

GAHC010006222014



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

**Case No. : WP(C)/885/2014**

MANAGEMENT OF LALAMOOKH TEA ESTATE  
OWNED BY LALAMOOKH TEA COMPANY PVT. LTD., HAVING ITS REGD.  
OFFICE AT AZIMAGANJ HOUSE, 5TH FLOOR, 7 CAMEL STREET, KOLKATA-  
17, OWNING AMONGST OTHERS THE LALAMOOKH TEA ESTATE AT  
LALAMOOKH, P.O. LALAMOOKH, P.S. LALA, DIST- HAILAKANDI, ASSAM,  
REPRESENTED BY ITS COMMERCIAL MANAGER MATILAL DHAR

VERSUS

THE STATE OF ASSAM AND 3 ORS  
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,  
DEPARTMENT OF LABOUR, DISPUR, ASSAM

2:THE GENERAL SECRETARY  
CACHAR CHA SRAMIK UNION  
SILCHAR  
LALAMOOKH TEA ESTATE  
AT LALAMOOKH  
P.O. LALAMOOKH  
P.S. LALA  
DIST- HAILAKANDI  
ASSAM

3:THE PRESIDING OFFICER  
INDUSTRIAL TRIBUNAL  
SILCHAR  
P.O. and P.S. SILCHAR  
DIST- CACHAR  
ASSAM

4:SRI JOY NARAYAN KOIRI  
S/O SRI BHOROT KOIRI

R/O VILL.- KUNKUN BASTI  
P.O. LALAMOOKH  
P.S. LALA  
DIST.- HAILAKANDI  
ASSAM. IMPLEADED VIDE H.C.O. DTD. 17.11.2014 PASSED IN M.C. NO.  
1228/201

**Advocate for the Petitioner : MR.M CHOUDHURY**

**Advocate for the Respondent : MR.B KUMAR**

**B E F O R E**  
**HONBLE MR. JUSTICE SANJAY KUMAR MEDHI**

**Advocate for the petitioner : Ms. M Hazarika, Sr. Advocate &  
Shri D Khan, Advocate.**

**Advocate for the respondents : Shri SK Singha, Advocate.**

**Date of hearing : 09.01.2024.**

**Date of judgment : 09.01.2024.**

**JUDGMENT & ORDER**

The legality and validity of an Award dated 29.05.2013 passed by the learned Industrial Tribunal, Silchar, Cachar in Ref. No. 2/2005 is the subject matter of challenge.

**2.** By the aforesaid Award, the learned Tribunal had held that the management was not justified in stopping/dismissing the workman from his

service w.e.f. 29.11.2003 and was accordingly directed to be reinstated with 50% back wages.

**3.** This Court while issuing Rule, vide order dated 24.02.2014 had, however, passed an interim order so far as the direction regarding back wages was concerned.

**4.** Before going to the issue which has arisen for determination, the basic facts of the case can be narrated in brief in the following manner.

**5.** The aforesaid Ref. Case No. 2/2005 was made to the learned Tribunal on the following issues:

“*1. (a) Whether the management is justified in stopping/dismissing Shri Joynarayan Koiri from service with effect from 29.11.2003 as alleged?*

*(b) If not, what relief is the Wikman entitled to?*

*2. (a) Whether the management is justified in issuing absenteeism notice to Shri Koiri for not attending the duties?*

*(b) If not, what relief is the workman entitled to?”*

**6.** Both the petitioner-management and the workman-respondent no. 4 had filed their written statements. The management had adduced evidence through three numbers of witnesses whereas the workman had adduced evidence through himself.

**7.** According to the version projected by the workman, he was not allowed to perform his duties from 29.11.2003 without any reason and his approach to the

management had also failed to yield any positive result. It is also projected that there was no proceeding or any allegation against him. As regards three numbers of notices which were also placed on record at the time of conciliation, the workman had stated that those notices which were exhibited as Exts. A, B and C were never served upon him. The workman had also relied the statement of one Radheshyam Rabidas which was made in connection with another case and was exhibited as Ext.-R. The said person-Radheshyam Rabidas had stated that the workman was not allowed to work in the garden. The aforesaid Ext.-R was exhibited by the learned Tribunal. In paragraph 8 of the written statement, the workman has said that he did not have any means of livelihood.

**8.** The petitioner-management in its written statement has however, refuted all the facts projected. In paragraph 10 of the said written statement, it has been clearly stated that the management never stopped the workman from discharging his duties and the workman had stopped coming from his duties on his own volition. It has further been explained that the workman wanted the job of a particular nature, namely, to maintain the sluice gate which job was earlier given to his father and the sluice gate was near to his home.

**9.** The learned Tribunal after hearing the parties had, however, accepted the plea of the workman and directed his reinstatement with payment of back wages of 50% which has been stated above.

**10.** I have heard Ms. M Hazarika, learned Senior Counsel assisted by Shri D Khan, learned counsel for the petitioner. I have also heard Shri SK Singha, learned counsel for the respondent no.4 as well as Shri M Chetia, learned State

Counsel, Assam.

**11.** Ms. Hazarika, learned Senior Counsel for the petitioner has submitted that the findings arrived at by the learned Tribunal is not based on the materials on record and is rather based on surmise and conjectures. It is submitted that all the three notices dated 20.12.2003, 28.02.2004 and 19.03.2004 were tendered to the workman which were refused to be received and those notices have been duly proved as Exts.-A, B and C by the competent witness. It is submitted that the learned Tribunal took a hyper technical approach in seeking any independent witness. It is submitted that the notices of the management cannot be served by any independent witness and therefore, the question of those witnesses being interested witness would not arise. With regard to the Ext.-R which is the statement of one Radheshyam Rabidas, it is submitted that though there may not be any legal bar in accepting a prerecorded statement, it is the requirement of law that the maker of such statement is required to be produced in the proceedings so as to give the other party a scope to cross-examine and without such cross-examination, such statement cannot be accepted. Reference has also been made to the cross-examination of the workman wherein he has accepted that he had wanted to work in a particular location, namely, the sluice gate of the garden as a Chowkidar.

**12.** The learned Senior Counsel has also submitted that though Rule was issued on 24.02.2014 and the interim order was only confined to the direction for payment of back wages and there was no restraint on the direction for the workman to join in his service, the workman never came to join his service. It has been submitted further that it is only after the order dated 12.12.2023 passed by this Court on the last date of hearing that the workman had reported

for his service on 20.12.2023 and he was accordingly allowed to discharge his duties. It is submitted that till date, there is no affidavit filed by the workman in the writ petition which gives rise to a presumption that the projection made by the management is correct. Ms. Hazarika, learned Senior Counsel accordingly submits that though the management would not have any serious difficulty in the issue of reinstatement of the workman which has already been done, the challenge is mainly with regard to the direction for payment of back wages which has been quantified as 50% by the learned Tribunal.

**13.** Shri Singha, learned counsel for the respondent no. 4-workman has, however, submitted that from 29.11.2003, the workman was not allowed to discharge his duties. He submits that since there would be no difference in performing the duties either in the garden or in the sluice gate, the workman should have been allowed to perform his duties as Chowkidar manning the sluice gate. The receipt of the three numbers of notices has been denied both in the conciliation as well as before the learned Tribunal by way of filing of the written statement. The learned counsel for the workman has, however, fairly accepted that till now, no affidavit has been filed in this proceeding. He has also accepted that so far as Ext.-R is concerned, the maker of the statement, one Radheshyam Rabidas was not produced as a witness. However, at the same breath, he submits that the statement was made in another court proceeding and therefore, there would be a sanctity attached to the said statement and therefore, the same can be accepted.

**14.** The rival submissions made by the learned counsel for the parties have been duly considered and the records of the learned Tribunal which have been

transmitted have been examined.

**15.** At the outset, though the reference was structured by using the expression of dismissal of the workman, this Court, upon perusal of the materials, is of the view that the case was not involving any dismissal from service and was, rather from the allegation made by the workman that he was stopped from discharging his duties. It is trite law that the expression 'dismissal' has to be preceded by a procedure established in law whereby the affected party/delinquent employee is required to be given an opportunity of defending himself. However, in the instant case, this Court has observed that the management had never pleaded that they had dismissed the workman from service and rather, according to the management, he was always offered to come for his duties which on his own volition, the workman had refused. The materials on record would also suggest that since the father of the workman was allotted the duties of manning the sluice gate of the garden, the workman who was in service with the garden wanted to have the same job. It also transpires that after the discontinuation of service of the father of the workman on his superannuation, the aforesaid job of manning the sluice gate was given to another person.

**16.** The discretion of the management to utilize the service of a workman who was a daily wage rated worker cannot be embarked upon, except in exceptional circumstances wherein a case of victimization could be established. However, in the instant case, there is no such allegation.

**17.** With regard to the findings of the learned Tribunal for not accepting the

Exts.-A, B and C which are the notices, this Court is not inclined to accept the said findings barely on the fact that tendering of three notices were not proved by any independent witness. As regards the Ext.-R, this Court is of the opinion that though there may not be any legal embargo to rely upon a prerecorded statement, it is trite law that the maker of such statement has to be produced in the proceedings and the other side be given a chance to cross-examine so as to maintain fairness and transparency which does not appear to have been done in the instant case. The findings of the learned Tribunal that the management did not question the genuineness of the said Ext.-R would be of no consequence as admittedly, the maker one Shri Radheshyam Rabidas was not produced as a witness before the learned Tribunal.

**18.** With regard to the means of livelihood which is directly connected with the direction of payment of back wages, though a statement has been made in paragraph 8 of the written statement by the workman that he did not have any means of livelihood, such statement has to be examined with the attending facts and circumstances. The consistent stand of the management is that the workman was never stopped from discharging his duties and he on his own volition had stopped from coming to attend his duties.

**19.** Shri Singha, learned counsel for the workman had tried to argue that even after the order of this Court dated 24.02.2014, the workman was not allowed to perform his duties. However, in absence of any affidavit in this regard, such statement orally made cannot be accepted more so, when this Court has been apprised that after the last order passed by this Court on 12.12.2023 when the workman had reported for his duties, he has been allowed to join. This fact has

been accepted by the learned counsel for the workman.

**20.** Under those circumstances, this Court is of the opinion that while the issue of reinstatement may not require any interference as it was never a case of dismissal, the direction for payment of back wages does not appear to be reasonable based on the attending facts and circumstances.

**21.** Accordingly, the impugned Award dated 29.05.2013 passed by the learned Industrial Tribunal, Silchar in Ref. Case No. 2/2005 stands interfered with so far as payment of back wages is concerned. This Court, however, makes it clear that since the workman has already reported for his duties on 20.12.2023, the management should facilitate him from performing duties in accordance with law. Though the part of the award concerning payment of back wages has been interfered with, considering the facts and circumstances, this Court is inclined to pass a direction for payment of a lump sum amount to the workman. This Court had noticed that while issuing Rule, vide order dated 24.02.2014, an amount of Rs. 25,000/- was directed to be paid which was accordingly done.

**22.** In the interest of justice, this Court directs the management to pay another amount of Rs. 50,000/- to the workman which is required to be done within a period of 2 months from today.

**23.** The writ petition accordingly stands disposed of.

**24.** The original records be transmitted back forthwith.

**JUDGE**

**Comparing Assistant**