

GAHC010193432018



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

Case No. : Cont.Cas(C) 374/2018

1:PRANJAL PANGGING
S/O. SRI PURNESWAR PANGGING, R/O. VILL. KAMALPUR, P.O. AND P.S.
JONAI, DIST. DHEMAJI, ASSAM.

VERSUS

1:RAKESH KUMAR AND 2 ORS.
COMMISSIONER OF EXCISE, ASSAM HOUSEFED COMPLEX, DISPUR,
GUWAHATI-06.

2:JEEVAN B
IAS
DEPUTY COMMISSIONER
LAKHIMPUR
NORTH LAKHIMPUR
ASSAM.

3:NEELKAMAL PATHAK
SUPERINTENDENT OF EXCISE
I/C
LAKHIMPUR
NORTH LAKHIMPUR
ASSAM

Advocate for the Petitioner : MR. M K SHARMA

Advocate for the Respondent : MR. P N GOSWAMI (R1)

**BEFORE
HON'BLE THE CHIEF JUSTICE (ACTING)
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

ORDER

Date : 28-09-2018

[A.K.Goswami, CJ, (Acting)]

Heard Mr. MK Sharma, learned counsel for the petitioner. Also heard Mr. PN Goswami, learned counsel appearing for respondent Nos. 1 and 2 and Mr. M Biswas, learned counsel appearing for respondent No.3.

This contempt application was filed alleging wilful and deliberate violation of the order of this Court dated 03.08.2018, passed in WA No. 218 of 2018. On 25.09.2018, this Court had passed the following order:

“Heard Mr. M.K. Sharma, learned counsel for the petitioner. Also heard Mr. P.N. Goswami, learned counsel, appearing for the respondent Nos.1 & 2 and Mr. M. Biswas, learned counsel, appearing for the respondent No.3. Pursuant to the order dated 05.09.2018, Shri Neelkamal Pathak is personally present before this Court. No affidavit is filed by him. There is also no application seeking any further time to file show cause as to why contempt proceeding shall not be initiated against him. There was a categorical direction in the order dated 03.08.2018 passed in Writ Appeal No.318/2018 directing the respondent No.5 therein (Neelkamal Pathak) to allow the appellant, the present petitioner, to function as Excise Inspector at Lakhimpur Sadar. There is no dispute at the bar that Neelkamal Pathak approached the Supreme Court by filing a special leave petition being SLP (Civil) No.21251/2018 against the said order dated 03.08.2018 passed in Writ Appeal No.218/2018 and that by an order dated 10.08.2018, the SLP was dismissed. It is an admitted position that till date, the respondent No.3 herein has not allowed the petitioner to function as Excise Inspector at Lakhimpur Sadar. Mr. Goswami submits that in the matter of transfer and posting of officers from the rank of Inspector of Excise, the

Commissioner of Excise is not the controlling authority and there is no materials on record to demonstrate that the Commissioner & Secretary to the Government of Assam, Department of Excise, who is the competent authority, was served with a copy of the order dated 03.08.2018. He prays for some time to obtain instructions as to whether any action was taken by the Commissioner of Excise upon receipt of the copy of the letter dated 20.08.2018. He also submits that he will ascertain as to whether copy of the letter dated 20.08.2018 addressed to the Commissioner of Excise, which was forwarded to the Commissioner & Secretary to the Government of Assam, Department of Excise, was received by him. Mr. Biswas orally makes a prayer for 2(two) days' time to file an affidavit. Prayers are allowed. List on 28th September, 2018. On the next date fixed, Shri Neelkamal Pathak shall remain present before this Court at 10:30 AM."

Respondent No.3, Sri Neelkamal Pathak is present in the Court today pursuant to the order dated 25.09.2018.

Two affidavits have been filed, one by the respondent No.1 and the other by the respondent No.3.

It is submitted by the learned counsel for the parties that the order of this Court dated 03.08.2018 has fully been complied with.

From the materials on record, we find that the petitioner did not serve any copy of the order of this Court to the Principal Secretary, Government of Assam.

In the affidavit filed by the respondent No.1, it is stated that he came to learn about the order of the Court dated 03.08.2018 when a representation was served on 27.08.2018, and on 04.09.2018, he informed the Principal Secretary to the Government of Assam about the said order with a request to take necessary action. It is stated by respondent No.1 that he is not the competent authority to appoint, promote, transfer or grant leave etc in respect of officers from the rank of Inspector of Excise.

In the affidavit filed by the respondent No.3, while tendering unconditional

apology, it is stated that he was under an impression that an official communication will be issued in connection with his posting as he was holding the charge of Superintendent of Excise, In-charge, Lakhimpur Sadar and he was also not sure as to whether he will have to hand over charge of Superintendent of Excise, In-charge and therefore, there was delay in implementation of the order of this Court.

Mr. PN Goswami has submitted that in view of the ongoing Assembly session, there was some delay in issuing a formal notification with regard to posting of the officers concerned. The same was done on 27.09.2018 and thereafter, the petitioner had taken over charge.

Considering the matter in its entirety, this contempt petition is not pursued any further and the same is closed.

The personal appearance of Sri Neelkamal Pathak is hereby dispensed with.

Contempt petition stands closed.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant