
(2006) 01 GAU CK 0013
In the Gauhati High Court

Kuddus Mia

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 27-01-2006

Acts Referred:

Citation : (2007) 1 GLR 662 : (2006) 3 GLT 157

Hon'ble Judges : Tinlianhang Vaiphei, J;Iqbal Ahmed Ansari, J

Bench : Division Bench

Judgement

I.A. Ansari, J.—By this common judgment and order, we propose to dispose of both the appeals, which have arisen out of the judgment and order, dated 17.2.2003, passed in Civil Rule No. 410 of 1994.

2. The writ petitioner, namely, Kuddus Miah challenged the order, dated 25.2.1994, passed by the Superintendent of Police, South Tripura, dismissing the petitioner, who was a constable, from service. By the judgment and order, dated 17.2.2003, the learned Single Judge, while allowing the writ petition, observed and directed as follows:

In the result, the writ petition is allowed. The impugned order of dismissal dated 25.2.1994 is hereby quashed. The petitioner be reinstated in service immediately. But the quashing of impugned order of dismissal and consequently reinstatement of the petitioner in service will not preclude the authority to continue the departmental proceeding afresh allowing all sorts of reasonable opportunity to the petitioner. So far back wages are concerned, the petitioner is entitled to be paid fifty per cent of the back wages on his submitting non-earning certificate for the said period and the authority is to verify whether the petitioner engaged himself in any profitable employment, engagement in other service, profession, trade or vocation and if it is found that the petitioner otherwise earned considerable amount, the same should be adjusted against the amount of back wages to be given as per order.

3. Dissatisfied by the fact that while setting aside the petitioner's dismissal from

service and directing his reinstatement in his service, the learned Single Judge had also permitted the respondent-authorities concerned to continue with the departmental proceeding afresh after affording a reasonable opportunity to the writ petitioner and that the learned Single Judge had held the petitioner merely 50 per cent of the back wages, the petitioner came before this court by way an appeal, which has given rise to Writ Appeal No. 18 of 2003. Aggrieved by the fact that the writ petitioner's dismissal from service had been set aside and he had been directed to be reinstated in service with 50 per cent of the back wages, the respondents-authorities concerned have also come before this court with an appeal, which has given rise to Writ Appeal No. 31 of 2003.

4. In the above back-drop, we have heard Mr. B. Das, learned senior counsel, appearing on behalf of the writ petitioner-appellant, and Mr. S. Deb, learned senior counsel appearing on behalf of the writ respondents-appellants.

5. Before entering into the merit of the present appeals, it is pertinent to point out that a departmental proceeding was drawn up against the writ petitioner on two charges, which are reproduced hereinbelow:

Article I. That the said C/6322 Kuddus Miah of H-Coy 1st Bn. TAP is alleged to have collected a fake school certificate from Charipara H.S. School in the name of Abdul Rehman and impersonating as Abdul Rahman got himself recruited in 92 Bn. BSF as Bogafa in the year 1971.

So, he is charged with the offence of gross misconduct.

Article-II. That the said C/6322 Kuddus Miah is alleged to have obtained a false school certificate from Lalsinghmura J.B. School showing him to have read upto Class-IX and producing the same got himself recruited as Home Guard in the year 1976.

So, he is charged with the offence of gross misconduct.

6. The Departmental enquiry concluded with the findings of guilt reached against the writ petitioner. The Inquiry Officer, accordingly, submitted his enquiry report. This report was accepted by the respondent/authorities concerned and by the order, dated 25.2.1994, aforementioned, the petitioner was dismissed from service.

7. One of the principal grievances expressed by the petitioner, in his writ petition, was that he had not been accorded fair hearing at the time of the departmental enquiry inasmuch as he was not provided with a Defence Assistant of his choice, that the Inquiry Officer had taken into consideration documents, which had not been included in the list of documents, which was to be relied upon by the disciplinary authority, and that witnesses, whose names did not appear in the list of witnesses, had been examined. The learned Single Judge, it appears, has accepted these grievances of the writ petitioner.

8. At the time of hearing of the present appeals, reliance has been placed by the

disciplinary authority on the observations made by the Inquiry Officer in his enquiry report, which has not been challenged by the petitioner as regards the petitioner's contention that there was illegality, on the part of the Inquiry Officer and the disciplinary authority, in not providing a Defence Assistant to the petitioner of his choice. The relevant observations made, in this regard, in the enquiry report are reproduced hereinbelow:

CORRESPONDENCE IN CONNECTION WITH ENGAGEMENT OF DEFENCE ASSISTANT BY THE DELINQUENT CONSTABLE.

I sent a letter to the delinquent Constable vide No. 20406-07 dated 22.11.1991 with a copy to CO. TAP 1st Bn. Agartala wherein I intimated him whether he was in need of engaging any defence assistant at the time of enquiry into the Proceeding drawn up against him and if so, he was asked to propose the name and particulars of a serving Government employee for engagement as his Defence assistant within five (5) days from the date of receipt of the letter fail in which it would be presumed that no Defence assistant would be required by him at the time of enquiry into the Proceeding. He was remained for submission of his reply vide No. 69/71 dated 3.1.1992 with a copy of Comdt. TAP 1st Ban., Agartala when reply was not received in respect of letter No. 20404-07 dated 22.11.1991. The delinquent Constable submitted a prayer dated 30.11.1991 through OC "H" Company, TAP 1st Ban. And the same was received by me through CO, TAP 1st Bn vide No. 10671 dated 30.11.1991 wherein he mentioned that he should have to seek legal advice and help from the law knowing person and, thus, he prayed for allowing him 10(Ten) days" time from 1.12.1991 for submission of his reply. But he did not submit any reply nominating the Defence assistant. Subsequently he met me personally and intimated that no Defence assistant could not be managed by him.

9. The above observations, made by the Inquiry Officer in his enquiry report have never been challenged and are not, in fact challenged before us. It is also not the grievance of the writ petitioner that the report of the enquiry had not been furnished to him. Situated, thus, when we take into account the above observations made by the Inquiry Officer, we find that the petitioner was duly informed of his right to have the services of a Government employee of his choice as Defence Assistant; but the petitioner did not furnish any name of any person for being appointed as Defence assistant. In such a situation, it cannot be said that the petitioner was denied the right to have a Defence assistant of his choice.

10. Turning to the grievance of the writ petitioner that the witnesses had been examined on behalf of the disciplinary authority without giving adequate opportunity to the petitioner, it is imperative to note that in this regard, the observations of the Inquiry Officer are as follows:

EXAMINATION OF PROSECUTION WITNESSES AND RECORDING OF THEIR STATEMENTS THEREOF

During enquiry into the articles of charge of the Proceeding I examined the following prosecution witnesses in presence of the delinquent Constable at different places on different dates and recorded their statements on separate sheets of paper. The delinquent Constable cross-examine some of the prosecution witnesses and declined to cross-examine some of them after their examination was over. The copies of the statements of the PWs, recorded by me were handed over to the delinquent Constable on proper receipts on different dates as and when they were examined and their statements were recorded by me.

11. It is no doubt, true that some of witnesses had been examined at the enquiry, whose names did not appear in the list of witnesses, which had been furnished to the petitioner; but the petitioner did not raise any objection thereto at the enquiry nor did he express any grievance that any prejudice would be caused to him if the witnesses were examined. In fact, even in his representation made against his order of dismissal, the petitioner has stated nothing to show as to how he was prejudiced by examination of the witnesses, whose names had not even included in the list of witnesses furnished to him by the disciplinary authority. Mere examination of a person as a witness, whose name did not find place in the list of witnesses, cannot make the writ court interfere unless prejudice is shown to have been caused by such examination. If the petitioner was not prepared or willing to cross-examine such a witness, he could have asked for adjournment. Notwithstanding what we have observed hereinbefore, we notice that the Inquiry Officer relied on a report from the School from where the writ petitioner has allegedly obtained a fake certificate. This report has been considered by the Inquiry officer behind the back of the petitioner inasmuch as this report was never placed before the petitioner, and no witness was examined to prove the correctness of the said report. This apart, the Inquiry Officer has also not examined any one from Border Security Force, though the report submitted, in this regard, has been relied upon.

12. In the circumstances, as indicated hereinabove, learned Single Judge was perfectly justified in observing, thus, "The Inquiring authority admitted some documents and materials having travelled beyond the list of witnesses and comments appended to the memorandum of charges."

13. Because of what had been pointed out hereinabove, we are of the view that the learned Single Judge was wholly justified in setting aside and quashing the order of dismissal, dated 25.2.1994, aforementioned and in directing reinstatement in service of the petitioner.

14. In view of the fact that the documents and materials, which had been relied upon by the Inquiry Officer, are relevant, though the process through which the materials were brought into consideration was incorrect and improper. The illegality committed in bringing on records the report/documents aforementioned need to be removed. In this view of the matter, the learned Single Judge was not incorrect in permitting the respondents/authorities concerned to resume the

departmental proceeding afresh. While doing so, the learned Single Judge, however, was, in our opinion, not justified in directing the respondents/authorities concerned to pay fifty per cent of back wages to the petitioner. When the penalty imposed on a delinquent is interfered with by a writ court and the disciplinary authority is permitted to resume the departmental proceeding, the reinstatement of the delinquent shall really be for the purpose of bringing the disciplinary proceeding to logical conclusion.

15. In the case at hand, the charges levelled against the writ petitioner are very serious in nature and in the face of such charges, when the order of dismissal of the petitioner from service was set aside and quashed and the respondent-authorities concerned were permitted to resume the enquiry, the learned Single Judge ought to have made it clear that the reinstatement so directed, was for the purpose of completing the disciplinary proceeding and the learned Single Judge ought not to have directed the respondent-authorities concerned to pay fifty per cent of his back wages. If the directions, so given are not interfered with, the result will be that even if the petitioner is found guilty of the charges brought against him, he would still reap the benefit of back wages. Such an approach is impermissible in law.

16. Because of an infraction of the relevant rules or the principles of natural justice, in holding of the departmental proceeding or in arriving at the conclusion of guilt or otherwise, when the court interfere with the findings of guilt and directs reinstatement of the employee with liberty to the authority to proceed with the enquiry, the appropriate direction to the employer shall be to keep the employee under suspension and to resume the enquiry. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement, if ultimately ordered, should invariably be left to be decided according to law by the authority concerned on culmination of the proceedings and depending on the final outcome of proceedings.

17. What emerges from the above discussion is that while we find no reason to interfere with the setting aside and quashing of the impugned order, whereby the petitioner was dismissed from service, and also with the direction of his reinstatement, we are constrained to direct that the writ petitioner be placed under suspension and the enquiry be expeditiously resumed and concluded. The outcome of the enquiry shall govern the service benefits of the petitioner including his back wages. We further direct that considering the length of period for which the matter has remained pending, the respondent-authorities concerned shall conclude the proceeding expeditiously and within a period of 4 months from today.

18. With the above modifications as indicated hereinabove to the judgment and order, dated 17.2.2003, aforementioned, the two writ appeals shall stand disposed of. No order as to costs.

19. Let the record of the departmental proceedings be returned to the learned Counsel for the State respondents.