

GAHC010239602015



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

Case No. : WP(C)/4347/2015

DILIP SARMA
S/O SRI GHANSU RAM SHARMA, R/O DIWAN BASTI, P.P. DIPHU, DIST-
KARBI ANGLONG, ASSAM,

VERSUS

THE UNION OF INDIA and 5 ORS
REP. BY THE SECY., MINISTRY OF DEFENCE, NEW DELHI

2:THE DIRECTOR
DIRECTORATE GENERAL RESETTLEMENT
DEPTT. OF EX-SERVICEMEN
MINISTRY OF DEFENCE

3:THE DIRECTOR OF SAINIK WELFARE
ASSAM
SAINIK BHAWAN
H/NO.74
P.O. LACHIT NAGAR
GHY-7

4:THE SECY.
RAJYA SAINIK BOARD
ASSAM
LACHIT NAGAR
GHY-7

5:THE SECY.
ZILA SAINIK BOARD
ASSAM
DIPHU
KARBI ANGLONG
ASSAM
PIN-782460

6:THE WELFARE OFFICER
ZILA SAINIK WELFARE OFFICER
DIPHU
KARBI ANGLONG
ASSAM
PIN-782460

7:EX-SERVICEMAN WELFARE SOCITEY
REP. BY THE SECRETARY
GOPAL ROAD
PAN BAZAR
KAMRUP (M)
GUWAHATI
ASSAM
PIN- 78100

Advocate for the Petitioner : MR.S S TALUKDAR

Advocate for the Respondent : C.G.C.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

11.01.2024

Heard Mr. A. K. Das, learned counsel appearing for the writ petitioner. Also heard Mr. S. K. Medhi, learned Central Government Counsel appearing for the respondent Nos.1 and 2, Mr. T. C. Chutia, learned Additional Senior Government Advocate, Assam appearing for the respondent Nos.3, 4 and 5 and Mr. B. N. Sarma, learned counsel appearing for the respondent No.7. None has

appeared for the respondent No.6.

2. The writ petitioner herein was temporarily appointed as a Chowkidar and posted in the Sainik Rest House, Diphu, Karbi Anglong vide order dated 01.02.1979 issued by the Deputy Commissioner (District Commissioner), Karbi Anglong, Diphu at a consolidated pay of Rs.175/- (Rupees One Hundred and Seventy Five) per month. Pursuant to the order dated 01.02.1979 the petitioner had joined as Chowkidar and discharged his duties until 19.02.2015 on which date the respondent No.6 had issued an order/notice of termination from service to the writ petitioner. The ground stated in the impugned order/notice dated 19.02,2015 is reproduced herein below for ready reference :-

“It is hereby informed to you that the requirement of an ex-serviceman in the chowkider job has led to the deliberation of termination of your job. Besides, your age factor is against you for this job. You have already been given your dues; so with the cognizance of the Director of Sainik Welfare, Guwahati, Assam, the subject termination notice is served upon you to be effective by 28 Feb 2015. The clearance would be made effective accordingly.”

Aggrieved by the order dated 19.02.2015 the petitioner has approached this Court by filing the instant writ petition.

3. By taking note of the grievance of the petitioner and in view of the fact that despite opportunities granted by the Court, the respondents had failed to file affidavit responding to the allegations made in the writ petition, this Court had passed order dated 04.11.2015 suspending the operation of the impugned order dated 19.02.2015. It is the case of the petitioner that despite the interim order dated 04.11.2015 the petitioner was not allowed to join back in service.

4. Mr. Das, learned counsel for the petitioner has contended that the impugned order is wholly arbitrary and has been issued in complete violation of the principles of natural justice. It is also the submission of Mr. Das that as per the service record his client was engaged/appointed against a permanent vacancy and therefore, the respondents were completely unjustified in terminating the services of the petitioner in this manner. The learned counsel for the writ petitioner, therefore, seeks an order from this Court issuing a writ of certiorari setting aside the impugned order dated 19.02.2015. Mr. Das has, however, submitted in his usual fairness that the petitioner has in the meantime attained the age of superannuation from service and therefore, the question of reinstatement of the petitioner may not arise at this point of time even if the order of termination from service dated 19.02.2015 is interfered with by this Court. According to Mr. Das, the petitioner may at best be entitled to service benefits such as back wages/unpaid salaries which reliefs have not been prayed for in this writ petition and therefore, he be granted liberty to pursue such legal remedy before the appropriate forum.

5. Mr. T. C. Chutia, learned Addl. Sr. Govt. Advocate, Assam submits that although the petitioner was appointed by the then Deputy Commissioner, Karbi Anglong, yet, his service was entirely placed under the disposal of the Zilla Sainik Welfare Office, Diphu, Karbi Anglong and therefore, the Government of Assam does not have any role in the matter.

6. Mr. B. N. Sarma, learned counsel for the respondent No.7 submits that there were serious allegations against the writ petitioner which had led to the issuance of the order dated 19.02.2015. It is also the submission of Mr. Sarma that since the petitioner was over-aged and unfit to continue as Chowkidar, his

services were terminated.

7. I have considered the submissions made at the Bar and have also gone through the materials available on record.

8. As noted above, the appointment of the petitioner was purely on temporary basis. However, the appointment was made by the Deputy Commissioner (now District Commissioner) of Karbi Anglong Districg. The petitioner was admittedly and evidently receiving his salary until 19.02.2015 i.e. the date of termination of his service. The ground on which the services of the petitioner was terminated, as reflected in the impugned notice/order dated 19.02.2015, has been quoted herein above. The grounds of termination neither matches the submission made by Mr. B. N. Sarma, learned counsel for the respondent No.7 nor can the same be treated as valid ground so as to terminate the services of an employee. This Court is, therefore, of the opinion that even if the petitioner was a temporary employee, his services could not have been dispensed with by the authorities in such an arbitrary and illegal manner, as has been done in the present case.

9. Situated thus, this Court is of the unhesitant opinion that the impugned order dated 19.02.2015 is illegal and the same is accordingly set aside. Since the petitioner has already attained the age of superannuation from service, no order of his reinstatement in service is deemed necessary in this case. It would, however, be open for the petitioner to pursue appropriate legal remedy as may be available to him under the law, seeking benefits accruing to him under this order, before the appropriate authorities, if so advised. If the petitioner continues to remain aggrieved in the matter even thereafter, it would be open for him to approach this Court once again by filing appropriate proceeding.

Writ petition stands disposed of.

JUDGE

Comparing Assistant