
(2000) 09 GAU CK 0014
In the Gauhati High Court
Case No : Writ Petition (C) No. 20 of 1991

Chandra Prova Sinha

APPELLANT

Vs

Union Territory of Mizoram and Others

RESPONDENT

Date of Decision : 05-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 239
Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1988 — Section 5(2), 6

Citation : (2000) 3 GLT 460

Hon'ble Judges : N.C. Jain, J

Bench : Single Bench

Advocate : Mr. P.C. Prusty, for the Appellant; Mr. T. Vaiphei, AAG, for the Respondent

Final Decision : Dismissed

Judgement

1. This petition under Article 226 and 227 of the Constitution of India was filed by Kunjeswar Sinha an ex-Inspector of Police. He died during the pendency of the writ petition and his wife has been brought as legal representative.

2. The order of Inspector General of Police, Mizoram has been challenged in this petition which has been attached as Annexure-VIII, the order reads as under :

"Whereas Inspr. Kunjeswar Sinha, Inspector of Police, Lunglei has been placed under suspension w.e.f. 13.1.1997 (FN) since a criminal case was registered against him vide FIR No. 2(1) 77 u/s 161 I.P.C. r/w sec. 5(2) Prevention of Corruption Acts.

And whereas the said accused Inspr. Kunjeswar sinha has been discharged from the case under sec. 239 Cr.P.C. by the Special Judge for Mizoram, Silchar

On a careful consideration of the judgment aforesaid, the undersigned holds that the suspension was not wholly unjustified and, therefore, considers that the

period of suspension may be treated as non-duty and he shall not be entitled to pay and allowances other than the amount already paid to him as subsistence allowances as per provision of FR 54-B(5).

And therefore, Inspr. Kanjeswar Sinha was given a notice for making representation if any, on the quantum proposed above. After considering the representation submitted by Inspr. Kunjeswar Sinha, the undersigned has finally come to the conclusion that inspr. Kunjeswar Sinha is re-instated w.e.f. 30.6.1981 FN and the period of suspension w.e.f. 13.1.77 to 29.6.1981 FN shall not be treated as a period spent on duty and he therefore shall not be entitled to pay and allowances other than the amount already paid to him as subsistence allowances".

3. In order to appreciate the precise point, it is necessary to have a look at the factual matrix of the case. The writ petitioner, Shri Kunjeswar Sinha was placed under suspension vide the order dated 13.1.1977 on account of registration of the case u/s 161 I.P.C. and section 5(ii) of the Prevention of Corruption Act for having accepted bribe. The writ petitioner was ultimately discharged by the Special Judge vide the order dated 29.7.1982 (Annexure -III) with the following observation -

The original of the aforesaid section has not been produced, although opportunity was given to the prosecution in this regard. That apart, no other relevant paper is available where-from it can be presumed that the sanctioning authority really applied mind on the facts and circumstances of the case in according sanction. Again, from the sanction before me, it is clear that there is no sanction for the offence u/s 161 of the Indian Penal Code. In the absence of any sanction for the said offence, I cannot take cognizance of the offence on a sanction u/s 6 of the Prevention of Corruption Act. The sanction is, therefore, an invalid one and consequent on that I have no jurisdiction to try the case. The accused is, therefore, discharged u/s 239 of the Criminal Procedure Code".

4. Before the aforesaid mentioned order was passed, discharging the writ petitioner, he attained the age of 58 years on 1.7.1981 and therefore, the Superintendent of Police released him from service by passing the following order which is attached with the Writ Petition as Annexure-IV. The order reads as under :

"Inspector Kunjeswar Sinha (under suspension) who attained 58 years of age on 1.7.1981 and he is released from service w.e.f. 30.6.1981 afternoon on superannuation pension.

The period of suspension will be regularised as per final Judgement of the Court."

5. After passing of the aforesaid mentioned order, the Inspector General of Police passed the impugned order, which has been noticed by me in the earlier part of the judgment. The legality and validity of the order (Annexure-VII) is subject-matter of challenge before me in this Writ Petition. The learned counsel for the

petitioner, Mr. P.C. Prusty has vehemently argued that his client having been discharged, he was entitled to be reinstated with full back wages. The learned counsel has cited 54-B(1)(b) in order to contend that no reasoning is forthcoming in the impugned order as to why the employee was deprived of his full back wages. In order to appreciate the argument, it is necessary to have a look at the provision of FR 54-B in its entirety. FR 54-B is reproduced below :

"F.R. 54-B - (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order -

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 53. where a Government servant under suspension dies before the disciplinary or the court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowance to which he would have been entitled, had he not been suspended :

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum

proposed and after considering the representation if any, submitted by him in that connection within such period (which in on case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or the Court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

NOTE - The order of the competent authority under the proceeding proviso shall be absolute and no higher sanction shall be necessary for the grant of -

(a) extraordinary leave in excess of three months in the case of temporary Govt. servant; and

(b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 53."

6. The learned Assistant Advocate General, Mizoram has with equal vehemence argued that the learned Inspector General has passed the impugned order after careful consideration of the judgment of the Special Judge and after considering the representation submitted by the writ petitioner. He has also relied upon the judgment of the Hon'ble Supreme Court reported in Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others,

7. I have given my thoughtful consideration to the arguments of the learned counsel for the parties and am of the considered view that there is no force in any of the arguments of the counsel for the writ petitioner. A bare reading of the entire Rule 54(B) and its sub-rules leaves no manner of doubt that a Government servant is entitled to the payment of full pay and allowances only in two situations. If Government servant dies before the institution or conclusion of the disciplinary or Court proceedings, the period between the date of suspension and

the date of death would have been mandatorily treated as on duty for all purposes and his family would have been entitled to full pay and allowances. In the present case the Govt. servant died after passing of the impugned order i.e. during the pendency of the writ petition. The other situation where under the Government servant could be paid full pay and allowances comes into play if the authority competent to order reinstatement was to come to the conclusion that the suspension was wholly unjustified. No such conclusion in the instant case was arrived at by the concerned authority. Rather a conclusion to the contrary has been arrived at by the authority in the impugned order to the effect that the suspension was not wholly unjustified. Once the Government servant is suspended on account of criminal charge of taking bride, it cannot be held on a point of law that suspension of such a Government servant was wholly unjustified. It has further been observed in the impugned order that the representation of the petitioner has been considered. In view thereof, it can not successfully be maintained that there is any violation of any provision of F.R.-54(B).

8. Before parting with the judgment, it is necessary to have a look at the judgment cited by the learned counsel for the State. The relevant observations of the Apex Court are produced below with advantage.

"4. Mr. Rajit Kumar, learned counsel for the appellant, contends that under Rule 72(3) of the Maharashtra Civil Services (Joining Time, Foreign Services and payment during Suspension, Dismissal and Removal) Rules, 1991 (for short "the Rules"), the Rules cannot be applied to the appellant nor would the respondents be justified in treating the period of suspension of appellant, as the period of suspension, as not being warranted under the Rules. We find no force in the contention, as not being warranted under the servant in acquitted of offences, he would be entitled to reinstatement. But the question is whether he would be entitled to all consequential benefits including the pensionary benefits treating the suspension period as duty period, as contended by Shri Ranjit Kumar ? The object of sanction of law behind prosecution is to put an end to crime against the society and law thereby intends to restore social order and stability. The purpose of the prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. The Constitution has given full faith and credit to public acts. Conduct of a public servant has to be an open book; corrupt would be known to everyone. The reputation would gain notorety. Though legal evidence may be insufficient to bring home the guilty beyond doubt or foolproof. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts would be undermined. Every act or the conduct of a public servant should be effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. The very cause for suspension

of the petitioner and taking punitive action against him was his conduct that led to his prosecution for the offences under the Indian Penal Code. If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into actual, is entitled to be reinstated with consequential benefits. In our considered view this grant of consequential benefits with all back wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid consideration is given full back wages as a matter of course on his acquittal. Two courses are open to the disciplinary authority, viz. it may enquire into the misconduct unless, the selfsame conduct was subject of change and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty (and on payment of subsistence allowance etc). Rule 72(3), 72(5) and 72(7) of the Rules give discretion to the disciplinary authority. Rule 72 is also applies as the action was taken after the acquittal by which date the Rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits. As a consequence, he would not be entitled to the benefits of nine increments as stated in para 6 of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc. The appellant is also not entitled to any other consequential benefits as enumerated in para 5 and 6 of the additional affidavit".

9. Although the Apex Court was dealing with rule 72(3) of the Maharashtra Civil Services Rules, yet it cannot be said that the ratio of law as laid down by the Apex Court would not apply to the facts of the instant case. The ratio of law as laid down in Krishnakant Raghunath's case is fully applicable to the facts of the instant case. No authority taking contrary view has been cited by the learned counsel for the petitioner.

10. For the reasons recorded above, the writ petition is found to be devoid of any merit and the same is ordered to be dismissed with no order as to costs.