
(2008) 08 GAU CK 0033
In the Gauhati High Court
Case No : Writ Petition (C) No. 897 of 2004

Hanncilal Vaiphei

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 29-08-2008

Acts Referred:

Constitution of India, 1950 — Article 311(2)
General Clauses Act, 1897 — Section 16

Citation : (2009) 1 GLR 251 : (2009) 2 GLT 841

Hon'ble Judges : T.N.K. Singh, J

Bench : Single Bench

Advocate : Kh. Tarun Kumar, for the Appellant; Nepolean, for the Respondent

Final Decision : Allowed

Judgement

T.N.K. Singh, J.—Heard Mr. Kh. Tarunkumar, learned Counsel appearing for the Petitioner as well as Mr. S. Nepolean; learned G.A. appearing for the respondents.

2. The Petitioner, who is now serving as Assistant Teacher, by filing this writ petition, is praying for a direction to the Respondents to pay subsistence allowance for the period during which the Petitioner was under suspension. While the Petitioner was serving as an Assistant Teacher of Thiankhokam Aided Jr. High School, Churachandpur District, in view of the letter doted 24.5.2000 written by the Director of Education(S), Govt. of Manipur and also the letter dated 29.5.2000 written by the Z.F.O., Churachandpur Manipur, he was barred from getting annual increment with immediate effect under an order dated 5.6.2000 issued by the Secretary. Thiankhokam Aided Jr. High School.

The said order dated 5.6.2000, further, debared the Petitioner from enjoying senior scale, selection grade and also from promotion till he got a clean chit from the authority investigating into the case against the Petitioner.

3. Subsequently the Petitioner had been placed under suspension w.e.f. 22.6.2000 vide order of the Committee, i.e., Managing Committee of the

Thiankhokam Jr. High School, which was approved by the Zonal Education Officer/ Churachandpur, Govt. of Manipur. The Secretary of the said school issued an order dated 22.7.2004 for revocation of the order of suspension of the Petitioner w.e.f. 22.7.2004. The said order of the Secretary, Thiankhokam Aided jr. High School for revocation of the suspension order was also approved by the Z.E.O., Churachandpur, Govt. of Manipur vide order being No. 3/6/03-ED (CCP), Churachandpur 23rd July, 2004. The said order of the Secretary, Thiankhokam Aided Jr. High School mentioned that the period of suspension of the Petitioner will be governed by the outcome of the case for which he was placed under suspension or the order of the Director of Education(S), Govt. of Manipur, as the case may be. In the said order of the Secretary, Thiankhokam Aided Jr. School dated 22.7.2004, there is no indication or nothing is mentioned about the subsistence allowance of the Petitioner while he was under suspension. Hence, the present writ petition for a direction to the Respondents to pay subsistence allowance to the Petitioner for the period under suspension.

4. The Respondent No. 2, tiled an affidavit in-opposition stating that the Petitioner is found involved in a criminal case for which charge sheet had already been submitted and at present the accused (Petitioner) is facing special Trial Case No. 60/2000 before the Special Judge, Manipur West. In the affidavit, the Respondent No. 2 further, states that as the Petitioner is involved in the fraudulent withdrawal of Rs. 61.5 lakhs, question of immediate payment for his back wages does not arise. In the affidavit in-opposition filed by the Respondents, nothing is mentioned as to the entitlement of the Petitioner to subsistence-allowance for the period during which the Petitioner was under suspension.

5. The only question to be decided for granting reliefs sought for in the present writ petition, is as to whether the Petitioner would be entitled to subsistence allowance while he was under suspension or not?

6. Mr. Nepolean, the learned Counsel appearing for the Petitioner has taken this Court to the different provisions of the Government Aided Private School teacher (Discipline, punishment and Appeal) Rules; the Manipur Aided Secondary Schools (Managing Committee) Rules, 1977 and also the Managing Committee of the Aided Primary School Rules and contends that there is no provision in any of these Rules, governing the service of the Petitioner, for payment of subsistence allowance while the Petitioner was under suspension.

7. To the contra, Mr. Tarunkumar, learned Counsel appealing for the Petitioner contends that oven in absence of rules, the Petitioner would be entitled to get subsistence allowance inasmuch as subsistence allowance is not the bounty of the employee; it is a right of the employee to get subsistence allowance while the employee is under suspension. In support of his contention Mr. Tarunkumar relied on the decisions of the Apex Court (1) R.P. Kapur Vs. Union of India (UOI) and Another, (Constitution Bench), (2) Ghanshyam Das Shrivastava v. State of Madhya Pradesh (1973) 1 SCC 636 (Constitution Bench), (3) Capt. M. Paul

Anthony Vs. Bharat Gold Mines Ltd. and Another, (4) Jagdamba Prasad Shukla Vs. State of U.P. and Others, and (5) S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others,

8. The Apex Court in R.P. Kapur's case (supra) held that on general principle, the Government like any other employer, would have the right to suspend a public servant in one way or the other. It may suspend any public servant pending departmental enquiry or pending criminal proceeding; this may be called interim suspension or the Govt. may proceed to hold a departmental enquiry and after he is found guilty, order of suspension as a punishment, if the rules so permits, can be issued. This will be suspension as a punishment. The authority is not only entitled to appoint the public servant, but also entitled to suspend him pending a departmental enquiry into his conduct and pending a criminal proceeding which may even result in departmental enquiry against him. This general principle illustrates by the provision 16 of the General Clauses Act, which is in consonance of general law of master and servant. But, what amount should be paid to the public servant during the interim suspension will depend on the provisions of the statute or the rules in that connection. But, if there is no such provision, the public servant would be entitled to his full emolument during the period of suspension. The Apex Court further held that on general principle the employee under suspension would be entitled to subsistence allowance during the period of suspension.

9. The Apex Court in Ghanashyam Das Shrivasta (supra) observed that in case the employee having no financial resources did not attend the enquiry proceeding at the place far away from his home because of nonpayment of subsistence allowance, the enquiry proceeding is vitiated as the concerned employee did not receive a reasonable opportunity of defending himself in the enquiry. The ratio laid down in that case is that the employee would be entitled to get subsistence allowance during the period of suspension and even non-payment of subsistence allowances to the concerned employee facing departmental enquiry during the period of suspension will vitiate the departmental enquiry. Para No. 5 of the SCC in Ghanashyam Das (supra) is quoted hereunder :

5. With respect, we find it difficult to share the view) taken by the high court, paragraph 6 of the writ petition expressly alleges that on 5th December, 1964, the Appellant sent a letter to the Enquiry Officer Informing him that unless he was paid subsistence allowance, he would not be able to face, the enquiry proceedings. The letter was filed along with the petition. It is Annexure H. The letter stated that "Until and unless I am paid subsistence allowance... I categorically refuse to face any proceeding...as I have no capacity to do so because of acute shortage of funds." (emphasis added). This is obviously specific pleading on the point that for non-payment of subsistence allowance he was short of funds and could not attend the enquiry. It is true that his affidavit does not give any particulars about his sources of income and the estimate of

expenses to be incurred in the enquiry. But, it would prima facie suggest that he had no other sources of income except his pay. If he had no other sources of income he could not invent them for the purpose of mentioning them in the affidavit. More significantly, the Government affidavit does not allege that he had any other source of income except pay. The fact that he had been drawing a monthly pay of Rs. 300 till October, 1964, would not necessarily show that he had sufficient money to enable him to go to Jagdalpur to attend the enquiry in February, 1965. He was suspended on 30th October, 1964 and thereafter he did not get subsistence allowance until 20th March, 1965. Having regard to the prevailing high price, it is not possible to draw any adverse inference against him from the mere circumstance that he had been receiving a monthly payoff Rs. 300 till October 1964. The fact that he filed a writ petition immediately on the passing of the order of dismissal and thereafter came in appeal to this Court, would not establish that he had enough resources to enable him to attend the enquiry. It seems to us that on the whole the High Court has gone by conjectures and surmises. There is nothing on the record to show that he has any other source of income except pay. As he did not receive subsistence allowance till 20th March, 1965, he could not, in our opinion, attend the enquiry. The first payment of subsistence allowance was made to him on 20th March, 1965, after a part of the evidence had already been recorded on 9th, 10th and 11th February, 1965. The enquiry proceedings during those days are vitiated accordingly. The report of the Enquiry Officer based on that evidence is infected with the same defect. Accordingly, the order of the Government dismissing him from service cannot stand. It was passed in violation of the provisions of Article 311(2) of the Constitution for the Appellant did not receive a reasonable opportunity of defending himself in the enquiry proceedings.

10. The Apex Court in Capt. M. Paul Anthony (supra) held that act of non payment of subsistence allowance can be likened to slow poisoning as the employee, if not permitted, to sustain himself on account of nonpayment of the subsistence allowance, would gradually starve himself to death. It is fairly well settled in service jurisprudence that suspension does not put to an end to an employee's service. He continues to a member of service though he is not permitted to work, he is paid only subsistence allowance, which is less than his salary. Service Rule also usually provide for payment of salary at reduced rate during the period of suspension. This constitutes subsistence allowance. If there is no provision in the Rules applicable to a particular service for payment of salary at a reduced rate, the employer would be liable to pay full salary even during the period of suspension. Suspension notwithstanding nonpayment of subsistence allowance is inhuman which is unpropitious effect on the life of an employee. When he is placed under suspension, he is demolished the salary is also paid to him at a reduced rate under the nickname, "subsistence allowance" so that the employee may sustain himself [Ref. Capt. M. Paul Anthony (supra). Para, 28, 29 and 30 of the SCC in Capt. M. Paul Anthony (supra)] read as follows:

28. Service rules also usually provide for payment of salary at a reduced rate

during the period of suspension. [See Fundamental Rule 53] This constitutes the "subsistence allowance". If there is no provision in the rules applicable to a particular class of service for payment of salary at a reduced rate, the employer would be liable to pay full salary during the period of suspension.

29. Exercise of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by a "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of subsistence allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demolished and the salary is also paid to him at a reduced rate under the nickname of "subsistence allowance" so that the employee may sustain himself. This Court in *O.P. Gupta v. Union of India* made the following observations with regard to subsistence allowance (SCC P.340. para 15).

An order of suspension of a government servant does not put an end to his service under the Govt. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in *Khem Chand v. Union of India* is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance—generally called subsistence allowance—which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental enquiry is concluded within a reasonable time. The very expression "subsistence allowance" has an undeniable penal significance. The dictionary meaning of the word "subsist" as given in Shorter Oxford "English Dictionary", Vol.11 at p. 2171 is "to remain alive as on food; to continue to exist." "Subsistence" means—means of supporting life especially a minimum livelihood.

30. If, therefore, even that amount is not paid, then the very object of paying the reduced salary to the employee during the period of suspension would be frustrated. The act of non-payment of subsistence allowance can be likened to slow-poisoning as the employee, if not permitted to sustain himself on account of non-payment of subsistence allowance, would gradually starve himself to death.

11. The ratio laid down in *Ghanashyam Das Shrivasta's* case (supra) is also reiterated by the Apex Court in *Jagadamba Prasadd Shukla* (supra) wherein the Apex Court held that non-payment of subsistence allowance to the employee, during the entire one year and 8 months long period of suspension because of which the employee did not participate in the departmental enquiry, would amount to denial of reasonable opportunity of participating the departmental enquiry. The Apex Court, further, held that payment of subsistence allowance is a right not a bounty. Para 8 of the SCC in *Jagadamba Prasad Shukla's* case

(supra), reads as follows:

8. The payment of subsistence allowance, in accordance with the Rules, to an employee under suspension is not a bounty. It is a right. An employee is entitled to be paid the subsistence allowance. No justifiable ground has been made out for non-payment of the subsistence allowance all through the period of suspension, i.e., from suspension till removal. One of the reasons for not appearing in inquiry as intimated to the authorities was the financial crunch on account of non-payment of subsistence allowance and the other was the illness of the Appellant. The Appellant in reply to the show cause notice stated that even if he was to appear in inquiry against medical advice, he was unable to appear for want of funds on account of non-payment of subsistence allowance. It is a clear case of breach of principles of natural justice on account of the denial of reasonable opportunity to the Appellant to defend himself in the departmental enquiry. Thus, the departmental enquiry and the consequent order of removal from service are quashed.

12. For the reasons discussed above, the submission of Mr. Nepolean, learned Counsel appearing for the Respondents-1 and 2 that the Petitioner would not be entitled to get subsistence allowance during the period of his suspension as there is no provision for payment of subsistence allowance in the service rules governing the service of the Petitioner, is not sustainable in the eye of law. Further, this Court is of the firm view that the Petitioner would be entitled to get the subsistence allowance inasmuch as the subsistence allowance is a right of the employee so long as the master and servant relationship is continuing and also that the subsistence allowance is not bounty.

13. For the aforesaid reasons, this writ petition is allowed. Accordingly, the Respondents 1, 2, 3 and 4 are directed to pay the subsistence allowance to the Petitioner during the period of his suspension within a period of four months from the date of receipt of a certified copy of this judgment and order.