

(2007) 12 GAU CK 0035
In the Gauhati High Court
Case No : Writ Petition (C) No. 381 of 2003

Bidhu Bhusan Das

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 05-12-2007

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Central Civil Services (Temporary Service) Rules, 1965 — Rule 5, 5(1)
Constitution of India, 1950 — Article 311
Penal Code, 1860 (IPC) — Section 379, 419, 468, 471
Tripura Civil Services (Conduct) Rules, 1988 — Rule 3(1)

Citation : (2009) 1 GLT 567

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : P.R. Barman, for the Appellant; T.D. Majumder, for the Respondent

Judgement

Hrishikesh Roy, J.—Heard Mr. P. Roy Barman, learned Counsel appearing for the Petitioner. Also heard Mr. T.D. Majumder, Learned Addl. G.A. representing the State Respondents.

2. The Petitioner who has been serving as a L.D.C. under the Director of School Education is before this Court to challenge a termination order 11.9.03 (Annexure-A) whereby the service of the Petitioner has been ordered to be terminated by taking recourse the provisions of Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965, (hereinafter referred to as "the Rules").

3. The Petitioner was appointed as an L.D.C. on the strength of an appointment order dated 6.4.1985 issued by the Director of School Education and he joined in the said post on 23.2.2005.

4. On 20.11.1997 a charge memo was issued against the Petitioner by the Director of School Education, Tripura which contained the following charge against the Petitioner.

That Sarvasree Bidhu Bhusan Das secured job under Education Department in the post of Assistant Teacher on 19.6.78 and posted to Kamaipur J.B. School under Inspector of School, Belonia, South Tripura (Now at Subhashnagar High School (Pry. Section) and his younger brother Sri Jagadish Chandra Das also secured job as Lower Division Clerk Madhuban (Dukli) H.S. School under this department in the same name of Sri Bidhu Bhusan Das on 23.2.85 on the strength of the same Educational Certificate. This un-doubtedly indicates a very desperate and deceiving role played by them in the connivance of both the brOrs. . These two brOrs. have possessed the same name and by way of in personification they achieved their unlawful goal.

Thus, the above mysterious activities of the aforesaid employees named Sri Bidhu Bhusan Das, Assistant Teacher and Bidhu Bhusan Das @ Sri Jagadish Chandra Das, Lower Division Clerk attract the breach of discipline and tantamount to violation of Rule 3(1) and (iii) of the Tripura Civil Services (Conduct) Rules, 1988 which have sufficient reasons to proceed against them in accordance with the provisions of Rule 14 of the C.C.S. (C.C. & A.) Rules 1965.

5. An enquiry was conducted into the said charge and by the enquiry finding dated 11.6.99, it was held that the charge that the Petitioner and his brother connived with each other to gain entry into the Government service by producing the educational testimonials of his elder brother, could not be proved. The Enquiry Officer categorically found that the charge made against the Petitioner is not established.

6. The Petitioner who was placed under suspension while the enquiry was on, after the enquiry finding in his favour was given, was ordered to be reinstated in service and the Director of School Education by his order dated 7.7.1999 treated the period spent by the Petitioner under suspension to be "on duty".

7. The Petitioner also faced a criminal trial on the basis of criminal charge brought against him. The charge against the Petitioner are extracted herein below for ready reference.

That you forged a certain documents mentioned below intending that it shall be used for the purpose of cheating and that hereby committed an offence punishable u/s 468 IPC. and within my cognizance.

And I hereby direct that you be tried on the said charge.

That, you fraudulently used as genuine of documents namely, 1) pass certificate of Intermediate Examination, 2) Admit Card, 3) Marksheet, 4) Employment Card etc. which you then know to be a forged documents mentioned above and that you thereby committed an offence punishable u/s 471 IPC, and within my cognizance.

And I hereby direct that you be tried on the said charge.

8. By the judgment dated 29.12.95 in G.R. Case No. 120 of 1987 the learned

Chief Judicial Magistrate, West Tripura, Agartala held that the prosecution failed to prove the charge beyond reasonable doubt and accordingly ordered acquittal of the Petitioner and also his brother, both of whom were tried together in the said criminal trial.

9. Several years after the acquittal of the Petitioner by the criminal court and also after the Departmental enquiry finding dated 11.6.1999 which were in favour of the Petitioner, Anr. Memo dated 26.10.2002 was issued by the Director of School Education, whereby the Petitioner was asked to furnish certain original educational testimonials within 15 days from the date of the said Memo. It was indicated in the Memo dated 26.10.2002 that on failure to supply the requisitioned documents, an exparte decision will be taken by the authority.

10. The Petitioner in his reply dated 20.11.2002 submitted that the documents asked for have been seized from him by the then District Inspector of School on 7.10.1986 and he also enclosed a copy of the receipt given by the Inspector of Schools to indicate why he was not in a position to furnish the requisitioned testimonials. The copy of the receipt-dated 7.10.1986 showing receipt of the original testimonials from the Petitioner is marked as Annexure "D" in the Writ petition.

11. Thereafter the authorities did not pursue the matter any further but eventually the impugned termination order dated 11.9.03 was passed terminating the service of the Petitioner in purported exercise of powers under Rule 5(1) of the Rules. The Termination order indicates the same to be a termination simpliciter.

12. Mr. P. Roy Barman, learned Counsel appearing for the Petitioner challenging the termination order makes the following submissions.

(i) The termination order is not a simple order of termination but has to be considered stigmatic in view of the events which preceded the termination order and accordingly such termination order can not be treated as a termination simpliciter but has to be construed as a punishment termination, which should have been preceded by an opportunity to the Petitioner.

(ii) It is also contended on behalf of the Petitioner that only because the authorities failed to prove the charge against the Petitioner in the Departmental enquiry and since the Petitioner was also acquitted by the criminal court, the Petitioner is removed from service by issuing the impugned termination order and said termination order is liable to be interfered with by this Court, since the order is motivated by the charges earlier made which however could not be proved against the Petitioner.

(iii) The learned Counsel also contents that the Respondent authorities did not challenge the acquittal order dated 29.12.1995 whereby the Petitioner has been acquitted of the same very charge contained in the charge Memo dated 26.10.02 nor the Respondent authorities took a decision to disregard the domestic enquiry

finding dated 11.6.99 and to conduct a fresh enquiry. Infact the Department has given benefit of positive enquiry finding and the criminal court finding given to the Petitioner, by ordering regularization of the period of his suspension as one "on duty" and accordingly there could not have any occasion for the authorities to order termination of the service of the Petitioner.

(iv) Mr. Roy Barman also contends that the Petitioner was appointed as an L.D.C. in the year 1985 and he was sought to be terminated by treating him as a temporary employee after nearly 18 years of service and recourse to the provisions of the CCS (Temporary Service Rules) would not be justified in the instant case.

13. Mr. T.D. Majumder, learned Addl. G.A. on the other hand submits that the Petitioner was not confirmed in his service and accordingly the authorities were within their right to take recourse to the Rules of 1965 to terminate the service of the Petitioner, although he had served for about 18 years as a temporary Government servant.

The learned Addl. G.A. further contends that the termination of the Petitioner's service was ordered as in the perception of the employer, retention of the Petitioner in service was not desirable as he had tarnished reputation of the Department as is revealed from the news paper report.

It is further contended that the impugned order is an order of termination simpliciter and no stigma is attached to such termination and accordingly he is not entitled to be given any hearing or opportunity prior to such termination and accordingly interference of the court is not called for.

Learned Addl. G.A. has also produced an order dated 23.11.07 passed by the Director of School Education in respect of the brother of the Writ Petitioner whereby Bidhu Bhusan Das, the Asstt. Teacher (brother of the Petitioner) was removed from his service on the basis of guilty finding recorded by the departmental enquiry in connection with the charge levelled against him, that the two brOrs. are serving in the Department on the strength of the same set of educational qualifications certificates.

14. In order to decide the legality of the termination order, it would be relevant to take note of the events which preceded the issuance of the impugned termination simpliciter order dated 11.9.03. Only then it can be determined as to whether in substance the order of termination is punitive which would have entailed a full scale enquiry or whether it is a case of termination simpliciter, which could have been passed without holding such an enquiry.

Whether the earlier events pertaining to levelling of charge against the Petitioner and the domestic enquiry conducted against him as well as the criminal trial faced by the Petitioner on the said charges, had a bearing on the decisions to terminate the service of the Petitioner, would determine whether the impugned order can be treated as one of termination simpliciter or as a punitive order.

15. The learned Counsel for the Petitioner has cited the following decisions of the Supreme Court to contend that even in case of non confirmed Government servant, the authorities can not terminate the services without affording a hearing if such termination is construed to be a stigmatic one.

(i) Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, (ii) AIR 2000 1706 (SC) and (iii) Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, .

16. From the aforesaid Supreme Court decision it can be seen that if an order visit a Government Servant with a civil consequences or casts aspersions on his character or integrity, it must be considered to be one by way of punishment and requirement of giving an opportunity of hearing is mandatory before termination even in cases where the status of the public servant is that of a temporary employee.

It is also clear that if a termination simpliciter order is preceded by a full scale Departmental enquiry, a charge-sheet and also a criminal trial, the order of termination will naturally be construed to be a not one of termination simpliciter but a punitive one, requiring the employer to follow the procedure laid down under Article 311 of the Constitutions of India.

It has been stated by the Supreme Court in Chandra Prakash Shahi (supra) that if there are any allegation of misconduct and an enquiry is held to find out the truth of that misconduct and an order terminating the service is passed after that enquiry, the order would be punitive in nature, as the enquiry was held not for assessing the general suitability of the employee for the post in question but to find out the truth of allegation of mis-conduct against that employee.

17. The decision of the Apex Court in Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, laying down the following ratio may be extracted:

One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) culminated in a finding of guilt. If all three factors are present, the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld.

The termination order itself referred to three other letters. One of the letters explicitly referred to misconduct on the part of the employee and also referred to an Inquiry Committee's report, which report in its turn had found that the employee was guilty of misconduct. The termination was held to be stigmatic and set aside.

18. It is now necessary to examine the facts of the present case in the context of the ratio of the decisions of the Apex Court. In the instant case, the termination simpliciter order passed against the Petitioner was preceded by several events

touching on the character and the integrity of the Petitioner. Serious charge of securing appointment through impersonation by producing educational testimonials of his brother were levelled against the Petitioner and the Petitioner was also charged with stealing his brother's educational testimonials. But, in the enquiry held, the said charge was not established.

In the criminal trial also the Petitioner faced substantially the same charges pertaining to securing of, appointment through impersonation and production of educational testimonials of Anr. to secure such employment and also theft of such educational testimonials from Anr. . But even in the criminal trial, the Petitioner was acquitted for lack of evidence.

19. Thus when the Employer was confronted with positive findings of the Departmental enquiry and also the criminal court in favour of the Petitioner in respect of the charge framed against him, a Memo dated 26.10.02 was addressed to the Petitioner directing him to furnish the original educational testimonials and on his failure to furnish the same, it was indicated that an exparte order would be passed against him.

When the Petitioner in his reply indicated that the said testimonials have been seized by the Dy. Inspector of School on 7.10.1986 and continues to be in the custody of the Department itself, the authorities without proceeding further on the basis of the Memo dated 26.10.02, had issued the impugned termination order dated 11.9.03 against the Writ Petitioner.

20. In the counter Affidavit filed by the Department, it is averred that the said termination order has been issued as the Petitioner by his conduct brought the Education Department into disrepute. Could that be the motive for issuing the impugned termination order? If examined in the context of the previous history of charges levelled against the Petitioner, the Departmental enquiry, the criminal trial, can it be said that the termination order was an innocent termination order? In fact by all parameters the termination order seem to be motivated by the charges earlier levelled against him.

21. The Petitioner in the criminal trial faced various charges under the IPC such as under Sections 379 (theft), Section 419 (cheating by impersonification); Section 468 (forgery for the purpose of cheating); Section 471 (using as genuine a forged document). But the Petitioner has been acquitted of the said charges under acquittal order dated 29.12.95.

22. Unlike the Petitioner who was issued with the impugned order of termination simpliciter, the brother of the Petitioner was Departmentally preceded with, for more or less, on similar charges and a guilty finding was given by the Enquiry Officer against the said brother. On the basis of said guilty finding. An order dated 23.11.07 was passed against Bidhu Bhusan Das serving as an Assistant Teacher for his removal from service, by the Director of School Education.

23. But in so far as the Writ Petitioner is concerned, Enquiry Officer gave a

favourable finding by his Enquiry finding dated 11.6.1999 and the Trial court also on 29.12.1995 ordered acquittal of the Petitioner.

Therefore, although the charge against the two brOrs. were somewhat similar, the crucial difference between the two cases is the guilty finding against the brother and not guilty finding against the Writ Petitioner.

24. In view of the various events preceding the termination order dated 11.9.03, I am of the view that there is a clear nexus between the allegation levelled and the simply worded termination order and it can not be considered to be a case of termination simpliciter but has to be construed as a case of dismissal, although non-injurious terminology are used in the termination order. The authorities were motivated to terminate the service of the Petitioner because of the charges and since the charges could not be proved, they decided to terminate his service by taking recourse to the provision of 5(i) of the Rules. Thus, it is not a case of simple termination but a termination actuated by events of the past. It is a stigmatic termination and powers under Rule 5(i) of the Rules can not be used to pass such stigmatic termination orders.

25. Considering the peculiar nature of the case the Petitioner is ordered to be reinstated in service as the impugned order is quashed. But he shall not be entitled to his full arrear wages for the period he remained out of service. The Petitioner may be paid only 50% of his wages for the period he remained out of job. However, the Petitioner shall be entitled to the other service benefits.

26. With the aforesaid direction this Writ Petitioner stands disposed of. No cost.