

(2014) 05 MEG CK 0010
In the Meghalaya High Court
Case No : W.P. (C) No. 195 of 2013

Govind Singh Bathyal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-05-2014

Acts Referred:

Citation : (2015) 1 GLD 352 : (2014) 3 GLT 228

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—Heard Mr. R. Jha, learned counsel for the petitioner and Mr. R. Deb Nath, learned CGC appearing for the respondents. In this writ petition, the relief sought for are (i) quashing the impugned dismissal order dated 31.05.2009 passed by the Commanding Officer, HQ 36th Assam Rifles, C/o. 99 APO for discharging or dismissing the writ petitioner (Rifleman [General Duty] from service); (ii) quashing the punishments awarded to the petitioner and; (iii) expunge the same from the service record of the petitioner for all purposes.

2. The petitioner was enrolled as a recruit in Assam Rifles on 31.10.1999 as Rifleman (General Duty) and after completion of training, the petitioner was posted at HQ 3rd Assam Rifles and thereafter, he was allotted with the Regimental No. G/3900550. The Parliament in the Fifty Seventh year of the Republic of India enacted an Act called "the Assam Rifles Act, 2006". The Govt. of India, Ministry of Home Affairs, issued the Notification "New Delhi, the 20th February, 2009 S.O. 517(E) in exercise of the powers conferred by Sub-Section (2) of Section 1 of the Assam Rifles Act, 2006 (47 of 2006), the Central Govt. hereby appoints the 20th day of February, 2009, as the date on which the provisions of the said Act shall come into force". Therefore, the Assam Rifles Act, 2006 (47 of 2006) came into force w.e.f. 20.02.2009. u/s 168 of the Assam Rifles Act, 2006, the Assam Rifles Act, 1941 is repealed. For easy reference,

Section 168 of the Assam Rifles Act, 2006 is quoted hereunder:-

"168. Repeal and savings. - (1) The Assam Rifles Act 1941 is hereby repealed.

(2) Notwithstanding such repeal, - (a) the Assam Rifles in existence at the commencement of this Act and constituted under the Act so repealed shall be deemed to be reconstituted under this Act; (b) members of the Assam Rifles in existence at the commencement of this Act and appointed under the Act so repealed shall be deemed to have been appointed or, as the case may be, enrolled as such under this Act; (c) any appeal, application, trial, inquiry or investigation pending immediately before the commencement of this Act shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Assam Rifles Act, 1941, as if this Act had not come into force; (d) anything done or any action taken before the commencement of this Act, in relation to any person appointed or enrolled, shall be valid and as effective in law as if such things or action was done or taken under the corresponding provisions of this Act."

3. Under Sub-Section (2) of Section 11 of the Assam Rifles Act, 2006 an officer not below the rank of Deputy Inspector General of Assam Rifles may dismiss or remove from service any person under his command other than an officer or a sub-ordinate officer of such rank or the ranks as may be prescribed. Section 11 of the Assam Rifles Act, 2006 reads as follows:-

"11. Dismissal, removal or reduction by Director-General and by other officers. - (1) The Director General, Additional Director-General or any Inspector-General may dismiss or remove from service or reduce to a lower grade or rank or the ranks any person subject to this Act other than an officer.

(2) An officer not below the rank of Deputy Inspector General may dismiss or remove from the service any person under his command other than an officer or a sub-ordinate officer of such rank or the ranks as may be prescribed.

(3) Any such officer as is mentioned in subsection (2) may reduce to a lower grade or rank or the ranks any person under his command except an officer or a sub-ordinate officer.

(4) The exercise of any power under this section shall be subject to the provisions of this Act and the rules and regulations."

4. The meaning of "Subordinate officer" is defined u/s 2(w) and it means a person appointed or in pay as a Subedar Major, a Subedar or a Naib Subedar of the force. The meaning of "under-officer" is defined u/s 2(z) and it means a Warrant Officer, Havildar, Naik and Lance Naik of the force. The petitioner being a Rifleman (General Duty) is neither subordinate officer nor under-officer. On bare perusal of Section 11(2) of the Assam Rifles Act, 2006, it is crystal clear that an officer not below the rank of Deputy Inspector General of Assam Rifles can dismiss or remove the Rifleman (General Duty) from service. The impugned dismissal order dated 31.05.2009 was issued by the Commanding Officer, who is

not the competent authority for dismissing the Rifleman (General Duty) from service.

5. In a writ petition being WP(C) No. (SH) 148/2010, the Gauhati High Court (Single Bench) passed the judgment and order dated 20.07.2011 quashing the dismissal order dated 09.02.2010 passed by the Commandant for dismissing the Rifleman (General Duty) from service only on the ground that u/s 11(2) of the Assam Rifles Act, 2006, an officer not below the rank of Deputy Inspector General of Assam Rifles can dismiss or remove the Riflemen (General Duty) from service. The copy of the said judgment and order of the learned Single Judge dated 20.07.2011 is available at Annexure-VI to the writ petition and paras. 3, 4 & 5 of the said judgment and order dated 20.07.2011 read as follows:-

"3. Mr. S.C. Shyam, learned CGC, while supporting the impugned order draws my attention to a Gazette Notification dated 24.08.2010 rescinding the Assam Rifles Rules, 2008 and submits that these Rules have been rescinded, the Commandant under Army Rules has power to dismiss the petitioner on the finding arrived at the summary court martial. A perusal of the Gazette Notification will show that it is unless the Rules have been rescinded and not an Act. It must be noted that it is u/s 11(2) of the Act that the petitioner can be removed by the Deputy Inspector General of the Assam Rifles. There is no evidence on repeal of the Assam Rifles Act, 2006 which came into force with effect from 20.02.2009, the respondent No. 5 has no power to pass the impugned order of dismissal.

4. I have repeatedly asked the learned CGC to produce any Gazette Notification rescinding or keeping the Assam Rifles Act, 2006 in abeyance, but he fails to do so. He produced some letters such as dated 23.07.2010 of the Assistant Legislative Counsel, the Office Memorandum dated 17.03.2010 issued by the Deputy Director, Rajya Sabha Secretariat and the letter dated 16.10.2009 of the Chief Law Officer for Director General Assam Rifles to impress this Court that the Act has been kept in abeyance. In my opinion, the exercise of repeal or keeping the operation of the statute is a serious matter and can be done only by a competent authority and it will be duly notified in the Official Gazette as has been done when the Act was enforced by the Gazette Notification dated 20.02.2009. In this view of the matter, there is absolutely no evidence to corroborate the submission made by the learned CGC that the Assam Rifles Act, 2006 has been kept in abeyance by the Central Government. As the impugned order of dismissal was passed by the respondent No. 5 when the Assam Rifles Act, 2006 indisputably enforced the petitioner was dismissed from service, the impugned order is ultra vires to the provisions of Section 11(2) of the Assam Rifles Act, 2006. Under the circumstances, the impugned order for dismissal cannot be sustained in law and is liable to be quashed.

5. The offshoot of the foregoing discussion is that this writ petition succeeds. The impugned order dated 9.2.2010 Annexure 2 to the writ petition is hereby quashed. The petitioner shall be reinstated to his post with consequential relief within a period of 45 days from the date of receipt of this order. It is made clear

that it shall be open to the respondent authorities to take a fresh issue against the petitioner in accordance with law. The parties are directed to bear their respective costs."

6. Against the said judgment and order of the learned Single Judge dated 20.07.2011 passed in WP(C) No. (SH)148/2010, the respondents i.e. Director General of Assam Rifles and others preferred an intra-court appeal being WA No. (SH)33/2011 before the Division Bench of the Gauhati High Court. The Division Bench of the Gauhati High Court vide judgment and order dated 29.08.2011 (incidentally authored by this very Court, Justice T. Nandakumar Singh) had dismissed the appeal by affirming the judgment and order of the learned Single Judge dated 20.07.2011 for setting aside the impugned dismissal order dated 09.02.2010 passed by the Commandant for dismissing the Rifleman (General Duty). The judgment and order of the Division Bench dated 29.08.2011 passed in WA No. (SH)33/2011 reads as follows:-

"29.08.2011

Heard Mr. S.C. Shyam, learned counsel for the appellants respondents in the writ petition. This appeal is directed against the judgment and order of the learned Single Judge dated 20.07.2011 allowing Writ Petition (C) No. (SH)148 of 2010 filed by the respondent-writ petitioner, assailing the order dated 09.02.2010 issued by the Commanding Officer for dismissing the writ petitioner from service for the simple reason that u/s 11(2) of the Assam Rifles Act, 2006 the Deputy Inspector General is the competent authority for dismissing Rifleman (General Duty).

The only ground for filing the present writ appeal is that if the relief sought for by the respondent-writ petitioner in WP(C) No. (SH)148/2010 is allowed on the ground that the Commandant is not the competent authority for dismissing Rifleman, a flood gate will be opened inasmuch as many Riflemen had been dismissed from service by the Commandant. We have also perused Section 11(2) of the Assam Rifles Act, 2006 and it is clear that the Deputy Inspector General is the competent authority for dismissing the Riflemen (General Duty).

Such being the situation, we are of the firm view that dismissal order dated 09.02.2010 issued by the Commandant is illegal inasmuch as he is not the competent authority for issuing dismissal order of the Riflemen (General Duty) and the Deputy Inspector General is competent authority.

It is fairly well settled that door of justice cannot be closed to the citizens only on the ground that the relief sought for, if granted will open the flood gate. Regarding this point, reference may be made to the decisions of the Apex Court in (1) Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, (2) Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, and (3) Coal India Ltd. and Others Vs. Saroj Kumar Mishra, .

For the foregoing reasons we are in complete agreement with the judgment and

order of the learned Single Judge dated 20.07.2011 allowing WP(C) No. (SH)148 of 2010 for setting aside the dismissal order dated 09.02.2010 issued by the incompetent authority i.e. Commandant.

Accordingly, this writ appeal is devoid of merit and dismissed.

Mr. Shyam, learned CGC appearing for the appellants prays for extending time for compliance with the directions mentioned in the impugned judgment and order dated 20.07.2011. Taking into consideration of the prayer and also the peculiar circumstances of this case, further tow months" time is granted for complying direction of this Court (learned Single Judge) in the judgment and order dated 20.07.2011 from today."

7. Against the said judgment and order of the Division Bench of the Gauhati High Court dated 29.08.2011 passed in WA No. (SH)33/2011, the Director General of Assam Rifles and others had preferred an SLP before the Apex Court. Learned counsel appearing for the parties stated that the said SLP filed against the said judgment and order of the Division Bench dated 29.08.2011 passed in WA No. (SH)33/2011 had been dismissed by the Apex Court i.e. Supreme Court. In compliance with the directions of the Hon"ble Gauhati High Court in the said judgment and order dated 29.08.2011 Radhey Shayam Prasad Yadav i.e. writ petitioner of WP(C) No. (SH)148/2010 had already been reinstated in service. This fact is not disputed by Mr. R Deb Nath, learned CGC appearing for the respondents.

8. In the above factual backdrop, this Court is of the considered view that the present writ petition is squarely covered by the decision of the Hon"ble Gauhati High Court in the said judgment and order dated 29.08.2011, which had been upheld by the Apex Court. Accordingly, this Court is of the considered view that the respondent No. 5 i.e. Commandant Officer, HQ 36th Assam Rifles, C/o. 99 APO is not the competent authority for passing the impugned dismissal order dated 31.05.2009 for dismissing or discharging the petitioner from service. In the result, the impugned dismissal order dated 31.05.2009 is hereby quashed. The respondents are directed to reinstate the petitioner in service within a period of 60 days from the date of receipt of a certified copy of this judgment and order.

9. However, regarding the second prayer for quashing the impugned punishments awarded to the petitioner, as there was violation of principles of natural justice, the impugned punishments are hereby quashed. However, the respondents are directed to start the proceedings, if necessary, de novo and the petitioner should be given sufficient opportunity to put up his case for defence. It is made clear that there shall be no punishments of the petitioner without following due process of law. Regarding the consequential relief, it is left open to the respondents to take appropriate decision. With the above observations and directions, this writ petition is allowed.