
(2018) 10 MAN CK 0004
In the Manipur High Court
Case No : Writ Petition (c) No. 144 Of 2018

A. Birendra Singh

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 25-10-2018

Acts Referred:

Constitution Of India, 1950 — Article 14
Central Civil Services (Conduct) Rules, 1964 — Rule 3, 3(i), 3(ii), 3(iii)
Manipur Civil Services (Pension) Rules, 1977 — Rule 9
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14, 20, 20(1), 29, 29A, 29(v)
M.P. Civil Services (Classification, Control And Appeal) Rules, 1966 — Rule 20

Citation : (2018) 10 MAN CK 0004

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : Th. Khagemba, Y. Ashang

Final Decision : Allowed

Judgement

Kh. Nobin Singh , J

[1] Heard Shri Th. Khagemba, the learned Advocate for the petitioner; Shri Y. Ashang, the learned Government Advocate for the State respondents and Shri S. Samarjit, learned CGC for the Accountant General.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of certiorari or any other appropriate writ to quash and set aside the orders dated 04.06.2007 issued by the Commissioner (Hr. Edn), Government of Manipur and dated 14.12.2017 issued by the Commissioner (Higher & Tech. Education), Government of Manipur and also to issue a writ of mandamus or any other appropriate writ to direct the respondents to allow the petitioner to enjoy his pension and retiral benefits.

[3.1] Facts and circumstances as narrated in the writ petition, are that the petitioner was initially appointed as a Lecturer in English at the Oriental College,

Imphal vide an order dated 02.12.1972 and while he was serving in that capacity, the Oriental College was taken over by the State Government in the year 1979, as a result of which the petitioner became the Government employee.

[3.2] In the year 1988, the petitioner was upgraded as the Selection Grade Lecturer and he continued to serve in that capacity. Thereafter, he was appointed on deputation as the Director, North East Zone Cultural Centre, Dimapur, a society registered under the Societies Registration Act (hereinafter referred to as "the Centre") for a period of 3 (three) years for which the Under Secretary (Higher Education), Government of Manipur issued an order dated 05.04.1999 releasing him from the State Government on the same day so that he could join his duty at the Centre. After his joining at the Centre, he started discharging his duties sincerely and while he was discharging his duties as the Director, he got rupees one crore withdrawn from M/S Peerless Corporation, Calcutta and invested in the M/S Leafin India Ltd., Dimapur after the same being proposed by the Accounts Officer.

[3.3] While the petitioner was on deputation, the Principal Secretary (Higher Education), Government of Manipur issued a memorandum dated 03.01.2002 by which a departmental enquiry was initiated against him on three charges- firstly, the petitioner having known that he was not competent to invest the corpus fund without the approval of the Finance Committee/ Executive Board, decided to invest rupees one crore in M/S Leafin India Ltd., a private non banking finance company of Hyderabad which was bankrupt, resulting in a loss of rupees one crore and the interest of Rs. 21.25 to the Centre thereby committing gross negligence and failing to maintain integrity and devotion to duty under Rule 3(i) & (ii) of the CCS(Conduct) Rules, 1964. Secondly, the petitioner, while he was functioning as the Director of the Centre from 19.04.1999 to 18.04.2002, having known fully well that he was neither competent nor authorized to withdraw prematurely the corpus fund of rupees one crore invested in M/S Peerless Corporation, Calcutta, withdrew the same and invested with M/S Leafin India Ltd., Dimapur thereby committing misconduct under the Rule 3 of the CCS (Conduct) Rules, 1964. Thirdly, the petitioner, while working as the Director, committed total negligence and dereliction of duty by not reporting the failure of M/S Leafin India Ltd., to pay the monthly interests w.e.f. 01.03.2000, to the Chairman/ Finance Committee which resulted in the loss of Rs.21.25 lakhs as interest and the principal amount of rupees one crore to the Centre, thereby he has failed to maintain absolute integrity and to do nothing which is unbecoming of a Government servant under Rule 3(i) and (iii) of CCS (Conduct) Rules, 1964. By the said memorandum, the petitioner was given 10 (ten) days time to submit his written statement of defence. By the time when the memorandum was issued, the petitioner was not yet released from the said centre, as the tenure of his deputation was not over and a list of witnesses was not furnished to him along with the said memorandum.

[3.4] Since the tenure of his deputation expired on 18-04-2002, the Deputy

Secretary (Higher Education), Government of Manipur vide its letter dated 15.06.2002 requested the Additional Secretary (Art & Culture), Government of Nagaland to release the services of the petitioner from the Centre so as to enable him to join the parent Department. In the meantime, the Director-in-Charge of the Centre addressed a letter dated 17.05.2002 to the Programme Officer, Department of Art & Culture, Government of Manipur enclosing therewith the minutes of the Executive Board's meeting held on 17.04.2002 stating that the mismanagement of the fund by the petitioner was also looked into and the Chairman, Executive Board very fairly accepted that the said financial mismanagement was on account of lack of supervision.

[3.5] The petitioner submitted his written statement of defence to the Principal Secretary (Higher Education), Government of Manipur on 25.01.2003 whereby he denied the charges leveled against him by giving sufficient reasons and requested him to close/ drop the departmental proceedings initiated against him. In his written statement of defence, the petitioner stated that he be given an opportunity of being heard in person. Since no action was taken by the State Government after his written statement of defence being submitted, the petitioner attained the age of his superannuation and was allowed to retire from his service vide order dated 03-09-2005 issued by the Joint Secretary (Hr. Education), Govt. of Manipur under the provisions of the Manipur Civil Services (Pension) Rules, 1972 adopted as the Manipur Civil Services (Pension) Rules, 1977.

[3.6] After about more than three years from the date of issuance of the said memorandum, the departmental enquiry was proceeded further and accordingly, he engaged his Defence Assistance, Shri M. Tolen Singh who appeared before the said enquiry authority on 09.08.2005 & 16.08.2005 and during the course of preliminary hearing, the petitioner stated that he had withdrawn the said amount of rupees one crore from M/S Peerless Corporation, Calcutta and deposited the same to M/S Leafin India Ltd., Dimapur. The Enquiry Officer, on the assumption that the charges leveled against him were admitted by the petitioner, concluded the departmental enquiry with the observation that no further enquiry was required and his report was furnished to the Disciplinary Authority for taking appropriate action. On receipt of the said report, the Joint Secretary (Higher Education), Government of Manipur vide its letter dated 06.10.2005 furnished him a copy thereof by giving him fifteen days' time to submit a representation if he wished to do so. The petitioner submitted his elaborate representation, highlighting the facts and circumstances, to the Commissioner, Higher Education, Government of Manipur on 07.11.2005 with a prayer that the departmental enquiry be dropped/ closed as he had already been allowed to retire from service.

[3.7] As his representation was not considered for some months, the petitioner submitted another representation dated 12.04.2006 to the Commissioner (Higher Education), Government of Manipur praying for allowing him to enjoy his pension and pensionary benefits. But without considering the facts and circumstances

including the irregularities committed during the course of enquiry, the Commissioner (Hr. Education), Government of Manipur issued an order dated 04.06.2007 by which the petitioner was awarded a major penalty of withholding his pension and retiral benefits and a recovery of the pecuniary loss to the Government under Rule 9 of the MCS (Pension) Rules, 1971 and the CCS(CCA) Rules, 1965. The said order was never communicated to the petitioner and he came to know about it only when it was produced before the Hon'ble High Court at the time of hearing the writ petitions being WP(C) No. 625 of 2004 and WP(C) No. 467 of 2006 which were disposed of on 02.04.2008 with a liberty being granted to the petitioner to challenge the same.

[3.8] Being aggrieved by the said order dated 04.06.2007, the petitioner submitted a review application to the Principal Secretary (Higher and Technical Education), Government of Manipur praying for setting aside it which was filed within two months and 12 days from the date of having knowledge about it. Since the authorities did not issue any appropriate order on the said application, the petitioner approached this Court by way of a writ petition being WP(C) No.467 of 2017 which was disposed of on 04.09.2017 directing the respondent No.1 therein to consider the said application and to dispose it of within two months therefrom. Thereafter, the said application was rejected by the Commissioner (Hr. & Tech. Education), Government of Manipur vide its order dated 14.12.2017 on the ground that the same was time barred under the provisions of Rule 29(v) of CCS (CCA) Rules 1965. Being further aggrieved by the said order dated 14.12.2017, the instant writ petition was filed by the petitioner on the inter-alia grounds that the rejection of his application by the Commissioner (Hr. Education), Government of Manipur was totally illegal as there was no time period prescribed in Rule 29 of the CCS(CCA) Rules for filing such a review application; that the Government of Manipur was not competent to issue the said memorandum dated 03.01.2002, as the petitioner was at that time on deputation and his term of deputation had not expired; that since the Departmental Enquiry was initiated under Rule 14 of the CCS(CCA) Rule, 1965, the petitioner ought not have been allowed to retire from service till the completion of the departmental proceeding which the State Government failed to do so and therefore, the impugned order by which the penalty of withholding of his pension and retiral benefits and recovery of the pecuniary loss to the Government was imposed, was not sustainable in the eye of law; that while the departmental proceeding was being continued, the procedures prescribed under the CCS (CCA) Rules, 1965 were not followed at all; that the finding arrived at by the Enquiry Officer to the effect that as the charges were admitted by the petitioner, the enquiry stood closed, was vitiated in the eye of law; that the articles of charges were too vague, the authorities failed to indicate the procedure or rule which was not followed by the petitioner; that assuming but not admitting that the said departmental enquiry did not prove the charges nor was the ill motive established and that while disposing of the review application, the Commissioner (Hr. Education) had not considered the facts and

circumstances including the explanations given by the petitioner.

[4] An affidavit-in-opposition on behalf of respondent Nos. 1 & 2 has been filed wherein it has been stated that the petitioner being a Lecturer in English and the Director of the Centre ought to know the Memorandum of Association of the Centre and its relevant rules and that the petitioner was not authorized to withdraw or to re-invest the corpus fund without obtaining approval from the Finance Committee. The statement that unlimited powers are conferred upon the Director, does not mean that the Director should enjoy financial powers without conforming to the existing GRF or the Nagaland Finance Rules or as approved by the Executive Board and Governing Body. Since the petitioner had admitted the charges leveled against him, the ignorance of law could not be a ground for condoning his illegal acts. On the one hand, the petitioner was trying to justify his illegal acts while, on the other hand, he was praying for dropping or withdrawing the departmental enquiry on humanitarian ground and since the petitioner having admitted the pecuniary loss, the authority was bound to withhold the pension and retiral benefits. The petitioner filed his review application on a misconception of law because the Principal Secretary (Hr. Education) was not the proper authority to address the issue and therefore, the petitioner should have approached the appropriate authority for invoking the provisions of Rule 29-A. There was no lapse on the part of the State Government in issuing the said order, as the same was issued after having consulted with the Law Department as well as the Department of Personnel (DP). The question of the application of Rule 20 of CCS (CCA) Rule, 1965 ought to be examined keeping in mind the fact that the State of Manipur is one of the stakeholders of the said Centre. The Centre being a newly established body having no proper manpower and infrastructure, the State Government initiated the departmental enquiry by issuing the memorandum dated 03.01.2002 and also decided to repatriate the petitioner from that Centre and in fact, the departmental enquiry was actually made effective after the petitioner was returned to the parent Department. Since the petitioner having participated in the enquiry proceedings and admitted the charges leveled against him, he could not take a U-turn at such a belated stage by operation of the principle of acquiescence, waiver, estoppel in the writ petition. An affidavit of behalf of the Accountant General has been filed wherein it has been stated that the duty of the Office of the Accountant General is to implement the decisions taken by the State authorities in various issues relating to maintenance of GPF, Pension and Gazette Entitlement and therefore, as and when the relevant documents are received, the office of the Accountant General will scrutinize those and authorise the case as per rule. It has been also stated that since it had no role to play at that stage, the Accountant General ought not to have been made a party in the writ petition.

[5] In the rejoinder affidavit filed by the petitioner, it has been stated that there was no question of admitting any of the charges leveled against him, since the enquiry itself was against the Rule 20 of CCS(CCA) Rules and the penalty being imposed was in contradiction to Rule 14 of CCS (CCA) Rules where the question

of the petitioner having consciously participated or not, was immaterial given the fact that the said enquiry was an illegal one as it was held in violation of Rule 20 of CCS(CCA) Rules. The Rule 20 of CCS(CCA) Rule did not permit the departmental proceeding while the petitioner was still on deputation and therefore, the while enquiry proceeding and its subsequent orders were illegal and null and void in the eye of law.

[6] From the aforesaid pleadings, two issues have arisen for consideration by this court-one, whether in view of the provisions of Rule 20 of the CCS(CCA) Rules, the departmental enquiry initiated by the State Government against the petitioner while he was on deputation, was vitiated and in other words, whether the fact that the petitioner had participated in the enquiry proceedings, would validate the actions of the State Government which are contrary to the provisions of Rule 20 thereof and two, the review application submitted by the petitioner to the Principal Secretary (Higher & Tech. Edn.) was barred by time. According to the learned counsel appearing for the petitioner, Shri Th. Khagemba, Advocate the departmental enquiry initiated by the State Government was void ab initio and therefore, the subsequent actions pursuant thereto, were also null and void. So far as the second issue is concerned, it has been stated by him that the question of the review application being time barred did not arise at all, as no time period was prescribed in Rule 29 A for filing such an application. In support of his contention, he has relied upon some decisions of the Hon'ble Supreme Court. Firstly, In Punjab National Bank & ors. Vs. Kunj Behari Mishra & anr., (1998) 7 SCC 84, the disciplinary proceedings were initiated against the respondents. The enquiry officer submitted his report which was not agreed to by the disciplinary authority which directed the recovery of money from them without giving an opportunity of being heard. The issue was as to whether the disciplinary authority, while differing with the finding of the enquiry officer, can give a contrary finding without affording any opportunity to the delinquent officer.

The Hon'ble Supreme Court held that before the disciplinary authority records its finding contrary to that of the enquiry officer, it must give to the delinquent officer an opportunity to represent before it. However, since 14 years have lapsed, the Hon'ble Supreme Court was of the view that it would not be in the interest of justice that at that stage, the case should be remanded to the disciplinary authority for the start of another innings and accordingly, it directed the appellants therein to release the retirement benefits. Secondly, in Nar Singh Pal Vs. Union of India & ors., (2000) 3 SCC 588, the appellant who was initially engaged as a casual labour and had acquired temporary status because his continuous service, was prosecuted for having committed an offence and was later acquitted by the court. In the meantime, his service was terminated against which he made a representation which was not heeded to and accordingly, he approached the CAT by way of an application which was dismissed by it. Being aggrieved by it, he approached the High Court which also dismissed his writ petition. When the matter came up before the Hon'ble Supreme Court, it held that the retrenchment compensation paid to him, which was only a meager

amount, was utilized by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental rights under Constitution cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of fundamental rights available under the constitution. Thirdly, in *State of Orissa & anr. Vs. Mamata Mohanty*, (2011) 3 SCC 436, the issue was as to whether Article 14 of the Constitution is meant to perpetuate an illegality. The Hon'ble Supreme Court held that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. While disposing of the appeal, the Hon'ble Supreme Court held:

"37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/ development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (*Vide Upen Chandra Gogoi v. State of Assam*, *Mangal Prasad Tamoli v. Narvadeshwar Mishra* and *Ritesh Tewari v. State of U.P.*)"

On the other hand, Shri Y. Ashang, the learned Government, supporting the stand taken by the State Government in its affidavit, has submitted that after the disciplinary proceeding being over with his participation without any objection and penalty being imposed, the petitioner could not turn around and contend that the disciplinary proceeding was illegal in view of the principles of acquiescence, waiver and estoppels, for which he has relied upon the decision rendered in *P.S. Gopinathan Vs. State of Kerala & ors.*, (2008) 7 SCC 70 wherein the appellant, a judicial officer, was appointed on promotion as District & Sessions Judge vide order dated 14-01-1992. The High Court while issuing posting order dated 29-02-1992 treated the appellant's appointment on promotion as temporary. On 15-07-1992 fresh appointment orders were issued to the appellant and other judicial officers and the appellant was made permanent District & Sessions Judge through this order. The High Court issued a fresh posting order dated 31-07-1992 wherein the appellant was described as temporary District & Sessions Judge who had become permanent vide order 15-07-1992. On the basis of the office memorandum dated 29-09-1992 of the High Court, the seniority of the appellant was proposed to be shown below the respondent No.6. Being aggrieved by it, the appellant submitted representations followed by reminders but to no effect. The appellant filed a writ petition challenging the draft seniority list dated 16-08-1994 and other orders which was referred to a bench of two Judges which dismissed the same by holding that the High Court while issuing the order of the posting treated the appellant as

temporary and acted entirely bonafide since the amendment was not in the anvil but in fact, it was published on the same day with retrospective effect from 1-1-1992. While upholding the judgment and order of the High Court, the Hon'ble Supreme Court dismissed the appeal and while doing so, the Hon'ble Supreme Court held:

"33. The law of equitable estoppel by acquiescence has been clearly stated by Fry, J. in *Willmott v. Barber*. It has been said therein that the acquiescence which will deprive a man of his legal rights should amount to fraud. A man is not to be deprived of his legal right unless he has acted in such a way as would make it fraudulent for him to set up those rights. What, then, are the elements or requisites necessary to constitute fraud of that description, are stated thus:

(i) The plaintiff (i.e. the party pleading acquiescence) must have made a mistake as to his legal rights;

(ii) The plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of the mistaken belief;

(iii) The defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it, he is in the same position, as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights;

(iv) The defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights; and

(v) The defendant, the possessor of the legal right must have encouraged the plaintiff in his expenditure of money, or in the other acts which he has done, either directly or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the court to restrain the possessor of the legal right from exercising it, but nothing short of this will do.

These principles were followed and applied in many cases in India." \

It has also been submitted by the learned Government Advocate that since the validity and correctness of the memorandum dated 03-01- 2002 was not challenged by the petitioner, the subsequent orders issued by the State Government could not have been challenged by him. In *Amarjeet Singh & ors. Vs. Devi Ratan & ors.*, (2010) 1 SCC 417, the promotions were made by the DPC under different rules and without challenging the promotions of the appellants, the seniority list which is consequential to the promotions could not be challenged by the respondent. The Hon'ble Supreme Court held that challenging the consequential order without challenging the basic order was not permissible.

[7] Rule 20 of the CCS (CCA) Rules, 1965 provides the procedure to be followed for purpose of initiating disciplinary proceeding against the officers lent to a

department or a State Government or other authorities. Rule 20(1) reads as under:

"(1) Where the services of a Government servant are lent by one department to another department or to a State Government or an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred to as "the borrowing authority"), the borrowing authority shall have the power of the Appointing Authority for the purpose of placing such Government servant under suspension and of the Disciplinary Authority for the purpose of conducting disciplinary proceeding against him:

Provided that the borrowing authority shall forthwith inform the authority which lent the services of the Government servant (hereinafter in this rule referred to as "the lending authority") of the circumstances leading to the order of suspension of such Government servant or the commencement of the disciplinary proceeding, as the case may be."

On perusal of this rule, it is absolutely clear that the wordings of this rule are clear, plain and unambiguous and require no interpretation at all. It provides that when the services of an officer are lent to a department or a State Government or any other authority, it is the borrowing authority which shall have the power to suspend and initiate disciplinary proceedings against him/her. It is nowhere stated in this rule that in addition to the power being conferred upon the borrowing authority, the lending authority shall continue to enjoy the same power. Immediately after such an officer being suspended or a disciplinary proceeding being initiated against him, the circumstances leading thereto shall be informed to the lending authority and moreover, if any of the penalties specified in clauses (i) to (iv) is to be imposed, it may do so under sub-rule (2) after consultation with the lending authority.

[8] In the present case, it is not in dispute that the petitioner was initially appointed as a Lecturer in English at the Oriental College, Imphal vide an order dated 02.12.1972 and later, he became an employee of the State Government after the Oriental College was taken over by the State Government in the year 1979. In the year 1988 he was upgraded as the Selection Grade Lecturer and while he was serving in that capacity, he was appointed as the Director of the Centre vide Notification dated 17-03-1999 issued by the Chief Secretary, Nagaland for a period three years which was followed by an order dated 05-04-1999 issued by the Under Secretary (Higher Education), Government of Manipur releasing from his parent department. A copy of the said Notification is not placed on record and therefore, it is not clear to this court as to when the period of three years would have expired. But on perusal of the letter dated 15-06-2002 of the Deputy Secretary (Hr. Edn), Government of Manipur addressed to the Addl. Secretary (Art & Culture), Government of Nagaland, it is seen that the period of deputation expired on 18-04-2002. The fact that the memorandum dated 03-01-2002 was issued by the State of Manipur shows that it was issued while the petitioner was on deputation. In other words, the

memorandum dated 03-1-2002 was issued prior to the expiry of the period of the petitioner's deputation. As per the provisions of Rule 20

(1) mentioned above, it is the Centre which had the power to initiate disciplinary proceeding against the petitioner because he was on deputation but contrary to the said rule, the State of Manipur had issued the said memorandum dated 03-01-2002. The only justification made by the State of Manipur in its affidavit, was that although the memorandum dated 03-01-2002 was issued before the expiry of the period of deputation, the disciplinary proceeding was in fact made effective after the petitioner was returned to the parent department. Moreover, relying upon the P.S. Gopinathan Vs. State of Kerala & ors case (supra), it has further been submitted by the learned Government Advocate that since the petitioner having participated in the disciplinary proceedings without any demur, he had waived his right by acquiescence and therefore, he was estopped from contending that the initiation of disciplinary proceeding by the State of Manipur was illegal. The facts of that case are slightly different from that of the present case. In the present case, it is specifically provided in Rule 20(1) that it is the borrowing authority which is empowered to initiate disciplinary proceeding and not the lending authority. The State of Manipur is governed by rule of law and when the rule specifically provides the manner of exercising its power, it ought to do so in that manner only. The issuance of the memorandum dated 03-01-2002 by the State of Manipur itself is contrary to the said rule and therefore, the subsequent actions taken by it including the orders dated 04-06-2007 and 14-12-2017, are bad in law and not sustainable. In other words, the power exercised by the State of Manipur was without jurisdiction with the result that the action taken by it was void ab initio. The law laid down by the Hon'ble Supreme Court in State of Orissa Vs. Mamata Mohanty (supra) and relied upon by the counsel appearing for the petitioner will have an application. The conduct of the petitioner or for that matter, his participation in the disciplinary proceeding cannot be said to have validated the action of the State of Manipur. Moreover, the learned counsel appearing for the petitioner has relied upon the order dated 29-09-2014 passed by the High Court of Madhya Pradesh in B.L. Satyarthi Vs. State of Madhya Pradesh & anr, WA No.1058 of 2009 wherein Rule 20 of the M.P Civil services (CCA) Rules, 1966 is involved and is parie materia with Rule 20 of the CCS (CCA) Rules, 1965. The Hon'ble High Court held that when an employee is sent on deputation, a temporary contract is brought into force between the borrowing department and the employee concerned and as long as its contract of employment subsists, the borrowing department can invoke the provisions of Rule 20 but once the employee is repatriated back to the parent department, the contract of employment temporarily created during the period of deputation ceases and if that be the position, the borrowing department does not have any authority to take action against the employee concerned. This order of the High Court Madhya Pradesh is not binding on this court except the persuasive value. But since the observation made by it as aforesaid appears to be the correct one, this court endorses it.

[9] One ancillary issue which needs to be considered by this Court at this juncture is as to whether the State of Manipur shall be given a liberty to proceed with a fresh disciplinary proceeding, since the earlier one has been held to be void ab initio. The learned counsel appearing for the petitioner, relying upon the decision rendered by the Hon'ble Supreme Court in Punjab National Bank & ors. Vs. Kunj Behari Mishra & anr (supra), has submitted that after a lapse more than sixteen years, there will be no point of conducting an enquiry and therefore, the petitioner be permitted to lead a peaceful life by granting pension and pensionary benefits within a reasonable time. It is no doubt true that the Hon'ble Supreme Court had observed that it would not be in the interest of justice that at that stage, the case should be remanded to the disciplinary authority for the start of another innings and accordingly, it directed the appellants therein to release the retirement benefits but it may be noted that the Hon'ble Supreme Court had not laid down the law that in all such cases where there is a long delay in conducting the disciplinary enquiry, a denovo enquiry cannot be held by the State Government. It depends on the facts of each case. In the said case, the amount involved was hardly two lakhs while in the present case, the amount involved is more than a crore which can be said to be a huge amount for such a Centre and moreover, it is public money. It may set a bad precedent, if the State of Manipur is precluded from initiating a disciplinary proceeding afresh in accordance with law. It is for the State Government, and not for this court, to take a decision according to its wisdom whether it shall initiate a fresh enquiry or not in the facts and circumstances of the present case.

[10] In this case, as has been stated hereinabove, two issues felt for consideration by this court but since the main issue relating to the validity and correctness of the disciplinary proceeding itself having been decided by this court in favour of the petitioner, this court is of the view that there is no need of going in the second issue which can be considered in an appropriate case in future and in other words, the second issue is kept open.

[11] In view of the above and for the reasons stated hereinabove, the instant writ petition is allowed and consequently, the orders dated 04.06.2007 issued by the Commissioner (Hr. Edn), Government of Manipur and dated 14.12.2017 issued by the Commissioner (Higher & Tech. Education), Government of Manipur are quashed and set aside. There shall be no order as to costs. However, given the facts and circumstances of the case, the respondents are given liberty to proceed with a fresh disciplinary enquiry, if they so desire, against the petitioner in accordance with law.