



GAHC010289412019

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

Case No. : WP(C)/8887/2019

MINTU KONWAR

S/O- LT. BILLESWAR KONWAR, R/O- BARUBARUAH BURAHAJA KONWAR
GAON, P.O- BARBARUAH, PIN- 786007, DIST.- DIBRUGARH, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
TO BE REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM,
ENVIRONMENT AND FOREST DEPTT., DISPUR, GHY.- 06.

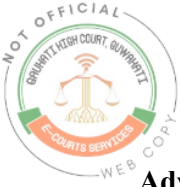
2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY.-06.

3:THE SECY. TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST DEPTT.
DISPUR
GHY.-06.

4:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS
ASSAM
PANJABARI
GHY.-37.

5:THE CHIEF CONSERVATOR OF FORESTS (LEGAL)
ASSAM
PANJABARI
GHY.-37

Advocate for the Petitioner : MR. P K MUNIR



Advocate for the Respondent : SC, FOREST

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. PK Munir, Advocate
For the Respondents : Mr. D Gogoi, SC, Forest Department
Mr. P Nayak, Advocate for respondent No. 2.
Date of Hearing : 15.12.2023
Date of Judgement : 15.12.2023

JUDGEMENT & ORDER (ORAL)

Heard Mr. P K Munir, learned counsel for the petitioner. Also heard Mr. D Gogoi, learned standing counsel for the Forest Department and Mr. P Nayak, learned counsel for the respondent No. 2.

2. While the petitioner was working as a Constable of Assam Forest Protection Force (in short AFPP), by an order dated 25.07.2011 passed by Principal Chief Conservator of Forest, Assam, the petitioner was discharged from service. Subsequently, the Commandant of AFPP, Basistha discharged the petitioner from service with effect from 31.07.2011 on the basis of the order dated 25.07.2011.

3. Being aggrieved by the aforesaid two orders, the petitioner preferred an appeal under Section 9 of the Assam Forest Protection Force Act, 1946. Same was also dismissed by the Appellate Authority.

4. Being aggrieved, the petitioner preferred a writ petition before this court registered as WP(C) 476/2012. This court under its order dated 25.08.2017 set aside the orders impugned dated 25.07.2011 and 05.12.2011 and further directed the disciplinary authorities to consider the matter afresh from the stage

of consideration of enquiry report dated 07.08.2010 and to pass necessary order in accordance with law.

5. Thereafter, the petitioner was reinstated in service. No enquiry as provided by this court in its order dated 25.08.2017 was initiated/ continued.

6. By the said order dated 25.08.2017, this court also directed the respondent authorities to consider the entitlement of monthly salary of the petitioner till a fresh order is passed in the matter.

7. The petitioner preferred a representation on 02.04.2019 before the Principal Chief Conservator of Forest, Assam along with a copy of the order passed by this court in WP(C) 476/2012 claiming for back wages etc. Subsequently, by an order dated 15.03.2018, the petitioner was allowed to resume his duties in the office of the Commandant, First AFPF, Basistha. However, prayer of the petitioner for back wages was declined for the purported reason that as the petitioner had not performed duty with effect from 25.07.2011 to 19.03.018, he is not entitled for such back wages. Being aggrieved, the present writ petition is filed.

8. Law is by now well settled that it would amount to a great injustice to an employee or workman if he is denied back wages simply for the reason that the incumbent did not work between the period from the dismissal from service till his reinstatement under the court's order inasmuch as no fault can be found with the incumbent employee for not working during the period, rather it is fortified while such order of dismissal is set aside that the action of the respondent itself was bad.

9. Therefore, it cannot be said that the petitioner was at fault in not performing his duties during the period with effect from 25.05.2011 to 19.03.2018. In fact, by virtue of order dated 25.07.2011, the petitioner was kept out of work by the employer and the petitioner was reinstated in service and was allowed to work by virtue of this court's judgment and order dated

25.08.2017 passed in WP(C) 476/2012.

10. Therefore, in the considered opinion of this court in such a circumstance, the principle of no work no pay shall not be made applicable inasmuch as the petitioner cannot be denied back wages for no fault on his part. The question of gainful employment as raised by Mr. D Gogoi, learned counsel arguing that the petitioner has not been able to show that he was not gainfully employed during the said period and therefore not entitled for back wages do not find favour of this court for the reason that the petitioner cannot be asked to prove that he was not gainfully employed. When the employer insists upon such issue of gainful employment, it is the employer who is to positively assert that the petitioner was gainfully employed during the period of dismissal. However, decision impugned does not disclose that the employer either had any satisfaction that the petitioner was gainfully employed during the period of his discharge till reinstatement by virtue of court's order or the same is a reason for refusal of back wages.

11. That being the position, the petitioner cannot be deprived of his back wages for the period with effect from 25.05.2011 to 19.03.2018.

12. Accordingly, the writ petition stands allowed with a direction to the respondent Nos. 1,2,3,4 and 5 to pay the petitioner his back wages for the period with effect from 25.05.2011 to 19. 03.2018. The entire exercise be carried out within a period six months from the date of receipt of a certified copy of this order to be forwarded by the writ petitioner.

13. With the determination made herein and direction issued, this writ petition stands allowed.

JUDGE

Comparing Assistant