



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

Case No. : WP(C)/232/2022

Borik Perme
A Permanent Resident of Ngopok Village,
PO/PS Mebo, District East Siang, Arunachal Pradesh and currently residing at
Geku, PO Geku, PS Yingkiong, District Upper Siang, Arunachal Pradesh.

VERSUS

THE STATE OF AP and 3 Ors. Represented through Chief Secretary, Govt. of
Arunachal Pradesh, Itanagar.

2:The Secretary (Horticulture)
Age: 0
Occupation :
Govt. of Arunachal Pradesh Itanagar

3:The Director
Age: 0
Occupation :
Department of Horticulture Govt. of Arunachal Pradesh Chimpu Itanagar.

4:The Deputy Director of Horticulture
Age: 0
Occupation :
Govt. Horticulture Farm Jumlo Siang District Arunachal Pradesh

Advocate for the Petitioner : Muk Pertin, Senior Advocate

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

JUDGMENT & ORDER (ORAL)

Date : 12-03-2024

Heard Ms. T. Y. Bhutia, learned counsel for the petitioner. Also heard Mr. I. Riram, learned Additional Senior Government Advocate for the respondents.

2. The grievance raised by the petitioner in the present proceedings is with regard to non-regularisation of his services w.e.f. February 2020 to March 2022 and the consequential non-release of his salaries for the said period. The petitioner has also raised a grievance with regard to the denial to him of the benefits under MACP scheme which was due to him w.e.f. 23.07.2019.

3. The facts as requisite for adjudication of the issue arising in the present proceedings is noticed, hereinbelow:

The petitioner was vide an order dated 14.01.2020, ordered to be transferred and posted from Jomlo Farm to Palin in the same capacity. It is to be noted that the petitioner is working as a Horticulture Development Officer (HDO) and at the relevant point of time, was posted at such capacity at Jomlo Farm. The petitioner being aggrieved by the said order of transfer, had approached this Court by way of instituting WP(C)No. 42(AP)2020 assailing the said order. This Court vide order dated 31.01.2020, disposed of the said writ petition, requiring the competent authority to consider the representation as preferred by the petitioner against the said order of transfer and it was further provided that till such time, the representation is not disposed of, no coercive action against the petitioner shall be taken.

The petitioner, accordingly, submitted the certified copy of the order before the Secretary, Agriculture/Horticulture, Government of Arunachal

Pradesh. The Director of Horticulture, Government of Arunachal Pradesh, vide order dated 29.01.2020, permitted the petitioner to continue at Jomlo Farm up to March 2020 and thereafter, it was provided that he may be released immediately to join his new place of posting. The petitioner, in terms of the order of the Director, dated 29.01.2020, submitted his joining report before the Deputy Director, Horticulture, Jomlo Farm, however, the same was not accepted and the petitioner was not allowed to resume his service. Subsequently, vide an order dated 08.06.2020, in modification of the earlier order dated 14.01.2020, the petitioner was transferred and posted from Jomlo Farm to Geku under the Deputy Horticulture Officer, Upper Siang.

It is the contention of the petitioner that the order of transfer, dated 08.06.2020, was brought to the notice of the Deputy Director of Horticulture, Jomlo Farm by him vide his representation dated 23.06.2020, with a prayer that necessary order of release be issued in his case for the purpose of undertaking the said transfer. The petitioner also in the said representation, prayed for returning of his Service-book and for disbursement of his salaries, which were in arrears w.e.f. February, 2020. The said prayer of the petitioner was not considered and accordingly, the petitioner approached the Director, Department of Horticulture, Chimpu, Itanagar, vide his representation dated 03.09.2020 for a direction to the Deputy Director, Horticulture, Jomlo farm, for releasing him for the purpose of undertaking the transfer as ordered in his case vide order dated 08.06.2020.

It is seen that the Secretary, Horticulture, vide his order dated 27.10.2020, has directed the Deputy Director, Jomlo Farm to release the petitioner immediately. In spite of the said developments, the petitioner was not released from Jomlo Farm and accordingly, he also not being permitted to discharge his duties, therein, was denied his salaries.

The petitioner had on a regular basis informed the Departmental Authorities about the action on the part of the Deputy Director of Horticulture, Jomlo Farm, in not complying with the directions issued by the Departmental Authorities to him towards his release from Jomlo Farm. Accordingly, the Director of Horticulture, vide his order dated 16.09.2021 directed the Deputy Director of Horticulture, Jomlo Farm to release the petitioner from Jomlo Farm to facilitate his joining at Geku within 7(seven) days from the date of issuance of the said order. It was further provided that non-compliance of the directions as contained in the order may lead to disciplinary action against the said authority. The Deputy Director in spite of being so directed in the matter vide order dated 16.09.2021 by the Director of Horticulture, Government of Arunachal Pradesh, did not take any steps for release of the petitioner from the Jomlo Farm. Accordingly, vide an order dated 23.02.2022, the Disciplinary Authority proceeded to place the Deputy Director, Horticulture, Jomlo Farm under suspension by invoking the provisions of Rule 10(1) of *the Central Civil Services (Classification, Control and Appeal), Rules, 1965*.

The Secretary, Department of Horticulture, vide its order dated 16.03.2022, after noticing the defiance of the Deputy Director, Horticulture, Jomlo Farm, in not complying with the directions issued to him to release the petitioner from Jomlo Farm to enable him to join his new place of posting at Geku and also, noticing that the petitioner has filed several representations in this connection, proceeded to direct that the petitioner be released immediately from Jomlo Farm to enable him to join his new place of posting at Geku. It is relevant to note that the Secretary in its said order dated 16.03.2022 has recorded a finding that the Deputy Director of Horticulture, Jomlo Farm was given sufficient time of 2(two) full years to release the petitioner from his establishment and to mend his conduct before the authorities. However, the said Deputy Director, Jomlo Farm continued to defy Government order and

rendered the service of the petitioner jobless for 2 (two) years. Accordingly, it was brought on record that the said Deputy Director was placed under suspension vide order dated 23.02.2022 for his said misconduct.

In pursuance to the incumbent in the post of Deputy Director, Horticulture, being placed under suspension, the person holding the charge of the said post in terms of the directions as passed by the Secretary of the Department vide its order dated 16.03.2022, proceeded vide the release order dated 21.03.2022 to release the petitioner from Jomlo Farm, enabling him to join at his place of posting at Geku. The petitioner was also given his last pay certificate for the purpose. The petitioner, thereafter, on release, having joined his transfer place of posting had been approaching the authorities for regularisation of his said period since, February, 2020 till March, 2022 and for release of his salaries. However, the said representations having not evoked any response, the petitioner has instituted the present proceedings before the Court.

4. I have heard the learned counsel for the parties and also perused the materials as available on record.

5. Mr. I. Riram, learned Additional Senior Government Advocate appearing for the respondents, at the outset, submitted on instructions received by him that the salaries of the petitioner could not be released, inasmuch as the Service-book of the petitioner was missing and has not been traced after the earlier incumbent in the post of Deputy Director of Horticulture, Jomlo Farm, was placed under suspension. In view of the said position, the period during which the petitioner could not join his transferred place of posting on account of non-release from the post as held by him, as of then, could not be regularised and the salary for the said period could also not be paid. It is the submission of the learned Additional Senior Government Advocate, that the process for reconstruction of the Service-book is presently underway and prays that the authorities be given 3 (three) months time to complete the process and to pass

appropriate orders for regularisation of the services of the petitioner and for release of his salaries for the period for which a claim is made in the present proceedings.

6. Noticing the said submissions as made by the learned Additional Senior Government Advocate appearing in the matter, on instructions from the respondents, this Court is of the considered view that the contentions as raised by the petitioner in matter need not be given a consideration by this Court as the submissions made by the learned Additional Senior Government Advocate redresses the grievances of the petitioners.

7. Accordingly, accepting the submissions as made by the learned Additional Senior Government Advocate in the matter, it is directed that the respondents in the Horticulture Department shall within a period of 3 (three) months from the date of receipt of a certified copy of this order, reconstruct the Service-book of the petitioner by incorporating all required benefits that would have accrued to him during the period for which such Service-book was not updated and accordingly, release to the petitioner his salaries and other allowances for the period he was not so paid, i.e. specifically for the period from February 2020 to March 2022. On reconstruction of the Service-book of the petitioner and after updating the increments as due to him from the date the last such increment was so paid to the petitioner, the arrears as would be now becoming due to the petitioner shall also be released to him. It is also provided that on regularising the said period w.e.f. February, 2020 to March, 2022, the case of the petitioner for grant of MACP benefits as claimed w.e.f. 23.07.2019 shall be given its due consideration and in the event, the petitioner is found eligible for such benefit, the said benefit be also released to the petitioner and the arrears that would become due on account of such grant of MACP benefits to the petitioner shall be so computed and released to the petitioner.

8. The above exercise be initiated and completed within a period of 3 (three) months from the date of receipt of a certified copy of this order.

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9. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant