

(1999) 02 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 3263 of 1998

Arun Ch. Sharma

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 26-02-1999

Acts Referred:

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 6(1)
Constitution of India, 1950 — Article 226

Citation : (1999) 1 GLT 404

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : P.K. Goswami, R.C. Saikia, D.C. Bora and J.I. Barbhuya, for the Appellant; K.H. Choudhury, Addl. Sr. G.A., for the Respondent

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution of India, the Petitioner has prayed for quashing the order dated 3.6.98 passed by the Government of Assam in the department of Labour and Employment placing him under suspension pending drawal of departmental proceeding under Rule 6(1)(a) of the Assam Civil Services (Discipline & Appeal) Rules, 1964 with immediate effect.

2. The relevant facts briefly are that the Petitioner was posted as Assistant Director of Employment at Silchar with effect from 15.5.97. On 10.9.97, the Government of Assam in the department of Labour and Employment issued a notification allowing the Petitioner to hold the current charge of the post of Deputy Director of Employment, Southern Assam Zone, Silchar in addition to his duties until further orders. While the Petitioner was holding such charge as Deputy Director of Employment, he received a letter dated 26.9.97 from the Director of Employment and Craftsman Training, Assam, (hereinafter referred to as "the Director") which stated that at the time when the selection Board meeting was held for appointment of Sri Aniruddha Bhattacharjee in the office of the Deputy Director of Employment, Southern Assam Zone, Silchar, there was a

ban imposed by the Government on employment and the said ban was reopened only in the last part of August, 1997. So the appointment made by the Deputy Director of Employment, Silchar during the ban period was illegal and unjustified. By the said letter dated 26.9.97, the Petitioner was directed to cancel the appointment of Sri Aniruddha Bhattacharjee and take follow up action as per the Government instructions contained in the notification dated 1.8.97, a copy of which was enclosed along with the said letter. The Petitioner then cancelled the appointment of Sri Aniruddha Bhattacharjee as LD Assistant, constituted a fresh selection committee on 30.9.97 and held a fresh selection through written examination and interview and prepared a select list of candidates for the vacancies in the posts of L.D.A. in the District Employment Exchange, Silchar. Sri Aniruddha Bhattacharjee who stood first in the said selection was appointed as L.D.A. by the Petitioner by his order dated 7.11.97. Thereafter, on 2.4.98, the Petitioner appointed Smti Sanchita Das who was placed second in the order of merit in the select list as L.D.A. By letter dated 2.4.98 the Petitioner appears to have informed the Director about the aforesaid appointment of Smti. Sanchita Das. After receiving the letter dated 2.4.98 of the Petitioner, the Director sent a telegram on 9.4.98 to the Petitioner cancelling the unauthorised appointment of Smti Sanchita Das and asked him to report compliance by wire. On 20.4.98, the Director sent another telegram to the Petitioner to confirm termination of appointment of Smti Sanchita Das, L.D.A. by return or else face disciplinary action. Simultaneously, on 20.4.98, the Director issued a letter to the Petitioner stating therein that the Petitioner was not empowered to exercise the power of the Deputy Director of Employment in respect of appointment/transfer of ministerial staff including L.D.A. and Grade-IV as he was holding the current charge of the post of Deputy Director of Employment, Southern Assam Zone, in addition to his own duties as Assistant Director of Employment, District Employment Exchange, Silchar and that he was not a regular full fledged Deputy Director. In the said letter dated 20.4.98, it was further stated that against the vacant post of L.D. Assistant under the District Employment Exchange, Silchar, Sri Dilip Hazarika, L.D.A. from Employment Exchange, Majuli had already been transferred by order dated 30.3.98 and yet the Petitioner had appointed Smti. Sanchita Das in the said vacant post by his order dated 2.4.98 despite the ban on recruitment to Grade-III and Grade-IV posts imposed by the Government on 14.3.95 which had not been lifted. In the said letter dated 20.4.98, it was further mentioned that the Petitioner had not complied with the Directorate telegraphic instructions dated 9.4.98 to cancel the said illegal and unauthorised appointment of Smti. Sanchita Das as L.D.A. in the District Employment Exchange, Silchar. By the said letter, the Petitioner was asked to explain as to why the Government should not be approached for taking appropriate disciplinary action against him for unauthorised exercise of powers and insubordination and violation of Administrative orders of the Government which were in force. Thereafter, by order dated 23.4.98, the Petitioner cancelled the appointment of Smti Sanchita Das as L.D.A. in the District Employment Exchange, Silchar in pursuance of the telegraphic orders dated 9.4.98 and 20.4.98" of the Director. In his letter dated

2.S.98 to the Director, the Petitioner submitted his explanation in reply to the letter dated 20.4.98 of the Director stating, inter alia, that the order dated 30.3.98 transferring Sri Dilip Hazarika to the vacant post of L.D.A was received by the Petitioner only on 4.4.98 and hence he was not aware of the order of transfer of Sri Hazarika to the said vacant post prior to the appointment of Smti Das on 2.4.98. In the said explanation, the Petitioner had also stated that the ban on appointment was reopened in the last part of August, 1997 as stated in the letter dated 26.9.97 of the Director to the Petitioner and that on receipt of the telegraphic instructions dated 9.4.98 and 20.4.98 and on telephonic instructions from the Director on 23.4.98, he had cancelled the appointment of Smti Das by order dated 23.4.98. The said explanation however was not accepted and by the impugned order dated 3.6.98 of the Government in the department of Labour and Employment, the Petitioner was placed under suspension pending drawal of departmental proceeding. Aggrieved, the Petitioner has moved this Court for appropriate relief.

3. At the hearing, Mr. P.K. Goswami, learned Counsel for the Petitioner, submitted that it will be clear from the letter dated 20.4.98 of the Director to the Petitioner that the first allegation against the Petitioner was that he could not exercise the power of the Deputy Director of Employment in respect of appointment of ministerial staff as he was holding only the current charge of the post of Deputy Director and was not a regular Deputy Director, but this allegation is misconceived inasmuch as in accordance with the order dated 10.9.97 of the Government of Assam, Labour and Employment Department, the Petitioner was allowed to hold the current charge of the post of Deputy Director of Employment, Southern Assam Zone, Silchar which would mean that he would perform all the functions of the Deputy Director of Employment including appointment of L.D. As. In this context, Mr. Goswami pointed out that the Petitioner has not committed any illegality in filling up the posts of L.D. As through a selection committee which was approved by the Deputy Commissioner. He further submitted that the selection Committee comprised, besides the Petitioner, of the Sub-Divisional Officer (Sadar), Silchar, the Joint Director of Health Services, Cachar, Silchar, the District information and Public Relation Officer, Cachar, Silchar and the Assistant Director of Employment (Enforcement), Southern Assam Zone, Silchar, and that the candidates were selected strictly on the basis of merit. Hence there were no malafide on the part of the Petitioner in selecting candidates and making appointment to the posts of L.D. As. The second allegation against the Petitioner in the letter dated 20.4.98 of the Director is that despite the order of transfer of Sri Dilip Hazarika, L.D.A. from the Employment Exchange, Majuli issued on 30.3.98 by the Director, the Petitioner appointed Smti Sanchita Das as L.D.A. in the District Employment Exchange, Silchar as a result of which the transfer order of Sri Hazarika could not be given effect to. Mr. Goswami explained that the Petitioner had no knowledge whatsoever about the said transfer order dated 30.3.98 when he issued the appointment order of Smti Sanchita Das on 2.4.98. At any rate, Mr. Goswami pointed out the said Sri Dilip

Hazarika was not keen on the transfer and therefore moved this Court in Civil Rule No. 2098/98 and obtained an order of stay. The third allegation against the Petitioner in the letter dated 20.4.98 of the Director is that there was a ban on recruitment to the posts of Grade-III and Grade-IV issued by the government on 14.3.95 and that the said ban had not been lifted and yet the Petitioner appointed Smti Sanchita Das. This allegation is factually misconceived because in the letter dated 26.9.97 of the Director to the Petitioner, it was clearly, stated that the ban on appointment was reopened in the last part of August, 1997. Mr. Goswami vehemently contended that this was a case of total non-application of mind on the part of the authorities before passing the order of suspension and that the order of suspension was liable to be quashed. He vehemently argued that the Petitioner appears to have been suspended as the transfer of Sri Dilip Hazarika which was initiated at the instance of the Minister concerned could not be implemented due to the stay order dated 4.5.98 passed by the court in Civil Rule No. 2098/98. He cited the decisions of the Supreme Court in *State of Orissa Vs. Bimal Kumar Mohanty*, as well as the decisions of this Court in *Dhirendra Kumar Barthakur v. The State of Assam and Ors.* (1983) 2 GLR 459, *Sadou Asom Rajyik Paribahan Nigam Chalak Santha v. The State of Assam and Ors.* 1988 (2) GLJ 177, and *Sohrab Ali v. State of Assam and Ors.* 1995 (1) GLJ 578 in support of his aforesaid submission that the order of suspension is vitiated and is liable to be quashed.

4. Mr. K.H. Choudhur, learned Additional Senior Government Advocate, Assam, on the other hand, referred to the averments in the counter affidavit filed on behalf of Respondent No. 1 to justify the impugned order of suspension. He further submitted that the records produced before the court would show that the Petitioner wherever he was posted resorted to all kinds of irregularities and that the impugned order of suspension was absolutely necessary in the facts and circumstances of the case. He submitted that there were also allegations of misappropriation and other financial irregularities against the Petitioner and that the charges against the Petitioner were of grave nature. He relied on the decision of the Supreme Court in *State of Orissa v. Bimal Kumar Mohanty* (supra) wherein it was held that where charges of misconduct were of grave nature of comprised of serious acts of omission and commission, the delinquent employee should be suspended by the disciplinary authority.

5. In *Dhirendra Kumar Barthakur v. State of Assam* (Supra), a Division Bench of this Court held that the disciplinary authority while exercising the discretion under the Rules for placing an employee under suspension must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations and must not act to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. In the said case, the court found that the disciplinary authority had taken into account irrelevant considerations and had failed to take the relevant considerations into account while exercising the discretion under the Rules for placing the delinquent employee under suspension and therefore set

aside the order of suspension. In *Sadou Asom Rajyik Paribahan Nigam Calak Santha v. State of Assam and Ors.* (supra), the court found that the State Government had issued instructions to the effect that the suspension was not to be resorted to except to impose major penalty and that the statement of allegations should be served within three months from the date of suspension failing which the government servant concerned was to be reinstated and in that case since the charges had not been served on the delinquent drivers within three months after suspension, the court directed reinstatement of the drivers. In *State of Orissa v. Bimal Kumar Mohanty*(supra), the Supreme Court held:

It is thus settled law that normally when an appointed authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by malafides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.

In *Sohrab Ali v. State of Assam & Ors*(supra), this Court after citing the aforesaid principles laid down by the Apex court held that an order of suspension should not be a matter of administrative routine and should be passed only after application of mind to the relevant considerations and some of the relevant

considerations which must weigh with the disciplinary authority while passing the order of suspension are gravity of the misconduct sought to be enquired into, nature of evidence placed before the appointing authority and the likelihood of the delinquent officer creating impediment in the enquiry if not suspended and when an order of suspension is challenged there is no general law that is to be followed by the court in every case, and each case has to be judged by the court on its own facts.

6. The question for decision in this case therefore is as to whether the competent authority has applied his mind to all relevant factors as indicated in the judgment of the Supreme Court in *State of Orissa v. Bimal Kumar Mohanty*(supra) and the judgment of this Court before passing the impugned order of suspension against the Petitioner. On a reading of the impugned order of suspension dated 3.6.98. it appears that the same has been passed on the basis of a report submitted by the Director on 14.5.98. In the said report dated 14.5.98, the Director has stated inter alia that on receipt of the order dated 30.3.98 of his Directorate transferring Sri Dilip Hazarika, LDA, Employment Exchange, Majuli to the District Employment Exchange, Silchar against the vacant post of LDA vice Sri B C Nunia, LDA who had been allowed to officiate temporarily as UDA in the said Employment Exchange, the Petitioner had immediately filled up the said vacancy by appointing unauthorisedly one Smti Sanchita Das and allowed her to join on 3.4.98 and sent a telegram on 4.4.98 to the Director, and also to the Employment Officer, Employment Exchange, Majuli intimating the fact that the vacancy under reference had been filled up by him. In the said report dated 14.5.98, the Director has further stated that this act of the Petitioner was not only malafide in intent, but also illegal and unauthorised as it went against the order issued by the Director on 30.3.98. The Director further stated in the said report that the facts as detailed in the report would reveal that the Petitioner has unnecessarily dragged the Government and the Directorate to uncalled for litigation and the Director has requested the Government to take appropriate action against the Petitioner for insubordination, dereliction of duty and overstepping of jurisdiction. The records produced before the court show that after receipt of the report dated 14.5.98 of the Director, the Deputy Secretary(C) has placed the following note before the Commissioner & Secretary Labour and Employment Department on 25.5.98:

Commr & Secy.

Notes from pages 31/N and P.U.C. below at 83-84/C and 85-98/E. It may be mentioned here that Sri Sarmah is in the habit of committing irregularities wherever he is posted earlier. He was posted at Guwahati but because of his committing certain irregularities he has been transferred to Silchar and we have already drawn up departmental proceeding against him. In the recent past, he also we also received report from DE & CT that he also again committed certain irregularities at Silchar and we have accordingly requested DE & CT to frame draft additional charges against Sri Sarmah. Now in view of what has been stated

by the DE & CT at pages 85-87/c it appears that it may not be in interest of public service to allow Sri Sarmah to continue to function as Asstt. Dir. of Employment. Hence a decision may kindly be taken if pending drawal of additional charges of insubordination, dereliction of duty and of over-stepping his jurisdiction he may be placed under suspension with immediate effect. Submitted.

Sd/- 25.5.98

The aforesaid note of the Deputy Secretary(C) was then placed by the Commissioner and Secretary before the Minister with proposal to place the Petitioner under suspension pending departmental proceeding against him and the Minister passed orders on 27.5.98 agreeing to the said proposal of the Commissioner and Secretary. It will be clear from the note of the Deputy Secretary(C) with which both the Commissioner & Secretary and the Minister have agreed that the order of suspension of the Petitioner was passed because of the fact that the Petitioner was in the habit of committing irregularities wherever he was posted. In the note of the Dy. Secy.(C) it was further mentioned that the Petitioner was posted at Guwahati, but he committed irregularities and he was transferred to Silchar and that Departmental proceedings were drawn up against him. But he again committed irregularities at Silchar as stated in the report of the Director and that in the interest of public service, the Petitioner should not be allowed to continue to function as Assistant Director of Employment and that pending drawal of additional charges for insubordination, dereliction of duty and overstepping his jurisdiction he may be placed under suspension with immediate effect. The considerations which weighed with the competent authority therefore for placing the Petitioner under suspension were that the Petitioner had committed irregularities earlier while he was posted at Guwahati for which the departmental proceedings were pending and that the Petitioner was transferred to Silchar but he committed further irregularities by making appointment of Smti, Sanchita Das and that he had committed misconduct of insubordination, dereliction of his duty and over-stepping of jurisdiction for which additional charges had to be framed him. The aforesaid considerations which weighed with the competent authority for placing the Petitioner under suspension cannot be held by the court to be irrelevant considerations. Further, the averments in the counter-affidavit filed by the Respondents on 3.8.98 are that the temporary vacancy of LDA caused due to the officiation of Sri BC Nunia to the post of UDA was not a regular vacancy as Sri BC Nunia had only been promoted to the post of UDA by way of temporary officiating arrangement as per order dated 20.1.98 of the Director, a copy of which has been annexed to the said counter-affidavit as Annexure-E, and hence no regular recruitment to the said post of LDA could be made and yet the Petitioner went ahead and appointed Smti Sanchita Das to the said post on regular basis. The aforesaid allegation against the Petitioner is a grave one and if proved makes out a case of illegal and irregular appointment having been made by the Petitioner to the post of LDA and if the Petitioner has been suspended by the competent authority on account of the aforesaid alleged misconduct on his part, it is difficult for the court to hold that the suspension of

the Petitioner by the impugned order was vitiated on account of non-application of mind. As to how far the aforesaid allegation of misconduct on the part of the Petitioner is substantiated in the inquiry in the disciplinary proceedings however is a different matter and will depend upon the materials which are placed against the Petitioner in the said inquiry and no opinion can be expressed by the court at this stage as to whether or not the allegation of misconduct on the part of the Petitioner is true or not.

7. In the result, I am not inclined to quash the impugned order of suspension. But since the Petitioner will be retiring shortly, I dispose of this writ petition with" the direction that the departmental proceedings against the Petitioner be completed within a period of two months from the date of receipt of a certified copy of this judgment by the Commissioner & Secretary to the Government of Assam, Labour & Employment Department from the Petitioner and the Petitioner will be paid his subsistence allowance in accordance with the Rules during the period of suspension within a month from today. However, considering the entire facts and circumstances of the case, the parties shall bear their own costs.