

GAHC020001452021



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

**Case No. : WP(C)/62/2021**

SHRI. INOKIVI YEPHTO  
S/O LT. NIVIKHE YEPHTO, R/O ACHIKUCHU VILLAGE, ZUNHEBOTO,  
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS  
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF  
NAGALAND, KOHIMA

2) THE HOME COMMISSIONER,  
NAGALAND, KOHIMA

3) THE COMMISSIONER,  
NAGALAND, KOHIMA, NAGALAND

4) THE DEPUTY COMMISSIONER,  
ZUNHEBOTO, NAGALAND

**Advocate for the Petitioner : HISINLO**

**Advocate for the Respondent : VETO V. ZHIMOMI**

**BEFORE**  
**HON'BLE MRS. JUSTICE MARLI VANKUNG**

**JUDGMENT & ORDER (CAV)**

**Date : 03-10-2023**

Heard Mr. Hisinlo, learned counsel for the petitioner along with  
Mr. Veto V. Zhimomi, learned Government Advocate for the State

respondents.

**2.** This writ petition filed under Article 226 of the Constitution is for the payment of the back-wages of the petitioner from the date of his release from service on 30.10.2018 till the date of his reinstatement on 20.03.2020.

**3.** The case of the petitioner is that he was appointed as a Driver under the establishment of the Deputy Commissioner, Zunheboto on 30.01.2017. His appointment was under challenge by a petitioner in WP(C)/156(K)/2017 wherein the instant petitioner was arrayed as the respondent, on the grounds that the instant petitioner was having a fake driving license. The case in WP(C)/156(K)/2017 was decided against the instant petitioner and he was released from service as per the order of the Court in WP(C)/156(K)/2017 dated 30.10.2018 and the petitioner in WP(C)/156(K)/2017, was appointed as the driver in place of the resultant vacancy on the same day itself *i.e.* on 30.10.2018. Being aggrieved the instant petitioner filed Writ Appeal No. 15(K)/2018 wherein the Court allowed the writ appeal *vide* its order dated 26.02.2020, thereafter the appellant/instant petitioner, was reinstated back into service as a Driver under the establishment of Deputy Commissioner, Zunheboto, Nagaland *vide* order dated 20.03.2020 by releasing the respondent no.1 who was previously appointed in place of the petitioner/appellant. The Division bench in Writ Appeal No. 15(K)/2018 however held that the state respondents shall not recover any salary paid to respondent no.1 in terms of his appointment dated 30.10.2018. Thereafter, on his reinstatement, the petitioner submitted a representation dated 27.07.2020 to the Deputy

Commissioner for payment of his backwages from the date of his release, *i.e.* 30.10.2018 till the date of his reinstatement, *i.e.* 20.03.2020. However, till date, the representation of the petitioner has not been considered, hence the instant writ petition.

**4.** Mr. Hisinlo, the learned counsel for the petitioner, submits that the non-consideration of payment of back-wages to the petitioner is not in accordance with the judgment and order of the Division Bench of this Court wherein this Court had directed the reinstatement of the petitioner into his service with immediate effect. He submits that the petitioner was illegally released by the Deputy Commissioner and it is a settled principle of law that once Termination Order is found to be illegal the consequential back-wages should be followed as a rule. The learned counsel submits that inspite of the above settled principle of law, his representation dated 30.10.2018 has been left unattended to till date. In support of this submissions he has cited the decision of the Apex Court in **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya**, reported in **(2013) 10 SCC 324** : where the Apex court held that :

*“22. 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. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food*

*and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. 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. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”*

**5.** Mr. V. Zhimomi, the learned Government Advocate, on the other hand submits that the State respondents are not liable to pay for the back-wages during the period from 30.10.2018 to 20.03.2020, considering the fact that this Court in its order dated 26.02.2018 in WA/15(K)/2018 had stated that “the State respondents shall not recover any salary paid to the respondent No. 1/petitioner in terms of his said appointment order dated 30.10.2018”. The learned Government Advocate submits that the principle of *res judicata* would be applicable in this case since the case of the petitioner had reached its finality in WA/15(K)/2018. The petitioner did not pray for payment of back-wages before the Court in WA/15(K)/2018 but had prayed only for reinstatement and cannot now, at this stage, when the matter was already settled, approach this Court for

back-wages as an after thought.

**6.** The learned Government Advocate for the respondent further submits that the submission of the petitioner for back-wages is just an after-thought and he has prayed for the back-wages after a lapse of 4 (four) months of his reinstatement. In support of his submission he has cited the decision of the High Court of Bombay in **Rekha Raghunath Kuttikar -Vs- Savio Joao Dorethy Rebello & Anr.** reported in **(2021) SCC online Bom 4572.**

**7.** The learned Government Advocate further submits that the principle of *No Work No Pay* would apply in this case, since the petitioner was not under the employment of the State during the period from 30.10.2018 to 20.03.2020 and that during this period the respondent no.1 in WA/15(K)/2018 was given the salary/wages for the service rendered by him which the appellate court had stated was not to be recovered from the respondent. Therefore, the payment for back-wages salary is not tenable or admissible for the fact that the petitioner was not in service during the said period, *i.e.* 30.10.2018 to 20.03.2020. In support of his submission he has cited the decisions of the Apex court in **Union Territory, Chandigarh -Vs- Brijmohan Kaur** reported in **(2007)11 SCC 488**, **Vijay Kumar Agarwal -Vs- Union of India and Another** reported in **(2015) 17 SCC 625** and the decision of the High Court of Chhattisgarh in **Puniram Shrivastava Vs- State of Chattisgarh** reported in **2020 SCC online Chh 26.**

**8.** The learned counsel for the petitioner in rebuttal to the

submission made by the learned Govt. Advocate has pointed out that the petitioner/appellant in WA/15(K)/2018 had preferred the appeal for setting aside the order of the learned Single Bench in WP(C)/156(K)/2017 wherein he was dismissed from his employment for an alleged invalid driving license and therefore the writ appeal was only for setting aside the order of the learned Single Judge. He further submits that there was no delay in the representation for payment of back-wages which was only after 4 months of his reinstatement.

**9.** Having heard the submissions made by the rival parties this court, before going into the merits of the case has perused the representation which was submitted by the petitioner on dated 27.07.2020. There is no indication that state respondents have responded to the representation in any manner whatsoever, even by way of verbal communication. This court finds that every citizen deserves a reply to his representation and the state respondents cannot shrink away from its responsibility to consider and make a conscious decision whether to allow or reject the representation received. Thus, this court, at this stage is not inclined to consider the writ petition on merits considering the fact that, it is the bounded duty of the state respondents to consider and give a befitting reply instead of leaving the representation duly received in cold storage.

**10.** This writ petition is therefore disposed of without going into the merits of the case, with a direction that the state respondents should dispose of the representation of the petitioner dated 27.07.2020 with a speaking order, keeping in mind the principles of equity and fair play, within three weeks from the date of receiving a certified copy of this

order. Thereafter if still aggrieved the petitioner is given the liberty to take legal recourse for the redressal of his grievances, if so advised.

**11.** Accordingly, WP(C)/62/2021 stands disposed of with the above directions.

**JUDGE**

**Comparing Assistant**