
(2001) 10 GAU CK 0001
In the Gauhati High Court
Case No : Writ Petition (C) No. 6100 of 2001

Jatindra Nath Hazarika

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-10-2001

Acts Referred:

Assam Civil Services (Conduct) Rules, 1965 — Rule 12(2)
Assam Public Service Commission (Limitation of Functions) Regulations, 1951 — Regulation 4
Assam Services (Discipline and Appeal) Rules, 1964 — Rule 6, 6(1)

Citation : (2001) 3 GLT 578

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : D.C. Mahanta, T.J. Mahanta and P. Bhattacharjee, for the Appellant;
A.C. Burgochain, for the Respondent

Judgement

J.N. Sarma, J.—I have heard Shri Mahanta, learned advocate for the Petitioner and Shri Buragohain, learned advocate for the Respondents.

2. The Petitioner herein is working as an Assistant Training Superintendent, Inland Water Transport, Guwahati and holding the post till 27.5.99. The Petitioner was subsequently promoted to the post of Training Superintendent vide notification dated 30.5.97. That the post was under Regulation-4(d) A.P.S.C. (Limitation & Functions) Regulation, 1951. His name was later on sent to Assam Public Service Commission for regularisation. Though the Assam Public Service Commission gave the approval, regularisation order has not yet been passed. But on 23.8.2001 there was a bolt from the blue and by Annexure-5 he was put under suspension. That notification is quoted below:

Annexure-5 Government of Assam Transport Department Assam Secretariat (Civil): Dispur Guwahati-781006. Orders by the Governor Notification Dated Dispur, the 23rd August, 2001.

No. TWT-25/98/13: Whereas on the basis of allegation received against Shri Jatin

Hazarika, Training Supdt. Inland Water Transport, Guwahati regarding running of business in his wife's name, the Political (Vigilance Cell) Deptt. has furnished its enquiry report. That Smti. Dulumoni Hazarika, W/o Shri Jatin Hazarika is a partner of M/s M.P.E.S. Ship Building Company and also was the proprietor of M/s. Auto-Feb Ship Building Company. Both the Builders had received the allotment of works for construction/supply of Ships/Vessels etc. from the Inland Water Transport Deptt. where her husband Shri Jatin Hazarika has been serving.

Shri Jatin Hazarika had not intimated the Govt. as required vide Section 12(2) of Assam Civil Service (Conduct) Rules, 1965 about the involvement of his wife Smti Dulumoni Hazarika in the trade. The registered office of M/s Auto Feb is also located in the house of Shri Jatin Hazarika. Thereby Shri Jatin Hazarika violated the provisions of Section 12(2) of Assam Civil Service (Conduct) Rules, 1965.

Whereas the Governor of Assam is satisfied that there are sufficient materials on records to draw up departmental proceedings against Shri Jatin Hazarika, Training Supdt., IWT and is also satisfied that it is necessary and expedient to place Shri Jatin Hazarika under suspension immediately.

Therefore, pending drawal of departmental proceedings, Shri Jatin Hazarika, Training Supdt. IWT, Guwahati is placed under suspension under Rule 6(1) of the Assam Services (Discipline & Appeal) Rules, 1964 with immediately effect.

By order and in the name of the Governor of Assam. Sd/- P.C. Sharma, Commissioner & Secy., to the Govt. of Assam, Transport Department.

3. Let us have a look at the rule on the basis of which the Petitioner has been put under suspension. That rule is known as Assam Civil Services (Conduct) Rules, 1965. Rule-12(2) provides as follows:

12(2). Every Government servant shall report to the Government if any member of his family is engaged in a trade or business or owns or manages an insurance agency or commission agency.

4. In paragraph-9 it has been stated that this fact was informed to the Director vide letter dated 25.11.96 along with an affidavit sworn by the wife of the Petitioner, that is Annexure-6, 6A, 7 and 7A respectively and these letters were received by the office on 28.11.96. Shri Mahanta argued that the very ground of suspension is no existent, and it was done in a most mechanical manner. In this connection Shri Mahanta places reliance on two decisions:

(1) (1983) 2 G L R 459 (Dhirendra Kumar Barthakur, Petitioner v. The State of Assam and Ors. Respondents) wherein the Division Bench of this Court pointed out as follows:

"Despite the apparent wide power of suspension under Rules 6, it is now well settled that the authority concerned is to keep in view several factors in exercise of its powers, such as, where continuance in the office of the Government servant would prejudice the investigation, trial or an enquiry, or where the

allegations against him are such that in the interest of maintenance of purity of the administration or the upkeep of proper standards of discipline and morale in the service, it is considered expedient to place him under suspension. It is necessary that the authority concerned passing the order must address its mind to relevant aspects and come to the bonafide conclusion that a disciplinary proceeding against him is under contemplation.

No doubt suspension is not a punishment by itself; but it cannot be denied at the same time that in such case the office placed under suspension suffer a lot. Apart from this, suspension of a Government servant is liability on the part of the Government in the sense that not only the person concerned is required to be paid substantial allowance but also a substitute in his place is to be taken. The idea behind placing an officer under suspension is not to inflict punishment which can be done only when the charges are proved but to safeguard against further loss to the Government, manipulation of records, intimidation of witnesses, embarrassment to Government in the public eye as in the case where moral turpitude is involved.

5."To the same effect is the decision in State of Orissa Vs. Bimal Kumar Mohanty, wherein the Supreme Court pointed out as follows:

Naturally when an appointing authority or the disciplinary authority seeks to suspend an employee pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It should not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider such case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one way of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of the service the dereliction of duty would pay fruits and the offending employee to get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witness or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. Each case must be considered depending on the nature of the allegation the gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or

contemplated enquiry or investigation. It would be Anr. thing if the action is actuated by malafide, arbitrary or for ulterior purpose. The suspension must be a straight in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent continuance in office while facing departmental enquiry or trial of a criminal charge.

6. That being the position of law, I do not find that the offence/misconduct as pointed out in the order of suspension is such a serious nature or of such a gravity that may require suspension of an employee.

7. In that view Annexure-5 to the writ petition shall stand quashed and the Petitioner shall be allowed to continue in service. However, the authority may proceed with the departmental enquiry if so advised.

8. With the above observations this writ application shall stand disposed of.