

(2016) 08 GAU CK 0002
In the Gauhati High Court
Case No : W.P. (C) 4308 of 2016

Dr. Kasim Ali Ahmed

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 01-08-2016

Acts Referred:

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 6(1)(a)
Constitution of India, 1950 — Article 226

Citation : (2016) 5 GauLJ 14 : (2017) 1 GauLR 77 : (2016) 4 GauLT 397

Hon'ble Judges : Mr. Ujjal Bhuyan, J.

Bench : Single Bench

Advocate : Mr. K.N. Choudhury and Mr. H. Das, Advocates, for the Appellant; Mr. N. Sarma, SC, Secondary Education Department, for the Respondent

Final Decision : Allowed

Judgement

Mr. Ujjal Bhuyan, J.(Oral)—Heard Mr. K.N. Choudhury, learned Sr. Counsel assisted by Mr. H. Das, learned counsel for the petitioner and Mr. N. Sarma, learned Standing Counsel, Education Department, Govt. of Assam.

2. By filing this petition under Article 226 of the Constitution of India petitioner seeks quashing of order dated 13.07.2016 passed by the Director of Higher Education, Assam placing the petitioner under suspension.

3. Petitioner is serving as Principal, Goalpara College, Goalpara.

4. According to the petitioner, he has an unblemished career till date and has never being subjected to any departmental or administrative proceeding. Suddenly impugned order dated 13.07.2016 was issued which is extracted hereunder:-

"In pursuance to the Govt. letter No. AHE.294/2016/3,dated 12.07.02016 and pending drawal of Departmental Proceeding Dr. K. A. Ahmed, Principal, Goalpara College, Goalpara is hereby placed under suspension with immediate effect.

He is allowed to draw the subsistence allowances as per Rule."

5. Contention of the petitioner is that there is no reasonable basis to hold that any departmental proceeding can be contemplated or may be drawn up against the petitioner as ingredients necessitating initiation of such proceeding are totally absent in respect of the petitioner. Therefore, there is no legal basis or justification for placing him under suspension.

6. Aggrieved, present writ petition has been filed.

7. On 25.07.2016, this Court directed learned Standing Counsel to produce the relevant file relating to issuance of the impugned order dated 13.07.2016.

8. Today, when the matter is called upon, Mr. Sarma has produced one file comprising six pages of note-sheet and four pages of documents. From the note-sheet and the documents, it is seen that Deputy Commissioner, Goalpara had submitted a complaint dated 21.06.2016 before the Director of Higher Education, Assam regarding unsatisfactory educational atmosphere at Goalpara College. Though the first part of the complaint was general in nature regarding the college and the management, in the second part of the complaint, it was mentioned that petitioner did not participate in the International Yoga Day celebration on 26.06.2016 i.e. on the day of issue of complaint itself. It was further stated that the college auditorium was not kept properly for a function like celebration of International Yoga Day. While placing on record his extreme displeasure as regards action of the Principal in non-participation in the International Yoga Day, Deputy Commissioner requested the Director to conduct a detailed enquiry into the financial and academic aspects of Goalpara College.

9. It appears that as per note of the departmental Secretary placed before the Education Minister, issuance of show-cause notice based on the complaint was suggested. However, the departmental Minister in his note dated 07.07.2016 to the Principal Secretary directed placement of the petitioner under suspension and to issue a show-cause notice to him. It was also noted that depending upon the reply submitted, a decision may be taken whether to hold departmental proceeding or not.

10. From a careful perusal of the note of the departmental Minister, it is evident that when the direction was issued to place the petitioner under suspension, it was not yet decided whether to hold departmental proceeding or not. When the suspension order was issued, no departmental proceeding was pending or contemplated against the petitioner. There is no dispute at the Bar that petitioner is Government servant and is governed by the provisions of the Assam Services (Discipline & Appeal) Rules, 1964. Power to place a Government servant under suspension is provided in Rule 6(1) of the said Rules which is extracted hereunder:-

"6. Suspension-(1) The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the Governor in that behalf

may place a Government servant under suspension-

- (a) Where a disciplinary proceeding against him is contemplated or is pending, or
- (b) Where a case against him in respect of any criminal offence involving moral turpitude is under investigation or trial:

Provided that where the order of suspension is made by an authority lower than the Appointing Authority such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made."

11. The present case would be covered by the provisions contained in Rule 6 (1) (a). A reading of this provision would go to show that the competent authority may place a Government servant under suspension where a disciplinary proceeding against him is contemplated or is pending. Therefore, condition precedent for invoking the power to place a Government servant under suspension as provided in Rule 6(1) of the Assam Services (Discipline & Appeal) Rules, 1964 is either pendency of departmental proceeding or contemplation of departmental proceeding against the Government servant. When either of the two situations exist, the power of suspension can be exercised. Therefore, pendency of departmental proceeding or contemplation of departmental proceeding is the sine qua non for invoking the power under Rule 6(1) of the aforesaid Rules. Admittedly from the noting of the departmental Minister, neither of the two situations was present when the impugned order was passed. On the day the impugned order was issued, no departmental proceeding against the petitioner was pending or even contemplated. If the departmental authorities have any materials against the petitioner certainly they can initiate administrative/disciplinary action against the petitioner but such action must be in conformity with the law.

12. From a careful reading of the complaint of the Deputy Commissioner as noticed above, it appears that the basic complaint is regarding non-participation of the petitioner in the International Yoga Day celebration in the college campus, which is the proximate cause of the complaint.

13. According to Mr. Choudhury, learned Sr. Counsel, petitioner had participated in the celebration but he was slightly late in attending the function. The same cannot be construed to be a misconduct warranting initiation of departmental proceeding and to place the petitioner under suspension during the pendency of the disciplinary proceeding.

14. I find sufficient force in the submission of Mr. Choudhury, learned Sr. Counsel. Time and again, the Supreme Court has emphasised that power of suspension though available with the departmental authority, must be sparingly used and not used as a means of punishment. It is not necessary to refer to the numerous decisions of the Court in this regard.

15. For the aforesaid reason, this Court finds no legally valid justification to sustain the suspension order dated 13.07.2016 which is accordingly set aside

and quashed. Petitioner shall be re-instated in service but such re-instatement shall be without prejudice to the right of the departmental authorities to initiate disciplinary proceeding if materials on record would justify initiation of such proceeding and if it is considered necessary.

16. Writ petition is allowed but without any order as to cost.

17. Record produced is returned back.