

GAHC010194142019



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

WRIT PETITION (C) No.5997 of 2019

Md. Imran Ullah,
Aged about 63 years,
Son of Late Assahot Ullah,
Resident of Suejpure, Jail Road, Jorhat, Assam, Pin-
785001.

.....Petitioner

-Versus-

1. The Union of India,
Through the Secretary to the Govt. of India,
Ministry of Defence, New Delhi
2. The Director of Accounts, AIT Headquarters,
RK Puram, New Delhi, 110066.
3. The Air Officer Commanding,
10 Wing Air Force, C/O 99 APO, Jorhat.
4. The Chief Administrative Officer, 10 Wing Air
Force, C/O 99 APO, Jorhat

.....Respondents

For the Petitioner : Mr. D. Choudhury, Advocate.

For the respondents : Ms. B Sarma, CGC.

-BEFORE-

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Date of hearing : 7th February, 2023.

Date of Judgment & Order : 9th February, 2023.

Judgment & Order (CAV)

Heard Mr. D. Choudhury, learned counsel for the petitioner as well as Ms. B. Sarma, learned CGC appearing for all the respondents.

2. The petitioner has prayed for payment of arrear salary from 05.05.2001 to 12.12.2005 and from 02.01.2008 to 25.11.2014. The petitioner's case in brief is that he was appointed as a Cinema Hall Manager in the Air Force Station, Jorhat in the scale of pay of Rs.330-8-370-10-400-EB-18-480, in the year 1984, in pursuant to the selection process that had taken place in respect of Advertisement dated 12.12.1983. The petitioner's service was confirmed in the year 1997.

3. The petitioner's service was thereafter terminated vide Notice of Termination dated 23.04.2001. Being aggrieved, the petitioner filed WP(C) No. 3112/2001. The same was disposed of by this Court, vide order dated 01.05.2001, with a direction that post retiral benefits should be paid to the petitioner and thereafter the service of the petitioner may be terminated.

Otherwise, the petitioner should be allowed to continue in service. Consequent to the order dated 01.05.2001 passed in WP(C) No. 3112/2001, the petitioner was reinstated into service vide letter dated 31.05.2001, by revoking the Notice of Termination dated 23.04.2001. The revocation of Notice of Termination of the petitioner vide letter dated 31.05.2001 also stated that fresh orders would be issued on completion of the court of inquiry proceedings relating to financial irregularities in the accounts of the cinema.

4. Subsequent to the above, the petitioner filed WP(C) No. 6607/2003 on the ground that he was not allowed to re-join his duty and was not allowed to sign the attendance register. It may be stated here that no action for termination of the service of the petitioner was undertaken by the respondents.

This Court disposed of WP(C) No.6607/2003, vide order dated 16.08.2005, by holding that the petitioner should be allowed to join in service and he should be paid the regular and current salary by the respondents, within a period of 4 (four) months from the date of receipt of a certified copy of the order. However, the respondents were given the liberty to complete the inquiry proceedings that had been initiated against the petitioner. Though the petitioner in his prayer in WP(C) No. 6607/2003 prayed for payment of his salary from April 2001, no direction was made for payment of arrear salary, thereby implying that the said prayer had not been allowed.

5. Consequent to the order dated 16.08.2005 passed in WP(C) No. 6607/2003, the respondents issued a letter dated 08.12.2005, reinstating the petitioner into service with immediate effect as per the terms and conditions binding upon him,

during the course of his functioning as Cinema Hall Manager.

6. Subsequent to the above events, the Board of Inquiry initiated against the petitioner concluded with removal of the petitioner from service, vide order dated 02.01.2008. Being aggrieved, the petitioner filed WP(C) No. 4182/2008. During the proceedings of WP(C) No. 4182/2008, the petitioner retired on 25.11.2014.

7. WP(C) No. 4182/2008 was disposed of by this Court, vide order dated 01.06.2015, by setting aside the impugned penalty order dated 02.01.2008. This Court remanded the matter back to the Disciplinary Authority to take a fresh decision in the light of observations made in the order dated 01.06.2015, which was to include the period of service of the petitioner from 05.05.2001 to 12.12.2005. The decision was to be taken by the respondents within 3 (three) months from the date of receipt of a certified copy of the order.

8. The respondents thereafter issued the impugned Speaking Order dated 19.06.2019, releasing the petitioner from service w.e.f. 31.08.2004, i.e., the date the cinema was closed down, and decided to pay 3 (three) months' salary to the petitioner. The impugned Speaking Order also stated that the Board of Inquiry had been dispensed with, against the inquiry made into financial irregularities relating to the cinema.

9. The petitioner's counsel submits that in terms of the order dated

01.06.2005 passed in WP(C) No. 4182/2008, an additional Board of Inquiry was initiated against the petitioner, vide letter dated 10.09.2015 issued by the respondents. However, the said additional Board of Inquiry dropped its inquiry proceedings, vide the impugned Speaking Order dated 19.06.2019 issued by the respondents, which stated that the respondents had decided to dispense with the conduct of any Board of Inquiry into the alleged irregularities relating to the cinema. The impugned Speaking Order dated 19.06.2019 also stated that an amount of Rs.1,03,103/-, which amounted to 3 (three) months of salary of the petitioner plus gratuity, should be released to the petitioner.

10. The petitioner's counsel submits that as the penalty order dated 02.01.2008 was set aside by this Court vide order dated 01.06.2015 passed in WP(C) No. 4182/2008 and as the Additional Board of Inquiry had stopped its inquiry proceeding against the petitioner vide the impugned Speaking Order dated 19.06.2019, there was no justification for the disciplinary authority to have issued the said Speaking Order, terminating the service of the petitioner, deeming him to be released from service on 31.08.2004, the date the venture (cinema) was closed down, by giving only 3 (three) months' salary in terms of Rule 25 of DACL 29/1999 plus gratuity. Accordingly, the said Speaking Order should be set aside and the unpaid salary of the petitioner should be paid for the period 05.05.2001 to 12.12.2005 and from 02.01.2008 to 25.11.2014.

11. Ms. B Sarma, learned CGC on the other hand, submits that the petitioner was appointed as a Manager in the Air Force Cinema at Jorhat and he was deemed to be released from service on 31.08.2004 vide the impugned Speaking

Order, as the cinema hall was closed down in the year 2004. She also submits that this Court in its order dated 16.08.2005 passed in WP(C) No. 6607/2003 had directed that the petitioner should be allowed to re-join his service. Though the cinema hall venture was closed in the year 2004, the respondents issued the re-instatement letter dated 08.12.2005 to the petitioner, to honour the order passed by this Court on 16.08.2005. The learned CGC also submits that there is no infirmity with the impugned Speaking Order dated 19.06.2019, wherein the disciplinary authority have stated that an amount of Rs. 1,03,103/-, which is equivalent to 3 (three) months' salary of the petitioner plus gratuity, should be released to the petitioner, instead of any alleged arrear salary, in terms of Rule 25 of the DACL 29/1999. She also submits that though the Board of Inquiry/disciplinary proceedings against the petitioner was dispensed with, vide the Speaking Order dated 19.06.2019, the disciplinary authority had been directed to take a fresh decision with regard to the service period of the petitioner from 05.05.2001 to 12.12.2005 in terms of para 27 of the order dated 01.06.2015 passed in WP(C) No. 4182/2008. She accordingly submits that as there is no infirmity with the impugned Speaking Order dated 19.06.2019, the writ petition should be dismissed.

12. I have heard the learned counsels for the parties.

13. The facts of the case, as shown in the earlier paragraphs, clearly shows that the petitioner's service was first terminated vide Notice of Termination 23.04.2001. The petitioner challenged the same vide WP(C) No. 3112/2001. This Court vide order dated 01.05.2001 disposed of WP(C) No. 3112/2001 by

giving the following directions:-

“As agreed to by the learned counsel for both the parties, I dispose of this Writ Petition with a direction that the service of the petitioner may be terminated in terms of Rule 25 by giving three months notice or by paying in lieu thereof. The person sought to be terminated shall also be paid his gratuity and other retrial benefits and only after the payments of the same, the service can be terminated. Otherwise, the petitioner shall be allowed to continue in service inspite of the impugned order of termination.”

14. In terms of the above order dated 01.05.2001, the respondents were given the option to terminate the service of the petitioner in terms of Rule 25, by giving three months notice or by making payment in lieu thereof. Further, all retrial benefits and gratuity were also to be paid. Otherwise the petitioner was to be allowed to continue in service. The respondents did not terminate the petitioner's service and instead vide the letter dated 31.05.2001, the termination of the petitioner's service was revoked.

15. Consequent to the above, the petitioner filed WP(C) No. 6607/2003 stating that he was not allowed to re-join his duty. This Court vide order dated 16.08.2005 disposed of WP(C) No. 6607/2003, by directing that the petitioner should be paid his regular and current salary. The operative portion of the order dated 16.08.2005 passed in WP(C) No. 6607/2003 is reproduced below:-

“The writ petition is disposed of with the direction to the respondents that the case of the petitioner shall be considered and the petitioner shall be allowed to join in the service and he shall be paid the regular and current salary by the respondent within a period of four months from the date of receipt of a certified copy of this order alongwith the writ petition and supporting documents, to be filed by the petitioner. However, the respondent is given liberty to complete the

enquiry proceeding in accordance with the prevailing norms/rules and the petitioner shall cooperate with the enquiry proceeding. However, liberty is given for modification/alteration of this order.

The writ petition is disposed of.”

The prayer portion in writ petition, i.e., WP(C) No. 6607/2003 is reproduced herein below:-

“It is, therefore, prayed that Your Lordship may be pleased to admit this petition, issue Rule calling upon the respondents to show cause as to why a Writ of Mandamus shall not be issued directing the respondents to release all the monetary benefits such as pay from April 2001 as the notice of termination was revoked and to pay the provident fund, gratuity etc, as per notice of termination if the petitioner is not allowed to perform his duties or allow the petitioner to resume his duties with full pay and allowances from the date of revocation order with continuity in service and/or pass such further order/orders as Your Lordships may deem fit and proper.”

The above order dated 16.08.2005 clearly shows that there was no direction passed for payment of any arrear salary to the petitioner, thereby implying that the prayer for payment of arrear salary was not accepted by the Court. The said order has also attained finality, as on date. As such, this Court is of the view that the question of payment of arrear salary to the petitioner, for the period from 05.05.2001 to 12.12.2005 does not arise.

16. The respondents, in compliance of the order dated 18.08.2005 passed in WP(C) No. 6607/2003, consequently reinstated the petitioner into service by issuing a letter dated 08.12.2005. Thereafter, the Board of Inquiry concluded the proceedings that had been initiated against the petitioner and removed the petitioner from service vide order dated 02.01.2008. Being aggrieved, the petitioner filed WP(C) No. 4182/2008. This Court in its order dated 01.06.2015 passed in WP(C) No. 4182/2008, set aside the penalty order removing the

petitioner from service. However, the disciplinary authority was given the liberty to take a fresh decision against the petitioner, which was to include the service period of the petitioner from 05.05.2001 to 12.12.2006. Paragraphs 27 and 28 of the order dated 01.06.2015 passed in WP(C) No. 4182/2008 is as follows:-

“27. Thus in view of the above, the impugned penalty dated 02.01.2008 is hereby set aside and quashed. However, taking an overall view, matter is remanded back to the disciplinary authority to take a fresh decision in the light of the observations made above which should also include the period of service of the petitioner from 05.05.2001 to 12.12.2005. Appropriate decision shall be taken within a period of 3 (three) months from the date of receipt of a certified copy of this order and communicated to the petitioner.

28. Writ petition is allowed to the extent indicated above.”

17. Consequent to the order dated 01.06.2015 passed in WP(C) No. 4182/2008, the respondents issued the impugned Speaking Order dated 19.06.2019, releasing the petitioner from service w.e.f. 31.08.2004, i.e., the date the cinema was closed down, and decided to pay 3 (three) months' salary to the petitioner. The impugned Speaking Order also stated that the Board of Inquiry had been dispensed with, against the inquiry made into financial irregularities relating to the cinema. Paragraphs 11 and 12 of the impugned Speaking Order dated 19.06.2019 states as follows:-

“11. NOW THEREFORE, in view of above factual circumstances and observations/directions of Hon'ble High Court of Guwahati in various writ Petitions as referred hereinabove, having considered the matter in entirety as per the available records and within the ambit of applicable policies concerning your employment, the following is decided:

(a) You were appointed as Manager of an independent non-public fund (NPF) welfare venture 'AF Cinema' on 01 Feb 1984 which was closed down on 31 Aug 2004 due to incurring of heavy losses. Conduct of a Board of Inquiry at this belated stage concerning the irregularities committed prior to the year 2001 is considered as

impracticable in view of long passage of time and also considering that none of the punishments mentioned in Rule 19 of the DACL 29/1999 can be validly be awarded at this belated stage after closing down of the venture itself in the year 2004. Accordingly, it has been decided to dispense with the conduct of any Board of Inquiry in to the said irregularities at this belated stage.

(b) Consequently, you will be deemed to have been released from service on 31 Aug 2004, the date of closing down of the said venture in which you were appointed. On this account, in terms of provisions of Rule 25 of DACL 29/1999, you will be granted three months of salary preceding the date of your deemed release on closing of venture, amounting to Rs. 23276/- (Rupees twenty three thousand two hundred and twenty seven only). Since the said venture which was being run as a welfare venture of the station, namely, 'Service Institute'. Notwithstanding the fact that the said 'AF Cinema' in which you were serving no longer is in existence, in view of the legal obligation of payment of above amounts of three months' salary and gratuity, it is hereby ordered that the said amounts also be paid out of the said SI venture.

(c) As brought out herein above, you were asked to rejoin for duty on 31 May 2001, firstly, in view of order of Hon'ble High Court dated 01 May 2001 and secondly, for conducting of a Court of Inquiry in the alleged irregularities and the available records indicate that you had not rejoined duty apparently in view of the pending inquiry in to alleged financial irregularities committed by you. Accordingly, since you had not performed any duty in the said venture during the period 05 May 2001 to 31 Aug 2004 (the date of closing down of the venture.) You are not eligible for any wages for the said period. Further, since the venture itself was closed on 31 Aug 2004, you are also not eligible for any wages for the period 01 Sep 2004 to 12.12.2005.

12. In terms of para 11(b) above, an amount of Rs. 1,03,103/- (Rupees one lakh three thousand one hundred and three only) is being released from SI Fund, and a separate communication will be forwarded on release of the said amount."

18. Rule 24 and 25 of the DACL 29/1999 is reproduced as follows:-

"Rule 24 Termination of Service

(1) The appointing authority may terminate service of an employee by giving one month's notice in writing or pay of in lieu thereof without

assigning any reason.

(2) Nothing in sub rule(1) above shall apply to an employee who has been removed/dismissed from the service for misconduct.

Rule 25 Resignation/Termination of Services

The period referred to in rules 23 and 24 above shall be 3 months on either side where an employee has rendered more than 5 years of service.”

19. Paragraph 27 of the order dated 01.06.2015 passed in WP(C) No. 4182/2008 clearly shows that the disciplinary authority was to take a fresh decision with regard to the period of service undergone by the petitioner from 05.05.2001 to 12.12.2005. As the Inquiry proceedings initiated against the petitioner was dropped, no action could have been taken by the Disciplinary Authority in respect of his service period from 05.05.2001 to 12.12.2005. As the petitioner had been reinstated into service by the respondents, vide letter dated 18.12.2005, issued in compliance with the order dated 16.08.2005 passed in WP(C) No. 6607/2003, wherein no direction for payment of arrear salary prior to 16.08.2005 had been made, the petitioner's prayer for payment of salary for the period from 05.05.2001 to 12.12.2005 is not sustainable. The said prayer is accordingly rejected.

20. As the petitioner had been reinstated into service vide letter dated 18.12.2005, in compliance with the order dated 16.08.2005 passed in WP(C) No. 6607/2003, the petitioner could not have been deemed to have been released from service from an earlier date, i.e., 31.08.2004, especially when the order dated 16.08.2005 and the letter dated 18.12.2005 have not been cancelled, modified, withdrawn or set aside by the authorities or the Court. In the case of ***State of Kerala –vs- M.K. Kunhikannan Nambiar Manjerimanikoth, Naduvil (dead) & Ors.***, reported in ***(1996) 1 SCC 435***,

the Apex Court has held that all official decisions are presumed to be valid unless set aside or otherwise held to be invalid by a Court of competent jurisdiction.

21. Though the petitioner's counsel had tried to make out a case that the petitioner was liable to be given his salary for the period from 05.05.2001 to 12.12.2005 in terms of the order dated 01.06.2005 passed in WP(C) No. 4182/2008, wherein the disciplinary authority was given the liberty to take a fresh decision in respect of the petitioner's service period from 05.05.2001 to 12.12.2005, this Court is of the view that the said direction was not with regard to whether the petitioner would be entitled to payment of monetary benefits/salary for the said period, in view of the order dated 16.08.2005 passed in WP(C) No. 6607/2003, wherein a direction had been made to provide the petitioner regular and current salary only, despite the petitioner having prayed for arrear salary in his writ petition in WP(C) No. 6607/2003. It could only relate to the disciplinary/Board of Inquiry proceedings. Further more, it is settled law that a co-ordinate Bench cannot sit in judgment over a decision of another Bench of equal strength, and nothing beyond the issue of the disciplinary inquiry initiated against the petitioner can be read into para 27 of the order dated 01.06.2015 passed in WP(C) No. 4182/2008. In any event, the Board of Inquiry/disciplinary proceeding having been dropped/dispensed with, as per the impugned Speaking Order dated 19.06.2019, the Disciplinary Authority could not have issued any order with regard to the petitioner's service period between 05.05.2001 to 12.12.2005.

22. The impugned Speaking Order dated 19.06.2019 which has purportedly been made in relation to the order dated 01.06.2015 passed in WP(C) No.4182/2008, shows that the respondents had decided to dispense/drop the disciplinary inquiry/Board of Inquiry against the petitioner, in respect of financial irregularities pertaining to the cinema due to its belated stage. As the inquiry had been dispensed with, the disciplinary authority cannot have any further role to play with regard to the service conditions of the petitioner. As the petitioner's order of removal dated 02.01.2008 was set aside by the order dated 01.06.2015 passed in WP(C) No. 4182/2008, the petitioner would have to be reinstated w.e.f. 02.01.2008 and the period from 02.01.2008 till the date of his retirement would have to be regularised. The Speaking Order is not found to be sustainable, to the extent of releasing the petitioner from service w.e.f. 31.08.2004 and giving him only 3 (three) months' salary. The petitioner would have to be given his salary for the period from 02.01.2008 till his date of retirement, i.e., 25.11.2014, plus gratuity and all other applicable retirement benefits. In the case of ***Deepali Gundu Surwase –vs- Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors.***, reported in ***(2013) 10 SCC 324***, the Apex Court has held that the very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money as his income gets dried up. The family also suffers in the process. The Apex Court further held that the reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the

employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. In the present case, the State respondents having decided to drop the Board of Inquiry/disciplinary proceedings against the petitioner, the petitioner will have to be given his unpaid salary from the date of the order dated 02.01.2008, terminating him from service, which was set aside.

23. The salary, gratuity and other benefits payable to the petitioner should accordingly be paid to the petitioner, within a period of 2 (two) months, from the date of receipt of a certified copy of this order. Consequently, the impugned Speaking Order dated 19.06.2019, to the extent that the petitioner is released from service w.e.f. 31.08.2004 and the decision to pay only 3 (three) months' salary is hereby set aside.

24. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant