

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

ITANAGAR BENCH  
NAHARLAGUN

JUDGMENT AND ORDER (CAV)

IN

WP (C) 104 (AP) 2011

**Shri. Abhay Kumar Roy →** Petitioner.

*-Versus-*

**State of A.P. →** Respondents.

**BEFORE**  
**THE HON'BLE JUSTICE DR (MRS.) I SHAH**

<b>FR</b>	<b>NFR</b>

**JUDGE**

*Talom*

**IN THE GAUHATI HIGH COURT**  
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL  
PRADESH)  
**ITANAGAR BENCH.**

**WP (C) 104 (AP) 2011**

**Shri. Abhay Kumar Roy,  
S/O Sri. Suraj Deo Roy,  
R/O BRC, Loiliang,  
District-Lohit (A.P).**

.....Petitioner.

**By Advocate:**  
Mr. L. Tenzin, Advocate.

**-Versus-**

- 1. The State of Arunachal Pradesh,  
Represented by the Chief Secretary, Itanagar,  
Arunachal Pradesh.**
- 2. The Secretary,  
Animal Husbandry and Veterinary,  
Department, Itanagar,  
Arunachal Pradesh.**
- 3. The Deputy Commissioner,  
Lohit District,  
Arunachal Pradesh.**
- 4. The Director,  
Animal Husbandry and Veterinary Department,  
Nirjuli, Arunachal Pradesh.**
- 5. The Administrator,  
LIFCO Ltd., Tezu,  
Lohit District, Aruanchal Pradesh.**
- 6. The District Labour & Employment Officer, Lohit  
District, Tezu, Arunachal Pradesh.**
- 7. The District Animal Husbandry and Veterinary Officer,  
Lohit District, Tezu.**
- 8. The District Veterinary Officer, Lohit District, Tezu.**
- 9. Lohit Farmers Live Stock Product Marketing Co-operative Society Ltd. (LIFCO),  
Represented by its Administrator-cum- District Veterinary Officer.**

.....Respondents.

**By Advocate:**  
Ms. G. Deka, Ld. Addl. Sr. Govt. Advocate for respondent Nos. 1 to 9.

**BEFORE**  
**THE HON'BLE JUSTICE Dr. (MRS.) INDIRA SHAH**

Date of hearing : 14.02.2014

Date of Judgment & Order : 13.03.2014

**JUDGMENT & ORDER (CAV)**

Heard Mr.L. Tenzin, learned counsel for the petitioner. Also heard Ms. G. Deka, learned Addl. Sr. Govt. Advocate appearing on behalf of the State respondents.

2]. By filing this application, the petitioner has challenged the order No. LIFCO-5/2010-11 dated 31.07.2010 passed by the Director, Animal Husbandry, Veterinary Department, Nirjuli declaring that Lohit Farmers Livestock Product Marketing Co-operative Society Limited (in short, LIFCO) has been closed down with effect from 04.07.2010 and the order dated 31.08.2010 passed by the Deputy Commissioner, Tezu. The petitioner has prayed to direct the respondent authorities for fixation of the wages of the petitioner @ revised and fixed by the State Govt. to its permanent employees and also for direction to the respondent authorities to pay all his arrears, allowances, bonus, DA and ADA etc. as per the Minimum Wages Act, 1936 and the direction that the petitioner be absorbed in the service of the State Government.

3]. The petitioner has claimed that he is a permanent employee of Lohit Farmers Livestock Product Marketing Co-operative Society Limited (in short, LIFCO), he joined his service in the year 1987 as Packer and later on, was promoted to the rank of Supervisor in 1989. In 1995, when his service was terminated he challenged the termination order and this Court quashed the termination order and directed the respondent authorities for payment of 50 % of back wages. The petitioner was then reinstated in service and was given the job of Supervisor-cum-Salesman. Even after reinstatement, the petitioner was getting the salary less than the contingency labourer's of LIFCO. His repeated request to increase his salary was not considered. In the year, 2009 some contingency staffs of LIFCO including the petitioner had submitted a representation claiming implementation of Minimum Wages rates notified by the State Government. After conciliation, proceeding initiated by the Deputy Commissioner, Tezu, the Administrator of LIFCO were directed by the Deputy Commissioner to pay wages to his workers @ revised and fixed by the State Government along with the arrears and bonus within a period of 30 days from the date of issue of the order, failing which penalty under the relevant sections of above laws shall be imposed upon him. The impugned order dated 3.07.2010 was issued by the respondent No. 5 declaring that the provision of LIFCO has been closed with effect from 04.07.2010, the services of staffs are no more required and the notices may be treated as notice for termination of services from LIFCO Limited, Tezu.

4]. It is submitted by the learned counsel for the petitioner that for the termination of services of the workmen and for closing down the establishment, certain condition are to be fulfilled and followed as per section 25F, 25FFA, , 25 H and section 2 (a) of the 5<sup>th</sup> Schedule of the Industrial Disputes Act, 1947. It is alleged that no condition as referred to, in the aforesaid sections were followed by the respondent authorities. It is further submitted that no procedure as mentioned under Section 25 of the Industrial Disputes Act, 1947 was followed in respect of retrenchment of the service of the petitioner.

5]. Section 25F lays down the conditions precedent to retrenchment of workman (en) and requires the employer to give notice to the appropriate Government/prescribed authority apart from giving 1 (one) month's notice in writing or 1(one) month's wages in-lieu of the notice and payment of retrenchment compensation to the concern workman (en).

6]. Section 25 FFA requires that an employer, who intends to close down an undertaking shall serve, at least 60 days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for intended closure of the undertaking. The **proviso** to the aforesaid sections also shows that this Section shall not be applied to an undertaking in which less than 50 workmen are employed.

7]. The respondent authorities in their affidavit-in-opposition have denied that the petitioner was a permanent employee of LIFCO. According, to the respondents, the LIFCO was running in great losses for last several years and it could not bear the expenditure of the establishment costs, for which the LIFCO had to be closed down as per procedure. All the employees were terminated including the petitioner. The Deputy Registrar of the Co-operative society, thereafter, requested the Administration LIFCO Limited to look after certain immovable and movable property/assets of the establishment. Accordingly, 2 contingent staffs were engaged on casual basis and their wages are paid by the Veterinary Department. It is averred by the respondents that the employees in LIFCO are all casual employees and were paid only the wages, the question of regular employment/appointment does not arise. Since the LIFCO is governed by bye-laws of LIFCO, the petitioner could not claim any benefit beyond the bye-laws of the LIFCO.

8]. It is further averred that LIFCO is a Co-operative society and has no way connected with the State Government and as such the petition is neither maintainable nor the petitioner is entitled to get any relief.

9]. It is submitted by Ms. Deka, learned Addl. Sr. Govt. Advocate appearing on behalf of the State respondents that no writ lies against the Co-operative society and therefore, this writ petition is not maintainable. Moreover, termination of the service of the petitioner is not punitive in nature. The petitioner, who was an employee of a Co-operative society, could not be equated with the salary of a regular Government Employee.

10]. In the cited case of Sri. **J. N. Barthakur-vs- Chairman Assam Co-operative Mills Limited 1995 (III) GLT 291**, it was observed that there was no material to show that the Government as the pervasive control over the affairs of the society and therefore, no writ could be issued against the Jute Mill.

11]. It appears from the Annexure-A /2 filed by the petitioner that LIFCO was financially dependent on share of the Government as well as the individuals. It also shows that it was running with 7 regular staffs and 10 contingency staffs. The name of the petitioner has been shown as regular staff in the aforesaid brief note of the LIFCO Limited.

12]. In another cited case of **Passang Tsering & Ors-vs- State of A.P. & Ors. 2000 (2) GLT 696**, this Court referring the case of ***Sabhajit Tewary-vs- Union of India & Ors, AIR 1975 SC 1329, Rasmanna Dayaram Shetty-vs- The international Airport Authority of India & Ors AIR 1979 SC 1628, Som Prakash Rekhi-vs- Union of India & another, AIR 1981 SC 212, Ajay Hasia & Ors.-vs. Khalid Mujib Sehravardi & Ors, AIR 1981 SC 487, P.K. Ramachandra Iyer-vs- Union of India & Ors, AIR SC 541***, observed that the Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the sweep of the Expression State. A wide enlargement of the meaning must be tampered by a wise limitation. It must not be lost sight of that in the modern concept of welfare State, independent institution, corporation and agency are generally subject to State control, and therefore State control, however, vast and pervasive is not determinative. Financial contribution by the State is also not conclusive. The combination of the state aid couple with an unusual degree of control over the management and policies of the body and rendering of an important public service being the obligatory functions of the state may largely pointed out that the body is "state".

13]. There is nothing to show that the LIFCO on any point of time was declared as important public utility service within the meaning of sub-clause-n to section 2 of Industrial Dispute Act, 1947.

14]. In the cited case of State of ***Assam-vs- Barak Upatayka D-U Karmacheri Sanstha 2009 (5) SCC 694***, it was held as under-

**"23" What clearly holds the field at present is the principle laid down and reiterated by the Constitution Bench of this Court in Steel Authority of India Ltd. -vs- National Union Waterfront Workders wherein this Court categorically held: (SCCp. 27, para 37)**

**"37" We wish to clear the air that the principle, while discharging public functions and duties the government companies/corporations/societies which are instrumentalities or agencies of the Government must be subjected to the same limitation in the field of public law-constitutional or administrative law-as the Government itself, does not lead to the inference that they become agents of the Centre/State Government for all purposes so as to bind such Government for all their acts, liabilities and obligations under various Central and/or State Acts or under private law".**

15]. Here, in this case, the conditions precedent to the retrenchment of the workmen under Section 25 F of the Industrial Dispute Act, 1947 was complied as the petitioner/workmen had been paid in lieu of notice wages for the period of the notice, the provisions of section 25 FFA Act is not applicable since the establishment had less than 50 workmen being employed.

16]. Section 25 NH is also not applicable because this chapter is in respect of Industrial establishment in which not less than 100 workmen were employed on an average for the average proceeding of 12 months.

17]. That apart, in view of the aforesaid cited decision by this Court as Hon'ble Supreme Court, no writ lies and hence it is not maintainable against the Co-operative Societies.

18]. Accordingly, this writ petition stands dismissed.

**JUDGE**

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