

Bali Ram Das Vs State of Assam and Others

Court: Gauhati High Court

Date of Decision: Aug. 10, 2000

Acts Referred: Constitution of India, 1950 " Article 226

Citation: (2000) 3 GLT 246 : (2001) 3 LLJ 239

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

Bench: Single Bench

Final Decision: Allowed

Judgement

J.N. Sarma, J.

This writ application has been filed by a poor employee. The petitioner herein joined the service under the Central dairy,

Khanapara as Muster roll worker in 1967 under Town Milk Supply Scheme of the Govt. of Assam at pay scale of Rs. 90/- per month. The

petitioner from 1982 was treated as a casual employee and his salary has been revised from time to time as per the revision of the pay scale. The

petitioner was given the annual increment. The representations were filed from time to time to regularise the service of the petitioner. Nothing was

done. The petitioner was asked to appear before the Medical Board by letter dated December 15, 1995. That letter is Annexure-2 to the writ

application. That is quoted below:

No. TMS/A-30/95-96/

Dtd. Khanapara, the 15th December/95.

From:-

Sri B.K. Das, B.Sc.(D.T) PGDM,

Superintendent,

Town Milk Supply Scheme,

Khanapara, Guwahati -781022.

To

The Additional Director,

Health Service, Hengrabari,

Guwahati -6.

Sub : HEALTH CERTIFICATE

Sir,

With reference to the subject cited above, I have the honour to inform you that a Health Examination report (Through Medical Board) in respect of

Sri Bali Ram Das. Casual employee of this office required as asked by the Director, Dairy Development Department, Assam, Khanapara,

Guwahati.

As such Sri Bali Ram Das, Casual employee of this office is hereby deputed for examination through Medical Board and necessary certificate may

kindly be issued to this office when done with.

This is for favour of your kind information and necessary action.

Yours faithfully,

Sd/-

Superintendent,

Town Milk Supply Scheme,

Khanapara, Guwahati-781022"".

2. Accordingly the petitioner appeared before the Medical Board and the Medical Board opined as follows:

Today on January 22, 1996 standing Medical Board examined clinically Shri Bali Ram Das and found him free from any disease. His age

according to his own statement is 56 years and appearance is about fifty six years.

Inspite of it by order dated June 30, (Annexure-4) the petitioner was released from service. That order is quoted below:

No.T.M.S./A-30/Pt-97-98/422/

Khanapara dtd. 30.6.97

From:

Surendra Kr. Das, B.Sc.(DT) PGAM

Superintendent,

Town Milk Supply Scheme,

Khanapara, Guwahati-22

To:

Sri Bali Ram Das,

Casual Employee.

Town Milk Supply Scheme,

Khanapara, Guwahati- 22

Sub: Release/ retirement from service.

Ref: Director"s letter No. DD/A-1/7/4475 dtd. 21.6.97.

With reference to the subject cited above and as per the instruction of the Directors letter you are hereby informed that because of lack of your

physical fitness for work your service could not be extended for any further period and hence your service could not be continued as casual

employee from July 1, 1997 (morning). Hence from June 30, 1996 (afternoon) you are hereby released from service.

Yours,

Sd/-

Surendra Kr. Das

Superintendent,

Town Milk Supply Scheme

Enclosure- Original copy of the application.

Thereafter the petitioner submitted representation, but nothing has been done and the petitioner was released from service even before attaining the

age of superannuation. The petitioner will attend the age of 60 in January, 2001. Hence, this writ application.

3. An affidavit-in-opposition has been filed wherein it has been stated in paragraph 6 that the petitioner submitted his school certificate, but as that

was not properly investigated and he was retired from service as indicated above. The order of release vide Annexure-4 quoted above is an

arbitrary, whimsical exercise of power. So, on this short ground alone, this writ application is allowed. The order releasing the petitioner from

service shall stand quashed. But the matter does not end there. It is needless to say that the petitioner shall be entitled to all the back wages from

the date of release till he attains the age of superannuation i.e. January, 2001. The back wages shall be paid to the petitioner within a period of four

(4) months. The petitioner is entitled to the back wages as he was thrown out from service in a most mechanical manner and that too a poor

employee who was working since 1967. The next question is that what relief can be granted to the petitioner in addition to the relief which has

been granted earlier. In this connection, one may have a look at U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey

and Others, where the Supreme Court has laid down the law as follows at U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra

Bhan Dubey and Others,

25. The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear we cannot put shackles on

the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is

wronged, the High Court will step in to protect him, be that wrong be done by the state, an instrumentality of the State, a company or a co-

operative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under part

III of the Constitution or any other right which the law validly might confer upon him.

In this case injustice is writ large on the face of the record. A poor employee is being thrown out after putting service for almost 33 years and

because of the failure on the part of the authority to regularise his service in time, after retirement he will have nothing and he will be thrown to

vagaries of life, he would not have sufficient means to have two square meals a day. After all security of service and regularisation of service in time

by adhering to the rules is our constitutional goal. But the authority was in deep slumber for all these 33 years and did not regularise the service of

the petitioner. In that view of the matter in addition to the relief granted earlier, I also direct that the authority shall regularise the service of the

petitioner notionally now (for this regularisation he will not be entitled to back wages). This regularisation shall be made only for the purpose of

pension and retiral benefits. The service of the petitioner shall be regularised in such a manner and from such period so that he may get some

amount as pension and other retiral benefits). This shall be done within a period of four (4) months from today. After doing that the authority shall

also pay all the retiral benefits due to him in accordance with law and rules.

4. This disposes of the writ application. Heard Mr. M.K. Choudhury, learned advocate for the petitioner and Mr. D. Goswami, learned advocate

for the Respondents.