

GAHC020002062023

2025:GAU-NL:505



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

Case No. : WP(C)/91/2023

SHRI. VISETOL RHETSO
S/O DUKHWE RHETSO,
AGED ABOUT 48 YEARS,
R/O VISWEMA, R. KHEL,
KOHIMA DISTRICT, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, PWD
DEPARTMENT,
GOVERNMENT OF NAGALAND

2:THE ENGINEER-IN-CHIEF

PWD(R AND B)
NAGALAND
KOHIMA

3:THE EXECUTIVE ENGINEER

PWD(R AND B)
PHEK DIVISION
PHEK DISTRICT
NAGALAND

4:THE SUB-DIVISIONAL OFFICER

PWD(R AND B)
CHOZUBA DIVISION

NAGALAN

Advocate for the Petitioner : SOHOR.ALI SHEIKH,
THONLUICHAWANG,PAKINRICHAPBO

Advocate for the Respondent : GOVT ADV NL,

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocates for the petitioner : Mr. S.A. Sheikh and
Mr. Pakinrichapbo

Advocate for the respondents : Mr. N. Angami

Date of Hearing : 07.08.2025

Date of Judgment : 14.10.2025

JUDGMENT AND ORDER (CAV)

1. Heard learned counsel Mr. S.A. Sheikh and I Mr. Pakinrichapbo for the petitioner and learned Sr. Government Advocate Mr. N. Angami for the respondent.
2. The petitioner in this case is Shri Visetol Rhetso, whereas the respondents are the State of Nagaland represented by the Commissioner and Secretary, PWD Department, Government of Nagaland, the Engineer-in-Chief PWD (R&B) Nagaland, the Executive Engineer PWD (R&B) Phek division and the Sub-Divisional Officer PWD (R&B) Chozuba division arrayed as Respondent Nos. 1, 2, 3 and 4 respectively. The petitioner has prayed to direct the respondent authorities to allow him to serve the department for the remaining period till his superannuation.
3. The petitioner is aggrieved by the impugned letter dated 13.12.2022 issued by the Respondent No. 2 rejecting the petitioner's prayer through his advocate to continue his services to the department.

4. The petitioner's case in brief is that he was appointed as Mason vide appointment order dated 29.09.2000 by the Respondent No.2 and was posted at the office of Executive Engineer PWD (R&B) Phek division, Nagaland. Accordingly he joined his service on 30.09.2000 and to that effect, the Executive Engineer PWD (R&B), Phek division by letter dated 25.10.2000 reported his joining to the office of the Respondent No. 2. After serving for two and a half months the petitioner was transferred to the office of SDO PWD (R&B) Chozuba division vide transfer order dated 15.12.2000.

5. It is submitted that while the petitioner was serving in the Sub-Divisional office at Chozuba, sometime in the early part of the year 2002, he was called by the SDO Chozuba division to the office room and informed that some unknown miscreants warned him not to sanction the petitioner's salary. In order to avoid confrontation and to be on the safer side, the petitioner was advised not to attend office for a few days. On the advice of the officer, the petitioner stayed at home for a few days. When the situation turned conducive, the petitioner, on instruction of the SDO, Chozuba resumed his duties and started to attend office regularly. It is submitted that after attending his duties regularly, one day in the month of July 2002, the petitioner was heading towards his house along with his friends when he was waylaid by two persons wielding weapons and threatening him not to attend office anymore from the next day onwards. The miscreants also threatened the petitioner not to divulge about the incident. The incident was reported by the petitioner to the Executive Engineer, Phek division and the petitioner pleaded for safety measures to work in the office in a peaceful environment, but the erstwhile Executive Engineer, Phek division expressed his inability to provide any protection as the matter related to threats from some antisocial elements. Sensing threat to his life, the petitioner stopped attending office till September 2003.

6. It is submitted that the office of the SDO, Chozuba division vide letter dated 06.10.2003 reported the petitioner's absence to the executive engineer. The respondent No. 2 on the body of the letter dated 06.10.2003 directed the SDO not to prepare the petitioner's salary until the office of the Executive Engineer, Phek Division, would receive any confirmation from the office of the Engineer-in-chief PWD (R&B)

Nagaland, Kohima.

7. It is contended that the direction issued by the Executive Engineer, not to prepare the petitioner's salary was taken without appreciating the genuine problem the petitioner was facing in attending the office. Acting on the direction, the SDO Chozuba did not prepare the petitioner's salary. However, the petitioner kept on attending his duties for a few years but he was not allowed to mark his attendance. The petitioner again was intercepted by miscreants and petrified, the petitioner stopped attending to his duties.

8. It is further submitted on behalf of the petitioner that the petitioner was mentally and emotionally shattered and sank into depression and got associated with bad company. Nevertheless, the petitioner finally succeeded in regaining his mental stability and started attending his office from November 2018. The petitioner filed a representation dated 20.04.2022 to the Executive Engineer, Phek Division, to consider his case and to release his salary.

9. The office of the Executive Engineer vide letter dated 11.05.2022 forwarded the report along with all documents to the Chief Engineer PWD (R&B). Thereafter, the petitioner through his counsel sent a pleader's notice dated 04.11.2022 to the respondent No.2 requesting the respondent No.2 to consider his case based on humanitarian and compassionate ground. The respondent No. 2 vide letter dated 13.12.2022 declined to consider the petitioner's case.

10. It is submitted that the petitioner was appointed as a regular Mason, which is evident from his service book. The respondent No. 2 has declined to consider his case citing reasons that the petitioner was a temporary appointee which is illegal. He has not received any order of termination nor any notice and thus denying him to serve till the remaining period of his service would tantamount to deprivation of right to livelihood. The petitioner has submitted that his right is guaranteed under article 14

and 21 of the Constitution of India which has been violated by the respondent authorities. Hence, this case.

11. All the respondents have jointly filed an affidavit-in-opposition denying that the petitioner was compelled to stay away and remain absent from his duties. The respondents have vehemently denied that the then SDO Chozuba division advised the petitioner not to attend office for a few days in order to avoid confrontation with the unknown miscreants and the petitioner acted on the advise of the SDO and remained absent for some time and thereafter, he resumed his duties on the instruction of the SDO.

12. It is contended by the respondents that there is not even a whisper in the petition relating to the reason why two armed miscreants would threaten the petitioner while he was returning home from his office. He never lodged any FIR with the police nor did he file a written complaint. It is further contended that there are no documents to substantiate that he has ventilated such grievances to the respondent authorities relating to his difficulties in attending his duties at his place of posting. The respondent authorities were not privy to the life-threatening situation of the petitioner for such a prolonged period.

13. It is submitted that the petitioner has put forward a manufactured and fabricated story to mislead the respondent authorities as well as this Court to justify his prolonged absence from duties. On the contrary, it is submitted that the SDO PWD (R&B) Chozuba Division, intimated the Executive Engineer, PWD (R&B) about the petitioner's absence from his duties through a letter dated 06.10.2003 informing that the petitioner had stopped attending his duties after November 2001 and his whereabouts was not known to the officers of the concerned division.

14. It is admitted that the Executive Engineer, PWD (R&B) Phek Division issued a direction not to prepare the petitioner's salaries as he had stopped attending his official duties without any valid reason and without informing the appropriate authority.

15. It is further contended that the petitioner has vacillated from his own statement,

as he has stated in his legal notice dated 04.11.2022 that he kept attending the office but as no attendance register was maintained by the office, he could not mark his attendance whereas on the contrary, he has stated through his petition that he was not allowed to mark his attendance despite the fact that he kept attending his office up to 2010. Respondents have thus prayed to dismiss the petition at the threshold with exemplary costs.

16. It is also contended that there is no documentary evidence to substantiate the petitioner's claim that he sank into depression as he was suffering from mental health issues.

17. It is further contended that the letter dated 06.10.2003 clearly reflects that the petitioner stopped attending to his duties from November 2001 and from the letter dated 11.05.2022 sent by the Executive Engineer PWD, it is apparent that the last salary of the petitioner was drawn in the month of January 2002. The contention of the petitioner that after he regained his mental stability, he started attending his office from November 2018 is completely false and misleading and has been vehemently denied by the respondents. Respondents have reiterated that the petitioner had stopped attending to his duties without availing any leave and without informing the respondent authorities.

18. The respondents have highlighted the Rule 4 of Nagaland Government Servants Conduct Rules 1968 which clearly provides that a Government servant shall at all times

- a.i. maintain absolute integrity ,
- a.ii. maintain devotion to duty, and
- a.iii. do nothing which is unbecoming of a Government servant.

19. As the petitioner has willfully stopped attending his duties without leave or informing his superiors and has clearly violated the Rule 4 of the Rules 1968, the petitioner is liable to be dismissed from service. It is also submitted that even if the petitioner was on leave, he would have no *locus standi* to submit prayer for allowing him to serve the respondent department for the remaining period of his service till superannuation.

20. At Rule 18 of the Rules of 1968, it is clear that "***Unless the President, in view of the exceptional circumstances of the case, otherwise determines, no Government servant shall be granted leave of any kind for a continuous period exceeding five years***".

21. I have considered the submissions at the bar with circumspection. The petitioner's submissions appear to be absolutely absurd. If the petition is carefully scrutinized, it has not been mentioned that the petitioner has been threatened by any banned organization to be terrified to the extent that he had to stop attending to duties from 2001 onwards. The petitioner's statements appear to be misleading at the very outset. If the petitioner had informed the SDO or even the Executive Engineer about his plight, there appears to be no justified ground why the SDO or the Executive Engineer would deny that the petitioner was under such threats.

22. The petitioner was appointed as a Mason and it is unfathomable why a banned organization would threaten any Mason from attending to his duties or directing any SDO or Executive Engineer not to pay the salaries due to the petitioner. Thus, the petitioner's statements appear to be very absurd and unreliable. The petitioner was on unauthorized leave and he failed to attend to his duties without any just cause. At this stage when he is expecting his superannuation, he realized his fallacy and has come up with some unsubstantiated excuses. Even relating to his mental health issues, he has submitted no documents to substantiate his mental ailment. When a person seeks relief on breach of his fundamental rights, he also has to be aware of his fundamental duties. Most importantly, the petitioner has not submitted a representation for transfer citing his reasons. If the petitioner was so petrified with the situation, he ought to have prayed for transfer to a safer region.

23. The Annexure-5 of the petition is the letter dated 06.10.2003 addressed to the Executive Engineer PWD by the SDO informing that the petitioner was absent from his duties from November 2001. Annexure-6 is the representation submitted by the petitioner with prayer for release of salaries with effect from March 2002 till date. The prayer of the petitioner is dated 02.04.2022, which clearly reflects that the petitioner suddenly awoke from his slumber as late as March-April of 2022 and thereafter, he realized that he was not

receiving his salaries since March of 2002 and so he had forwarded a representation for his salaries for the last 20 years. This is absolutely absurd and has to be deprecated. The belated representations and the legal notices were forwarded in the year 2022. There are no documents to substantiate that the petitioner could not attend duties owing to circumstances beyond his control. There is not a figment of evidence to substantiate the petitioner's cause.

24. At one instance the petitioner has stated that the office did not maintain an attendance register whereas on the other instance he has stated that he was not allowed to affix his signature on the attendance register. Why would the petitioner be debarred from affixing his signature on the attendance register by the officers or by the employees without any valid reason ?

The learned Government Advocate for the respondents has submitted that this petition ought to be dismissed with costs due to the conduct of the petitioner in misleading this Court with such false statements, not substantiated by any documents or any evidence. It is submitted by the learned counsel for the respondents that the petitioner has exposed himself through his own web of lies. His case is enmeshed in his web of lies.

25. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in ***Jai Shanker vs. State of Rajasthan reported in AIR 1966 SC 492***, wherein it has been held that:-

6. *"It is admitted on behalf of the State Government that discharge from service of an incumbent by way of punishment amounts to removal from service. It is, however, contended that under the Regulations all that Government does, is not to allow the person to be reinstated Government does not order his removal because the incumbent himself gives up the employment. We do not think that the constitutional protection can be taken away in the manner by a side wind. While, on the one hand, there is no compulsion on the part of the Government to retain a person in service if he is unfit and deserves dismissal or removal, on the other, a person is entitled to continue in service if he wants until his service is terminated in accordance with law One circumstance*

deserving removal may be over staying one's leave. This is a fault which may entitle Government in a suitable case to consider a man as unfit to continue in service. But even if a regulation is made, it is necessary that Government should give the person an opportunity of showing cause why he should not be removed. During the hearing of this case we questioned the Advocate General what would happen if a person owing to reasons wholly beyond his control or for which he was in no way responsible or blameable, was unable to return to duty for over a month, and if later on he wished to join as soon as the said reasons disappeared? Would in such a case Government remove him without any hearing, relying on the, regulation? The learned Advocate-General said that the question would not be one of removal but of reinstatement and Government might reinstate him. We cannot accept this as a sufficient answer. The Regulation, no doubt, speaks of reinstatement but it really comes to this that a person would not be reinstated if he is ordered to be discharged or removed from service. The question of reinstatement can only be considered if it is first considered whether the person should be removed or discharged from service. Whichever way one looks at the matter, the order of the Government involves a termination of the service when the incumbent is willing to serve. The Regulation involves a punishment for overstaying one's leave and the burden is thrown on the incumbent to secure reinstatement by showing cause. It is true that the Government may visit the punishment of discharge or removal from service on a person who has absented himself by over-staying his leave, but we do not think that Government can order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing cause why he should not be removed. If this is done the incumbent will be entitled to move against the punishment for, if his plea succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Article 311. A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it. To give no opportunity is to go against Article 311 and this is what has happened here".

26. In the instant case, the incumbent did not apply for leave at all. The reply to the legal notice forwarded by the petitioner clearly indicates that the Chief Engineer had specifically mentioned in his reply that despite issuance of directions and notices to the petitioner by his controlling officer to attend office, and despite holding up his salaries since December 2001, the petitioner chose to ignore the same. As per the All India Services (Leave) Rules 1955, an employee who is absent without authorization for a period exceeding one year from the date of expiry of the sanctioned leave shall be deemed to have resigned from the service.

27. The petitioner's representation dated 20.04.2022 was for release of salaries with effect from March 2002 till date as he was absent from duties (without any information) for 20 years at a stretch. His prayer for release of his salaries with arrear has been rightly rejected by the Engineer-in-Chief, PWD Nagaland Kohima. The department has averred that petitioner's prolonged unauthorized absence for 20 years is deemed as resignation of the petitioner.

28. The argument of the learned counsel for the petitioner that although the petitioner has approached this Court after 20 years of his absence from his duties, the petitioner cannot be held to be absent from his duties, holds no water. It is argued that no penalties ought to have been imposed upon the petitioner, except after an enquiry. The authority, Engineer-in-Chief, NPWD, Kohima, while rejecting the petitioner's representation along with the legal notice dated 04.11.2022, which includes the petitioner's prayer to allow him to continue his services till his superannuation, has observed that according to the All India Services (Leave) Rules, 1955, when an employee is absent without authorization for a period exceeding 1 year from the date of expiry of the sanctioned leave, he shall be deemed to have resigned from service. The petitioner's representation was rejected by observing that after a gap of more than 20 years, the petitioner's prayer could not be considered at that stage. The petitioner has not been terminated from service. It is only observed that the petitioner has deemed to have resigned from service. It is also argued on behalf of the petitioner that there was no cessation of service. It is true that indeed there was no cessation of service.

29. Apart from a note by the Executive Engineer on the corner of the Letter no.

CBA/Estt-1/2002-03/144 dated 06.10.2003 which was addressed to the Executive Engineer by the S.D.O. relating to unauthorized leave of the petitioner, there is no official order of termination of the petitioner. The note dated 09.10.2003 on the corner of the aforementioned letter by the Executive Engineer clearly reflects that the Executive Engineer has directed the S.D.O. not to release the petitioner's salaries as the petitioner was unauthorisedly absent from his duties. This implies that no proceeding has been drawn up against the petitioner who was an employee serving in the office of the S.D.O. at Chozuba Division, Phek. It is true that in service jurisprudence *dias non* is a well known concept, i.e. the period for which the employee does not work may be treated as not counted for any purpose, including for the purpose of payment of salary.

30. The respondents themselves through their affidavit-in-opposition at paragraph 11 have stated that the petitioner was absent from his duties without any leave or without taking any permission from the authorities for more than 20 years and therefore, the petitioner should be removed from service after following due process of law. Thus, it is manifest that the petitioner has not been removed from service and the respondents have stated that as the petitioner is absent unauthorizedly without any leave for more than 20 years, the petitioner should be removed from service after following due process of law. Thereby, the petitioner may resume his duties.

31. The petitioner is hereby directed to attend to his duties within 15 (Fifteen) days from the date of this order. The respondents are also at liberty to proceed against the petitioner, if so advised, after following due process of law. The petitioner's prayer for back-wages and his prayer to release his salary w.e.f. March, 2022 till date, stands rejected and hereafter, the letter dated 13.12.2022 issued by the respondent No. 2, is set aside.

32. In terms of the above observations, this petition stands partly allowed. No order as to costs.

JUDGE

Comparing Assistant