

GAHC010006102014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/815/2014

RAJIB LAHON

S/O- SRI PADMA NATH LAHON, R/O- CHANDMARI, BEHIND AEI GUEST
HOUSE, P.S.- CHANDMARI, GHY- 21, KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
ANIMAL HUSBANDRY AND VETERINARY DEPTT., DISPUR, GHY- 6,
ASSAM.

2:THE DIRECTOR
DAIRY DEVELOPMENT
ASSAM
KHANAPARA
GHY- 22
ASSAM.

3:THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY- 6.

4:THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
PERSONNEL B DEPTT.
DISPUR
GHY- 6
ASSAM

Advocate for the Petitioner : MR.U K NAIR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

JUDGMENT AND ORDER

Heard Mr. D.K. Das, learned counsel for the petitioner. Also heard Ms. M.M. Katakya, learned standing counsel for the Animal Husbandry and Veterinary Department, Mr. R. Borpujari, learned standing counsel for the Finance Department and Ms. D.D. Barman, learned Government Advocate.

2. The petitioner was appointed on ad-hoc basis as Chilling Plant Supervisor at Milk Chilling Plant in the Veterinary Department by Notification 08-05-1989. Thereafter, he was transferred and posted as Assistant Rural Dairy Extension Officer at Town Milk Scheme, Manja, Karbi Anglong. The service of the petitioner was regularized on the recommendation of the Assam Public Service Commission as Assistant Rural Dairy Extension Officer by Notification dated 21-03-1994.

3. In response to an advertisement issued by the ICICI Prudential Life Insurance Company Ltd. (hereinafter referred to as 'the Company'), the petitioner applied for the post of Unit Manager of the Company. Thereafter, the petitioner wrote to the Commissioner and Secretary to the Government of Assam, Animal Husbandry and Veterinary Department/respondent No. 1 for issuance of 'No Objection Certificate'. The Deputy Secretary to the Government of Assam, Veterinary Department conveyed the sanction of the Governor of Assam to the granting of quasi-lien in respect of the petitioner to enable him to join his new assignment as Unit Manager of the Company for a period of two years with effect from the date of his release from the Department subject to submission of an undertaking that at the end of two years from the date of release, he would revert back or resign from the parent Department. Thereafter, the petitioner joined the said company.

4. On expiry of two years as he was holding an important assignment as Sales Manager, he was wanted by the Company for some more years and, therefore, the petitioner made an application on 31-10-2007 to the respondent No. 1, through the Director, Dairy Development, Assam/respondent No. 2 for extension of his quasi-lien period for another two years. However, by letter dated 04-02-2008, the respondent No. 2 wrote to the petitioner that his tenure of quasi-lien expired on 31-10-2007, he was asked to join his parent Department failing which his service will be terminated with immediate effect. By letter dated 06-06-2008, the respondent No. 2 again wrote to the petitioner that as he has completed two years deputation period in the Company, the petitioner was asked to join back in his parent place of posting immediately failing which his service will be terminated without further delay. By another letter dated 23-06-2008, the petitioner again wrote to the respondent No. 1 through the respondent No. 2 praying for extension of quasi-lien for another five years.

5. By letter dated 01-12-2008, the petitioner was released from service of the Company by issuance of No Due/Service Certificate. Accordingly, by letter dated 03-08-2009, the petitioner wrote to the respondent No. 1, through the respondent No. 2 informing that his assignment in the Company has come to an end and, therefore, he was willing to come back to his parent Department, i.e., Dairy Development, Assam. The said letter was forwarded by the respondent No. 2 to the Deputy Secretary to the Government of Assam by letter dated 06-08-2009.

6. By another communication, the Deputy Secretary to the Government of Assam, Veterinary Department wrote to the respondent No. 2 to kindly intimate the Department regarding the period of time to be regularised beyond 31-10-2007 with regard to the petitioner. The respondent No. 2 replied back by letter dated 29-09-2009 informing that the period from 01-11-2007 till the date of joining by the petitioner is to be regularized. However, as the petitioner was not allowed to join

till 04-02-2010, he submitted a representation dated 04-02-2010 to the respondent No. 1, through the respondent No. 2 requesting to allow him to join in the parent Department at an early date as he has been released from the company with effect from 31-10-2008 and he has been without duty since 01-11-2008.

7. By another representation dated 17-03-2010, the petitioner requested the respondent No. 1 through proper channel to regularize the period of extension of lien by extending the quasi-lien period from 01-11-2008 to 31-10-2008 and to regularise his period of absence from 01-11-2008 to 24-05-2010. However, as no positive response was forthcoming, he submitted another representation on 09-08-2020 to the respondent No. 1 to enable him to join his parent Department at an early date.

8. Being aggrieved with the inaction on the part of the respondents for issuance of appropriate order, the petitioner approached this Court by filing WP(C) No. 631 of 2011, which was disposed of by order dated 15-11-2011 directing the authorities to take a final decision in the matter within 15 days from the date of receipt of the order. However, despite issuance of the order dated 15-11-2011, passed by this Court in WP(C) No. 631 of 2011, no steps were taken and, therefore, the petitioner again made representations on 11-04-2012, 02-05-2012 and 01-06-2012 praying for an early decision in the matter. Finally by Notification dated 29-10-2012, issued by the respondent No. 1, the petitioner was allowed to join as Chilling Plant Supervisor, Kharupetia under TMSS, Khanapara, against a vacant post with effect from the date of taking over charge subject to the condition that the petitioner will not be entitled to any salary from 01-11-2008, i.e., the date of release of the officer from the post till the date of joining and the petitioner will bear the leave salary and pension contribution for the period of service in quasi-lien. The condition imposed in the Notification dated 29-10-2012 was not acceptable to the petitioner. However, on account of his financial constraints, he joined his duty on 29-10-2012.

By another communication dated 04-01-2014, the Joint Secretary to the Government of Assam, Animal Husbandry and Veterinary Department wrote to the respondent No. 2 informing that from 01-11-2007 to 28-10-2012, the petitioner was neither in Government service and nor on deputation, therefore, no leave can be granted to him for the said period and the period from 01-11-2007 to 28-10-2012 for which no leave is admissible, cannot be regularised and it will constitute a break in his service and it will have to be treated as 'dies non' under FR-18, read with the Government of India's instructions.

9. Being aggrieved, the petitioner is before this Court by way of present writ petition impugning the notification dated 29-10-2012 and the communication dated 04-01-2014 with further prayer to treat the period of the petitioner's service with effect from 01-11-2007 to 28-10-2012 as on duty and to fix the pay of the petitioner at the appropriate stage and also to regularise the period of absence of the petitioner with effect from 01-11-2007 to 31-10-2008.

10. The learned counsel for the petitioner submits that as the prayer of the petitioner for extension of his lien with effect from 31-10-2007 to 31-10-2008 was not accepted by the respondent authorities, the said period is to be regularised by adjusting the leave at the credit of the petitioner and the period with effect from 01-11-2008 to 28-10-2012 is to be regularised as on duty with all consequential benefits inasmuch as the petitioner was prevented from joining his service. The petitioner had all the intention to join back to his service, however, it was due to inaction on the part of the respondent that he was not permitted to join back in his parent place of posting and, therefore, the prayer made in the writ petition should be allowed.

11. Ms. M.M. Kakati, learned standing counsel for Animal Husbandry and Veterinary Department submits that the petitioner was granted quasi-lien to join in

his new assignment as Unit Manager in the Company for a period of two years with effect from the date of release from the Department subject to submission of an undertaking to the effect that at the end of two years from the date of release, he must revert back or resign from the parent Department. The petitioner, on completion of two years was reminded on several occasions to join back to his parent Department, however, he did not do so.

On receipt of the representation dated 17-03-2010 by the petitioner praying for extension of quasi-lien and grant of leave for regularisation of service beyond the terms of the quasi lien, the Department has endorsed the file to Finance Department for their views. However, the Finance Department regretted the proposal with a suggestion to move Personnel (B) Department. The Personnel (B) Department again advised to move the Finance Department once again for their considered views. However, the Finance Department reiterated their earlier views regretting the extension of the terms of quasi-lien. Accordingly, the Notification dated 29-10-2012 was issued on the basis of the views given by the Finance Department.

She further submits that as the petitioner had not joined back to his parent Department on his own volition, no interference is required in the Notification dated 29-10-2012 and the communication dated 04-01-2012.

12. Mr. R. Barpujari, learned standing counsel for Finance Department submits that the Company to which the petitioner joined as Unit Manager, is purely a private company and he was allowed to join the said Company on condition that he will revert back to his parent Department after completion of two years or resign from the parent Department. After expiry of two years of his quasi-lien on 31-10-2007, the petitioner did not come to his parent Department and instead he made a representation for extension of his quasi-lien for another 5 years as he was looking

after an important assignment in the Company, which requires utmost attention and involvement. After getting his representation, the Department had given several reminders on 04-08-2008, 06-06-2008 and 20-06-2008 to join in his parent Department. However, the petitioner did not respond to the Government reminders and was keeping himself away from his duty under the State Government with effect from 01-11-2007. The petitioner was continuing his assignment in the Company without any authority after expiry of his quasi-lien on 31-10-2007. Suddenly, on 03-08-2009, the petitioner expressed his willingness to join the parent Department. The said representation was forwarded by the respondent No. 2 to the respondent No. 1 and, thereafter, necessary examinations were taken in the Department and accordingly, views were taken from the Finance and Personnel (B) Department. As the petitioner was neither in Government service nor on deputation from 01-11-2007 to 28-10-2012, no leave could be granted to him for the said period. He was allowed to join in the parent Department on 29-10-2012 only and, therefore, the impugned Notification dated 29-10-2012 was issued. He, therefore, submits that there is no merit in the present writ petition and accordingly the same deserves to be dismissed.

13. I have heard the learned counsel for the parties.

14. It is undisputed that the respondents by a communication dated 01-12-2005 sanctioned and accorded quasi-lien in respect of the petitioner to join the Company as Unit Manager subject to making an undertaking that he was reverted back to his parent Department after completion of two years or resign from the parent Department. On completion of two years, the petitioner, by letter dated 31-10-2007, wrote to the respondent No. 1 praying for extension of his quasi-lien for another five years. However, from the record it is seen that the respondents did not consider his representation and had given him several reminders to revert back to the Department or resign from the service. It is also undisputed that the petitioner,

by the letter dated 03-08-2009, addressed to the respondent No. 1 informed that his assignment has come to an end in the Company, therefore, he is willing to come back in the Department. However, no response was forthcoming from the Department permitting the petitioner to join back to his parent Department and it was only after he had approached this Court by filing WP(C) No. 631/2011 that the respondents by Notification dated 29-10-2012, permitted the petitioner to join as Chilling Plant Supervisor, Kharupetia under TMSS, Khanapara, against the vacant post with effect from the date of taking over charge subject to the condition that the petitioner will not be entitled to any salary from 01-11-2008, i.e., the date of release of the officer from the post till the date of joining and the petitioner will bear the leave salary and pension contribution for the period of service in quasi-lien. A corrigendum was also issued correcting the date 01-11-2008 in the Notification dated 29-10-2012 as 01-11-2007.

15. A perusal of the Notification dated 29-10-2012 clearly indicates that the respondents had permitted the petitioner to join back in his parent Department and for the period from 01-11-2007 to the date of his joining, the petitioner will not be entitled to any salary. This would indicate that the respondents had condoned his period of absence from service for the period from 01-11-2007 till the date of his joining.

16. It is also to be borne in mind that the petitioner by communication dated 03-08-2009 addressed to the respondent No. 1 had expressed his willingness to join back in the Department. Despite the said communication the respondents did not take any step and allowed the matter to linger on. This is a case where the petitioner was willing to join back to his Department but the respondents had stopped the petitioner to join back. The delay in joining back to his Department, therefore, cannot be attributed to the petitioner.

17. In the facts and circumstances of the case, the respondents are directed that the period from 01-11-2007 to 31-10-2008 be regularised by adjusting the leave at the credit of the petitioner and the period from 01-11-2008 to 28-10-2012 be regularised as on duty. However, it is made clear that the petitioner shall not be entitled to any salary for the said period.

18. Let such steps be taken and completed within a period of three months from the date of receipt of a copy of this order.

19. Accordingly the Notification dated 29-10-2012 and the communication dated 04-01-2014 are set aside and quashed.

20. The writ petition is accordingly allowed.

JUDGE

Comparing Assistant