
(2018) 05 GAU CK 0004
In the Gauhati High Court
Case No : WP(C) 735 of 2015

DINESH CH. SINHA

APPELLANT

Vs

THE STATE OF ASSAM AND 2 ORS

RESPONDENT

Date of Decision : 10-05-2018

Acts Referred:

Assam Service (Discipline and Appeal) Rules, 1964 — Rule 9
Constitution of India, 1950 — Article 311

Citation : (2018) 05 GAU CK 0004

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA

Bench : Single Bench

Judgement

1. Heard Mr. S. Katakya, learned counsel for the petitioner. Also heard Mr. S.P. Bhattacharjee, learned counsel for the respondent.

2. The petitioner is an Assistant Teacher of the Normal Schools Silchar in the Cachar district. The provisional gradation list of the Assistant Teacher of Normal Schools was published on 18.09.2014 inviting objections from any person as regards the seniority depicted in such provisional gradation list.

The petitioner was placed at Serial No.4 of the provisional gradation list and it is stated that he was satisfied with his seniority position. But one Smti.

Manashi Sinha an Asstt. Teacher of Normal Schools, Silchar who was placed at serial No.8 had raised objection and on the basis of such objection,

the respondent No.3 by a letter dated 12.11.2014 had required the petitioner to attend a hearing on the objection raised against the gradation list.

Accordingly, the petitioner sought for some time for his appearance due to his illness and the date of hearing was deferred to 08.12.2014. According

to the petitioner he had appeared in the hearing before the respondent No.2 on 08.12.2014 and had answered all questions that were put on him.

3. In the aforesaid circumstance, the order dated 11.12.2014 had been passed by the Director of SCERT, Assam whereby, the petitioner was placed under suspension pending drawal of departmental proceeding. In the order of suspension dated 11.12.2014, it was stated that when the petitioner was given further opportunity to appear on 08.12.2014, he sought time for five minutes to bring the original records from his bag, but inspite of the authority waiting for two hours, he did not return back. Accordingly, the Director SCERT was of the view that the petitioner had defied the higher authority that there was an insubordination on the part of the petitioner.

4. By the show-cause notice dated 15.12.2014, a proceeding was drawn against the petitioner under Rule 9 of the Assam Service (Discipline and Appeal) Rules, 1964 read with Article 311 of the Constitution of India, whereby, the petitioner was required to show-cause as to why appropriate penalties should not be inflicted on him for having kept the authorities waiting for two hours on 08.12.2014. The Director in the show cause notice was of the view that the petitioner having kept the persons waiting amounted to violation of the order of the higher authority. The respondent in his affidavit had taken a stand that the behavior of the petitioner in keeping the authorities waiting for two hours be viewed to be an act of insubordination and further by doing so, the petitioner had obstructed to the process of finalization of the gradation list.

5. The said reason for placing the petitioner under suspension as depicted in the order dated 11.12.2014 and also the reasons for initiating the proceeding as depicted in the show-cause notice dated 15.12.2014 read further with the stand of the Director in paragraph 6 of his affidavit-in-opposition does not inspire the confidence of the Court. Even if the said act was done by the petitioner, the same does not amount to disobedience of the order of the higher authority or to be an act of insubordination. Admittedly, there was no such order of any higher authority which the petitioner could have violated and further the consequence of the petitioner having not produced any original document in response to the objection raised by another teacher in respect of the gradation list cannot by itself be viewed to be an act of defiance and it cannot be termed to be an act of disobeying the orders of the higher authority or to be an act of insubordination.

6. The word 'insubordination' is defined in Black's Law dictionary to

mean willful disregard of an employer's instruction especially a behavior that gives the employer a cause to terminate the workers employment. Another meaning of insubordination is stated to be an act of disobedience or refusal to obey an order that a superior officer is authorized to give. In the instant case as indicated above, neither any specific instruction of the Director is discernible from the records nor there is any order of superior officer that the petitioner had disobeyed.

7. In such view of the matter, this Court is of the view that in the given circumstance as indicated in the order of suspension dated 11.12.2014 and the show cause notice dated 15.12.2014 no element of insubordination is discernible. A further aspect that is to be taken into consideration is that if the requirement of the Director was to determine the seniority of the petitioner vis-à-vis another teacher namely, Smti. Manashi Singha, the Director could have very well referred to the records available in the department as regards their date of appointment, which otherwise should be the basis of determining the seniority.

8. It is further noticed that the order of suspension was passed on 11.12.2014 and about 3 and ½ years have elapsed since then there was nothing on record to show that any review was done every three months for further continuing with the order of suspension as required under paragraph-12 of Ajay Kumar Choudhary vs- Union of India reported in (2015) 7 SCC 291. It is also stated that by the interim order of this Court dated 11.02.2015 both the order of suspension dated 11.12.2014 as well as the show-cause notice dated 15.12.2014 were stayed. In the aforesaid circumstance as the order of suspension as well as the show-cause notice are found to be unsustainable both are hereby set aside and quashed.