
(1995) 07 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 75 of 1985

Dilip Kumar Roy Cohudhury

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 13-07-1995

Acts Referred:

Citation : (1996) 1 GLJ 530

Hon'ble Judges : J.N.Sarma, J

Bench : Single Bench

Advocate : U.B.Saha, B.Das, A.Bhattacharjee, Advocates appearing for Parties

Judgement

1. This application under Article 226 of the Constitution of India has been filed to quash the proceeding dated 11.12.85 drawn up by the respondent N6.2 against the petitioner vide Annexure F to the writ application. That is quoted below : (not quoted : Editor)

2. The legality and validity of this order is challenged in this writ application.

3. I have heard Shri B. Das, learned Advocate for the petitioner and Shri UB Saha, learned Advocate for the respondents. An affidavit in opposition has been filed on behalf of the respondents. Shri Das, learned counsel appearing on behalf of the petitioner submits that the three charges quoted above as against the petitioner even if it is true, does not come under the purview of the Central Civil Services (Classification Control and Appeal) Rules, 1965 and it is submitted that this cannot be a misconduct arising out of the petitioner's civil employment. Sri Das further submits that the proceeding are ab initio void and liable to be quashed.

4. Mr. Pas, learned Advocate appearing for the petitioner in this connection, regarding what is misconduct, places reliance in (1992) 4 SCC 54 (State of Punjab & others vs. Ram Singh ExConstable) wherein the Supreme Court in paragraph 5 and 6 regarding what is misconduct has laid down the law as follows:

"5. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999 thus :

"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."

Misconduct in office has been defined as :

"Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

P. Ramanatha Aiyer's Law Lexicon, Reprint Edition 1987 at page 821 defines "misconduct" thus:

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act; and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected.

6. Thus it could be seen that the word "misconduct" though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour; wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a discipline service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

S.Mr. Das, learned Advocate for the petitioner also relied on AIR 1979 SC 1022 (Union of India & others vs. J. Ahmed) where in paragraph 11, the Supreme Court laid down the law as follows :

"Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see Pearce vs. Foster) (1986) 17 QBD 536 (at p 542). A disregard of an essential condition of the contract of service may constitute misconduct (see Laws vs. London Chronicle (Indicator Newspapers). (1959) 1 WLR 698. This view was adopted in Shardaprasad Onkarprasad Tiwari vs. Divisional Supdt Central Railway, Nagpur Division, Nagpur 61 Bom LR 1596 : (AIR 1961 Bombay 150) and Satubha K. Vaghelavs. Moosa Raza, (1969) 10 Gujrat LR 23. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under :

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct."

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in Management, Utkal Machinery Ltd vs. Workmen, Miss Shanti Patnaik, (1966) 2 SCR 434 : (AIR 1966 SG 1051). In the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In S. Govinda Menon vs. Union of India, (1967) 2 SCR 566 : (AIR 1967 SC 1274), the manner in which a member of the service discharge his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same pay amount to misconduct as was held by this Court in PH Kalyani vs. Air France, Calcutta, (1964) 2 SCR 104 : (AIR 1963 SC 1756), wherein the load sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the contest of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct.

There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequence directly attributable to negligence would be such, as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or

malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar (examples) instances of which (are) a railway cabinman signalling in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashing causing heavy loss of life. Misplaced sympathy can be a great evil (see Navinchandra Shakerchand Shah vs. Manager, Ahmedabad Coop Department Stores Ltd, (1978) 19 Guj LR 108 at pi20). But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

6. On the other hand Shri Saha, learned Advocate appearing on behalf of the respondents submits that the Tripura Services (Duties and Rights and Obligation of the Govt Employees) Rules, 1982 provides in Rule 3 what are duties and the draws my attention to Rule 3 (a) which is quoted below :

"3. (a) Every Government employee shall at all times maintain absolute integrity, maintain devotion to duties and do nothing which is unbecoming of a Government servant."

7. Shri Saha submits that the conduct of the petitioner in this case is unbecoming of a Govt servant and in that view of the matter, the authority is competent to draw up a disciplinary proceeding. Shri Saha in this connection places reliance in AIR 1967 SC 1274 (S. Govinda Menon vs. Union of India & another) wherein the Supreme Court in paragraph 6 laid down as follows :

" It cannot be said that the expression "any act or omission" referred to in Rule 4 (1) of the All India Services (Discipline and Appeal) Rules, 1956 relates only to an act or omission of an officer when serving under the Government which means subject to the administrative control of the Government. It cannot also be said, therefore, that the disciplinary proceeding could be taken only on the basis of the relationship of master and servant. It is not necessary that a member of the service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subjectmatter of disciplinary proceedings. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship. To put it differently, the test is not whether the act or omission was committed by the member of the service in the course of the discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with the nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the service for integrity or devotion to duty as a

public servant. (1886) 17 QBD 536. Rel on."

8. After hearing learned counsel of the both the parties and on perusal of the materials on record let us first determine whether the petitioner has got right to challenge the disciplinary proceeding at the threshold itself. The disciplinary proceeding can be challenged at the threshold when it can be shown that the disciplinary proceeding is nothing but a witch hunt. If there are some materials to initiate a disciplinary proceeding, the question of quashing it does not arise. The resort to set aside a proceeding at the threshold must be taken only in the rarest of the rare case i.e. only when the conscience of the Court is shocked because of the initiation of the disciplinary proceeding which on the face of it is absurd and oppressive. If the disciplinary proceeding is based on some materials, the question of quashing it does not arise. May be that during the conduct of the proceeding it may not be possible to establish the charges but if the charges are based on materials the question of quashing the disciplinary proceeding shall not arise. This matter also can be looked at from another angle i.e. as against the disciplinary proceeding, remedies are available by way of appeal and revision and it will not be a proper exercise of jurisdiction to quash the disciplinary proceeding at the beginning or at the threshold without being absolutely satisfied that this proceeding is based on no materials whatsoever. That is what I do not find in this particular case.

9. Accordingly, this writ application shall stand rejected. Stay order passed earlier shall stand vacated. As the suspension has been revoked and the petitioner has been allowed to work, the petitioner shall not be suspended again but the authority may continue with the disciplinary proceeding.