
(2008) 06 GAU CK 0059
In the Gauhati High Court

Lila Bordoloi and Others

APPELLANT

Vs

Assam State Publication Board and Others

RESPONDENT

Date of Decision : 25-06-2008

Acts Referred:

Citation : (2009) 3 GLR 128 : (2008) 3 GLT 155

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—The legality and validity of the action of the respondents/ authorities in compulsorily retiring the petitioners from their respective services under the Publication Board of Assam is the subject matter Of controversy in this batch of writ petition.

2. I have heard Mr. U.K. Nair and Mr. A. K. Bora, learned Counsel for the respective petitioners. Also heard Mr. A.K. Phukan, learned Advocate General, Assam along with Mr. S.N. Sarma, learned Sr. Counsel appearing for the respondents.

3. Briefly narrated relevant facts necessary for the purpose of disposal of this batch of writ petitions which are heard analogously having given rise to common question for adjudication, are as follows:

In WP(C) No. 5914/04, Mr. Lila Bordoloi, the petitioner, was initially appointed as. Proof Reader on 26.04.75 by the Assam State Publication Board (for short "the Publication Board") and was promoted to the rank of Circulation Officer in due course of time. The petitioner, Mr. Dwipen Sharma, in WP(C) No. 2610/05 was initially appointed as Lower Division Assistant in the year 1978 and was promoted to the rank of Accountant in the year 1995. The petitioner, Mr. Naren Talukdar @ Narendra Chandra Talukdar in W.P.(C) No. 3027/05 was previously appointed as Work-Charge Muharrar (Gr. IV) in the year 1975 and he was promoted up to the position of U.D. Asstt. in the year 1983. In W.P.(C) No.

4750/04, the petitioner, Sri Achyut Sen Deka, was also appointed as Gr. IV staff in the year 1979 and was promoted to the rank of L.D. Asstt. Sri Dinesh Chandra Gayan, the petitioner, in W.P.(C)No. 2616/ 05, was appointed as Peon on 17th September, 1979, It is contended that there is nothing adverse against any of the petitioners in their service career.

The Publication Board, being in acute financial crunch, initially floated a scheme known as Voluntary Retirement Scheme (VRS scheme, 2004) and it was offered to all the 53 employees under the different cadres of the Publication Board offering the benefit, rendered under the said VRS scheme. Although some of the employees accepted the VRS scheme, the petitioners, however, did not opt to go on retirement under the said scheme, but due to financial crunch of the Publication Board, they were" compulsorily retired from their services by separate Notifications issued against each of them. The said decision and Notification compulsorily retiring the petitioners by the Publication Board are challenged in the respective writ petitions.

4. The contentions of the writ petitioners are that the impugned order compulsorily retiring the petitioners are illegal, unjust and improper and those are without jurisdiction in as much as there is no valid order of the Board of Directors of the Publication Board taking the decision to compulsorily retire the petitioners from their services and in fact there is no Board in existence since the year 2000. The learned Counsel for the petitioner further contended that due to none existence of the Board, the Secretary is not authorized and competent to issue said notice of compulsory retirement and although the Board has cited financial crunch as the reason for taking such course of action, in fact, there is no finding to that effect and the financial crunch of the Board is also disputed. Finally it is contended that FR 56B is not applicable and the petitioners could not have been compulsorily retired by applying the provision of FR 56B.

5. The Publication Board contested the case by filing counter. The common stand in the counter affidavit of the Publication Board is that Publication Board due to its serious financial crisis decided to implement the policy of Voluntary Retirement Scheme for survival and revival of the Board by issuing Notifications dated 19.03.04 and 29.04.04. Apart from the decision to implement the VRS, the Board also in the meeting of its general council held on 23.02:2000 decided to adopt the scheme of compulsory retirement as per the decision dated 28.06.2000 taken by the Executive Council. It is further contended that upto April, 2004, the employees of the Board could not be paid their salary for about 20 months and installment for Provident Fund also could not be deposited for about 73 months and LIC premium for 76 months and accordingly the Board has no option but to restructure the Board. The Board also took a decision to keep only 15 employees out of the total strength of 53 numbers of employees and thereby issued notices to all the employees offering them the scheme of VRS. The Board also resorted to compulsory retirement of its employees to keep the Board viable. In respect of the petitioner, Sri Lila Bordoloi, it is stated that he

was holding the post of Circulation Officer and two Magazines namely, viz. "Prakash" and "Mukuta", which were published by the Board, have been ceased publication and accordingly the service was no longer necessary and the post of Circular Officer automatically become redundant and surplus. In case of other petitioners, apart from their deficiency in service it is contended that their service is no longer necessary due to restructure of the Board on account of financial crunch. It is contended by the respondents that both the group of employee, i.e. those retiring compulsorily and those sent on voluntarily retirement, are provided with equal amount of financial benefits.

6. The Govt., of Assam constituted the Publication Board of Assam in the year 1958 to fulfill the needs of the state in the various publishing and allied activities so that the valuable old manuscripts which have become rare and require special endeavour to preserve these in printed forms. That apart, well-planned and substained publishing activities have also become urgently necessary in certain specific fields including the publication of science literature, childrens" literature, translated classics, compilation and publication of Assamese dictionary, encyclopedia, historical studies, books relating to tribal languages and culture, and such other works. The Board was set up under the Ministry of Education, Govt., of Assam but the Board, due to various reasons, more particularly, due to insufficiency of fund, is facing crisis and deficit allocation of budget has also added to the cause for sufferings for several years. On the other hand, the staff of the Board has increased including the over all expenses of the establishment. The Govt., of Assam has also accepted the decision to implement the VRS scheme and accordingly, the Publication Board was provided with sufficient fund to implement such scheme so that the function of the Board can be streamlined by necessary re-organisation.

7. In terms of the said scheme, a sizable employees under various categories accepted the same and they were released under the said scheme by providing necessary financial benefit.

8. During the course of hearing in order to justify the action taken by the Board, relevant original records of the Board were produced. Perusal of such record discloses that in the meeting of the General Council dated 06.12.99 various discussions were deliberated on the issue regarding financial crunch of the Board and the resolutions were adopted to urge upon the State of Assam for increasing the annual grant from 15 lacs to 20 lacs. Again in the meeting dated 08.05.2000 vide resolution No. 3.02, the General Council asked the Executive Committed to examine the introduction of compulsory retirement along with the VRS and to instruct the General Council, hi terms of the said decision of the General Council, the Executive Committee in its meeting dated 28.06.2000 as per resolution No. 10 decided to retire the employees compulsorily in case of necessity. In terms of the such decision taken by the Publication Board in its General Council as well as Executive Committee, the petitioners were compulsorily retired from service. Accordingly, the petitioner, Lila Bordoloi, in WP(C) No. 5914/04 was compulsorily

retired vide order dated 29.06.04 with effect from 30.06.04, the petitioners, Sri Achyut Sen Deka, in W.P.(C) No. 4750/04, Sri Dwipen Sharma in W.P.(C) No. 2610/04, Sri Dinesh Chandra Gayan in W.P.(C) No. 2616/05 and Sri Naren Talukdar @ Narendra Chandra Talukdar in W.P.(C) No. 3027/05 were compulsorily retired with effect from 31.05.04 with one month's notice plus gratuity as per Gratuity Act payable under the salary head as an employee of the Board including CPF etc.

9. The background of the aforesaid facts that emerge from the pleadings as well as from the departmental record juxtaposing the submissions made by the learned Counsel appealing for both the sides, the matter needs consideration as to whether the Publication Board was legally justified in compulsorily retiring the petitioners. Although the learned Counsel for the respective petitioners has disputed the contention of the Publication Board, that it is in severe financial crunch but the learned Counsel admits that the petitioners are not getting the salaries for more than 20 months. That apart, it is also on record that the Provident Fund dues for 73 months and LIC premium for 76 employees could not be deposited for want of finance. All these are undisputed facts born out of the record. Moreover, the deliberation of the members in the general meeting of the Publication Board held on 06.12.99 as well as Executive Council meeting held on 08.05.2000 disclose that the matter relating to the financial crunch of the Publication Board got prime consideration and importance amongst the members and it was extensively discussed. Means and suggestions to improve the financial conditions were also discussed and ultimately decision was taken to request the Govt., to raise financial grant.

10. From all these facts that are born out of the record, it is clear that the Publication Board had no other alternative but to take measures for improvement of the financial condition of the Board inasmuch as it has reached such stage that the Board has defaulted in payment of the contribution of the Provident Fund of its employees for which the statute provides for penal consequences. In such a situation, the Publication Board has decided to restructure the entire organization providing VRS scheme as accepted by the State Govt., in respect of the Public Sector organization. For the purpose of accepting such VRS scheme, the matter was decided in the meeting of the Board of Directors of the Publication Board held on 06.12.99 and in terms of the resolution adopted in the said meeting, the matter was referred to the Executive Council who in turn accepted both the schemes i.e. voluntary as well as compulsory retirement. In such a situation, the contention of the learned Counsel for the petitioners that there is no such decision of the Board to compulsorily retire the employees and that the Board is not financially unsound is totally misplaced and cannot be accepted.

11. Next question arose for consideration is as to whether the Secretary of the Board has got the power and authority to issue the impugned order of compulsory retirement. The function of the Publication Board is regulated and guided by a set of Rules known as Rules of the Publication Board Assam No.

EMI/25/58/Pf/14 dated 13.10.59. The said Rule was approved by the Govt., of Assam and it was duly published. Under Rule 4(ii), there shall be a whole time Secretary of the Board to be appointed by the Board with the prior approval of the Government and the salary is to be fixed with the prior approval of the Government. Rule 4(iii) provides that the Board is to select the members of the Executive Committee excluding Chairman and Vice Chairman. The Rules of Business of the Executive Committee are laid down under Rule 7 and 8. The power and duties of the Secretary of the Board is enumerated in Rule 9 and under Rule 9(ii) one of the duties of the Secretary is to carry out the decision of the Board and the Executive Committee. Under Rule 9(v), the Secretary is to perform all other functions as may be required for carrying out the purposes of the Board. From the aforesaid provisions it is thus clear that the Secretary is to carry out the decision of the Court as well as Executive Committee and in such a situation, the order issued by the Secretary in view of the facts as eluded hereinabove, cannot be said to be without its jurisdictional authority. In fact, the Secretary is empowered by the Rules of the Board to take such an action in carrying out the decisions of the Board and its Executive Committee.

12. The Publication Board decided to salvage the situation by maintaining a scalation office with staff of about 10 numbers and this was necessitated for want of financial support and strength. The stand of the respondents is that the Board was suffering from acute financial crunch thereby not being able to shoulder the burden of maintaining the staff. Out of total strength of 51 members of the employees, in terms of notice asking option for VRS only 10 employees accepted the same. On such consideration, the Publication Board had to take a decision to revive the organization by resorting to the policy of compulsory retirement. In such circumstances, the decision of the Board to adopt the provision of compulsory retirement cannot be said to be unjust and improper since by resorting such procedure the very existence of the Publication Board is sought to be maintained. One of the important factors to be noted is that the benefit provided to the petitioners by compulsorily retiring from service is not lesser than what was provided under the VRS scheme. The Publication Board adopted a practically viable procedure for its revival by maintaining the escalating staffs. The Board has such right in the given circumstances as emerged from the record of the case, in view of larger public interest.

13. Although Mr. Nair, learned Counsel strenuously urged relying on the decision of the case reported in 1999 (3) GLT 96 Jagadindra Arjun v. Meghalaya State Electricity Board and Anr. that without adopting the FR and SR, the provision of Rule 56(b) cannot be made applicable, in the in slant case, in view of the decision of the Publication Board in the General Council of the Board as well as Executive Committee referred to above deciding to retire some of its employees compulsorily, the said submission carries no weightage. The Publication Board in its highest body having decided to take such course of action of compulsory retirement of some of the employees according to its Rules of Business, the Board is within its jurisdiction to adopt such procedures. Even if the Board

adopted the provision of FR 56(b), the absolute right of the employer to cause retirement of a person cannot be disputed if such a course of action is necessary on public interest. FR 56 (b) lays down certain principles on fulfillment of which such power can be exercised. For this proposition, the decision of the Apex Court relied on is AIR (1970) SCWR 561 (Butail v. Union of India) and Mayongbam Radhamohan Singh Vs. The Chief Commissioner (Administrator), Manipur and Others, . The Publication Board having decided to retire some of its employees compulsorily in its respective meeting, such action would not be challengeable for non-adoption of the fundamental rules.

14. Mr. Phukan, learned Advocate General Assam referring to the Rules of procedure and conduct in the Assam Legislative Assembly, particularly Rule 116 and 117 submits that a resolution may be in the form of declaration of opinion or a recommendation or may be in the form so as to record either approval or disapproval of the House of an act of policy of the Govt., or to convey a message or recommend, or any such other form as the authority may consider appropriate, such a resolution can be adopted on public interest. It is contended by the learned Advocate General that the decision of the General Council as well as Executive Council having decided to compulsorily retire some of its employees apart from VRS, the action would not be invalid for non-adoption of the fundamental Rule and I find sufficient force in the submission of the learned Advocate General.

15. In cases like as in hand, compulsory retirement of an employee is not effected for taking any penal action. It involves no civil consequence not it cast any stigma if such action is to be taken on public interest. The High Court, in exercise of its writ jurisdiction, cannot sit as a court of appeal on facts above the decision of the authority unless the decision is capricious, arbitrary and irrational and made on some extraneous consideration (Ref. Gian Singh Mann Vs. High Court of Punjab and Haryana and Another, 1981 (1) SLJ 121).

16. In the instant case, the petitioners were compulsorily retired not as a punishment and only if it is resorted to by way of punishment employer, of course, is to follow all the relevant service Rule, as well as the principle of natural justice before taking any penal action by way of compulsory retirement. But this is not the case here. It was also found that such action was taken up for public interest and not by way of any disciplinary measure. From the pleadings of the parties as well as record of the case so submitted by the Publication Board, I find that the ground upon which the impugned order has been assailed could not be substantiated. The impugned order has been passed on public interest, i.e. for greater interest of the Publication Board and for its existence.

17. Accordingly, in view of the above discussions I do not find any merit in these writ petitions and those are dismissed, leaving the parties to bear their respective costs.