
(2006) 03 GAU CK 0006
In the Gauhati High Court
Case No : Writ Petition (C) No. 398 of 1999

Haladhar Kalita

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 01-03-2006

Acts Referred:

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 15, 23, 6, 7
Constitution of India, 1950 — Article 223, 226, 233, 233(2), 234
Police Act, 1861 — Section 34

Citation : (2006) GLT 28 Supp

Hon'ble Judges : B.S. Reddy, C.J;H.N. Sharma, J

Bench : Division Bench

Advocate : B.K. Goswami and T. Goswami, for the Appellant; B.C. Das, R.C. Paul and S. Roy, for the Respondent

Judgement

B.S. Reddy, C.J.—The Petitioner invokes the extraordinary jurisdiction of this court under Article 226 of the Constitution of India with a prayer to issue appropriate writ calling for the records of judgment and order dated 16.3.98 (under Memo No. JDJ. 63/96/54 dtd. 6.4.1998) passed by the Secretary to the Govt. of Assam, Judicial Department in the name of the Governor of Assam dismissing the appeal filed by the Petitioner under Rule 15 of the Assam Services (Discipline and Appeal) Rules, 1964 (for short "the Rules").

2. The facts relevant for the purpose of disposal of the writ petition are:

The Petitioner was a Judicial Magistrate, 1st Class. The High Court vide its order dated 8.3.1989 placed him under suspension while he was working at Tinsukia. He was served with charge sheet vide Memo dated 31.5.89 as to why any of the penalties prescribed under Rule 7 of the said Rules should not be imposed upon him and was asked to show cause against the same. The charges relate to severe illegalities, irregularities and anomalies indulged in by the Petitioner while discharging his duties as judicial officer. The allegation levelled against him was that he failed to maintain absolute integrity and devotion to duty, thereby being

guilty of gross misconduct.

3. The following charges were levelled against him alleging commission of illegalities, irregularities, anomalies and indulging in corrupt practices:

i) By realizing fines from the accused persons in MV cases for illegal gains showing the accused persons being released on admonition in the order sheets;

ii) By hurriedly disposing of cases granting acquittal to the accused from a charge of serious nature without giving adequate time to the prosecution to produce the witnesses and violating the mandatory provisions of law in destroying seized articles apparently with oblique motive;

iii) By violating the instructions contained in High Court Circular No. HC VI/73/4425-49 dated 22.5.73 re-circulated by the SDJM, Tinsukia on 21.11.88 and SDJM's order issued vide Memo No. JDLT/3626-30/88 dated 1.12.88 some cases of PFA Act were taken up for granting acquittal to the accused persons by manipulating case records and Court diaries;

(iv) By discharging accused persons on the ground of non-availability of original case records at a date before it was fixed for appearance of the accused apparently with oblique motive;

(v) By disposing 561 number of Cases u/s 34 of the Police Act by a single stroke of order illegally showing the cases being barred by limitation although those were not so;

(vi) By manipulating the case records and by changing order sheets and writing false orders for granting acquittal to the accused persons with oblique motive without framing charges in warrant procedure case and falsely showing supply of copies to the accused persons although the copies were not even ready then;

(vii) By discharging accused person on the ground of non-availability of seized articles when the accused himself filed petition pleading his guilt and also illegally allowing the accused person to remain at large without any order of bail when the accused appeared after 2 years of abscondance apparently with oblique motive.

4. The Petitioner accordingly submitted his reply denying all the averments and allegations made in the charge sheet. The High Court appointed the District & Sessions Judge, Jorhat as Enquiry Officer. The Enquiry Officer having conducted the enquiry in accordance with the Rules submitted its report. The Enquiry Officer held that all the charges levelled against the writ Petitioner were held proved except Charge No. (iv) in respect of which no evidence was led by the Presiding Officer in the departmental enquiry. The Enquiry Officer found the Petitioner to be guilty of committing various irregularities, illegalities in a number of cases. The way in which the cases under the Prevention of Food Adulteration Act, Arms Act, Motor Vehicles Act have been dealt with by the Petitioner would indicate not only his gross insubordination and deliberate motivated avoidance of

the directions of his superiors, but would also reveal his oblique motive in acquitting/releasing the accused persons in an illegal and objectionable manner and for unlawful gain.

5. The High Court having accepted the report of the Enquiry Officer called for further explanation of the Petitioner to which he submitted a further detailed explanation dated 9.10.90. The High Court in its Full Court meeting held on 23.11.1990 having considered the reply submitted by the Petitioner imposed punishment of removal from service. Thereafter, the Government vide its order dated 22.3.91 removed the writ Petitioner from service. The Petitioner preferred appeal under Rule 15 of the Rules against the order of the High Court. The said appeal was disposed of modifying the punishment awarded by the High Court. A copy of the order, however, was not furnished to the Petitioner. The Petitioner filed a writ petition in that regard and this court vide its order dated 27.9.93 directed a copy to be furnished to the writ Petitioner. That order has attained finality. A copy of the order passed in the appeal was accordingly communicated to the writ Petitioner on 27.1.94. The appeal appears to have been disposed of by order dated 30.3.92 where-under the appellate authority took the view that the penalties imposed were excessive and harsh and accordingly the punishment of removal from service was modified as an order of reinstatement in service with back wages while duly imposing penalty of withholding of promotion in service for two years.

6. The Petitioner, however, was not reinstated into the service. The Petitioner accordingly filed writ petition (Civil Rule No. 1699/94) in this court which was allowed by a learned Single Judge of this court vide order dated 30.1.96. Being aggrieved by the judgment dated 30.1.96 the State of Assam as well as Registrar (Judicial) filed two separate writ appeals, namely, Writ Appeal No. 262 and 405 of 1996 respectively. That, a Division Bench of this court vide its order dated 9.4.97 allowed both the appeals and accordingly set aside the judgment of the learned Single Judge. The Division Bench directed the State of Assam to approach the High Court for its opinion on the appeal preferred by the Petitioner in order to enable the High Court to reconsider its earlier decision and give its opinion to the Governor for disposal of the appeal based on the opinion to be furnished in accordance with law.

7. Accordingly, the appeal preferred by the Petitioner before the Governor was forwarded to this court for its recommendation. This court in its Full Court meeting held on 23.9.97 having considered the matter afresh with reference to the materials available on record opined that the conclusion of the Full Court earlier to award the punishment of removal from service was correct and the same needs no interference. The Government was accordingly informed. Thereafter, the appellate authority having taken the recommendation/opinion of the Full Court into consideration dismissed the appeal of the Petitioner. The Petitioner thereafter filed review which was also rejected.

8. The impugned order passed by the appellate authority rejecting the appeal is

impugned in this writ petition.

9. Mr. B.K. Goswami, learned senior Counsel appearing on behalf of the Petitioner mainly contended that the appellate authority committed an error in dismissing the appeal preferred by the writ Petitioner solely relying on the recommendation and opinion of the Full Court of this court without going into the legality and validity of the removal of the Petitioner from service. The appellate authority did not record any finding whatsoever regarding violation of principles of natural justice in conducting the disciplinary proceeding against the Petitioner. The contention was that the appellate authority being the statutory authority is duty bound to decide the departmental appeal in accordance with law. The review petition filed by the Petitioner was also dismissed without any application of mind.

10. It was also contended that the view expressed by the Full Court thus is vitiated since it is not supported by any reason. No speaking order has been passed. The Full Court is bound to take the relevant materials available on record into consideration for the purpose of making its recommendation to the appellate authority.

11. That, an attempt was also made to contend that there was no evidence at all in support of Charge Nos. (iii) and (iv) levelled against the Petitioner in the disciplinary proceeding; yet the Enquiry Officer has found the charges to have been proved against the Petitioner. It was further contended that there is no evidence on record to substantiate any of the charges levelled against the Petitioner. Reliance is sought to be placed upon the view taken by the appellate authority in the earlier round of litigation.

12. Mr. B.C. Das, learned senior Counsel appearing on behalf of the High Court submitted that the decision of the appellate authority does not suffer from any legal or constitutional infirmities requiring interference by this court in exercise of its jurisdiction under Article 226 of the Constitution of India. The appellate authority, according to the learned Counsel, rightly relied on the views expressed by the Full Court and it has no option but to rely upon the same for the purpose of disposal of the appeal. No independent inquiry into the matter by the appellate authority is permissible in law. The learned senior Counsel relied upon Article 235 of the Constitution of India in this regard. It was further contended that the opinion of the Full Court is based on the materials available on record and it is not necessary for the Full Court to write any lengthy order. No principles of natural justice and procedural irregularities have been committed during the course of inquiry at any stage. Mere allegation that certain documents were not furnished, when required by the Petitioner, is not enough unless the Petitioner is able to satisfy the court as to what were those documents specified by him which were not furnished to him. There is no such material available on record.

13. We have carefully considered the submissions made by the learned senior Counsel for the Petitioner as well as the learned senior Counsel for the Respondents and perused the materials available on record.

14. We shall first take up the contention as to whether the Full Court while considering the report of the Enquiry Officer together with materials available on record is required to pass any speaking order. The record discloses that the entire materials available on record right from the date of the order placing the Petitioner under suspension were made available and placed before the Full Court for its consideration. The Full Court, having taken the materials available on record including the evidence and the connected records, accepted the findings and conclusions drawn by the Enquiry Officer. Having taken the explanation into consideration together with the enquiry report and other relevant materials available on record the Full Court came to the conclusion that having regard to the gravity of the charges held proved against the writ Petitioner the punishment of removal alone would be appropriate to be awarded. The Full Court is not expected to write any lengthy order or judgment while agreeing with the findings and conclusions arrived at by the Enquiry Officer. There was no basis to contend that the Full Court did not apply its mind to the facts on hand.

15. There is also no material available on record to contend that the grounds raised in the appeals which were duly forwarded to the Full Court were not even looked into by the Full Court. It is not necessary to restate that the Full Court expressed its view after considering all the objections that were raised by the Petitioner at every point of time and that includes the memorandum of grounds. The Full Court came to the right conclusion that it is not a case requiring to take a different view other than the one taken by it initially when the matter came up for its consideration. The contention is not well founded and the same is accordingly rejected.

16. That, as regards the contention that the enquiry made by the Enquiry Officer is vitiated is also devoid of any merit. The Enquiry Officer never held that the Charge No. (iv) levelled against the writ Petitioner was held proved. On the other hand the Enquiry Officer observed that no evidence is led by the Presiding Officer and, therefore, there is no need to discuss the charge. So far the Charge No. (iii) is concerned, the Enquiry Officer having categorically assessed the evidence available on record found that the writ Petitioner in hasty and motivated manner has gone to the extent of manipulating the dates in court diary and the case records in which overwriting of the dates were also found. All those records were manipulated in order to acquit the accused for unlawful gains.

17. It is well settled and needs no restatement at our hands that this court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot reappraise and evaluate the evidence in order to substitute the findings. It is not even the case of the Petitioner that the findings recorded by the Enquiry Officer are perverse and based on no evidence. The parameters of certiorari jurisdiction are well delineated which needs no restatement at our hands.

18. So far as the contention that the principles of natural justice have been violated in the matter of making enquiry, except making such allegation nothing is demonstrated by the Petitioner as to how and in what manner the said

principles have been violated in conducting the enquiry. It is merely alleged that the Enquiry Officer failed to furnish the documents sought by the Petitioner and, therefore, he could not defend himself properly and effectively. It is not even stated as to what were those documents which the Petitioner required and not furnished by the Enquiry Officer. It is not as if the Enquiry Officer is bound to furnish any and every document even without asking for by the delinquent. The documents sought for must be relevant and further non- furnishing of such documents should result in causing prejudice to the defence of the delinquent. In the absence of any such plea and proof we are not inclined to accept the contention raised in this regard based on mere assertion made by the Petitioner. The record does not disclose the Petitioner having made any such request to the Enquiry Officer to furnish any specific documents and the same has been rejected. We accordingly find no merit in the submission.

19. In High Court of Judicature at The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, the Apex Court while overturning the view taken by the Bombay High Court held:

The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts; if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

20. The contention in this regard is obviously based on the findings recorded in the appellate order dated 30.10.92 which was communicated to the Petitioner only on 27.1.94 under the directions of this court. The findings recorded, if any, in the appeal which was disposed of without consulting the High Court, cannot be taken into consideration. The said order passed by the appellate authority without consulting the High Court is void ab initio and nonest and cannot be taken into consideration for whatsoever purposes. We accordingly find no substance in the submission.

21. This brings us to the main contention urged by the learned senior Counsel as regards the disposal of the appeal by the Governor. It was contended that the appeal preferred ought to have been considered on its own merits and not under

the dictation of the High Court. Relying on Rule 23 of the Rules learned senior Counsel contended that the appellate authority is bound to consider the appeal on merits and express its opinion on all the grounds stated in Rule 23. Non-consideration of the appeal on merits in the manner provided for under Rule 23 vitiates the whole of the appellate order. Rule 23 reads as hereunder:

23. Consideration of appeal: (1) In the case of an appeal against the order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 6 and having regard to the circumstances and gravity of the case the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 7, the appellate authority shall consider--

(a) Whether the procedure prescribed in these rules has been complied with, and, if not whether such non-compliance has resulted in violation of any provision of the Constitution or in failure of justice;

(b) Whether the findings are justified; and

(c) Whether the penalty imposed is excessive, adequate or inadequate; and after consultation with the Commission if such consultation is necessary in the case, pass orders--

(i) Setting aside, reducing, confirming or enhancing the penalty; or

(ii) Remitting the case to the authority which imposed the penalty or to any other authority with such direction as may deem fit, in the circumstances of the case.

22. That, there is no dispute whatsoever that the Governor is the appointing authority as well as the appellate authority so far as employees under Assam Judicial Services Grade-I, II and III are concerned. The Division Bench of this Court in *The Gauhati High Court v. The State of Assam and Ors.* (1992) 1 GLR 450 held that:

Though ordinarily the appellate authority must be somebody different from and higher than the authority which passed the order appealed against, there is no legal principle which militates against both the powers being vested in the same authority.... The appellate power can also be vested in the authority whose decision is sought to be challenged.

23. Whether the impugned order suffers from any errors for the reason that the appellate authority disposed of the appeal solely relying on the views expressed by the High Court? Whether the appellate authority was entitled to take any different view other than the one taken by the High Court? The submission, perhaps, is made relying on the passing observations of the Supreme Court in the case of *High Court of Judicature at High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another*, In the said case the Governor acted upon the recommendation of the High Court to impose

punishment of dismissal of the judicial officer concerned and accordingly passed orders of dismissal. "The Governor being the competent authority, validly and legally passed the order dismissing the Respondent from service. Even if there is any irregularity in the procedure, i.e.; absence of a Judge, it does not vitiate the order of dismissal by any error of law. Considered from this perspective also, we hold that the order of the Governor acting upon the recommendation made by the High Court is not vitiated by any manifest error of law. The order of dismissal thus indicates that the Governor independently considered the record and came to the conclusion that the proposed punishment of Respondent's dismissal from service was warranted on the proved facts."

The observation that the Governor independently considered the record and came to the conclusion to impose the proposed punishment cannot be understood as an authority in support of the proposition that the Governor is required to apply his mind independently and even can ignore the recommendation made by the High Court. The observations made cannot be torn out of context. In the very same decision it is observed that--"It is settled law that the control of the subordinate judiciary under Article 235 is vested in the High Court. After the appointment of the judicial officers by the Governor, the power to transfer, maintain discipline and keep control over them vests in the High Court."

24. In *T. Lakshmi Narasimha Chari Vs. High Court of Andhra Pradesh and another*, it is observed--

In view of the control over them vested in the High Court by virtue of Article 235 of the Constitution, the Governor is bound, in each case, to act in accordance with the recommendation of the High Court and each of them has to be removed from service for the misconduct found proved by the High Court against them.

(emphasis supplied).

Law is declared in emphatic terms that the Governor himself invariably act in accordance with the opinion given by the High Court.

The Governor has no option to act in a manner different from that recommended by the High Court.

25. While interpreting Rule 21(2) of Andhra Pradesh Civil Services (CCA) Rules, 1963, which provides for an appeal to the Governor against the order of dismissal, the court observed that the said Rule is required to be interpreted in conformity with Article 235 without the requirement of reading any limitation therein. The Supreme Court, in clear and in no uncertain times held the appeal must be decided by the Governor only in accordance with the opinion of the High Court. So far as the disposal of appeal by the Governor is concerned, the court observed:

Procedure requires reconsideration by the High Court of its earlier opinion and the opinion given by the High Court after reconsideration indicates the manner of

decision of that appeal. There is thus no erosion in the control vested in the High Court over persons belonging to the judicial service of a State; and the requirement of an appeal, i.e.; reconsideration of the earlier decision is also satisfied. In this process, any comments by the Governor on the merits of the case would also receive consideration of the High Court before it forms the final opinion and forwards its recommendation to the Governor for decision of the appeal in accordance with that opinion.

26. In the instant case there is no comment or opinion as such expressed by the Governor while sending the memo of appeal for the consideration of the High Court. Had it been there the High Court undoubtedly would have taken view, if any, expressed by the Governor in the matter for the purposes of making its recommendation.

27. In Registrar (Admn), High Court of The Registrar (Administration), High Court of Orissa, Cuttack Vs. Sisir Kanta Satapathy (Dead) by Lrs. and Another, the Apex Court while considering the scope of Article 223, 234 and 235 of the Constitution of India observed that the control vested in the High Court over the subordinate judiciary, though absolute and exclusive, has to be exercised without usurping the power vested in the Executive under the Constitution. The High Courts are vested with disciplinary control as well as administrative control over the members of the judicial service exclusively, but it does not mean that they also can pass orders of dismissal, removal, reduction in rank or termination from service while exercising administrative and disciplinary control over the members of the judicial service. "Undoubtedly, the High Courts alone are entitled to initiate, to hold enquiry and to take a decision in respect of dismissal, removal, reduction in rank or termination from service, but the formal order to give effect to such a decision has to be passed only by the State Governor on the recommendation of the High Court. It is well settled again by a catena of decisions of this Court that the recommendation of the High Court is binding on the State Government/Governor" vide para 18 in State of Haryana Vs. Inder Prakash Anand H.C.S. and Others, (emphasis supplied).

28. The same principle is restated in Yoginath D. Bagde Vs. State of Maharashtra and Another, wherein the Supreme Court reiterated its view--the "control" vested in the High Court is complete control subject only to the powers of the Governor in the matter of appointment, initial posting and promotion to the posts of District Judges. "For imposing major punishment, including the punishment of dismissal, removal or reduction in rank, the High Court can, in exercise of its powers under Article 235 of the Constitution, hold disciplinary proceedings and recommend the punishment to the Governor who alone is competent to impose such punishment having regard to the provisions of Article 233 and 234."

29. It is not necessary to burden this judgment with various other authoritative pronouncements of the Apex Court except to note that in State of Bihar and Another Vs. Bal Mukund Sah and Others, the Apex Court while explaining the constitutional scheme under provisions of Article 233 and 235 observed that

"neither the Legislature has power to legislate under Article 309 nor Governor has power to make rules under proviso to Article 309 in that regard bypassing the Recommendation of High Court under Article 233(2) and consultation with High Court under Article 234 are sine qua non for direct recruitment of District Judges at the apex level and other judicial officers at the base level respectively of the State judicial service. The role of the High Court under Article 233 and 234 is pivotal and meaningful and not merely formal. Article 309 as also Article 245 are subject to other provisions of the Constitution and hence have to be read subject to Article 233 and 234 which constitute a complete code.

30. Therefore, in our considered opinion, Rule 23 which provides as to the manner of consideration of appeal with reference to grounds mentioned therein by the appellate authority is required to be read so as to be in conformity with the Article 235 of the Constitution of India. It is not the appellate authority which is required to consider the appeal on merits with reference to the available grounds but it is the High Court which is required to consider the same in accordance with law.

31. The High Court's decision to reiterate its earlier view is based on consideration of the entire materials available on record which includes the evidence, report of the Enquiry Officer and the defence of the writ Petitioner etc. It is not necessary that the views expressed by the High Court should reflect its opinion with reference to each of the grounds mentioned in Rule 23 of the Rules. Any other view would make Rule 23 itself vulnerable and susceptible to be declared unconstitutional.

32. The discussion and analysis of the precedents compels us to conclude--

a) That there is no illegality or unconstitutionality as such in conferring the disciplinary jurisdiction and as well as the appellate jurisdiction in the Governor and both jurisdictions can be vested in one and the same authority so far as judicial officers are concerned;

b) The complete control in the matter of discipline over the judicial officers in the State vests in the High Court and the recommendations/views expressed by the High Court are binding on the disciplinary authority as well as appellate authority;

c) The appellate authority cannot decide appeal independently with reference to the grounds on which such appeal lies under Rule 23 of the Rules. The appellate authority is bound by the recommendations/views expressed by the High Court and pass orders accordingly;

d) No Rules under proviso to Article 309 of the Constitution of India or for that matter even any law be enacted in any manner contrary to the High Court's pivotal role in the matter of control and discipline over the subordinate judiciary. All such Rules and Laws, if any, shall be protanto void.

33. So far as the case on hand is concerned, we find no error to have been committed by the High Court in recommending for dismissal of the Petitioner

from service in view of the grave nature of charges held proved against him. Such individuals have no role to play in the administration of justice.

34. We also hold the proceedings before the Enquiry Officer are not vitiated for any reason whatsoever. The enquiry has been made in accordance with the principles of natural justice and in fair manner. The findings recorded by the Enquiry Officer are based on evidence and materials available on record. The High Court having rightly taken the entire materials into consideration expressed its view and reaffirmed the same and accordingly recommended to dismiss the Petitioner from service. The order passed by the Governor accepting the recommendations/views of the High Court is in conformity with the constitutional mandate enshrined in Article 235 of the Constitution and as well as the law declared by the Supreme Court.

35. It was faintly urged by the learned senior Counsel that the Governor himself did not decide the appeal but the same was disposed of by an authority in the Government which is impermissible in law. It is a mixed question of law and fact and in the absence of proper foundational facts pleaded no view could be expressed in the matter. No such specific plea as is required has been taken by the Petitioner in the writ petition. We accordingly reject the contention.

36. No other point is urged.

37. We find no merit in this writ petition and the same shall accordingly stand dismissed without any orders as to costs.