

(2015) 12 MAN CK 0001
In the Manipur High Court
Case No : W.P. (C) No. 691 of 2014

Gurumayum Lalgopal Sharma

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 04-12-2015

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19(4)

Citation : (2016) 1 GLT 107

Hon'ble Judges : Kh. Nobin Singh, J.

Bench : Single Bench

Advocate : M. Hemchandra, Advocate, for the Appellant; S. Rupachandra, ASG assisted by Gitanjali and Ch. Momon, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Kh. Nobin Singh, J.—Heard Shri M. Hemchandra, learned counsel appearing for the petitioner and S. Rupachandra, ASG assisted by Ms. Gitanjali, learned counsels appearing for the respondent Nos. 1 and 2 as well as Shri Ch. Momon, learned counsel appearing for the respondent No. 4.

2. The present writ petition has been filed by the petitioner praying for setting aside the impugned Notification dated 10-06-2014 issued by Prof. Dipak Kumar Sharma, Chairperson, Managing Committee, Shri Radha Madhava Adarsha Sanskrit Mahavidyalaya, Nambol suspending the petitioner from his service.

3.1. According to the petitioner, he was initially appointed to the post of Pracharaya (Principal) vide order dated 10-02-1995 issued by the President, Radha Madhava Sanskrit Mahavidyalaya, Nambol as per the resolution of the Governing Body, Radha Madhava Sanskrit Mahavidyalaya in its meeting held on 08-02-1995 and he had been serving in that capacity till 10-06-2014 when he was placed under suspension by an order of the Chairperson, Managing Committee, Shri Radha Madhava Adarsha Sanskrit Mahavidyalaya, Nambol.

3.2. The Radha Madhava Sanskrit Mahavidyalaya changed its name as Shree

Radha Madhava Adarsh Sanskrit Mahavidyalaya, Nambol as per the resolutions of the General Body at its meeting held on 29-08-2010 which was acknowledged by the Office of the Deputy Registrar of Societies, Bishnupur vide its letter dated 18-09-2010.

3.3. On 27-05-2014, an emergency meeting of the teaching and non-teaching staff of the Radha Madhava Adarsh Sanskrit Mahavidyalaya was held with Shri Kh. Raghumani Singh in the Chair and after discussion, as many as seven resolutions were taken relating to matters of academic utilisation of funds, official correspondence, improvement of qualification etc. As per the said Resolutions, it was resolved that the petitioner was declared removed from the post of Principal; that in his place Shri Y. Jugeshwar Singh, respondent No. 4 be appointed as Acting Principal and he be entrusted all the charges of the Principal with effect from 28-05-2014 and that the petitioner should be pressed to hand over all the relevant papers or records of Mahavidyalaya. Thereafter, the petitioner received the impugned Notification dated 10-06-2014 from one Prof. Dipak Kumar Sharma, Chairperson, Managing Committee, Shree Radha Madhava Adarsh Sanskrit Mahavidyala, Nambol thereby placing him under suspension. In the meantime, the petitioner also received a letter from the Secretary, Staff Monitoring Committee, R.M.A.S.M., Nambol dated 03-06-2014 regarding the said resolutions. Being aggrieved by the said Notification dated 10-06-2014, the instant writ petition has been filed by the petitioner.

4. In the writ petition, there were initially four respondents including the Radha Madhava Sanskrit Mahavidyalaya, Nambol as respondent No. 3 through its President/Chairperson. On 21-01-2015 when this court issued notice to the respondents, Shri S. Rupachandra, ASG accepted notice on behalf of the respondent Nos. 1 & 2 and accordingly, the learned counsel appearing for the petitioner was directed to take steps for serving notice upon the remaining respondents by registered post with A/D and dasti in addition. After the notice having been served upon the respondent No. 4 by dasti, an affidavit was filed by an Advocate junior to the learned counsel appearing for the petitioner stating therein that notice could not be served upon the respondent No. 3, as he resided at Guwahati. It appears that even the A/D card in respect of the notice sent to the respondent No. 3 by registered post was not received back. Later on, the petitioner moved an application for deleting the name of the respondent No. 3 from the array of parties which was allowed by this court on 02-11-2015 at the risk of the petitioner.

5. Despite number of opportunities being granted to the respondents, none of them did file any affidavit-in-opposition for the reasons best known to them.

6. Shri M. Hemchandra, learned counsel appearing for the petitioner submitted that as per para 56 of the revised scheme for financial assistance, the CCS (CCA) Rules, 1975 was applicable for observance of good conduct by the employees and disposal of disciplinary proceedings and since the respondents had not followed the provisions of Rule 10(6) thereof, the impugned Notification being

arbitrary and illegal ought to be quashed in terms of the judgment and order dated 31-03-2015 passed by this court in W.P. (C) No. 1030 of 2014, Shri Narengbam Priyobrata v. State of Manipur & anr. Shri S. Rupachandra, ASG submitted that as per para 7 of the said revised scheme for financial assistance and the guidelines, the Management Committee is the supreme body of the ASM/ ASS exercising the power of the Appellate Authority for group A & B employees and since the petitioner has not approached the Appellate Authority, the writ petition is not maintainable and is liable to be dismissed. Similar is the submission of Shri Ch. Momon, learned counsel appearing for the respondent No. 4.

7. It is not in dispute that Rule 10 of the CCS(CCA) Rules, 1975 deals with matters relating to suspension and is relevant for purpose of deciding the issue involved herein and Sub-Rule (6) and (7) of Rule 10 are reproduced herein below:--

"(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension [before the expiry of ninety days from the effective date of suspension] on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before the expiry of the extended period of suspension. Extension of suspension shall not be for a period not exceeding one hundred and eighty days at a time.

(7) An order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days."

It is also not in dispute that in the case of Shri Narengbam Priyobrata v. State of Manipur (supra), this court has quashed and set aside the suspension order dated 02-06-2014 on the ground that the said suspension order dated 02-06-2014 had become invalid and could not be validated in view of the provisions of Sub-Rule (7) of Rule 10 because it was not reviewed within 90 days as mandated by Sub-Rule (6) of Rule 10 of the CCS (CCA) Rules, 1975. The said judgment and order was passed by this court relying upon the law laid down by the Hon'ble Supreme Court in the case Union of India (UOI) and Others Vs. Dipak Mali, , the para 10 and 11 of which are reproduced herein below:--

"10. Having carefully considered the submissions made on behalf of the parties and having also considered the relevant dates relating to suspension of the respondent and when the petitioner's case came up for review on 20-10-2004, we are inclined to agree with the views expressed by the Central Administrative Tribunal, as confirmed by the High Court, that having regard to the amended provisions of sub-rules (6) and (7) of Rule 10, the review for modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of order of suspension and as categorically provided

under sub-rule (7), the order of suspension made or deemed would not be valid after a period of 90 days unless it was extended after review for a further period of ninety days.

11. The case sought to be made out on behalf of the petition Union of India as to the cause of delay in reviewing the respondent's case, is not convincing. Section 19(4) of the Administrative Tribunals Act, 1985, speaks of abatement of proceedings once an original application under the said Act was admitted. In this case, what is important is that by operation of sub-rule (6) of Rule 10 of the 1965 Rules, the order of suspension would not survive after the period of 90 days unless it was extended after review. Since admittedly the review had not been conducted within 90 days from the date of suspension, it became invalid after 90 days, since neither was there any review nor extension within the said period of 90 days. Subsequent review and extension in our view, could not revive the order which had already become invalid after the expiry of 90 days from the date of suspension."

8. If the contention of the learned counsel appearing for the petitioner is to be accepted as true and correct, it appears prima facie that the Notification dated 10-06-2014 has not been reviewed within the time stipulated in Sub-Rule (6) and therefore, the said Notification can be held to be invalid and accordingly quashed. Moreover, no affidavit-in-opposition has been filed by any of the respondents to controvert the averments made in the writ petition. But the problem that has cropped up is that the Chairperson, Managing Committee, Shree Radha Madhava Adarsha Sanskrit Mahavidyalaya, Nambol who issued the said impugned Notification, is no longer a party in the writ petition. Although the said Chairperson, Managing Committee was initially arrayed as party, its name has been deleted from the array of party pursuant to the order dated 02-11-2015 passed by this court at the risk of the petitioner. The question that arise for consideration is as to whether the said Notification dated 10-06-2014 can be quashed in the absence of the Chairperson, Managing Committee, Shree Radha Madhava Adarsha Sanskrit Mahavidyalaya, Nambol who being the author of it, is a necessary party. The answer will be in the negative for the reason that doing that will be violative of the principles of Natural Justice namely no one shall be condemned unheard. Keeping in mind the peculiar facts and circumstances of the case and considering the submissions of the learned counsels appearing for the parties, this court is of the view that the ends of justice will be met by disposing of the writ petition with the direction that the petitioner may approach the Management Committee, i.e., the Appellate Authority for redressal of his grievances.

9. In view of the above observations, the instant writ petition is disposed of with the direction that the petitioner may approach the Management Committee, i.e., the Appellate Authority for redressal of his grievances and in the event of any appeal being preferred by the petitioner against the said Notification dated 10-06-2014, the Management Committee shall consider and decide it on merit

without being influenced by or without taking into consideration the observations made by this court.