

**THE GAUHATI HIGH COURT**

(The High Court of Assam, Nagaland, Meghalaya,  
Manipur, Tripura, Mizoram and Arunachal Pradesh)

**ITANAGAR BENCH**

**W.A. 57(AP) 2006**

1. The State of Arunachal Pradesh  
represented by the Chief Secretary,  
Govt. of Arunachal Pradesh,  
Itanagar.
2. The Inspector General of Police,  
PHQ, Govt. of Arunachal Pradesh,  
Itanagar.
3. The Commandant,  
IRBN, BHQ,  
Namchangmukh

*... Applicants/Appellants*

**- Versus -**

Shri Kuru Talum  
S/o Shri Kuru Hassang  
Permanent resident of  
Old Ziro, P.O/P.S. Ziro,  
Lower Subansiri District,  
Arunachal Pradesh.

*.... Respondent*

**P R E S E N T**

THE HON'BLE MR.JUSTICE I.A. ANSARI  
THE HON'BLE MR JUSTICE AC UPADHYAY

For the petitioner : Ms. G. Deka, learned Govt. Advocate

For the respondent : Mr.P.K.Tiwari, Advocate,  
Mr.T.Pertin, Advocate  
Mr.AK Singh, Advocate &  
Mr.S.Tapin, Advocate.

Date of hearing/ : 17.12.2009\_  
Judgment & order

### JUDGMENT AND ORDER

A.C.Upadhyay, J

This is an appeal filed by the State Appellant against the impugned order dated 29.04.2005 passed in WP(C) No.39 of 2001 by the learned single Bench whereby the impugned order of termination of service of the respondent herein was quashed and set aside.

[2] We have heard Ms. G. Deka, learned Government Advocate, appearing on behalf of the appellant and Mr.PK Tiwari, learned counsel for the writ petitioner/respondent.

[3] Facts leading to filing of this appeal may be stated in brief as follows:

The writ petitioner, respondent herein was appointed as a Constable Driver by order dated 06.03.1999, issued by the Deputy Superintendent of Police Headquarter, Itanagar. While the respondent was in service of the Police Department as a Constable Driver, he was served with an order, dated 24.01.2001, by which his service was terminated on the ground of alleged suppressions of vital information of his involvement in a criminal case, while filling up the attestation form at the time of seeking appointment. By filing a writ petitions WP© 39(AP) 2001 the writ petitioner/respondent impugned the said order of termination of his service, dated 24.01.2001. The appellants herein, as respondents in the said writ petition, resisted the writ petition by filing their affidavit-in-opposition.

[4] By order, dated 29.04.2005, the learned Single Judge allowed the writ petition, set aside the impugned order, dated 24.01.2001, aforementioned, and directed re-instatement of the petitioner in service. Aggrieved by the directions so given, the appellants have preferred this appeal.

[5] Mr.PK Tiwari, learned counsel appearing on behalf of respondent vehemently submitted that the appeal is liable to be rejected for non compliance of the provision of Rule 5 of the CCS Temporary Service Rules, 1965, as no show cause notice was ever issued on the respondent before terminating his service.

[6] At the very outset while considering the present appeal, it is required to be pointed out that the learned Single Judge has interfered with the order, dated 24.01.2001, aforementioned on two grounds, namely, (i) that the affidavit-in-opposition of the respondents did not state if the writ petitioner had been given any opportunity of hearing by serving a notice to show cause on him ; and (ii) that an order of termination of service which entails civil consequences is not permissible in law to be issued without giving any opportunity to show cause and/or hearing to the person, whose service is sought to be terminated.

[7] In the backdrop of the reasons assigned by the learned single Judge for interfering with the impugned order terminating the service of the petitioner dated 24.01.2001, we have noticed that it had been clearly averred by the present appellants, in their affidavit, that a criminal case bearing no. Ziro P.S. Case no. 03/96 under Sections 25(1)B(A)/29(B) of Arms Act had been registered against the writ petitioner and that the writ petitioner, having been arrested in connection with the said case, was brought before Court and upon his being produced in

the Court of Judicial Magistrate, First Class, at Ziro, on 23.01.1996, he was released on bail on furnishing of bail bond. This apart, the appellants herein had also averred, in their affidavit-in-opposition, that prior to the termination of the petitioner's service, he had been given a notice, dated 15.05.2000, to show-cause by Commandant, 1<sup>st</sup> IRBN, Namchangmukh.

[8] Therefore, on the face of the clear averments so made by the appellants in their affidavit, it would be manifestly incorrect to uphold the view postulated by the learned counsel for the respondent that no notice to show-cause had been given to the writ petitioner.

The appellant had terminated the services of the petitioner/respondent under sub-rule (1) of Rule 5 of the CCS(temporary Service) Rules 1965, which may be reproduced as under:-

*"5 Termination of Temporary Service*

*(i)(a)The services of a temporary Government servant who is not in quasi permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the authority or by the appointing authority to the Government servant.*

*(b)The period of such notice shall be one month provided that the services of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of pay plus allowance for the period of the notice at*

*the same rates at which he was drawing then immediately before the termination of his services or, as the case may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum, equivalent to the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month.”*

[9] What is also of essence to note here is that the writ petitioner/respondent did not file any affidavit-in-reply to the affidavit-in-opposition filed by the present appellants. The plea on behalf of the respondent herein, as reflected in the writ petition, was that even if there was a case registered against him, he was not aware of the same. In the face of the clear and unambiguous averments of the appellants regarding arrest of the writ petitioner/respondent in connection with the case aforementioned, the plea of the petitioner/respondent that he was not aware of the case aforementioned is nothing but patently false statement. This apart, the writ petitioner/respondent, nowhere, denied or disputed his arrest in connection with the case aforementioned. Therefore, it is clear from the above circumstances that the writ petitioner/respondent, while filling up the attestation form had concealed the fact of pendency of a case against him and also that he had been arrested in connection with the said case.

[10] Undisputedly, the order of termination of service was passed by the competent authority under Rule 5(1) of CCS (Temporary Service) Rules, 1965, as the respondent was purely a temporary employee of the police department put on probation for a period of 2 years.

[11] In the above circumstances, the writ petitioner's appointment was liable to be terminated, for having intentionally given false information to the authority concerned during his selection in a disciplined force. Further, the conditions of appointment of the petitioner/respondent clearly indicated that his appointment was subject to verification by police, and if any adverse remark was received regarding his character and antecedent later on, his service was liable to be terminated without notice.

[12] In view of the fact that there was overwhelming materials on record showing that the petitioner had stood arrested in the criminal case aforementioned and he had made false statement in his attestation form and in view of also the fact that the appellants had clearly proved that the termination of the petitioner's service preceded by a notice to show-cause, interference with the order of termination of the petitioner's service, in exercise of the powers under Article 226 of the Constitution of India, was neither legal nor justified.

[13] Because of what has been discussed and pointed out above, we set aside the order, dated 29.04.2005, aforementioned passed by the learned single Bench and maintains the impugned order, dated 24.01.2001, whereby the petitioner's service stood terminated.

[14] In view of the above, the appeal is allowed. However, there shall be no order as to costs.

However, before parting with this appeal, we also make it clear that if the petitioner has been already re-instated in service in compliance with the directions passed in the order, dated 29.04.2005, aforementioned, his re-instatement shall stand terminated with immediate effect and further necessary orders,

in this regard, may be passed accordingly by the appropriate authority.

**JUDGE**

**JUDGE**