66 dated 30.5.1994) is terminated."

6. The office order dated 30.5.1994 referred to above appointing the petitioner as Lab. Attendant is not for a limited period. Here, the petitioner continued to be in service as Lab. Attendant till the impugned termination order was passed on 1.3.2001 assuming the same to be a valid order. However, this termination order cannot be said to be valid for the reasons stated hereinafter. In the first place, the petitioner's services could not have been terminated while disposing of her representation to allow her to join her duty without initiating a separate proceeding for termination and without giving her one month's notice as required under condition No. 3 of the appointment order dated 30.5.1994 (Annexure-3). Admittedly, no such notice was given to the petitioner. Then it is not understood how her absence could have been construed as her unwillingness to continue in service at least on 1.3.2001 when the impugned order was passed terminating her service on this ground in the face of her repeated averments in her writ petition narrating her conduct and acts showing her keenness to continue in service. And it is settled law that the averments made in the writ petition not controverted by filing an affidavit-in-opposition shall be deemed to have been admitted by the respondents. In this case the respondents have not filed any affidavit-in-opposition.

7. Mr. G. Ete, learned counsel has straneously argued that the impugned termination order was passed only on 1.3.2001 and prior to 1.3.2001 the petitioner could not have been debarred from joining her duty in the absence of any order placing her under suspension. Admittedly, no such suspension order was ever passed by the respondents. Mr. Ete further submits that the petitioner did not commit any wrong to deserve termination except that she fell seriously ill and had to remain absent from duty during the period of her illness. Mr. Ete

submits that in a similar case this court quashed termination order vide decision in Satya Prasad Das v. State of Assam 2001(1) GLT wherein it has been held -

"Whether justification offered by a Government Servant for remaining absent from duty is valid justification or not, however, is a matter to be decided in each case by the Disciplinary Authority. The case of the petitioner as stated In paragraph-8 of the writ petition is that he was suffering from mental diseases and chest trouble and was not in a position to function properly for which he applied for casual leave, and his mental condition became worse and chest trouble become critical, and he was advised rest by Dr. SC Ghose, Sub-Divisional Medical & Health Officer, Rural Hospital at Abhoyapuri, and it was for these reasons that he was not able to attend to his duties. As to whether or not the aforesaid explanation furnished by the petitioner for remaining absent from duty was however a matter to be considered and decided in disciplinary proceedings by the Enquiry Officer and the Disciplinary Authority. But it appears that no enquiry was held In the case of the petitioner in accordance with Rule 9 of the Rules, 1964 before he was discharged from service."

8. Learned counsel Mr. Ete submits that in the instant case also no inquiry/ disciplinary proceeding was held and the impugned termination order is liable to be quashed. Mr. Ete further submits that even if such inquiry as contemplated under Article 311(2) read with the statutory rules is not necessary in the instant case, the impugned termination order is liable to be quashed for non-issue of one month's notice to the petitioner as required under condition No. 3 of her appointment letter. I am inclined to agree with Mr. Ete, learned counsel for the petitioner. In the Apex Court decisions in State of U.P. and Others Vs. Kamla Devi (Smt) and Another, and State of UP v. Krishna Kumar Sharma relied upon by Mr. N.N. Saikia, learned Advocate General, Arunachal Pradesh, it has been held that inquiry is not necessary when Rules provide for termination of service of a temporary Govt. Servant either with one month's notice or pay in lieu thereof. In the instant case the condition No. 3 of the appointment letter provides for termination with one month's notice, and no such notice was issued to the petitioner. Hence the above decisions are of no assistance to the respondents to show that the impugned termination order is valid. Another decision in Principal of Institute of Post Graduate Medical Education's case 1995 (4) SCC 609 relied upon by Mr. Saikia is clearly distinguishable.

9. In any view of the matter, the impugned termination order dated 1.3.2001 (Annexure-11) cannot be allowed to stand, and the same is set aside and quashed.

10. The State respondents shall reinstate the petitioner in service within one month from the date of receipt of this order. In case, in the meantime, the post earlier held by the petitioner has been filled up, a supernumerary post shall be created to accommodate her. The concerned authority shall take a decision as per relevant rules as to the petitioner's entitlement to any arrear pay and allowances for the period prior to her reinstatement.

11. The writ petition is allowed to the extent indicated above. No costs.