
(2007) 08 GAU CK 0090
In the Gauhati High Court
Case No : Writ Petition No. 940 of 2005

Debashis Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 24-08-2007

Acts Referred:

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 25, 9
Constitution of India, 1950 — Article 12

Citation : (2008) GLT 175 Supp

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : H.R.A. Choudhury and I. Uddin, for the Appellant; U.K. Goswami, for the Respondent

Final Decision : Allowed

Judgement

A.B. Pal, J.—The Petitioner was appointed Headmaster of Tengripar High School, a privately managed institution, on 22.4.1991 by its Managing Committee. The appointment was approved by the Inspector of Schools, Nagaon on 6.4.1994. On 18.7.2004 the President of the Managing Committee of the said school issued show cause notice asking the Petitioner to give his reply to certain allegations against him received by the Committee from some students, their guardians and some teachers. The allegations are that the Petitioner was misbehaving with some young girl students in a manner which amount to outraging their modesty. He was in the habit of touching their face, neck and other parts of their body around their blouse, apart from making sexually coloured remarks. Such behaviour on the part of the Headmaster generated serious discontent among students, teachers and the guardians.

The other allegation contained in the said show cause notice are that he was demanding Rs. 300-400/- from the students for issuing transfer certificate and the fund of the school was not managed properly, as observed by the Auditor.

2. The Petitioner submitted his reply to the said show cause notice denying the

allegations and contending, inter alia, that had there been any truth in the said allegation of sexually harassing the girl students he would have certainly received some sort of communication from the parents or teachers expressing, their grievances. As he received none from any person, not even from the alleged victims, he had reason to believe that all such allegations were the out come of certain conspiracy against him. He also strongly denied the allegation of receiving money for issuing transfer certificate or mismanaging the school fund.

3. Though all the allegations were denied specifically, the Petitioner was terminated from service by a resolution of the Managing Committee taken on 28.7.2004, without any inquiry into the said allegations. Thus, no opportunity to defend himself against the unverified and untested allegations was afforded to

him. Aggrieved by such order of termination dated 29.7.2004 the Petitioner has approached this Court calling into question the correctness and validity of the order of termination.

4. None of the respondents has filed return to controvert the contention of the Petitioner aforementioned. The State of Assam, the Director of Secondary Education and the Inspector of Schools, Nagaon, are the official respondents arrayed as respondent Nos. 1, 2 and 3 respectively. The Managing Committee of the said school is the 4th respondent. Though the official respondents have entered appearance through the learned State counsel, the Managing Committee of the School, though duly served, chose not to enter appearance.

5. I have heard learned Counsel for the parties.

6. The first question which has fallen for consideration is whether the writ petition is at all maintainable as the institutions is neither a Government School nor a provincialised or a Government aided school. Learned Counsel for the respondents has placed an argument that the institution is not covered by grant-in-aid rules of the State Government, though it receives certain amount towards fee-compensation. As such, it cannot be said to be an instrumentality of the State to be covered by Article 12 of the Constitution. This being the position, the writ proceeding against a private body is misconceived and untenable in law.

7. Learned Counsel for the Petitioner, however, strongly controverts this submission arguing that as the institution is admittedly receiving certain aid and its Managing Committee is constituted by the Inspector of Schools, it cannot be safely held that the State Government exercises certain control over the institution.

8. It would appear from the materials placed on record that the said institution was given provisional recognition on 20.1.2004 (Annexure-2). The copy of the orders placed at Annexure-2 series indicate that the institution was receiving "fee compensatory grant "and "ad hoc recurring grant" from the State Government. At Annexure-3 is placed an order dated 12th July 1994 deputing the Petitioner for B. Ed training by an order dated 6.8.2002. The Inspector of

Schools constituted the Managing Committee of the school. All these documents together would definitely show that the State Government has been exercising control over the said institution by constituting Managing Committee, approving appointments of teachers and other employees, providing grants and deputing teachers for training. Therefore, it is decided that a writ proceeding against the Managing Committee of the School, being instrumentality of the State, is legally maintainable.

9. The next question which has been agitated during the course of argument is the relevant rules under which the disciplinary matters of the employees of such an institution are to be regulated. It is strongly submitted by the learned Counsel for the Petitioner that the rules applicable in the Government aided school shall apply to the Petitioner. Rule 25 of the said rules provides that in disciplinary matters of employees of the Government aided schools, Assam Services Discipline and Appeal Rules, 1964 shall apply. Rule 9 of the said Rules, which lays down the procedure for imposing penalties, has not been followed in the case in hand, as would appear from a bare perusal of the show cause notice, the reply and the order of punishment impugned. It is further submitted that at any stage of the proceeding no opportunity was afforded to the Petitioner to cross check or verify the allegations against him though he specifically denied all the charges. The principles of natural justice demand that no person should be condemned unheard which means that such a person must be given reasonable opportunity to defend himself against the charges. It would appear from the materials placed on record that no such opportunity of controverting the allegations in self defence was given to the Petitioner, learned Counsel submits.

10. Even without entering into the applicability of Assam Services Discipline and Appeal Rules, 1964, it has to be noticed that the Managing Committee did not afford any opportunity to the Petitioner to establish that the allegations against him were concocted and baseless. When he specifically denied the charges in writing contending that there was a conspiracy against him to dislodge him from service, it was incumbent upon Managing Committee to order an inquiry in which the Petitioner could cross examine the prosecution witness and produce his own witnesses and other evidence to prove his contention that he was the target of a conspiracy and all the allegations against him are false and baseless.

Another aspect of the matter also comes to notice which is that no approval of the Inspector of Schools on the order of termination has been obtained. It is not res-integra that if approval of an authority for appointment is required by law, approval of that authority for termination of the services is also a legal necessity. As there is neither any pleading by the respondents nor any submission by their counsel focusing on this question, this Court is left with no alternative but to take the view that no approval of the Inspector of Schools had been obtained before issuing the order of termination impugned.

11. For the reasons and discussions aforementioned the order impugned is not sustainable in law and, therefore, the same is set aside and quashed.

Considering the nature and seriousness of the allegations it may not be desirable to place the Petitioner in-charge of the institution before he is cleared from all such allegations. The period he has been out of service may, therefore, be treated as on suspension which the Managing Committee may direct to continue further till the allegations are formally inquired into. The inquiry shall be conducted in accordance with the relevant rules and the principle of natural justice which would require affording reasonable opportunity to the Petitioner to defend himself. The Managing Committee, with the approval of the Inspector of Schools, shall then take decision on the basis of the out come of the said inquiry.

12. Subject to above observations and directions this writ petition is allowed without any order as to cost.