

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 70 of 2023

Md. Zakir Hussain aged about 36 years, S/o Mrs. Khomei of Sangaiyumpham Nungphou Mamang P.O. Wangjing & P.S. – Thoubal, Thoubal District, Manipur – 795148 earlier serving as VDF Thoubal District having V.D.F. No. 1185 presently disengaged from the VDF strength.

..... Petitioner/s

- Versus -

1. The State of Manipur represented by the Chief Secretary/Special secretary/Secretary (Home), Government of Manipur, Babupara, Old Secretariat South Block P.O. & P.S. Imphal, Imphal West District, Manipur – 795001;
2. The Director General of Police, Manipur, Babupara, Police Headquarter, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001;
3. The Superintendent of Police, Thoubal District, Thoubal, P.O. & P.S. Thoubal, Thoubal District, Manipur – 795138.

.....Respondent/s

B E F O R E

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioner :: Mr. Ajmal Hussain, Advocate.

For the respondents :: Mr. Shyam Sharma, G.A.

Date of Hearing :: 08.05.2024

Date of Judgment and Order :: 23.05.2024

JUDGMENT & ORDER (CAV)

[1] Heard Mr. Ajmal Hussain, learned counsel for the petitioner and Mr. Shyam Sharma, learned G.A. for the State respondents.

[2] The present writ petition has been filed under Article 226 of the Constitution of India to quash and set aside the impugned disengagement order dated 02.01.2021 issued by the Superintendent of Police, Thoubal. The petitioner was disengaged from being a member of Village Defence Force (VDF) without affording an opportunity of being heard and without any enquiry on allegation of dereliction of duty upon escape of an accused from police custody.

[3] Vide order dated 24.10.2015 issued by the Superintendent of Police, Thoubal, the petitioner was engaged as VDF (Village Defence Force) bearing VDF No. 1185 in the strength of VDF, Thoubal District and he was serving in the said discipline for the last 6 years till he was disengaged vide disengagement order dated 02.01.2021 issued by the Superintendent of Police, Thoubal on the ground of dereliction of duty without any enquiry.

[4] On 02.01.2021, the petitioner was assigned duty at Bazar as a normal course of duty under a commander and on the same day, the petitioner was assigned another duty for both Gate Sentry as well as to look after the lock-up during which one accused person namely Naorem Romen @ Nanao who was in the custody of Thoubal Police station. While the petitioner was attending his duty, the said accused person escaped from the

custody. The incident happened as it was beyond the control of the petitioner alone, as the other person (the commander) was absent at that time and due to dilapidated wall/fencing of the police station. Subsequently, the escaped person was apprehended and re-arrested, but the petitioner was later asked to stay home by taking away the service ID without assigning any duty and later on, after 3 or 4 months, the petitioner came to know that he was disengaged from his service. However, no order copy was served to him at the time of disengagement from the service.

[5] The petitioner being aggrieved approached the competent authorities to review and revoke the impugned disengagement order dated 02.01.2021 and to consider his re-engagement by filing a representation dated 26.08.2022 to the respondents but the same is not considered till date.

[6] The respondent No. 3 filed counter affidavit stating that the petitioner was disengaged and struck off from the strength of Thoubal District VDF member for his dereliction of his duty in connection with the escape of one accused person namely Naorem Romen @ Nanao Singh from the police custody of Thoubal PS while the petitioner was on his duty. It is stated that on 08.01.2021, an enquiry report was submitted by the Sub-Divisional Police Officer, Thoubal wherein it is stated that the petitioner who was on sentry duty had committed negligence and dereliction of duty while on sentry. It is prayed that the writ petition may be dismissed as being devoid of merit.

[7] It may be noted that vide order dated 05.12.2023, this Court directed learned GA to explain the procedures for disengagement of VDF

personnel in the proposed counter-affidavit. However, in the counter-affidavit dated 23.02.2024 filed by the respondent No.3 (Superintendent of Police, Thoubal), nothing is mentioned in this regard. In the circumstances, this Court is compelled to do extra research through Google and ChatGTP 3.5. The following important information regarding the VDF is collected.

[8] The Village Defence Force, popularly known as VDF, in Manipur was established to enhance local security and assist the police in maintaining law and order, especially in the rural areas. Initiated under the Manipur Police, the VDF consists of volunteers from the local communities who are trained and equipped to guard their villages against various threats, including insurgent activities and ethnic violence. After completing the training successfully and passing any required assessments, the candidates are formally appointed as members of VDF. Once appointed, VDFs are assigned duty along with the police force. However, there is no material on record regarding the service conditions of VDF personnel.

[9] On further search, this Court comes across an Office Memorandum dated 18.10.2022 issued by the Home Department, Government of Manipur laying down service conditions of VDF. The OM, inter-alia, stipulates at para (vi) that a show cause notice to explain the charges against a VDF personnel be given mandatorily and an appeal lies to DIG from any adverse order passed by the SP against a VDF personnel. However, this OM is not mentioned in the counter-affidavit of the respondent in spite of specific direction of this Court in order dated 05.12.2023. The OM is reproduced below:

“Government of Manipur
Secretariat: Home Department

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Office Memorandum
Imphal, the 18th October, 2022

Subject: Service Conditions of Village Defence Force (VDF).

No. H/1/2022-HD-HD: The State Government is seized of the issues highlighted by the Village Defence Force (VDF) regarding their working conditions. In order to improve the engagement conditions of the people engaged as Village Defence Force (VDF), the State Government has decided to provide the following facilities to VDF personnel of the State:

- i. VDF will be given annual increment of Rs. 500/- in the monthly honorarium, w.e.f 1st January, 2022 onwards.
- ii. VDF will be allowed to avail 15 days compensatory leave in a year.
- iii. 10% of the direct recruitment vacancies in the rank of Police Constable and Rifleman may be reserved (horizontal reservation) for filling up by eligible VDF personnel.
- iv. Yearly physical & medical test shall be conducted by the police with the assistance of Health Department to assess their performance/duties.
- v. Three ranks will be created viz: 8 (eight) years of engagement will be designated as Corporal and those with 16 (sixteen) years will be designated as Sergeant after being found fit by a Screening Committee.
- vi. A Show Cause Notice will mandatorily be issued to the VDF personnel and given an opportunity to explain in case of any alleged charges. Decisions on the Charges including dis-engagement can be taken at the level of Superintendent of Police. An appeal against the decision can be made to the DIG concerned within 30 days of the decision.
- vii. VDF personnel with outstanding performance will be felicitated during National and State Level Functions and Police Raising Day after proper recommendation by a two tier Committee structure, one at District and the higher one being at the State Level.
- viii. Concerned District Superintendent of Police shall take action to enrol VDF personnel to eligible health care programme like Ayushman Bharat or CHHT. They may also be covered in social security schemes such as National Pension Scheme (NPS), Atal Pension Yojana, Jeevan Jyoti Bima Yojana, etc. in consultation with Finance Department.
- ix. Recruitment criteria/eligibility conditions, age, physical recruitment and educational qualifications for future recruitment/engagement of VDF will be issued separately.

2. This has a reference to decision taken by State Cabinet in its meeting held on 21.07.2022.

3. This is issued with concurrence of FD's U.O. No. 228/2022-2023/FD(PIC), dated 17.07.2022 and DP's U.O. No. 71/2022-2023/DP dated 10/10/2022.

(Rajesh Agrawal)
Principal Secretary (Home)
Government of Manipur.
.....”

[10] In a recent case of **Nasim Bano v. The State of Manipur & Ors [WP(C) No.209 of 2023 order dated 17.01.2024]-MANU/MN/0008/2024**, this Court held that even in absence of the statutory rules, an employee should be given an opportunity of being heard before terminating his service, when the termination is stigmatic. Relevant para are reproduced below:

“[15] The next question to be decided is whether the service of Anganwadi Worker, who is not a regular Government Employee, be terminated without any due process when the termination order is stigmatic.

[16] In the present case, it is admitted fact that the petitioner has been appointed in connection with the ICDS Project on a monthly honorarium basis and in the appointment order dated 08.07.2008, the tenure is not mentioned. In other words, her service may be utilised as long as the ICDS Project continues.

[17] There is no material on record to indicate existence of any Rules or Regulations controlling the service conditions of Anganwadi Workers and Helpers. In the cases relied by Mr. K. Roshan, learned counsel for the petitioner, at least some Rules and Regulations are there governing the appointment/engagement of such workers or the employees. On bare reading of the impugned order dated 18.08.2022, this Court is of the considered view that the termination order is stigmatic, because the termination was due to her involvement in a criminal case. In fact, the termination order was issued without affording any opportunity to the petitioner for her explanation.

[18] This Court is of the opinion that at least a Show Cause Notice ought to be issued to the petitioner to explain the

circumstances leading to her alleged involvement in the criminal case. The decision of **Ajit Kumar Nag** (Supra) as relied by the learned G.A. will not strictly be applicable in the present case, as the dismissal without enquiry was done under standing order of India Oil Corporation.

[19] Accordingly, the impugned order dated 18.08.2022 issued by the Child Development Project Officer, ICDS Project, Imphal East – II, Keirao Bitra is set aside and the petitioner be re-instated to her service with continuity of service within a period of 30 days from the date of receipt of this order. However, the petitioner will not be entitled to back wages for the period under termination. It is clarified that the respondents are at liberty to take up any action in compliance with the principles of natural justice, if so advised.”

[11] From the case of **Nasim Banu (supra)**, it is clear that even if the rule is silent or absent, an opportunity of being heard ought to be provided to an employee before removing him from service. In the present case, no such opportunity was given to the petitioner before issuing his dis-engagement order from being a VDF. In short, dis-engagement order is an alternative term of removal from service. The reason given in the impugned order is for dereliction of duty which is stigmatic in nature as held in the case of **Nasim Banu (supra)**. The disengagement order without any notice is bad on this ground alone.

[12] As mentioned above in para 9, State Government has issued an Office Memorandum dated 18.10.2022 laying down the service conditions of VDF. In para (vi), it is made mandatory to issue show cause notice to a VDF personnel to explain about the charges against him before passing any adverse order by SP and appellate forum is provided before DIG.

[13] In the present case, the dis-engagement order (ie, removal from service) was issued on 02.01.2021 itself, the day on which the accused escaped from police custody without affording any opportunity. The enquiry was conducted only on 08.01.2021, where some of the regular police personnel were awarded with minor penalty. The petitioner was awarded with a major penalty of removal from service without any show cause and enquiry. This Court is of the opinion that the disengagement order dated 02.01.2021 passed by the Superintendent of Police, Thoubal is in violation of the principles of natural justice as held in the case of **Nasim Banu**. Judicial note is taken about the subsequent Office Memorandum dated 18.10.2022 stipulating brief service conditions of VDF personnel.

[14] In the circumstances, the impugned order dated 02.01.2021 disengaging the petitioner from the strength of Thoubal District VDF is set aside and the petitioner is restored to the strength and roll of VDF Thoubal with immediate effect. The period between date of disengagement, ie, from 02.01.2021 to 23.05.2024 (date of this order) shall be treated as in service. The petitioner shall be entitled to 50% of back honorarium and allowances as admissible. It is clarified that the State respondents are at liberty to conduct an enquiry in terms of the Office Memorandum dated 18.10.2022 against the petitioner for the alleged dereliction of duty, if so advised, within a period of three months from the date receipt of a copy of this order, failing which the same shall stand abated.

[15] With these observations and directions, the writ petition is allowed. Arrears of honorarium and allowances as directed above shall be paid within a period of three months from today. No cost.

[16] Send a copy of this order to the Superintendent of Police, Thoubal for information and necessary compliance.

JUDGE

FR/NFR

Kh. Joshua Maring