

(1990) 11 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 624 of 1990

Gouri Ram Kalita

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-11-1990

Acts Referred:

Assam General Clauses Act, 1915 — Section 18

Gauhati Municipal Corporation Act, 1969 — Section 12(6), 425(2), 5(2), 71, 72(6)

Citation : (1991) 2 GLR 252

Hon'ble Judges : A. Raghuvir, C.J.; Manisana, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee, H. Gogoi, I. Islam and B. Sarma, for the Appellant; N.M. Lahiri, P.C. Deka and A.K. Goswami, for the Respondent

Final Decision : Dismissed

Judgement

Manisana, J.—The writ Petitioner Gouri Ram Kalita was appointed as the Deputy Commissioner East Zone of the Gauhati Municipal Corporation, for short "the Corporation" by the Commissioner of the Corporation with the approval of the Government, vide, order dated 16.6.84. By his order dated 29.3.90, the Commissioner suspended the Petitioner. The order of suspension has been challenged in this Court. The relevant portion of the order of suspension is in the following terms:

Pending drawal of departmental proceedings, I, Shri Mukesh Chawla, IAS, Commissioner, Gauhati Municipal Corporation in exercise of powers vested in me u/s 75(1) of the Gauhati Municipal Corporation Act, 1969 (Assam Act I of 1973), do hereby suspend Sri Gouri Ram Kalita, Deputy Commissioner, East Zone, Guwahati Municipal Corporation with immediate effect.

2. Mr. J.P. Bhattacharjee, the learned Counsel for the Petitioner has advanced two submissions. First, no regulation has been made under the Gauhati Municipal Corporation Act, 1971, for short "the Act", governing the conditions of service of the Petitioner and, therefore, the impugned order of suspension could not be

passed. Secondly, the Commissioner has no jurisdiction to suspend the Petitioner.

3. As regards the first contention of Mr. Bhattacharjee that in the absence of the statutory provision or regulations made u/s 75(1) the Petitioner could not be suspended, he has relied on the decisions of the Supreme Court in Balvantray Ratilal Patel Vs. The State of Maharashtra, and P.R. Nayak Vs. Union of India (UOI),

4. Mr. J.P. Bhattacharjee has drawn our attention to Section 75(1) of the Act. Section 75(1) of the Act provides:

Punishment of Municipal officer or staff, (1)--Every Municipal officer and staff may be fined, reduced in rank, suspended or dismissed for any breach of departmental rules or discipline or for carelessness, negligence of duties or other misconduct by the authority by whom such officer or staff is appointed as may be provided for in the regulation to be made in this behalf.

It is (sic, not) disputed that no regulation has been made as is provided u/s 75(1) or any other provision of the Act. Mr. Bhattacharjee has submitted that suspension u/s 75(1) is by way of punishment. Be that as it may, it may be noted here that suspension may be by way of penalty, or in contemplation of or after the start of, the disciplinary proceedings. (See T. Cajee Vs. U. Jormanik Siem and Another, para 14)

5. The question which, therefore, arises for consideration is whether, in the absence of regulation made u/s 75(1), the Petitioner could be suspended. Section 71 of the Act provides that Subject to other provisions of the Act, appointment to the Corporation establishment shall be made--(a) by the Corporation if the maximum salary of the officer is not below two hundred and fifty rupees per month ; (b) by the Commissioner in all other cases with the approval of the Corporation". However under provision to Section 72(6) of the Act, "during the period of supersession, appointments to the posts carrying any salary shall be made by the Commissioner with the approval of the State Government". In view of provisions u/s 71 and 12(6), the power to appoint is conferred by the Act, that is to say --either u/s 71 or under the proviso to Section 72(6), as the case may be. Therefore, Section 18 of the Assam General Clauses Act, 1915 is attracted. Section It of the Assam General Clauses Act, provides: "Where, by any Act, a power to make appointments is conferred, then unless a different intention appears the authority having power to make the appointment shall also have the power to suspend or dismiss any person appointed by it in exercise of that power". Therefore, Section 18 is the statutory provision under which interim suspension can be made in the absence of regulation.

6. A reading of the impugned order of suspension shows that the order of suspension was made before the commencement of the disciplinary proceeding, viz, interim suspension, and not by way of punishment. Merely because Section 75(1) is mentioned in the order of suspension, it would not amount to

punishment if the power to suspend is traceable under the Act. Section 18 of the Assam General Clauses Act is the provision under which interim suspension can be made, as already stated.

7. With regard to the decisions of the Supreme Court relied on by Balvantray Ratilal Patel Vs. The State of Maharashtra, the Supreme Court has, while dealing with Bombay Civil Services Rules and the Fundamental Rules, hold that the power to suspend "can only be a creature either by statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore the absence of such power either as an express term in the contract or in the rules formed under some statute would mean that the master would have no power to suspend a workman." In P.R. Nayak Vs. Union of India (UOI), the Supreme Court has while dealing with the All India Services (Disciplinary and Appeal) Rules, held that, if there is no provision for suspension of an officer before the commencement of the disciplinary proceeding, the suspension before the commencement of proceeding is illegal. The Supreme court has further held that there is no inherent power of suspension under the Fundamental Rules or any other rules governing the service conditions of the civil servant in that case.

8. What has been laid down in the above cited cases of the supreme Court is that without an express term in the contract or without some provisions of a statute or the rules there cannot be interim suspension. In the present case, it has already been concluded that there is statutory provision, namely Section 18 of the Assam General Clauses Act, under which interim suspension can be made. Therefore, the decisions of the Supreme Court are not applicable to the present case. That apart, the Petitioner in this case, is an employee of the Corporation. There is no regulation of the corporation giving the employees of the Corporation a statutory status and imposing restriction on the employer as in the above cited cases. It is already been concluded the present is a case of interim suspension. An interim suspension is only in aid of and as an ancillary to the final decision. It is inherent power of the master to suspend (sic) servant as it is the well-understood general law that the power (sic) to suspend flows naturally and as a necessary sequence from the power (sic) to appoint. Therefore, the Corporation like any other ordinary employer or master can pass an order of interim suspension against (sic) employee when a departmental enquiry is contemplated or is pending against him, even though there is no specific provision. This (sic) of ours finds support from the decision of the Supreme Court in T. Cajee Vs. U. Jormanik Siem and Another, A five-judge bench of the Supreme Court has, while explaining the decision in The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union, held:

...Suspension is of two kinds. In the first place suspension may be as a punishment, but the present is not a case of this kind of suspension: in the second place interim suspension may be made pending inquiry into a case where removal is the result sought. It was this type of interim suspension which was dealt with in the case of The Management of Hotel Imperial, New Delhi and

Others Vs. Hotel Workers" Union, and it was pointed out that without an express term in the contract or without some provision of a statute or the rules there could not be interim suspension in the sense that the master could withhold the wages of the servant. But that case did not lay down that the master could not forbid the servant from working while he was inquiring into his conduct with a view to removing him from service. It was specifically said there that if the master does so, namely, forbids the servant to work and thus in fact suspends him as an interim measure he will have to pay the wages during the period of interim suspension.... The effect of that decision is that in the absence of such power the master can pass an order of interim suspension but he will have to pay the servant according to the terms of contract between them....

From this point of view also the decision of the Supreme Court cited above are not applicable to the present case.

9. The next question which arises for consideration is whether the Commissioner has jurisdiction to pass an order of suspension, The Gauhati Municipal Corporation is a body corporate and has a permanent succession and a common seal u/s 5(2) of the Act. In Section 425(2), It is stated, inter alia, that when the Corporation is superseded, "such person or persons as the Government may appoint in that behalf, shall, so long as the supersession of the Corporation lasts", exercise and perform, so far as may be, the powers and duties of the Corporation and shall be deemed to be the Corporation for the purpose", (emphasis supplied). Therefore, during the period of supersession, there is substitution of functionaries, but the Corporation is not merged with the State Government. Although under the proviso to Section 72(6) of the Act, during supersession, the appointment to any post shall be made by the Commissioner with the approval of the state Government, it does not mean that the state Government is the appointing authority of the officers and staff working in the Corporation. It will be deemed to have been appointed by the Corporation or the Commissioner, as the case may be, under whose control the officers and staff are working.

10. As regards the expression "with the approval", in a decision of the Court in UC Koring Lyngdoh cs. EC District Council UK & J. Hills and Ors. AIR 1971 Gau 196 (FB), it has been held that, if the appointment is required to be made "with the approval", the appointment is not valid nor effectual in absence of the approval. We are of the view that the decision in that case is not helpful to the present case.

11. For the reason stated above, the impugned order of suspension was not beyond the power of the Commissioner. In the result, the petition is dismissed. No costs.