

GAHC010011822020



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

Case No. : WP(C)/783/2020

PRASANTA KUMAR SARMA
S/O- LATE HARIKANTA SARMA, R/O- VILL DUBAPARA, P.O- DUBAPARA,
P.S- GOALPARA, PIN- 783101, DIST- GOALPARA, ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF FINANCE, NEW
DELHI

2:UNITED BANK OF INDIA
SPONSORED BANK OF ASSAM GRAMIN VIKASH BANK
ASSAM (A BANKING COMPANY AND A BODY CORPORATE CONSTITUTED
UNDER THE BANKING COMPANIES) TRANSFER AND ACQUISITION ACT
1970
16 OLD COURT HOUSE STREET
KOLKATA

3:ASSAM GRAMIN VIKASH BANK
REP BY THE CHAIRMAN HEAD OFFICE
GS ROAD
BHANGAGARH
GUWAHATI- 781005
DIST- KAMRUP
ASSAM

4:THE GENERAL MANAGER CUM DISCIPLINARY AUTHORITY
ASSAM GRAMIN VIKASH BANK
GS ROAD
BHANGAGARH
GHY- 781005
ASSA

Advocate for the Petitioner : MR. D K SARMAH, MS. A TALUKDAR,MR D KALITA

Advocate for the Respondent : ASSTT.S.G.I., MR. A DHANUKA (r-3,4),MR. A GANGULY (r-3,4),SC, FINANCE,SC, A G V B

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri D. K. Sarmah, Advocate.

Advocate for the respondents : Shri A. Ganguly, learned SC, AGVB.

Date of hearing : **17.09.2024**

Date of Judgment : **24.09.2024**

JUDGMENT & ORDER

An order dated 26.05.2010 by which the petitioner has been reinstated in service as an Officer JMG, Scale 1 of the respondent-Bank, however, with a condition of not being entitled to the arrear salaries for a particular period is the subject matter of challenge in this petition instituted under Article 226 of the Constitution of India.

2. The facts, as projected in the petition are that the petitioner was initially appointed as a Clerk in the respondent-Bank in the year 1980. Thereafter, by participating in a direct recruitment, the petitioner was appointed as Field Supervisor in the grade of Officer on 11.11.1982. It is the categorical case of the petitioner that such appointment as Field Supervisor is a fresh appointment. While in service, vide an order dated 24.06.2000, the petitioner was placed under suspension which was followed by a disciplinary proceeding. However, the representation of the petitioner was considered and vide an order dated 29.08.2003, he was reinstated in service, however, in the Clerical Grade.

3. It is the case of the petitioner that such demotion could not have been made in the Clerical Grade as the appointment of the petitioner was in the Officer Grade and accordingly, he had initially filed WPC/228/2005 against the aforesaid order dated 29.08.2003. The said writ petition was disposed of by this Court vide judgment and order dated 25.08.2008 whereby the impugned order dated 29.08.2003 was set aside. The interference was mainly on the ground that the Enquiry Report was not furnished to the petitioner and the matter was remanded for a fresh consideration after furnishing copy of the Enquiry Report.

4. On such remand, the matter was proceeded and ultimately an order dated 26.05.2010 was passed whereby the petitioner was reinstated as Officer JMG, Scale 1. The said order, however, had a condition that the petitioner would not be entitled to arrear salaries for the period from 01.09.2003 to 25.05.2010 when he had discharged his duties as a Clerk-cum-Cashier. It is this condition which is the subject matter of challenge as indicated above.

5. I have heard Shri D. K. Sarmah, learned counsel for the petitioner. Also heard Shri A. Ganguly, learned Standing Counsel, Assam Gramin Vikash Bank.

6. Shri Sarmah, learned counsel for the petitioner has submitted that the reinstatement vide the first order dated 29.08.2003 could not have been in the Clerical Grade and the same was rightly interfered with by this Court in the judgment dated 25.08.2008. It is submitted that when on remand the order dated 26.05.2010 was passed for reinstatement of the petitioner as officer, the impugned condition of refusal for payment of arrear salaries for the period 01.09.2003 to 25.05.2010 i.e. the period when he had served as Clerk-cum-Cashier could not have been done. It is submitted that for the aforesaid period, the petitioner was forced to work as Clerk-cum-Cashier in spite of the fact that he was entitled to work as Field Supervisor in which he was appointed.

7. It is submitted that the petitioner would be entitled to the difference of pay and accordingly arrears for the period from 01.09.2003 to 25.05.2010. It is submitted that the petitioner had represented against the aforesaid condition and ultimately vide the order dated 23.12.2019 the said representation has been rejected. It is submitted that even the said rejection order is not by the Appellate Authority which is the Chairman but by the General Manager and therefore he questions the competency of the Authority.

8. On the aspect of that demotion cannot be done outside the cadre, the learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in ***Nyadar Singh Vs Union of India and Ors*** reported in **(1988) 4 SCC 170**. In the said case, it has been laid down that while demotion after a disciplinary proceeding is permitted such demotion has to be within the cadre. On the aspect of the principles of no work no pay, the learned counsel has relied upon the case of ***Commissioner, Karnataka Housing Board Vs C. Muddaiah*** reported in **(2007) 7 SCC 689** wherein it has been laid down that the aforesaid principle would not be an absolute proposition of law and everything would depend on the facts and circumstances of the case. It is submitted that the petitioner was wrongfully deprived from working as an officer for the period in question and therefore would be entitled to the arrears of pay being the difference of the salaries.

9. *Per contra*, Shri Ganguly, the learned counsel for the contesting respondent- Bank has, at the outset raised the issue of delay and laches and therefore questions the maintainability of the writ petition itself. It is submitted that the impugned order is of the year 2010 and the writ petition has been filed in the year 2020 just before the retirement of the petitioner. He has drawn the attention of this court to the communication dated 04.09.2010 issued by the

respondent-Bank wherein it was categorically informed to the petitioner that there was no scope of review of the appellate decision. It is submitted that though the Limitation Act may not have a strict application in a writ proceeding, the aspect of laches would definitely have a role as the exercise of powers under article 226 of the Constitution of India is equitable in nature.

10. On the aspect of delay and laches, the learned counsel for the respondent-Bank has relied upon the following decisions:

- (I) ***Union of India Vs Tarsem Singh*** reported in ***(2008) 12 SCR 104***
- (ii) ***Harendra Chandra Nath & Ors. Vs State of Tripura & Ors.*** reported in ***2013 (2) GLT 1094***
- (iii) ***Maimoona Khatun & Anr. Vs State of UP & Anr.*** reported in ***(1980) 3 SCC 578***
- (iv) ***Bhadra Kanta Sarma Vs State of Assam***
judgment dated 03.05.2019 in WP(C)/60/2017
- (v) ***Smti Sakuntala Basumatary Vs The Union of India*** reported in ***2017 1 GLJ 606***

11. In the case of ***Tarsem Singh*** (supra), the Hon'ble Supreme Court has dealt with the aspect of limitation in a writ proceeding. In the case of ***Harendra Chandra Nath*** (supra), this court has laid down that even if such a claim is entertained the said claim cannot be beyond three years from the date of arising of the cause of action.

12. The learned counsel for the respondent-Bank has also submitted that the case of ***Nyadar Singh*** (supra) relied upon by the petitioner itself makes it clear in paragraph 32 that the incumbent therein would not be entitled to the

difference of pay. The learned counsel accordingly submits that the writ petition is liable to be dismissed.

13. In his rejoinder, Shri Sarmah, the learned counsel for the petitioner has submitted that on 28.06.2010 the petitioner had submitted the first representation which was duly forwarded. However, the same was rejected vide communication dated 04.09.2010. It is submitted that the said order is not passed by the Chairman who is the Appellate Authority but by the General Manager. He submits that a further representation to the Chairman was made by the petitioner which was forwarded by the General Manager on 18.05.2011. The same was followed by further representations dated 14.10.2014, 03.10.2019 and 21.11.2019. The last representation was however rejected by the order dated 23.12.2019. It is submitted that even this rejection order was issued by the General Manager and not by the Chairman who is the Appellate Authority. The learned counsel accordingly submits that the aspect of delay and laches would not come in and the petitioner is entitled to the reliefs paid for.

14. The rival submissions have been duly considered and the materials placed before this Court have been carefully perused.

15. The earlier round of litigation being WP(C)/228/2005 was on the aspect as to whether a reinstatement can be done in a post beyond the cadre. This Court vide the judgment dated 25.08.2008 had disposed of the earlier writ petition whereby the initial order of reinstatement dated 29.08.2003 was set aside and the matter was remanded for fresh consideration. Upon such remand vide the order dated 26.05.2010, though the petitioner was reinstated as Officer JMG scale 1, the impugned condition being condition no. 4 was imposed which reads as follows:

“(4) No arrear salary shall be payable during the period of service as Clerk-cum-

Cashier (CC) i.e. from 01.09.2003 to 25.05.2010."

16. The cause of action, if any has arisen on passing of the aforesaid order of reinstatement dated 26.05.2010. Though it appears that the petitioner had submitted representation on 28.06.2010, the order dated 04.09.2010 makes it clear that the appeal of the petitioner was duly considered and further review of the appeal after such consideration by the highest appellate authority was not possible.

17. The petitioner did not approach this Court with any grievance against the said order at that time and rather kept on representing from time to time. The petitioner has tried to contend that a fresh cause of action has arisen after passing of the order dated 23.12.2019. It has also additionally been urged that such rejection is not by the competent authority.

18. This Court, on perusal of the materials has noted that the appeal of the petitioner was rejected in the year 2010 itself against which no proceedings in any Court of law was instituted. Though the petitioner claims to have submitted a number of representations, it is trite law that mere submission of representation would not extend the period of limitation. As regards the order dated 23.12.2019, the same is only a communication after a consideration of the representation dated 21.11.2019. Such communication cannot be treated to have given rise to a fresh cause of action as the cause of action, if any, had arisen in the year 2010 itself when the order dated 26.05.2010 was passed.

19. As regards the case law referred, the Hon'ble Supreme Court in the case of ***Nyadar Singh*** (supra) had laid down the principle that demotion cannot be outside the cadre. There is no dispute to the aforesaid principle laid down by the Hon'ble Apex Court, the earlier interference of this Court in WP(C)/228/2005 against the order dated 29.08.2003 however is on another aspect of not

furnishing the Enquiry Report before the impugned order was passed. On remand, the reinstatement was rightly done in the post of Officer JMG, Scale 1, however with the impugned condition. Even if it is assumed that a cause of action had arisen, such cause of action ought to have been espoused within the time prescribed by law. In the case of **Tarsem Singh** (supra), the Hon'ble Supreme Court, in clear terms has laid down that though in a writ proceedings the strict application of limitation act may not be there, the equity and interest of justice would require that such cause of action claiming money has to be instituted within three years. In the case of **Harendra Chandra Nath** (supra), where an issue of similar nature was made since a continuing cause of action was there for payment of arrear salaries for existing post, it was held that even such claim could not be beyond three years.

20. In the case of **Nyadar Singh** (supra) relied upon by the petitioner, it has been clearly laid down that though reinstatement in a post beyond the cadre is not permissible, the incumbent was held not entitled to the difference in pay. For ready reference the relevant paragraph is extracted herein below:

“32. ...

“(i) *In the first of the appeals, appellant Nyadar Singh, has, after the period of the reduction in rank has spent itself out, been restored to the original position. It would, therefore, be sufficient to set aside the penalty imposed on him and direct that the period of service in the reduced post be treated as service in the post held by him prior to imposition of the penalty, subject to the condition, however, that the appellant shall not be entitled to any difference of salary for and during the period of reduction. In view of this, we think that the proceedings taken against him should come to an end and there is no need to remit the matter to the Disciplinary Authority for selection and imposition of a fresh penalty.”*

21. Reliance has been made on the case of ***Commissioner, Kanataka*** (supra) wherein it has been laid down that there is no absolute proposition of law regarding no work, no pay. It is however seen that in the instant case, the claim itself has been made at a much belated stage and the issue is not directly on the said aspect.

22. Under the aforesaid facts and circumstances and the discussions made above, this Court is of the opinion that no relief can be granted to the petitioner in the instant case and accordingly the writ petition is dismissed.

JUDGE

Comparing Assistant