

GAHC010182242012



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

Case No. : WP(C)/1655/2012

RANU BHUSAN DAS
S/O LATE SUDHIR KUMAR DAS, VILL MAXIPUR, P.O. MALUA, P.S.
BADARPUR, DIST- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM AND ORS
REPRESENTED BY THE COMMISSIONER and SECRETARY, P.W.D.
DEPARTMENT, NOW NATIONAL HIGH WAY ROAD, GOVT. OF ASSAM,
DISPUR, GHY-6

2:THE CHIEF ENGINEER
NATIONAL HIGH WAY ROAD DIVISION
CHANDMARI
GHY-3

3:THE EXECUTIVE ENGINEER
KARIMGANJ NATIONAL HIGH WAY DIVISION PWD
P.O. and DIST- KARIMGANJ
ASSA

Advocate for the Petitioner : MR.I A TALUKDAR

Advocate for the Respondent : SC, PWD

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 06-06-2023

Heard Mr. A.I. Talukdar, learned counsel for the petitioner. Also
heard Mr. P Nayak, learned counsel appearing for all the respondents.

2. The present writ petition is filed assailing an order dated 12.06.2010 issued by the respondent No.3 whereby the representation filed by the petitioner claiming arrears of salary was rejected.

3. The brief facts leading to the present writ petition is that while the petitioner was holding a substantive post of Peon under the respondent authorities, he was promoted to the post of Tracer in officiating basis by an order dated 31.03.2000 issued by the Respondent No.3. The claim of the petitioner is that, though he was promoted to the aforesaid post on 31.03.2000 with definite scales of pay, he was paid such salary in the promoted post till the month of June, 2000 only. Though the salary was stopped, however, he continued to work as Tracer in the promoted post till the month of December, 2009. Thereafter without any order of reversion, the petitioner was not allowed to work as Tracer rather he was entrusted with the work of Peon i.e., in his substantive post.

4. Being aggrieved, the petitioner filed various representations before the authorities for redressal of his grievance. When such representations were not considered, he approached the Assam Administrative Tribunal for redressal of his grievances and a case being Case No.65ATA/2009 was registered.

5. The learned Tribunal under its order dated 16.02.2010 disposed of the said petition and remanded back the matter to the department with a direction to consider the appeal preferred by him. It was further directed that the appeal be disposed of through a speaking order within 3 (three) months. Pursuant to the said order, the appeal of the petitioner was considered and by the impugned order, the authorities rejected the claim of the petitioner.

6. The prayer of the petitioner was rejected concluding that the order of promotion of the petitioner from the post of Peon to the post of

Tracer was done without observing any necessary formalities and without obtaining government approval and therefore the same was not valid. It was also concluded that though no order of reversion was passed, however, the petitioner was reverted to the post of Peon with effect from June 2000 and since then his salary has been drawn and disbursed as Peon. Accordingly, it was concluded that in the aforesaid backdrop, the petitioner is not entitled for any arrears of salary for serving as Tracer.

7 Assailing such order, Mr. I.A Talukdar, learned counsel for the petitioner submits that the respondents themselves have admitted that the promotion order was issued and no reversal order was passed. Therefore, as they had authorized the petitioner to work as Tracer, the authorities are bound to pay the scales of pay of Tracer to the petitioner and therefore, the impugned order is liable to be interfered and a direction should be issued to the respondent authorities to pay the petitioner the arrears of salary from June 2000 till December 2009 as he worked as Tracer without any order of reversion till the month of December, 2009.

8. Mr. Talukdar, further contends that there is no fault on the part of the petitioner in getting the promotion as well as he worked as Tracer from the month of June 2000 to the month of December, 2009. Therefore, the respondents cannot refuse to pay the salary. In support of such contention, Mr. Talukdar relies on the judgment of the Meghalaya High Court rendered in ***Bainsten G. Momin Vs. State of Meghalaya & Anr*** reported in ***2017 (3) GLT (ML) 130***.

9. Per contra, Mr. P Nayak, learned counsel for the respondents submits that the petitioner himself through his representation dated 09.03.2007 has admitted that he worked as Tracer on being promoted till the month of May 2000 and his service was brought back to his earlier position within 2 months after the promotion order dated 31.03.2000 and he himself

admitted that since the month of June, 2000 he started getting the salary of Peon. Therefore, in view of such contention, even if it is assumed that the petitioner has worked as Tracer, his salary as Tracer has already been paid till the month of May, 2000 and from the month of June 2000 he started getting salary of his original post i.e. Peon.

10. This Court has given anxious considerations to the arguments advanced by the learned counsel for the parties and perused the materials including the impugned order.

11. The fact remains that the petitioner was promoted vide order dated 31.03.2000 by the Executive Engineer. The petitioner has not disputed the contention that such promotion was made *dehors* rules. It is also not under challenge the verbal reversal from the post of Tracer to the post of Peon. The petitioner himself pleaded that he started working again as Peon from the month of January 2010 and his claim is for the arrear of salary from June 2000 to December, 2009 as Tracer. No challenge to the revision has been made.

12. The respondent authority has disputed the entitlement of arrears salary not only in the impugned order but also by filing an affidavit. It is the contention that the order of promotion was issued without following due process and that the petitioner was reverted to his original post from the month of June 2000 itself, though no order of reversal was passed. The petitioner though claims that he continued to work till the month of December, 2009, such statement has been denied by the respondent authorities and the respondent authority contends that the petitioner worked till the month of May 2000.

13. Law is well settled that certain disputed questions of facts cannot be determined in a writ proceeding. Therefore, such dispute whether the petitioner worked as Tracer till May 2000 or till December, 2009 cannot be

ascertained inasmuch as, no tangible materials have been produced before this Court by the petitioner to ascertain that he continued to work as a Tracer in the promoted post till the month of December 2009. Rather, the fact remains that by filing a representation on 09.03.2007 before the Chief Engineer, PWD (Roads) Assam, the petitioner has candidly admitted that to his displeasure after serving two months as Tracer after his promotion on 31.03.2000, he was again brought back to the earlier post as Peon.

14. Therefore, for the determination made herein above, this Court is of the inherent view that no illegality has been committed by the authorities in rejecting the claim of the petitioner.

15. Coming to the judgment relied upon by Mr. Talukdar, this Court is of the considered opinion that the said judgment is not applicable in the present case inasmuch as, in the case of *Bainsten G Momin (supra)*, the case was that the petitioner was reinstated in terms of Court order but did not join due to miscommunication and therefore, he was granted arrear of salary though he did not work after reinstatement for the aforesaid period. In the case in hand, facts are totally different as discussed herein above and therefore, the judgment will be of no help in determining the present writ petition.

16. In view of the aforesaid reasons and discussion herein above, this Court finds no merit in the present writ petition and accordingly the same stands dismissed. Parties to bear their own cost.

JUDGE

Comparing Assistant