

(2005) 10 GAU CK 0004
In the Gauhati High Court
Case No : Writ Petition (C) No. 4154 of 2005

Apurba Kr. Borthakur

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-10-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 120(B), 409, 420
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2006) GLT 814 Supp

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : B.M. Choudury, A. Bhattacharyya, J. Mahanta and P. Kalita, for the Appellant; T. Islam and M.R. Pathak, for the Respondent

Judgement

Amitava Roy, J.—The Petitioner has assailed the order dated 17.02.2000, issued by the authorities of the C.K.B. College, Teok, Jorhat, (hereinafter referred to as the College), placing him under suspension and the approval thereof, by the Deputy Director of Higher Education, Assam, vide communication dated 21.06.2000.

2. I have heard Mr. B.M. Choudhury, learned Counsel for the Petitioner and Mr. Thomas, learned standing counsel, Education Department.

3. The facts in bare essential necessary for disposal of the petition are that the Petitioner while serving as Upper Division Assistant (Accountant) in the College, was arrested by the CM's Vigilance Cell, in connection with Vigilance P.S. Case No. 3 of 1999 u/s 120(B)/420/409 IPC read with Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988. He was produced before the Court of Special Judge, Guwahati and thereafter enlarged on bail on 03.02.2000. Following this, he was placed under suspension with effect from 28.01.2000, by the impugned communication dated 17.02.2000. The decision was approved by the Deputy Director of Higher Education, Assam, vide communication dated 21.6.2000. According to the Petitioner, till date neither any memorandum of

charges has been served on him, nor he has been notified about the trial in the criminal case. He is, therefore, before this Court, contending that the order of suspension needs to be quashed, in view of the undue and unexplained delay resulting in serious prejudice to him.

4. The Director of Higher Education, Assam Respondent No. 2, in his counter has confirmed the fact of the Petitioner's arrest in the aforementioned Vigilance P.S. Case. The charges against the Petitioner have been recited as follows:

a) Non-deposition of provident Fund money in the post Officer, which was deducted from the salaries of teaching and non-teaching staff.

b) Drawing of salaries of two Lecturers from 22 months who were not actually appointed but only prior approval were taken from the Director of Higher Education.

c) Drawing of salary in the name of Late Prafulla Bharna (IVth Grade) after his death for about two and half years.

5. According to him, following the suspension of the Petitioner, the College authority constituted a two men Inquiry Committee to explore the necessity of initiating a departmental proceeding against him. The Inquiry Committee accordingly, submitted its report on 22.05.2000. The official Respondent has asserted that the investigation in the Vigilance P.S. case is pending for non receipt of the death certificate of Dugdha Nath Sarma, Ex-Principal of College and that on receipt thereof, charge sheet would be submitted in the case.

6. Mr. Choudhury, has assertively argued that the Petitioner's suspension in the attending facts and circumstances is penal in nature and as the Respondent authorities have failed to either complete the investigation of the police case or initiate a departmental proceeding against him, in the meantime, it is a fit case where this Court would intervene and quash the order of suspension. The purported ground for the delay as offered by the Respondent No. 2, being untenable, the Petitioner is entitled to a writ of mandamus, directing his reinstatement, he urged. In support of his submissions Mr. Choudhury, has placed reliance on the decision of the Apex Court in Union of India and Others Vs. M.V. Valliappan and Others, and of this Court in Lalit Basumatary v. State of Arunachal Pradesh 2003 1 GLT 90 and Jahirul Haque Choudhury v. State of Assam (1993) 1 GLR 207.

7. Mr. Thomas, in reply has submitted that as the charges against the Petitioner are serious and the investigation of the vigilance case is nearing completion, no interference is called for. According to him, as the order of suspension has been passed mainly due to the Petitioner's involvement in the criminal case and his detention in connection therewith, mere delay cannot be a ground for revocation of the order.

8. I have extended my anxious consideration to the rival contentions. Admittedly, the Petitioner continues to languish in suspension for more than five years. No

departmental proceeding has yet been initiated against him and as is evident from the counter of Director of Higher Education, Assam the investigation of the Vigilance P.S. case is also not yet over. The reason for the delay in completion of the investigation as noticed hereinabove, also is not fully convincing. The investigation having been initiated, in my view, it ought to have been furthered with utmost expedition, more particularly when the Petitioner had been suspended primarily for his involvement in the criminal case. This has not been done. The principal ground for the Petitioner's suspension being his arrest in connection with the Vigilance P.S. case, this delay has a vital bearing on the issue raised. The report of the Inquiry Committee submitted on 22.05.2000 discloses that the college authorities are awaiting the result of the investigation in the Vigilance P.S. case. This makes it explicit that as on today no disciplinary proceeding against the Petitioner is in contemplation.

9. The bearing of delay on the continuance of an order of suspension was examined by this Court in Lalit Basumatary (Supra). Observing that suspension of an employee for an indefinite period exposes him to hardship and distress, it was held that protraction of such state of affairs is permissible under the service jurisprudence. In the reported decision as well, involvement of the Petitioner therein, in a criminal case was one of the re-considerations to place him under suspension.

10. This Court in Jahirul Haque Choudhury, while dwelling on the above aspect prescribed an outer limit of six months for completion of police investigation, where an employee is placed under suspension due to the pendency thereof. This only manifests the persistent concern of this Court for a speedy investigation to obviate avoidable delay to alleviate the suffering incumbent from the pain and agony of lingering suspension. The Apex Court in Union of India and Ors. v. M.V. Valiappan and Ors., (supra), while noticing in the contextual facts that no disciplinary proceeding was contemplated against the Appellant therein interfered with the order of suspension of the Appellant disapproving the delay in completion of the Police Investigation in a connected criminal case.

11. Having regard to the consensus of judicial opinion on the aspect of delay on continuing suspension of an employee in service, I am of the view that in the existing facts and circumstances, Petitioner has been able to make out a case, warranting interference with the order of suspension.

12. The charges levelled against the Petitioner serious though, in my view, having regard to the time lag and the stage of the investigation in the Vigilance P.S. case as indicated in the counter of the Director of Higher Education, Assam, I am of the opinion that the Petitioner's reinstatement in service at this stage is not likely to adversely hamper the investigation or the affairs of the college. Suspension is dominantly a disabling act temporarily putting off the incumbent from active service to prevent possible interference with the preliminary enquiries leading to a contemplated disciplinary proceeding. It cannot be resorted to as a routine measure or imposed as a penalty. The concerned

authorities are obliged in law to pursue the process with expedition and concern. Having regard to the injurious consequences visiting the employee, the investigative pursuit brooks no undue delay. The facts as obtained in the instant case display lack of concern of the concerned authorities. Lapse of five years in an unmistakable index thereof.

13. In view of the above, the order of suspension dated 17.02.2000 and its approval by the Deputy Director of Higher Education, Assam by his order dated 21.06.2000 are thereby set aside and quashed. The Petitioner will be reinstated in service forthwith. His entitlements would be computed and released in accordance with the relevant rules.

14. Needless to say, the Petitioner's reinstatement would not in any way act as a bar on the College authorities to initiate a departmental proceeding against him or pursue the criminal case.

15. The petition is thus allowed. No costs.