
(1999) 08 GAU CK 0003

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 44 (K) of 1999

Yanbemo Lotha

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision : 18-08-1999

Acts Referred:

Citation : (2000) 1 GLJ 73

Hon'ble Judges : A.P.Singh, J

Bench : Single Bench

Advocate : K.R.Murry , Jamir, Advocates appearing for Parties

Judgement

1. Heard Mr. KR Murry, learned counsel for the petitioner as well as Mr. I. Jamir, learned Senior Govt Advocate.

2. Present writ petition under Article 226 of the Constitution has been filed by Shri Yanbemo Lotha praying the Court to grant him the following reliefs:

(a) writ of Mandamus or any other order or direction for quashing the order No. 174 dated 24.3.99" appointing respondent No.3 to the post of Peon which was held by the petitioner.

(b) And to restore him on His post.

(c) And any other relief which the Court may find fit and proper.

3. Brief facts of the case are that petitioner's father late Shri Nphyo Lotha

was working as office peon in the establishment of Executive Engineer (E), Electrical Division, Wokha, Nagaland who died in harness on 3.9.97 while working on his official duty at Wokha. Consequent upon the death of his father, petitioner applied for his appointment as office peon, the post which had fallen vacant on the death of his father, on compassionate ground. His application was forwarded by the Executive Engineer as well as by the Sub Divisional Officer (SDO). The Chief Engineer who happens to be the competent authority appointed

the petitioner by office No. 2325 dated 3.10.97 for a period of 6 (six) months which was subsequently extended for another six months by office No. 452 dated 23.3.98 with effect from 3.4.98. The term of petitioner extended appointment came to an end on 2.10.98. Where after, his appointment was not extended as a result, his service stood terminated.

4. It is alleged by the petitioner that respondent No. 3 Shri T. Aremo Murry filed an application for his appointment on the post which was vacated due to the noncontinuation of petitioner's appointment as office peon. A report was obtained from the SDO on the said application of respondent No. 3 where after the Chief Engineer appointed respondent No.3 by order dated 24.3.99 for a period of 6 months. Feeling aggrieved, petitioner has filed the present writ petition.

5. It has been alleged by the petitioner in paragraphs 3 and 9 of the writ petition that termination of his service by nonextension of his appointment beyond 2.10.98 was engineered by the Chief Engineer to accommodate respondent No.

3 who happens to be the nominee of a VIP in the Govt. Allegation by the petitioner in this regard in paragraphs 8 and 9 of the writ petition are as follows :

"8. That to the great surprise of your humble petitioner, sometime in the last week of March, 1999, Shri T. Aremo Murry and his father brought an appointment order against the post held by me which was issued by the Chief Engineer, Department of Power, Nagaland, Kohima vide order No. 174 dated 24.3.99. Office Order No. 174 dated 24.3.99 enclosed as Annexure G. 9. That on enquiry it is revealed and the petitioner had come to know that the appointment of Shri T. Aremo Murry against the post legally held by me was made at the pressure and insistence of a certain VIP."

6. Reply to these paragraphs have been given by the Chief Engineer himself . in paragraph 5 of his counter affidavit. Paragraph 5 of counter affidavit read as follows:

"5. With regard to the statements made in paragraphs 8, 9, 10 and 11 of the petition, the deponent respectfully submits that when a new person is appointed for a period of 6 months so that the performance is observed during the period to see whether he is fit for regularisation in the post. Shri Yanbemo Lotha, office peon was appointed on the same principle and was extended upto 3.10.98. During this period his controlling officer, ie, SDO (Elect) Sanis, reported that Shri Yanbemo Lotha was not sincere in duty and irregular.

A copy of the remarks of the SDO(Elect) Sanis on the body of the application of Shri T. Aremo Murry is annexed herewith and marked as Annexure A. Therefore, his service was not given further extension. This was also intimated to the Executive Engineer (Elect) Wokha.

A copy of the letter is annexed herewith and marked as Annexure B."

7. A perusal of paragraph 5 of the counter affidavit would show that the suggestion made by the petitioner in paragraphs 3 and 9 of the writ petition being the real cause for the nonextension of his service beyond 2.10.98 have not been denied. The statement of petitioner in paragraphs 8 and 9 of the writ petition find corroboration from Annexure A to the counter affidavit filed by the Chief Engineer. Annexure A is the copy of the application filed by respondent No.3 seeking appointment on the post of office peon. It was on the application of respondent No.3 that report was endorsed to the Chief Engineer by the SDO about petitioner being irregular in his duty in that report, date and time of petitioner's absence from duty has not been mentioned, on the contrary, the learned counsel for the petitioner has produced before me an official letter dated 8th August" 98 written by the same SDO appreciating the loyalty, sincerity and his regularity in the office attendance of the petitioner. The facts stated by the SDO in that letter have been verified to be correct by the Executive Engineer. The letter reads as follows :

"Government of Nagaland Office of the SubDivisional Officer (Elect) Sanis: Nagaland.

No. SESD/Misc/10/ Date Sanis the 8th Aug 98.

To,

The Chief Engineer, Department of Power, Nagaland Kohima.

Through Executive Engineer (E) Wokha.

Sir,

With reference to the subject cited above, I have the honour to report you that Shri Yanbemo Lotha office peon in this Sub Division is found to be loyal, sincere and regular in office as per the attendance register record.

Yours faithfully Sd/(Myingthunoo Ngullie) Sub Divisional Officer (E) Sanis, Nagaland."

8. From these facts, the allegations made by the petitioner in paragraph 8 and 9 of the writ petition appear to be correct. Thus real reason for noncontinuation of petitioner's appointment beyond 2.10.98 was to make room for the appointment of respondent No. 3. It was for that end in view that petitioner's service was dispensed with. It is further noticeable that in the application of respondent No. 3 for seeking appointment on the post of peon, no date had been mentioned. It is also not clear as to how the report of petitioner's performance was given by the SDO on that application. Such report should in the normal course be given to the Chief Engineer separately. Termination of petitioner's service by not extending his terms of appointment beyond 2.10.98 and appointment of respondent No. 3 in place of petitioner present a very sorry state of affair as both do not appear to have been done in bonafide manner.

9. In Govt service, appointment should be made in accordance with law. There is

no room for making term appointment against substantive vacancies. Nothing is clear from the counter affidavit of the Chief Engineer as to why petitioner's appointment was made for a limited period though his father, on whose death the post became vacant occupied the post on permanent basis. Proper course for the Chief Engineer to adopt in the circumstances was to make regular appointment instead of making term appointment.

10. Power of appointment cannot be abused by the Govt or its functionaries in the manner as it has been done in the present case. Every endeavour should be made to ensure making of lawful appointment against the posts which fall vacant. Explanation given by the Chief Engineer in the counter affidavit that appointment for a short term of 6 months was made only for watching the performance of the appointee does not appear to be sound explanation. Even where appointments are to be made against permanent post, it is open for the State Govt to make the appointment initially on temporary basis so as to watch the performance of the appointed person for a particular period which is normally one or two years and if the State Govt finds the performance of the appointee concerned not satisfactory, it is open for it to terminate the service without assigning any reason. Simply because the State Govt wanted to observe the performance of the petitioner for some time, it was not open for it under the law to appoint him for a particular fixed term.

11. Recourse to the power of making appointment for a fixed term can be

had in a situation where the work against which the appointment to be made is of a limited period. Where the post is regular and vacancy; is substantive in nature, there is no room for making fixed term appointment. The attitude adopted by respondent No. 2 in making the appointment of the petitioner as well as of respondent No.3 for periods of six months is deprecated. The explanation given by respondent No.2 in his counter affidavit that the work and conduct of the petitioner was not found upto the mark hence his appointment was not extended beyond 2.10.98 does not enthuse confidence. From the material available on record, I find that it about bad performance of petitioner on his post was procured to create

vacancy for appointing respondent No. 3. Such a course of action does not behave of a person occupying the high position of the Chief Engineer.

12. No doubt temporary, ad hoc, casual or fixed term appointments can be

terminated prematurely purely on the basis of assessment of performance of the appointee in question. Such appointments though do not confer any right on the appointee to continue but at the same time the appointing authority too has no licence to exercise his power of termination of such appointment for extraneous considerations. In the present case, the termination of petitioner's service by nonextension of his appointment beyond 2.10.98 is a clear case of abuse of power by respondent No. 2. There was no justification whatsoever for the appointment of respondent No.3 in place of the petitioner who should have been

allowed to continue.

13. In the result, the writ petition is allowed with costs. Order of appointment of respondent No.3 dated 24.3.99 Annexure G is quashed. The respondents 1 and 2 are directed to reinstate the petitioner in service in accordance with law.