

(2000) 03 GAU CK 0020

Gauhati High Court

Case No: Civil Rule No. 6460 of 1998

Sujit Nath

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: March 13, 2000

Acts Referred:

- Assam Administrative Tribunal Act, 1977 - Section 4(1), 4(2)

Citation: (2000) 2 GLT 498

Hon'ble Judges: J.N. Sharma, J

Bench: Single Bench

Advocate: S. Dutta and K.K. Dey, for the Appellant; B.D. Goswami, for the Respondent

Judgement

J.N. Sarma, J.

This writ application depicts an attitude of callousness and non-application of mind on the part of the authority in dealing with its own employees. The petitioner herein was appointed on 15.3.1996 as a Driver on ad hoc basis, that is, Annexure-1 to the writ application. The appointment was made by the Additional Chief Medical And Health Officer, Cachar at Silchar. Thereafter on 3.6.1996 this appointment was approved by the Director of Health Services (FW). Assam, Guwahati. This is Annexure-2 to the writ application. On 7.8.1996 vide Annexure-3 the following order was passed :

"Annexure-3

OFFICE OF THE ADDL. CHIEF MEDICAL & HEALTH OFFICER (FW) CACHAR: SILCHAR.

No. FEW96/5904/ Dated Silchar, the 7.8.1996.

ORDER

In pursuance of the Director of Health Services (FW), Assam order No. HSFW/Estt./ 58/90/9543, dt. 24.7.1996 on receipt of favourable Police Verification report services

of Sri Sujit Nath. appointed by this office order No. FWE/96/ 1361 dt. 15.3.1996 & posted at Algapur RFWPC, as Driver in the Scale of pay of Rs. 975-15-1005-20-1205-EB-20-1225-30-1435-40-1635-50-1935, plus other allowances as admissible under rule is hereby regularised from the date of joining in the services."

2. Thereafter a W.T. Message was issued by the authority which reads as follows:

"Annexure-4.

HSFW5237-53 SERVICES OF ALL AD HOC APPOINTMENTS APPOINTED FOR THREE MONTHS FROM THIS DIRECTORATE OR FROM YOUR END AFTER 1.1.1996 ARE NOT TO BE EXTENDED AND EXTENSION MADE THEREAFTER EITHER ANOTHER PERIOD OF 3 MONTHS OR UNTIL FURTHER ORDERS ARE TREATED AS CANCELLED WITH IMMEDIATE EFFECT AS PER GOVT. U.O. NO. HLA 02/87 PT-I/87 DT. 13.6.1996 (.) ALSO FURNISH A COPY OF ALL APPOINTMENTS MADE AFTER 1.1.1996 DULY ATTESTED BY YOU (.)"

3. In pursuance of this W.T. Message on 5.11.1996 the authority passed the following order vide Annexure-5.

"Annexure-5.

GOVT. OF ASSAM

OFFICE OF THE ADDL. CHIEF MEDICAL & HEALTH OFFICER (FW) CACHAR: SILCHAR

No. 7858

Dt. 5.11.1996

To

Sri Sujit Nath,

Driver attached

to Algapur PHC (Now working at DFWD Silchar)

In pursuance of the instruction conveyed by the Director of Health Services (FW) Assam vide his telegram No. HSF/5237-53 dt. 30.10.1996.

Your services is no longer required by this department with immediate effect. He is terminated from the issue of this order.

Sd/- 5.11.1996

Addl.Chief Medical & Health Officer

Cachar, Silchar,

Memo No. 7859-62

Dt. 5.11.1996

Copy to:-1. The Director of Health Services (FW) Assam Guwahati-6 for favour of information in continuation to this office memo, No. 7867-78 dt. 5.11.1996. Attested copy of appointment letter of Sri Sujit Nath who was appointed with the approval from DHS (FW) Assam vide No. HSF/ Esstt/ 98/96/7567 dt. 3.6.1996

2. SDM&HO, Algapur for information.
3. Asstt. Acctt. DF WB, Silchar for information.
4. Esstt."

It is the legality and validity of this Annexure-5 quoted above which is challenged in this writ application.

4. A bare perusal of Annexure-4, the W. T. Message will show that the power was there only with regard to extension of appointment. The service of the petitioner was rightly or wrongly already regularised as stated above. Be that as it may thereafter also this matter took a curious turn. The petitioner filed a civil suit being Title Suit No. 136 of 1996 before the Civil Judge No. 1 (Junior Division), Cachar for declaration and other reliefs including the prayer for reinstatement of service. That suit was decreed by the Trial Court on 22.12.1997. The operative portion of the decree is quoted below:

"From evidence of DW stated in the cross it appears that the Exhibit-A was applicable on employees appointed on ad hoc basis or in cases of extensions. He omitted that services of plaintiff was regularised vide Exhibit-2. Clearly from this it is clear that this order of termination vide Exhibit-A was not applicable on the plaintiff and hence plaintiff was entitled to decree for restoration of his services as a driver of the defendant department. Accordingly the suit of the plaintiff is decreed as prayed for without cost.

ORDER

The suit of the plaintiff is decreed without cost. He is to be reinstated in service as driver within 30 days (thirty days) from the date of the decree."

5. As against the decree there was an appeal by the State of Assam before, the Civil Judge (Senior Division No. 2), Silchar being Title Appeal No. 2 of 1998. The only ground on which this appeal was allowed and the suit of the petitioner was dismissed was that the Civil Court does not have the jurisdiction to grant a decree for declaration and reinstatement of the service in view of the Assam Administrative Tribunal Act, 1977 read with Rules thereunder. As the decree was quashed by the Civil Court vide judgment dated 11.9.1998 in the title appeal as indicated above, the petitioner herein instead of approaching Assam Administrative Tribunal has approached this Court by filing this writ application.

6. I have heard Shri Dutta, learned advocate for the petitioner and Shri Goswami, learned advocate for the respondents. No affidavit-in-opposition has been filed. No record has been produced. This matter is pending before this Court from 18.12.1998.

7. After hearing Shri Dutta, learned advocate for the petitioner and on perusal of the materials on records, I hold that Annexure-4, the W. T. Message does not apply to

the petitioner and in that view of the matter Annexure-5 the order of termination of the service of the petitioner is liable to be quashed, which I hereby do. If Annexure-5 is quashed, the petitioner is entitled to be reinstated in the service as driver in the Office of the Additional Chief Medical and Health Officer, Cachar at Silchar. The petitioner shall be taken back in service within a period of six weeks. The petitioner may obtain the certified copy of this judgment and shall produce the same before the appropriate authority to do the needful in terms of this judgment. The petitioner shall not be entitled to any back wages in view of the fact that the petitioner did not render any service during that period though the negligence was on the part of the authority. I feel that an order for back wages will not be justified.

8. The above noted direction/order I have passed in exercise of my suo motu power under article 227 of the Constitution as I shall presently try to demonstrate that Annexure-7, the appellate judgment in T.A. No. 2/98(3/98) by the Civil Judge, Senior Division No. 2 Cachar at Silchar is patently erroneous. It has caused grave injustice to the petitioner. Of course the petitioner was not correctly advised to file this writ application, his remedy was by way of appeal before the Court. But the question is whether procedural wrong and the nicety of form should defeat justice while a Writ Court can not turn Nelson's eye to procedure and form, should we always be begged down by it or we can make a departure from it to deliver justice in an appropriate case. A way out must be found out, if necessary by making holes in the procedure/form net cast in the justice delivery system, this is not an attempt to destroy/demolish the procedure but a bold attempt to do justice for which we will strive. It is because of this I looked at Annexure-7 to find out if it is a stumbling block to give the justice as indicated above. The learned Judge took up issue Nos. 2 & 3 for decision in the appeal, issue No. 2 is maintainability and Issue No. 3 is jurisdiction of Civil Court to try the suit.

9. The jurisdiction of civil court is in section 4 of the Assam Administrative Tribunal Act, 1977, A perusal of section 4(1) and 4(2) together with the preamble of the Act of 1977 shows that the Tribunal has jurisdiction to entertain and dispose of appeals preferred by Civil Servants against any order passed by a competent authority only in respect of any condition of service, A declaration that a public servant was in service in the eye of law though actually he was not in service, is not a condition of service. As such no appeal could have been filed by the plaintiff before the Tribunal. The declaration sought by the plaintiff can not be granted by the Tribunal (see [Ranjit Chakravarty Vs. State of Assam and Others](#),

10. The exclusion of jurisdiction of Civil Court can not be readily inferred and the normal rule is that Civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded. When the particular Tribunal/Forum created by the Special Act can not grant the relief/remedy the jurisdiction of Civil Court can not be ousted (See 1969 S.C. 98 [M.P. Electricity Board, Jabalpur Vs. M/s. Vijaya Timber Co.](#), If an order is a nullity with

regard to a plaintiff he always can come before a Civil Court for appropriate declaration (See [Mafatlal Industries Ltd. and Others Vs. Union of India \(UOI\) and Others,](#)

11. At pages 27 and 28 of the writ application the decree of the Trial Court is available and a bare perusal of it will show that the Tribunal with its limited jurisdiction can not grant the reliefs prayed before the Civil Court. So the finding of the appellate court that the suit is barred is an erroneous and patently wrong finding and it calls for interference and I quash this order of the appellate court.