

GAHC010007202012



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

Case No. : WP(C)/3594/2012

DEBMOHAN RAJBONGSHI
S/O LT. RALAN MONI RAJBONGSHI
R/O VILLAGE V.I.P. ROAD
MILAN NAGAR
P.O. GUWAHATI AIRPORT
DISTRICT KAMRUP.I

VERSUS

THE STATE OF ASSAM AND ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOV ERNMENT OF
ASSAM
DISPUR-781 006.

2:THE SECRETARY

TO THE GOVERNMENT OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
DISPUR
GUWAHATI-781 006.

3:THE COMMISSIONER

AND SECRETARY TO THE GOVERNMENT OF ASSAM HOME A DEPARTMENT
DISPUR
GUWAHATI-781 006.

4:THE DEPUTY SECRETARY

TO THE GOVERNMENT OF ASSAM
HOME A
DEPARTMENT

DISPUR
GUWAHATI-781 006.
5:THE DIRECTOR

GENERAL OF POLICE
ASSAM
GUWAHATI-781 007.
6:THE DIRECTOR

GENERAL OF POLICE BORDER
ASSAM. SRIMANTAPUR
BHANGAGARH
GUWAHATI-781 032.
7:THE ADDITIONAL DIRECTOR
GENERAL OF POLICE

BORDER HQ B
ASSAM KHANAPARA
GUWAHATI-781 021.
8:THE SUPERINTENDENT OF POLICE

BORDER
ASSAM
KHANAPARA
GUWAHATI-781 021.
9:THE STATE OF ARUNACHAL PRADESH AND ORS
BEING REPRESENTED BY THE SECRETARY
MINISTRY OF HOME AFFAIRS
NEW DELHI - 110 001.

Advocate for : MR.H GUPTA
Advocate for : ASSTT.S.G.I. appearing for THE STATE OF ASSAM AND ORS

BEFORE
HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. A. R. Tahbildar. Advocate.
For the Respondents : Mr. R. Dhar, Addl.Sr.G.A.
Date of Hearing : 13.12.2023
Date of Judgment : 13.12.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. A. R. Tahbildar, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned Additional Senior Government Advocate for the State of Assam.
2. The present writ petition is filed with the following prayers:-

“Issue Rule calling upon the respondents to show-cause as to why the petitioner should not be allowed to be re-instated and allowed to continue in service w.e.f., 08.07.2004 in terms of the direction passed by this Hon’ble Court in W.P.(C) No. 3099/2006 vide its order dated 02.06.2010 and the order dated 22.04.2009 passed by the Hon’ble Apex Court in Civil Appeal No. 7922/2002, and secondly, why the petitioner should not be paid back wages for the period of illegal termination caused due to illegal discontinuance of service on invalid grounds w.e.f., 08.07.2004 and upon perusal of the records and upon cause or causes shown if any, the Hon’ble Court may be pleased to make the said rule absolute”.
3. The undisputed facts leading to the present writ petition are as under:-

- I. The petitioner is an ex-serviceman and after his retirement, he was engaged as Constable (B) in the Assam Police Border Organization, Assam under a scheme called Prevention of Infiltration of Foreigners (PIF).
- II. By an order dated 07.08.2004, the service of the petitioner as Constable (B) under the scheme was not renewed w.e.f. 08.07.2004 for the reason of poor performance.
- III. Subsequently, such order was interfered with by this Court under its order dated 02.06.2010 passed in WP(C) No.3099/2006.
- IV. This Court relying on the decision of the Hon'ble Apex Court passed in ***Md. Abdul Kadir –Vs- Director General of Police*** interfered with the order of discontinuation and held that the annual termination and re-appointment in case of person appointed under the scheme is not permissible in terms of the determination made by the Hon'ble Apex Court in ***Md. Abdul Kadir*** (supra). Accordingly, a direction of reinstatement of the petitioner was issued subject to assessment of medical fitness. However, it was made clear that the petitioner shall not be entitled for any back wages.
- V. Thereafter, the petitioner was allowed to rejoin in the service in terms of this Court's order dated 02.06.2010 passed in WP(C) No. 3099/2006 w.e.f. 09.07.2010.
- VI. Subsequently, the present writ petition was filed with a prayer of payment of back wages w.e.f. 08.07.2004, when the petitioner's service was discontinued till 09.07.2010.

4. In view of the determination made by this Court in WP(C) No. 3099/2006 (supra), preferred by the petitioner, wherein in no unambiguous term, it was held that the petitioner shall not be entitled for any back wages, this Court is of the view that such prayer cannot be granted in the present writ petition filed by the petitioner against the same respondents and for the same period, which was subject matter of the previous writ petition being WP(C) No. 3099/2006.
5. So far relating to the claim of back wages for the period from the date of issuance of the direction by this Court in WP(C) No. 3099/2006 till actual reinstatement, in absence of any challenge to such decision, this Court is not inclined to interfere. Accordingly, this writ petition stands dismissed.
6. However, at this stage, the learned counsel for the petitioner referring to the Judgment of the Hon'ble Apex Court in **Md. Abdul Kadir** (supra), submits that in terms of the judgment of the Md. Abdul Kadir (supra), a person cannot be discontinued annually and subsequently, by an office memorandum dated 21.01.2019 issued by the Commissioner & Secretary to the Government of Assam, Pension & Public Grievances Department, a policy decision was taken to give pro-rata pension to those persons who were engaged under the PIF scheme on completion of 10 years service. It is a case projected at this stage by the petitioner that the petitioner during the pendency of the present writ petition has retired on 31.05.2014 and therefore, a direction should be issued to the respondent authorities to grant him the pension in pro-rata basis in terms of the office memorandum dated 21.01.2019.
7. This Court is afraid that such dispute can be adjudicated in the present

writ petition where there is no pleading or prayer in that regard. However, the petitioner shall always be at liberty to agitate his grievance for non grant of pension if permissible under law and dismissal of this writ petition will no way affect such right of the petitioner.

8. With the aforesaid observation, this writ petition stands dismissed. Parties to bear their own cost.

JUDGE

Comparing Assistant