

Serial No.24
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 136 of 2021

Date of Order :19.07.2023

No. G/3900550 RFN/GD
Govind Singh Bathyal.

Vs. Union of India & 4 Ors.

Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Judge.

Appearance:

For the Petitioner/Appellant(s) : Mr. S.D.Upadhaya, Adv.
Ms. A.Synrem, Adv.

For the Respondent(s) : Dr. N.Mozika, DSGI with
Ms. S.Rumthao, Adv.

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| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

(ORAL)

1. The petitioner being aggrieved with the non-regularisation of the period of his service between 31-05-2009 to 31-10-2014, which is the date of discharge and date of reinstatement respectively, is before this Court

praying for directions to be issued to the respondents for regularization of his service for the aforementioned intervening period, for the purposes of pay, allowances and increments.

2. Mr. S.D.Upadhaya, learned counsel for the petitioner submits that the petitioner was discharged from service for getting 5 red ink entries in his service dossier. The said discharge, he submits, was then challenged before this Court by way of WP(C). No. 195 of 2013 and that this Court by order dated 23-05-2014, quashed and set aside the impugned discharge order, with directions to re-instate the petitioner in service. Learned counsel submits that though the matter was carried on appeal, the same was dismissed.

3. Learned counsel also submits that F.R. 54-A stipulates that where the dismissal, removal or compulsory retirement of a government servant is set aside by a Court of law, and such government servant is re-instated without holding further inquiry, the period of absence from duty shall be regularized. Learned counsel contends that inspite of the writ petitioner being re-instated to service on orders from the Court of law, the stipulation as contained in F.R. 54-A has not been complied with for the purposes of rendering him the due service benefits.

4. On another aspect, learned counsel submits that the impugned order refusing the said consequential relief was not made known to the petitioner

and it was only after a representation had been preferred on 03-09-2020, that he came to the knowledge that the said period had not been counted for the purposes of his qualifying service. He therefore prays that appropriate directions be passed in accordance with law, for regularization of the said period and for release of the due benefits to the petitioner.

5. Dr. N.Mozika, learned DSGI assisted by Ms. S.Rumthao, learned counsel for the respondents, has firstly raised the question of laches and delay on the part of the writ petitioner and submits that the petitioner was re-instated as far back as on 31-10-2014, and has only chosen to come before this Court in March, 2021 by way of this instant writ application. On this ground alone, he submits, on account of delay, the instant writ application deserves no consideration.

6. On the merits of the matter, learned DSGI submits that the order of the learned Single Bench dated 23-05-2014, had given liberty to the respondents to recommence departmental proceedings from the date it had been truncated and to decide on any other consequential relief that the petitioner may be entitled to. He submits that the respondents, though not having revived the disciplinary proceedings, had however, in line with the order of this Court passed the impugned order whereby the intervening period of absence from 23-05-2009 to 29-11-2014, had been treated as 'dies non' on the ground that the writ petitioner did not perform any

bonafide government duty, and on the general principal of ‘no work no pay’, the writ petitioner was not entitled to have any consequential service benefits. It has also been pointed out to the Court that the setting aside of the dismissal order was not on merit, but was on a technicality that the authority that passed the dismissal order was incompetent to do so. He finally submits that on account of delay and further, on account of the decision that has been arrived at by the respondents, no orders are called for and the writ petition is liable to be dismissed.

7. Heard learned counsel for the parties.

8. The matter in a short compass is confined to the claim of the writ petitioner, as noted above, for regularization of the intervening period between his discharge and re-instatement, in the backdrop of the orders that have been passed by this Court in the earlier proceedings, namely, WP(C). No. 195 of 2013, which was also not interfered with on appeal. A factor however, that cannot be overlooked or disregarded, is the fact that the petitioner chose to approach this Court with his grievance, on a cause of action that had arisen from the date of his re-instatement in service i.e., 30-11-2014.

9. The order dated 23-05-2014, passed in WP(C). No. 195 of 2013 had set aside the order of discharge on the ground that the Commandant as per Section 11 (2) of the Assam Rifles Act, was not the competent authority to

issue the order of dismissal, removal or reduction in rank. As such, the petitioner succeeded in being re-instated only on a technicality, and it was not that the case had been gone into on merits. The order however, while providing for re-instatement, gave liberty to the respondents to start the proceedings if necessary, *de novo* and with regard to any consequential relief, left it to the respondents to take appropriate action.

10. It is noted that the respondents did not choose to restart the proceedings against the writ petitioner, but re-instated him to service and accorded pay and allowances as entitled to him with effect from the date of re-instatement i.e., 30-04-2014. The petitioner on rejoining his service, however, never agitated for his regularization of the period from the date of discharge till re-instatement, and it was only on 03-09-2020, that a representation was filed, and the decision of non-regularisation of the period of absence communicated to him on 13-10-2020 by the respondents. Though a case has been sought to be made out that it was only after this communication, that the petitioner was made aware and thereafter approached this Court, this contention is not acceptable, inasmuch as, the petitioner waited for 7 years after re-instatement before he filed this writ petition.

11. The other aspect, especially the liberty given by the Court to decide on any consequential relief, is also a point that can be taken into

consideration as it appears that the action taken by the respondents is reasoned and balanced, as they did not initiate fresh proceedings but however, re-instated the petitioner and treated the period of absence as ‘dies non’. Notwithstanding this decision of the respondents which the petitioner contends to be in violation of F.R. 54-A, without traversing any further, the fact that the petitioner had preferred the writ petition 7 years after re-instatement, the same is hit by laches and delay.

12. Accordingly, on this ground apart from the other reasons as set forth above, the writ petition deserves no consideration and stands dismissed.

13. No orders as to cost.



Judge

Meghalaya
19.07.2023
"Samantha PS"