

GAHC010066122022



2024:GAU-AS:10734-DB

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

Case No. : WA/140/2022

UBC/75 NARENDRA NATH BARMAN,
S/O LATE HARESWAR BARMAN ,
RESIDENT OF VILLAGE BELSOR,
PO AND PS BELSOR, DIST NALBARI,
ASSAM, 781304.

.....Appellant

- VERSUS-

1.THE STATE OF ASSAM,
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
HOME DEPARTMENT, ASSAM, SACHIVALAYA,
DISPUR GUWAHATI 781006

2:THE DIRECTOR GENERAL OF POLICE,
ULUBARI, GUWAHATI 781007

3:THE SUPERINTENDENT OF POLICE, GOALPARA, ASSAM, 783120.

.....Respondents

- BEFORE -

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Appellant : Ms. R. Barua, Advocate.

For the Respondents : Mr. N. Das, Junior Govt. Advocate, Assam.

Date of Hearing : 05.11.2024.

Date of judgment : 05.11.2024.

JUDGMENT & ORDER (ORAL)

(Vijay Bishnoi, CJ)

Heard Ms. R. Barua, learned counsel for the appellant. Also heard Mr. N. Das, learned Junior Government Advocate, Assam appearing for all the respondents.

2. This intra-Court writ appeal is filed by the appellant being aggrieved with the order dated 19.07.2021 passed by the learned Single Judge in WP(C) No.3298/2021, whereby the learned Single Judge dismissed the writ petition filed by the appellant/writ petitioner solely on the ground of delay and laches.

3. The brief facts of the case are that while serving as a Constable in the Unarmed Branch of Assam Police, the appellant went on casual leave but he did not join his duties after expiry of the casual leave period and therefore, a show-cause notice dated 29.11.2012, under Section 65 of Assam Police Act, 2007 read with Rule 66 of Assam Police Manual Part-III and Article 311 of the Constitution of India and Rule 7 of the Assam Service (Discipline and Appeal) Rules, 1964, was served upon him mainly on the ground that he had not resumed the duty after expiry of the casual leave.

4. It is not clear as to whether the appellant submitted reply to the said show-cause notice or not. However, departmental proceedings were initiated against him and he was put under suspension as per the order passed by the Superintendent of Police, Goalpara. The appellant was served with a second show-cause notice on 17.03.2014 on the same charge for which the first show-cause notice had been issued to him.

5. The appellant replied to the said second show-cause notice with the

explanation that he had fallen ill and had to undergo medical treatment from a doctor and therefore, he failed to join his duties after expiry of the leave period.

6. It is the case of the appellant that along with the reply to the second show-cause notice he had enclosed a medical certificate issued by the In-charge Deputy Superintendent of Kakaya 30 Bedded Rural Hospita, Nalbari.

7. Subsequently, the appellant was served with another show-cause notice issued by the Superintendent of Police, Goalpara along with the report of the Enquiry Officer and ultimately he was removed from service vide order dated 10.09.2014 passed by the Superintendent of Police, Goalpara.

8. The appellant remained silent up to 2021, precisely, up to 28.04.2021 when he preferred the writ petition, being WP(C) No.3298/2021, before this Court challenging the order dated 10.09.2014, whereby he was removed from service.

9. The learned Single Judge has dismissed the aforesaid writ petition on the ground of delay and laches.

The relevant portions of the impugned order dated 19.07.2021 is extracted hereunder:

“5. It is also seen that there is no documents annexed in this writ petition to show that the petitioner had preferred an appeal before the competent authority against the impugned order dated 10.09.2014. Therefore, the petitioner has accepted the punishment of removal from service as imposed by order dated 10.09.2014 without any demur and as this writ petition was filed on 28.04.2021, the petitioner is seen to have challenged the order of removal after 6(six) years and 10(ten) months. It is further seen that it is not the case of the petitioner that the proceedings against him was ex parte and that he did not participate in the proceeding. We may refer to the case of the Union of India Vs. Tarsem Singh, (2008) 8 SCC 648 where in connection with belated service related claim, the Supreme Court of India had observed that the belated service related claim is to be rejected on the ground of delay and laches except

in the case of continuous wrong. In the present case in hand, there is nothing to show that in this case the petitioner is suffering from continuous wrong.

6. *Accordingly, the Court is of the considered opinion that the petitioner had acquiesced on his right to claim relief before the Court and accordingly, this is a fit and appropriate case for invoking the legal maxim of vigilantibus et non dormientibus jura subveniunt which means that equity aids only a vigilant and not the one who sleeps over their rights. The said maxim is found to be appropriate in the present case in hand.*

7. *On the ground of delay and laches, this writ petition stands dismissed.”*

10. Assailing the impugned order dated 19.07.2021, Ms. R. Barua, learned counsel for the appellant has argued that the learned Single Judge has not taken into consideration the fact that the appellant had sufficiently explained to the Superintendent of Police, Goalpara, the reasons for non-joining of duty after expiry of the leave period, however, the same had not been taken into consideration by the Superintendent of Police, Goalpara and therefore, the removal order so passed by the Superintendent of Police, Goalpara is illegal.

11. It is also contended that since the appellant was suffering from serious ailment, he failed to approach the Writ Court within the reasonable time. However, the learned Single Judge has ignored this aspect and illegally dismissed the writ petition on the ground of delay and laches.

12. On the contrary, Mr. N. Das, learned Government Advocate appearing for the respondents has opposed the writ appeal and argued that the learned Single Judge has rightly dismissed the writ petition on the ground of delay and laches.

13. Heard the learned counsel for the parties.

14. It is to be noticed that the copy of the medical certificate which, as per the appellant, was placed before the Superintendent of Police, Goalpara,

mentions that the appellant was suffering from Nerve weakness (Neuralgia) and was under treatment of the concerned doctor in O.P.D. from 10.12.2011 till 26.03.2014. The certificate also mentions that thereafter the condition of the appellant improved and he was advised to continue treatment until further advice.

Though the said medical certificate itself is doubtful but even though if it is taken into consideration, it is clear from the said medical certificate that after March, 2014, the condition of the appellant improved. However, despite the same, the appellant has failed to explain as to under what circumstances he failed to approach this Court up to April, 2021 against the removal order dated 10.09.2014 passed by the Superintendent of Police, Goalpara.

15. The reasons for the delay caused in approaching this Court from 2014 to 2021 have not at all been explained by the appellant and therefore, in such circumstances, we are unable to take a different view from the view as has been taken by the learned Single Judge in the impugned order dated 19.07.2021 and hence, there is no force in this writ appeal. The same is, therefore, dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant