

(2024) 04 GAU CK 0008

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4839 Of 2018

Assam Rastrabhasa Prasar Samity

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 02-04-2024

Acts Referred:

Citation : (2024) 04 GAU CK 0008

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : L P Sharma , S. Chakraborty, F. Khan, U. Das

Final Decision : Disposed Of

Judgement

1. Heard Mr. S. Chakraborty, learned counsel for the writ petitioner (Management). Also heard Mr. F. Khan, learned counsel for the respondent No.3 and Ms. U. Das, learned counsel for the respondent No.1. No one appears for the respondent Nos. 2 and 4.

2. At the outset, the counsel for the petitioner submits that the respondent No.2 died during the pendency of this case and that the legal heirs of the respondent No.2 have accepted the impugned order dated 04.03.2009 issued by the Management against the respondent Nos. 2, 3 and 4. The petitioner's counsel also submits that during the proceedings of this case, the respondent No.4 had also accepted the impugned order dated 04.03.2009 issued by the Management, by which the respondent nos.2, 3 & 4 have been compulsorily retired from service.

3. The case of the petitioner is that the respondent No.3 is a workman, who was placed under suspension vide order dated 23.06.2005. Show cause notice dated 05.11.2005 was issued to the respondent No.3 asking him to submit his written statement of defence against the 7 charges that were framed against him. The show-cause-notice dated 05.11.2005 has listed out 8 charges. However, there is no charge number 3 in the show-cause-notice dated 05.11.2005. The 8 charges

without charge No.3 are as follows-

"(1) That while you were working as LDA in the Assam Rastrabhasa Prasar Samity (in short 'Samity'), you were placed under suspension vide office order No.ARPS/Esstt/21/05/11/110-115 dated 23.6.2005 and Shri Suren Nath, a peon of the Samity, was asked to hand over the said suspension order to you through Peon Book and when Shri Nath went to deliver the said order, you refused to receive the said suspension order.

You are charged with insubordination, violation of office discipline and unbecoming of an employee of the Samity.

(2) That while you were placed under suspension, you refused to receive the aforesaid suspension order from Shri Jagadish Gogoi, peon of the the samity, the said suspension order was sent through Registered post with A/D vide registered letter No. 2787 dated dated 24.6.2005 but the postal authority returned the said registered letter to the sender i.e. the Samity with an endorsement 'Refused.

You are charged with insubordination, violation of office discipline and unbecoming of an employee of the Samity.

(4) That while you were working as LDA, you on 7.10.2002 at about 12.00 noon, when the Executive committee meeting of the Samity was going on in the office chamber of Mantri, you along with others entered into the office chamber of Mantri and demanded to revoke the suspension order of Shri Bimal Kr Nath, Shri Sailen Sarma and Shri Dimbeswar Borah, failing which he along with others threatened the officers/members of the Executive committee to confine in the room and subsequently he along with others closed the gate and tried to attack the official of the Samity.

You are therefore charged with riotous behaviour, threatening to the superior officers, insubordination, threatening the Executives and officials of the Samity and unbecoming of an employee of the Samity.

(5) That while you were working as LDA in the Samity, you on 3.11.2003 at about 12.30 PM, you along with some other employees of the Samity misbehaved Smti Priyasakhi Devi, Mukhya Prasasanik Adhikary of the Samity in the office of the Commissioner, Education Department at the Assam Secretariat, Dispur.

You are therefore charged with misbehaving Smti. Priyasakhi Devi, an officer of the Samity, violation of office discipline, insubordination and unbecoming of an employee of the Samity.

(6) That while you were working as LDA in the Samity, you left the office on 3.11.2003 at about 11.30 AM without any authority or permission from the competent authority and you along with others misbehaved Smti Priyasakhi Devi Mukhya Prasasanik Adhikary of the Samity in the office of the Commissioner, Education Department at the Assam Secretariat, Dispur at about 12.30 PM to

1.00 PM.

You are therefore charged with insubordination, violation of office discipline and leaving the office without permission from the competent authority and negligence of duty.

(7) That while you were working as LDA in the Samity, you, on 15.4.2005 at about 10 AM when the Samity tried to shift the stationery/files/furniture of the office from Hedaytpur to Rup Nagar, along with others obstructed the workers and threatened them with dire consequences. You also threatened the Mantri with un-parliamentary words and closed the main gate of the office as a result of which the Mantri, Pradhan Sachib, Adviser and other officers of the Samity were confined to the office premises from 10 AM to 8 PM on 15.4.2005.

You are charged with confinement of the employees of the Samity, obstructing the willing-workers from working, threatening the employees with dire consequences and unbecoming of an employee of the Samity.

(8) That while you were placed under suspension on 27.4.2005 and though you were not asked to attend office during the period of your suspension, but you regularly came to the office and threatened the officers/employees of the Samity with dire consequences of the life and you also threatened to murder them.

You are therefore charged with riotous behaviour and unbecoming of an employee of the Samity."

4. The respondent No.3 submitted his reply to the show-cause-notice, denying all the charges framed against him. Thereafter, a domestic enquiry was initiated against the petitioner and the Enquiry Officer gave his Enquiry Report dated 13.07.2008, by coming to a finding that charge Nos. 5, 6, 7 and 8 were not proved against the petitioner. The Enquiry Officer found that charge Nos.1 and 2 were proved against the petitioner and charge No. 4 was partly proved against the petitioner. However, no decision was made by the Enquiry Officer against charge No.3, as there was no Charge No.3.

5. The Enquiry Report was thereafter sent to the respondent No.3 requesting him to submit a representation against the same. Consequent to the above, the impugned order dated 04.03.2009 was issued by the writ petitioner compulsorily retiring the respondent No.3 from service. Being aggrieved by the same, the respondent No.3 raised an industrial dispute with the Government of Assam and thereafter, vide notification dated 09.05.2014, the industrial dispute was referred to the Industrial Tribunal, Guwahati for adjudication as per the following schedule-

"-SCHEDULE-

1. Whether the management is justified in giving compulsory retirement to their workmen Md. Abdul Jalil, Shri Bidyadhar Natha and Shri Debesh Mishra in place of re-instating them in their services along with back wages as demanded by

them?

2. If not, what relief they are entitled too?"

6. The Industrial Tribunal, Assam, Guwahati, registered Reference Case No.1/2006 against the industrial dispute raised by the respondent No.3. Reference Case No.1/2006 was thereafter disposed of by the learned Industrial Tribunal vide Award dated 18.09.2017, by which the Industrial Tribunal held that charge Nos. 1, 2 and 4 were not proved against the respondent no.3. The Management was directed to reinstate the respondent no.3 and pay him full back wages.

7. Being aggrieved by the above, the petitioner (Management) has filed the present writ petition challenging the Award dated 18.09.2017 passed in Reference Case No. 1/2006.

8. The petitioner's counsel submits that the learned Tribunal had misinterpreted the evidence given by PW 3 Sri Chitra Mahanta, holding that the Enquiry Officer had come to conflicting findings, when the Enquiry Report had stated that there was no incident on 07.10.2002, while also stating that the evidence given by the PWs 1, 2, 3 and 4 showed that the Mantri (Secretary) and other officers were confined to their room on 07.10.2002. He submits that the learned Tribunal had held that Enquiry officer had come to a finding that no incident took place on 07.10.2002, without understanding the context it was stated in. It was on the premise that if an incident had taken place on 07.10.2002, a report would have been made to the Police. He submits that the presence of the respondent No.3 in the Mantri's room on 07.10.2002 was proved and as such, the learned Tribunal could not have come to a finding that the charge No. 4 was not partly proved.

9. He submits that even though the respondent No.3 may not have uttered any word inside the room of the Mantri, the very fact that the respondent No.3 had entered the room with others, without permission, shows that the learned Tribunal was wrong in his finding that the respondent No.3 did not enter the room on 07.10.2002. He submits that in terms of the judgment of the Supreme Court in the case of Standard Chartered Bank Vs. R.C. Srivastava, reported in AIR 2021 Supreme Court 4879, in a domestic enquiry charge has to be proved on the principles of preponderance of probabilities and if a piece of evidence is on record, which could support the charge which has been levelled against the delinquent unless it is per se unsustainable or perverse, ordinarily is not to be interfered by the Tribunal, more so when the domestic enquiry has been held to be fair and proper. He further submits that in terms of the judgment of the Supreme Court in the case of Management of Bharat Heavy Electricals Limited Vs. M. Mani, reported in (2018) 1 SCC 285, the Supreme Court has held that once the Labour Court upheld the departmental enquiry as being legal and proper then the only question that survived for consideration before the Labour Court was whether the punishment of "dismissal" imposed by the appellant to the respondents was legal and proper or it requires any interference in its

quantum.

10. He submits that in the case of *The Workmen of M/S Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, reported in (1973) 1 SCC 813, the Supreme Court has held that the Tribunal is now clothed with the power to reappraise the evidence recorded in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman.

11. The petitioner's counsel submits that as there was no procedural impropriety in the domestic enquiry conducted against the respondent No.3, the learned Tribunal could not have interfered with the findings of the domestic enquiry. He accordingly prays that the impugned Award dated 18.09.2017 passed in Reference Case No. 1/2006 should be set aside.

12. Mr. F. Khan, learned counsel for the respondent No.3 submits that there is no infirmity in the finding of the learned Tribunal that charges 1 and 2 were not proved, inasmuch as, the crucial witnesses to prove the charges had not been examined in the domestic enquiry. In respect of the 4th charge, he submits that Enquiry Report dated 13.07.2008 has clearly shown that though the respondent No.3 was present along with others on 07.10.2002 in the office chamber of the Mantri, when the EC meeting was going on, the respondent No.3 did not misbehave with any of them, though he entered the office without permission along with others. He submits that the 4th charge framed against the petitioner does not make any mention of the respondent No.3 entering the office of the Mantri on 07.10.2002 without permission. He accordingly submits that there being no ground to interfere with the impugned award passed by the learned Tribunal, the writ petition should be dismissed.

13. I have heard the learned counsels for the parties.

14. Charge Nos. 1, 2 and 4 are reproduced once again as follows-

"(1) That while you were working as LDA in the Assam Rastrabhasa Prasar Samity (in short 'Samity'), you were placed under suspension vide office order No.ARPS/Esstt/21/05/11/110-115 dated 23.6.2005 and Shri Suren Nath, a peon of the Samity, was asked to hand over the said suspension order to you through Peon Book and when Shri Nath went to deliver the said order, you refused to receive the said suspension order.

You are charged with insubordination, violation of office discipline and unbecoming of an employee of the Samity.

(2) That while you were placed under suspension, you refused to receive the aforesaid suspension order from Shri Jagadish Gogoi, peon of the the samity, the said suspension order was sent through Registered post with A/D vide registered letter No. 2787 dated dated 24.6.2005 but the postal authority returned the said registered letter to the sender i.e. the Samity with an endorsement 'Refused.

You are charged with insubordination, violation of office discipline and unbecoming of an employee of the Samity.

(4) That while you were working as LDA, you on 7.10.2002 at about 12.00 noon, when the Executive committee meeting of the Samity was going on in the office chamber of Mantri, you along with others entered into the office chamber of Mantri and demanded to revoke the suspension order of Shri Bimal Kr Nath, Shri Sailen Sarma and Shri Dimbeswar Borah, failing which he along with others threatened the officers/members of the Executive committee to confine in the room and subsequently he along with others closed the gate and tried to attack the official of the Samity.

You are therefore charged with riotous behaviour, threatening to the superior officers, insubordination, threatening the Executives and officials of the Samity and unbecoming of an employee of the Samity.

15. The learned Tribunal, while deciding as to whether charge Nos. 1 and 2 had been proved, had stated that the Office Peon, namely Suren Nath, who had stated that the respondent No.3 had refused to accept the suspension order, had not been examined. Similarly, one Peon, namely Jagadish Gogoi was also not examined, to prove that the respondent No.3 had refused to accept the suspension order. This Court, on considering the reasoning and findings of the learned Tribunal on the above two charges, does not find any reason to interfere with the said finding of the learned Tribunal.

16. In respect of the 4th charge framed against the respondent No.3, it is proved by the Enquiry Report that the respondent No.3 had entered into the room of the Mantri on 07.10.2002. The finding of the Enquiry Officer in the Enquiry Report relates to the evidence of MW4, Sri Khirada Saikia, who stated in her evidence as follows:-

"Then Mantri and executive president Ext.-9 was written by Sri Nitai Debnath and Ext.-9(2) in his signature which I know Ext.-10 was received by me from smt. Priyasakhi Devi on 7.10.02 when the E.C. meeting was going on the C.S.E alongwith other entered at the office chamber of Mantri when I was also present and they threatened us to revoke the suspension order of Sri Bimal Kr. Nath, Sailen Sarma, Dimbeswar Bora and they confined us in the room and closed the main gate and attempted to attack us."

17. The evidence of MW 1, Sri Basanta Kr. Kakoti is as follows:-

"On 07.10.2002 when the Executive Committee Meeting was going on, Sri Bidyadhar Nath and other entered my room and demanded to revoke the suspension order of Sri Bimal Nath, Sailen Sarma and Dimbeswar Bora and Kr confired The member of the Executive Body in the room and used unpolitely word, and closed the main gate and tried to attack the offiaial of Samiti. Though Sri Bidyadhar Nath accompanied the group but he did not uttend any word against me as well as towards to Samiti members.

Though, Sri Bidyadhar Nath actively associated with the Union and present in every union activation but he never used any slang language or did any offensive act against any member of the Samiti. I do not remember if Sri Bidyadhar Nath forcefully entered the office during his suspension period did put his signature on the attended book.”

18. The evidence of MW 2, Smti. Priyasakhi Devi is as follows:-

“I was the administrative office during 2002 of the Samiti and I know Sri Bidyadhar Nath. He was an employee of Examination branch on 07.10.2002 when our executive meeting was going on in the office room of our 'Mantri', santa Kr. suddenly Sri Bidyadhar Nath and other entered the office chamber and confined 7 us inside the room and threatened us with dric consequent and used slang language to us.

19. The evidence of MW3, Sri Chitra Mahanta is as follows:-

“On 07-10-2002, when our E.C. meeting was going on in the office chamber of the Mantri, Sri Bidyadhar Nath and others entered into the office chamber of the Mantri and reataded us as confining in the room and also closed the main gate of the office and used unparliamently words towards us and shown their finger towards but we were not anantted by them. I do not know whether Sri Bidyadhar Nath was present or not on 15-4-05.”

20. The finding of the Enquiry Officer in the Enquiry Report dated 13.07.2008 is to the effect that the respondent No.3 was in the office chamber of the Mantri on 07.10.2002 when the Executive Committee (EC) meeting was going on and the respondent No.3 with others confined the members of the Samity in the room. Though respondent No.3 entered without permission along with others in the office chamber of the Mantri on 07.10.2002, the respondent No.3 did not misbehave with any of the persons in the meeting. Paragraph 2 and 4 of the Enquiry Report is reproduced below as follows :

“2. That I have carefully considered the evidence and also the argument submitted by the parties. From the evidence adduced by P.W. 1,2,3 and 4 it is clear that the charge sheeted employee entered into the office chamber of the Mantri on 7.10.02 without any permission along with others and confined the members of the Samity.

4. That further from the evidence of the witnesses of the Management it is crystal clear that the charge sheeted employees was present along with others on 7.10.02 in the office chamber of the Mantri when the E. C. Meeting was going on. But all the witnesses of the Management specifically deposed that Sri Bidya Dhar Nath did not misbehave any of them. But, however he entered without permission along with others to the office chamber of the Mantri on 7.10.02 and thus the Management has been able to prove the charge No.4 partly to the fact that he entered into the office Chamber of the Mantri along with others without any permission.”

21. The finding of the Enquiry Officer in his Enquiry Report at Para 2 is to the effect that the respondent No.3 entered the office chamber of the Mantri of the Management on 07.10.2002 without any permission along with others and confined the members of the Samity. The further finding of the Enquiry Officer in his Enquiry Report at Para 4 is to the effect that all the witnesses of the Management deposed that the respondent No.3 did not misbehave with any of them.

22. The above clearly goes to show that the respondent No.3 had entered the office of the Mantri without permission on 07.10.2002. However, the charge framed against the respondent No.3 does not make a mention that the respondent No.3 had entered the office without permission. It only states that the respondent No.3 had demanded revocation of his suspension order, failing which, he threatened the officers therein with physical harm, besides confining them in the said room.

23. The finding of the learned Tribunal, on the other hand, is that the presence of the respondent No.3 in the Mantri's room on 07.10.2002, instigating other workmen to commit an offence of confinement and assault on the officers of the Samity was not proved. No police complaint was lodged. Further, the finding of the learned Tribunal that the Enquiry Officer in one part of the Enquiry Report had stated that the evidence of the witnesses proved that the Mantri and the other officers were confined on 07.10.2002, but in the second part of the said paragraph, the Enquiry Officer stated that he was in agreement with the submission that no incident occurred on 07.10.2002 is not correct, inasmuch as, the learned Tribunal has twisted the findings of the Enquiry Report dated 13.07.2008. The Enquiry Officer had found the respondent No.3 to have entered the office of the Mantri on 07.10.2002 without permission and confined the members of the Samity in the office. The Enquiry Officer in his Enquiry Report had disagreed with the submission made by the respondent No.3 that had there been any incident on 07.10.2002, the Management would have immediately reported the matter to the police. This observation of the submission of the respondent No.3 made by the Enquiry Officer has been misinterpreted by the learned Tribunal. The learned Tribunal thus held that the said observation amounted to the Enquiry Officer saying that no incident occurred on 07.10.2002, as the Management did not submit any police report, regarding the entry of the respondent No.3 in the office of the Mantri on 07.10.2002.

24. This Court is of the view that the said finding of the learned Tribunal is not correct, as is clearly evident from the evidence and the records of the case. That the respondent no.3 had entered the Mantri's room and confined the officers of the Samity is proven by the evidence adduced and the finding of the Enquiry Officer. Accordingly, it is proved that the respondent No. 3 had entered the room of the Mantri on 07.10.2002 and confined the members of the Samity in the room.

25. For the reasons stated above, the finding of the learned Tribunal in the

impugned Award dated 18.09.2017 passed in Reference Case No. 1/2006 is hereby set aside, to the extent that the learned Tribunal findings that charge No. 4 framed against the respondent No.3, was not proved. However, this Court is not interfering with the findings of the learned Tribunal that charge Nos. 1 and 2 have not been proved against the respondent no.3. In view of this Court finding that charge No. 4 has been partly proved against the respondent no.3, this Court is of the view that the matter should be remanded back to the Management, for taking a fresh decision on the quantum of penalty to be imposed upon the respondent No.3. Accordingly, the impugned Award dated 18.09.2017 passed by the learned Tribunal in Reference Case No.1/2006 is hereby set aside, to the extent indicated above. The matter is remanded back to the Disciplinary Authority, to take a fresh decision as to whether any penalty is to be imposed, as charge 1 & 2 have not been proved. If the petitioner is of the view that penalty is to be imposed, the quantum of penalty to be imposed upon the respondent No.3 should be decided, as charge no.4 has been partially proved against the respondent No.3 in terms of the Enquiry Report.

26. The writ petition is accordingly disposed of.

27. Send back the case record.