

GAHC010118922023



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

Case No. : I.A.(Civil)/1622/2023

JANAK KALITA
S/O LATE SARBESWAR KALITA
RESIDENT OF HOUSE NO. 10, JANAKPUR KAHILIPARA,
GUWAHATI, KAMRUPM ASSAM 781028

VERSUS

1: THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT.OF ASSAM,
INDUSTRY AND COMMERCE DEPTT, DISPUR,GHY.

2:THE DIRECTOR OF INDUSTRIES AND COMMERCE
ASSAM BAMUNIMAIDAM GHY-21

3:THE GENERAL MANAGER DISTRICT INDUSTRIES AND COMMERCE
CENTRE GOALPARAASSAM

4:SANTANU DEORI, DEPUTY DIRECTOR ADMINISTRATION
COMMISSIONER OF INDUSTRIES AND COMMERCE DEPARTMENT UDYOG
BHAWAN BAMUNIMAIDAM GUWAHATI 2

For the Applicant : Mr. A. Chetry, Advocate.

For the Respondents : Mr. A. Kalita, Standing Counsel, Industries & Commerce.

- **B E F O R E** -
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

16.06.2023

The instant interlocutory application has been preferred seeking condonation of delay of 1199 days occasioned in filing the connected writ

appeal, which is preferred to assail the judgment dated 30.01.2018 passed by the learned Single Judge, dismissing WP(C) No.1501/2020 preferred by the applicant/appellant, who was the writ petitioner before the learned Single Judge.

The said writ petition was filed with a prayer to direct the respondents to count the services of the applicant/appellant between 01.03.2001 to 23.06.2003 as a period in regular service and to confer him service benefits with retrospective effect for the said period. The applicant/appellant has superannuated from the post of Deputy Director, Industries & Commerce Department, Guwahati on 29.02.2020. He filed the writ petition seeking the aforesaid relief and the same came to be rejected on 30.01.2018. In spite of the fact that the applicant/appellant retired from a senior post in Government service, he did not bother to challenge the judgment dated 30.01.2018 for almost 1199 days.

The reasons which have been assigned in the application seeking condonation of delay are that the applicant/appellant was not aware of the judgment dated 30.01.2018; that he was transferred to various places in the intervening period and only on enquiry being made recently, he came to know about the dismissal of the writ petition by order dated 30.01.2018. Thereafter, the applicant/appellant, engaged another counsel at Guwahati so as to prefer an appeal against the said judgment.

We feel that the averments made in the application apart from being absolutely vague, are also unacceptable on the face of the record. The applicant/appellant has not presented any communication, which he made with the counsel who was engaged in the writ petition. It cannot be accepted that the applicant/appellant being a Government servant, would be so negligent that

he would never contact his counsel to find out the fate of the writ petition filed in this Court seeking service benefits way back in the year 2010.

That apart, upon going through the judgment dated 30.01.2018, impugned in the connected writ appeal, we find that the applicant/appellant was originally appointed on *ad-hoc* basis under Regulation 3(f) of the APSC Regulation. The *ad-hoc* service of the petitioner/appellant on the post of Assistant Manager was terminated on 01.03.2001. Thereafter, he was freshly appointed on 21.06.2003. The post on which the applicant/appellant earlier worked in *ad-hoc* service was of Assistant Manager and his fresh appointment vide order dated 21.06.2003 was as a Superintendent.

Thus, we are of the firm opinion that the learned Single Judge rightly observed that it was not only a case of service break for the writ petitioner but in the second stage, he was re-appointed to a different post. Hence, we are of the opinion that the interlocutory application seeking condonation of delay is not acceptable in addition to the fact that the applicant/appellant has not made out any case so as to entertain the appeal on merits. Hence, the interlocutory application is dismissed. As a consequence, the accompanying writ appeal [W.A. No.6358/2023 (Filing Number)] yet to be numbered, is also rejected.

JUDGE

CHIEF JUSTICE

Comparing Assistant