

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.31563 OF 2011

ORDER

This writ petition is filed seeking the following relief:

“to issue a writ, order, orders more particularly one in the nature of writ of Mandamus declaring the impugned proceedings Memorandum No.44011/3/2010-Estt, dt. 14.11.2011 issued by the 4th respondent by ejecting to issue the movement order to the petitioner to enable him to report to duty at the 2nd respondent office and paying arrears of salaries with attendant benefits since December 2009 as illegal, arbitrary and consequentially to set aside the same and to direct the 4th respondent to issue the movement order with all the arrears of salaries with attendant benefits since December 2009 till the date of payment to the petitioner forthwith and to pass such other order or orders.”

Heard Sri K.V.Rajendra Prasad, Learned counsel appearing for the petitioner, and Sri K.Lakshman, learned Assistant Solicitor General, appearing for the respondents.

It is the case of the petitioner that initially he was appointed as Constable (Driver) in the 2nd respondent-Assam Rifles, Shillong, Meghalaya State. Thereafter, he was deputed to 4th respondent-Academy for a period of three years. After completion of three years of service in the 4th respondent-Academy, the petitioner has submitted a representation to absorb him on regular basis in the 4th respondent-Academy. The 4th respondent has requested the 2nd respondent to extend the tenure of deputation of the petitioner and to issue 'No

Objection Certificate', but the 2nd respondent had declined to grant 'No Objection Certificate'. Challenging the action of the 2nd respondent in declining to grant 'No Objection Certificate', the petitioner had filed W.P.No.21144 of 2009 seeking a direction to continue him in the 4th respondent-Academy. This Court on 8.4.2010 in WPMP No.58 of 2010 granted interim direction to continue the petitioner in the 4th respondent-Academy. Thereafter, WVMP No.980 of 2010 was filed and the said interim order was vacated. Aggrieved by the same, the petitioner filed W.A.No.717 of 2010. A Division Bench of this Court disposed of the said W.A.No.717 of 2010 along with W.P.No.21144 of 2009 on 29.11.2010. The operative portion of the said order reads as under:

“Accordingly, the Writ Appeal and the Writ Petition are disposed of. However, we make it clear that in the event of the appellant-petitioner still insisting any exigency for further extension, he can file a representation before the authorities concerned within a period of two (2) weeks from today and the same shall be considered on merits and disposed of in accordance with law within a period of six (6) weeks thereafter. It is needless to mention that till the representation filed by the appellant-petitioner is considered and disposed of, he shall not be disturbed. No costs.”

In pursuance of the said order, the petitioner submitted a representation dated 8.12.2010 to respondents 2 to 4. The 4th respondent *vide* Memorandum dated 31.01.2011 made it clear that the service book, LPC and the relevant documents

pertaining to the petitioner were already sent to the 2nd respondent, which is the parent organization. Thereafter, the petitioner had filed C.C.No.255 of 2011 and the same was dismissed on 1.4.2011. However, liberty was given to the petitioner to assail the order passed by the respondents. Questioning the Memorandum dated 31.01.2011, the petitioner had filed W.P.No.7646 of 2011. This Court *vide* order dated 11.08.2011 dismissed the said writ petition and the operative portion of the order reads as under:

“The petitioner is the permanent member of the 2nd respondent-organization. It was on his representation, that he was sent on deputation to the 4th respondent-organization for a period of three years. That period expired long back. The petitioner stated several reasons in support of his claim for permanent absorption in 4th respondent-organization. However, unless the principal employer gives consent for absorption of such nature, it would not be possible. The 2nd respondent has stated the reasons on account of which, the request of the petitioner cannot be acceded to.

A member of para-military force does not have a right to insist on no objection, for being absorbed in another organization. This Court cannot sit as an Appellate Authority, nor the reasons stated by the 2nd respondent can be said to be irrelevant or untenable.”

Aggrieved by the said order, the petitioner had filed W.A.No.731 of 2011 before the Division Bench. The Division Bench *vide* order dated 19-09-2011 dismissed the same. After pursuing all his legal remedies, the petitioner has submitted a representation to the 4th respondent on 30-09-2011 to issue

movement order so as to enable him to go and report to the 2nd respondent. The 4th respondent had issued the impugned proceedings dated 14.11.2011 stating that the service book, LPC and other relevant documents pertaining to the petitioner were already sent to his parent organization i.e., 2nd respondent and since the petitioner is no more on the rolls of the 4th respondent organization, there is no necessity to issue any movement order, apart from that an amount of Rs.25,883/- was transferred to his account towards travelling allowance and advised the petitioner not to make any correspondence with the 4th respondent for payment of pay and allowances etc. Challenging the same, the present writ petition is filed.

Learned counsel appearing for the petitioner contends that though the impugned order dated 14.11.2011 speaks that the petitioner was relieved on 9.10.2009, the same was not served on him; that unless and until the movement order is given to him, he is not in a position to go and report to the 2nd respondent-parent unit. He further contends that the salary from 9.10.2009 till the movement order is not issued to the petitioner, the 4th respondent be directed to pay the same with all consequential benefits.

Learned Assistant Solicitor General appearing for the respondents contends that since the 2nd respondent had declined to give 'No Objection Certificate' for further continuation of the petitioner in the 4th respondent-Academy, the petitioner had pursued all his legal remedies by filing writ petitions and writ appeals, and failed to get any favourable orders. He further contends that the impugned order dated 14.11.2011 was passed informing the petitioner that his service book, LPC and the relevant documents were already sent to the 2nd respondent and an amount of Rs.25,883/- was also transferred to his account towards travelling allowance and that the petitioner was relieved on 9.10.2009 to enable him to go and report to the 2nd respondent-parent unit. There are no merits in the writ petition and the same is liable to be dismissed.

As can be seen from the record, nowhere, the respondents have shown any material to demonstrate that the movement order was served on the petitioner. In the absence of the same, the petitioner could not report to the 2nd respondent. Apart from that, the impugned order dated 14.11.2011 makes it clear that the 4th respondent relieved the petitioner from 9.10.2009 and an amount of Rs.25,883/- was credited to the account of the petitioner on 19.2.2010. Be that

as it may, the petitioner had pursued all his legal remedies upto 2011 and it is only after 2011, the request of the petitioner was rejected *vide* Memorandum dated 31.01.2011. The 4th respondent ought to have given a movement order to the petitioner. A Division Bench of this Court disposed of W.A.No.717 of 2010 and W.P.No.21144 of 2009 *vide* common order dated 29-11-2010 giving liberty to the petitioner to file a representation within a period of two weeks, which shall be considered on merits and disposed of, in accordance with law within a period of six weeks thereafter. In pursuance of the same, the 4th respondent has considered the representation made by the petitioner and issued Memorandum dated 31.01.2011. The 4th respondent ought to have issued a formal movement order to enable the petitioner to report to the 2nd respondent, but it has once again issued Memorandum dated 14.11.2011 declining to issue movement order in favour of the petitioner.

Having regard to the rival submissions made by the learned counsel on either side, this Court is of the considered view that ends of justice would be met if a direction is issued to the 4th respondent to issue movement to the petitioner.

Accordingly, the Writ Petition is disposed of directing the 4th respondent to issue movement order to the petitioner

within a period of one week from the date of receipt of a copy of this order. On receipt of such movement order, the petitioner shall report to the 2nd respondent within a week thereafter. The 2nd respondent is directed to consider the case of the petitioner for regularization of his services for the period from 9.10.2009 till date, in accordance with law, as he was pursuing legal remedies during that period. No costs.

JUSTICE ABHINAND KUMAR SHAVILI

29th August, 2018

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