

(2014) 08 CAL CK 0092

Calcutta High Court (Port Blair Bench)

Case No: MA No. 019 of 2014

The Union of India

APPELLANT

Vs

U. Binu

RESPONDENT

Date of Decision: Aug. 8, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2014) 3 CALLT 701 : (2014) 5 CHN 52

Hon'ble Judges: Subhro Kamal Mukherjee, J; Indrajit Chatterjee, J

Bench: Division Bench

Advocate: Santosh Kumar Mandal and Saitsh Chandra Mishra, Advocate for the Appellant; Roshan George, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Subhro Kamal Mukherjee, J.

This is an appeal against the judgment and order dated April 03, 2014 passed in WP No. 045 of 2014.

2. The Hon"ble Single Judge, while allowing the writ petition, directed the respondent authorities to consider the case of the petitioner for his regularization afresh. The past service of the petitioner would be considered while considering his representation. However, authorities were restrained from declaring him ineligible on the grounds that he was discharged from service on disciplinary ground on January 22, 2002 and that he did not possess requisite qualification of five years service as of May 06, 2009. It would be no more open to the authorities to rely on any of the grounds, which formed the basis of the order No. 1580 dated November 05, 2012.

3. This litigation has a chequered history.

4. The petitioner was appointed, under rule 4(1) of the Andaman and Nicobar Islands Home Guards Regulation, 1964, as a Home Guard Volunteer against the existing vacancy of South Andaman Urban Area for a period of three years only.
5. The Area Commandant (Home Guard), on April 22, 2002, discharged the writ petitioner, after giving him personal hearing on April 12, 2002, in view of "in disciplined activity" noticed against him. (*Italics is mine*)
6. It is admitted before us that the reason for discharge of the petitioner was that he was performing his duty in plain cloth and not in his uniform.
7. The petitioner approached this Court with an application under Article 226 of the Constitution of India, which was registered as WP No. 049 of 2008.
8. Pinaki Chandra Ghose, J. (as His Lordship then was) disposed of the said writ petition directing the authorities to consider the representation of the writ petitioner on sympathetic and humanitarian grounds. However, His Lordship held that the offence of non-wearing of uniform could not be treated as fatal one to have the livelihood of the petitioner.
9. The Area Commandant (Home Guard) issued an order No. 150 dated June 03, 2008, upon consideration of the representation of the writ petitioner, in terms of the aforementioned order of this Court, and directed enrolment of the writ petitioner afresh as a Home Guard Volunteer with immediate effect against the existing vacancy for a period of three years.
10. The petitioner accepted such offer and was, consequentially, enrolled as Home Guard Volunteer.
11. The petitioner, once again, moved this Court with an application under Article 226 of the Constitution of India, inter alia, seeking his regularization with similarly situated persons. The said writ petition was registered as WP No. 994 of 2010.
12. Soumitra Pal, J. on February 07, 2011, disposed of the said writ petition by directing the respondents to consider the prayer of the petitioner for regularisation in accordance with the scheme to be framed as directed by the Division Bench.
13. As the petitioner completed his three years tenure as Home Guard Volunteer, he was discharged with effect from June, 02, 2011.
14. The petitioner again approached this Court in the constitutional writ jurisdiction challenging the said order of discharge and, also, seeking for his regularization. The said writ petition was registered as WP No. 946 of 2011.
15. Aniruddha Bose, J. by an order dated February 02, 2012 disposed of the writ petition by recording the submission of the learned Government Pleader that the case of the writ petitioner for absorption was under consideration. Therefore, His Lordship directed the authorities to take decision for regularization of the writ

petitioner in accordance with the applicable scheme and also the fact that he has served the organization in the past. (Italic is mine).

16. By order No. 266 dated February 24, 2012, the Area Commandant, rejected the representation of the writ petitioner, principally, on the grounds that the writ petitioner did not possess requisite qualification of five years of continuous service as of May 06, 2009 and that the said scheme for absorption did not envisage counting of past service.

17. The petitioner challenged the said order dated February 24, 2012 rejecting his representation before this Court moving yet another application under Article 226 of the Constitution of India.

18. This time, the writ petition was registered as WP No. 115 of 2012. Harish Tandon, J. disposed of the writ petition holding, inter alia, that the aforementioned findings were contrary to the order passed by this Court on February 07, 2011 in WP No. 946(W) of 2011. His Lordship held that by the aforementioned orders dated February 07, 2011, and February 02, 2012, the authorities were directed to consider the case of the petitioner in relation to his absorption/regularization in terms of the applicable scheme, also, taking into consideration his past service in the organization. Thus, the aforesaid order dated February 24, 2012 was set aside and the authorities were directed to consider the case of the petitioner afresh.

19. The authorities were to consider the case of the petitioner not only in the light of the applicable scheme, but, also, taking into consideration the order passed by this Court on February 07, 2012 in WP No. 946 of 2011.

20. The Area Commandant, by an order No. 1580 dated November 05, 2012, again, rejected the representation of the writ petitioner.

21. It was contended on behalf of the writ petitioner before the said authority that he was entitled to regularization from the date of initial engagement in view of the directions passed by this Court. The Area Commandant, however, rejected the representation with the following reasoning:

"(vi) Since, the petitioner was discharged on disciplinary grounds in the year 2002, the past service rendered by him prior to his discharge cannot be considered for qualifying service for regularization in view of the provisions of the eligibility criteria as enunciated in the Scheme-2011. It would not be out of place to mention here that stipulation of such a provision is absolutely mandatory otherwise, hundreds of home guard volunteers, who had served Home Guards Organisation in past for more than five years and discharged on various grounds would also come forward claiming regularization and the same would be nothing but an opening of floodgate of litigations involving huge financial burden on the government exchequer. This is moreso, when the A & N Islands Home Guards Regulation, 1964 and the Rules, 1965 do not envisage any regularization.

(vii) Since, he was re-enrolled afresh for a specific period of 3 years in terms of the A & N Islands Home Guards Regulation, 1964 and the Rules, 1965 w.e.f. 06/06/2008 and therefore, he does not fulfill the eligibility criterion of 5 years of continuous service as on 06/05/2009 for considering his regularization in terms of the said Scheme notified by the A & N Administration on 11/10/2011."

22. The petitioner approached Harish Tandon, J. with an application for contempt, being CPAN No. 007 of 2013, in connection with the aforementioned WP No. 115 of 2012. His Lordship held that there was no clear case of willful and deliberate violation of the order. However, liberty was granted to the petitioner to challenge the said order No. 1580 dated November 05, 2012 in appropriate proceedings.

23. The petitioner, thus, moved this High Court with an application under Article 226 of the Constitution of India challenging the said order No. 1580 dated November 05, 2012. The writ petition was registered as WP No. 045 of 2014.

24. By order dated April 04, 2014, Soumen Sen, J. set aside the order dated November 03, 2014 and directed the authorities to consider the case of the petitioner afresh by taking into consideration that the petitioner should not be held to be ineligible on the ground that he was discharged from his service on disciplinary ground on January 22, 2002 or that he did not possess requisite qualification of five years of continuous service as of May 06, 2009. The past service of the petitioner would be taken into consideration while considering the said representation of the petitioner afresh. It would be no more open for the respondents to rely on any of the ground which formed the basis of the impugned order dated May 05, 2012.

25. Mr. Santosh Kumar Mandal, learned senior advocate appearing on behalf of the appellants argues strenuously that, by the order impugned, the Hon"ble Single Judge virtually directed absorption of the writ petitioner in the government service. He, further, submits that, as the petitioner is ineligible for regularization, his case cannot be considered further for regularization. Mr. Mandal draws our attention to the scheme for regularization of the Home Guard Volunteers and submits that the petitioner cannot take benefit for the period between the date of his discharge from service on disciplinary grounds and the date of filing of the writ petition. Finally, Mr. Mandal submits that the petitioner had accepted his fresh order of appointment as Home Guard Volunteer on June 03, 2008 and, as such, he cannot take advantage of his past service in the organization.

26. This Court on April 08, 2008 held that discharge of the petitioner for performing duties in plain clothes and not in uniform was not commensurate with the alleged offence committed by the petitioner.

27. In the order dated February 02, 2011, Aniruddha Bose, J. directed the authorities to consider the prayer for regularization of the petitioner taking into the fact that he had served in the organization in the past.

28. All these orders have never been challenged by the authorities, although they were parties to it. The orders have, now, become final.
29. Submission of Mr. Mandal that the petitioner having accepted his fresh order of appointment in 2008, cannot turn round and ask for regularization taking into consideration of his past service, cannot be accepted.
30. It is true that the petitioner accepted the order enrolling him as Home Guard Volunteer afresh but, subsequently, the petitioner filed writ petitions for seeking absorption in the organization, and this Court, in the aforementioned orders, directed the authorities to take into consideration his past service in the organization.
31. Government administration in a welfare state like our country is supposed to act as a model employer. The State as a model employer is required to act fairly. As a model employer the State must conduct itself with high probity and candour with its employees. The Supreme Court of India in Bhupendra Nath Hazarika and another versus State Of Assam and others reported in 2013(2) Supreme Court Cases 516 observed that the legitimate aspirations of employees should not be guillotined and situation are not created where their hopes end in despair.
32. Keeping in view the totality of the facts and circumstances of the case, taking into the concept of social justice under the Constitution and role of a model employer in our welfare state, the Hon"ble Single Judge passed the impugned order.
33. We are, therefore, of the opinion that the Hon"ble Single Judge did not commit any error in law in the facts and circumstances of this case in directing the authorities to consider the case of the petitioner without resorting to the grounds contained in the order of the Area Commandant dated November 05, 2012.
34. Thus, we do not find any merit in this appeal.
35. The appeal is, therefore, dismissed.
36. The order impugned dated April 03, 2013 passed in WP No. 045 of 2014 stands affirmed.
37. We make no order as to costs.