
(2012) 10 GAU CK 0032
In the Gauhati High Court
Case No : Writ Petition (C) No. 5586 of 2010

Malaya Saikia

APPELLANT

Vs

Board of Trustees, ATPPF and PF Scheme and Others

RESPONDENT

Date of Decision : 15-10-2012

Acts Referred:

Citation : (2013) 1 GLD 472 : (2013) 1 GLT 461

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : S.B. Prasad, for the Appellant; N.C. Das and Ms. C. Sarma, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—By means of this writ petition, the petitioner has questioned the departmental proceeding that was initiated against her with imposition of penalty of compulsory retirement by Annexure-7 order dated 18.05.2006 followed by rejection of her appeal by order dated 18.03.2010 (Annexure-10(a)). The petitioner was charged with imprudent moral turpitude with the following allegations.

You are found to have committed the following offences unbecoming of an employee of the Board and comprising impudent, incontinent acts of indiscipline and grave misconduct rendering you unsuitable to be retained in the services to serve public interest. The penalty aimed at is dismissal from service.

1. You are found to have still continuing immoral and illicit relationship with an officer of the Board namely Shri K.R. Nag, Addl. PF Commissioner (under suspension) although you were given disciplinary awards on past two occasions for such proven misconduct with strict caution for amending your character and conduct. You were retained in services on both the said occasions affording you fair and reasonable opportunity to amend yourself. But you have deliberately undermined the authority to continue with the same immoral and illicit relations

with the person concerned, fully knowing that the later has his legally married wife with grown up children. Due to your arrogance you have deliberately thrown away all ethical values and become quite belligerent to defy the authority's cautions, issued at least on three past occasions, to held in yourself. You make Shri K.R. Nag, who goes to North Lakhimpur quite frequently to stay with you at your rented house. You have flouted your own written assurance of good conduct.

Alongwith the charge sheet the statement of allegations had also been enclosed, without, however, any copies of the lists of documents and witnesses by which aforesaid allegation was sought to be established. Responding to the charge sheet, the petitioner by her written statement of defence dated 30.11.2004 denied the charge. The petitioner also prayed for reinstatement in her service upon revocation of the order of suspension earlier passed.

2. In due course, the disciplinary authority being not satisfied with the written statement of defence submitted by the petitioner conducted an enquiry by appointing an enquiry officer. It appears that the enquiry officer was entrusted to conduct the enquiry in respect of both the delinquents, i.e. the petitioner and the other person, namely Shri K.R. Nag who was holding the post of Addl. PF Commissioner with whom the particular allegation was levelled against the petitioner.

3. On conclusion of the enquiry, the enquiry officer submitted his report dated 08.02.2006 holding the charge against the petitioner to have been established. Thereafter the disciplinary authority imposed the penalty of compulsory retirement on the petitioner by the impugned order dated 18.05.2006 which was upheld by the appellate authority by its order dated 18.03.2010.

4. Being aggrieved by the aforesaid proceeding with the imposition of penalty of compulsory retirement and rejection of her appeal, she has invoked the writ jurisdiction of this Court towards assailing the said proceeding and the consequential orders.

5. I have heard Mr. S.B. Prasad, learned counsel for the petitioner as well as Mr. N.C. Das, learned Sr. counsel assisted by Ms. C. Sarma, learned counsel for the respondents. I have also gone through the entire materials on record including the disciplinary proceeding file.

6. Mr. Prasad, learned counsel for the petitioner submits that on the basis of the particular allegation, the disciplinary authority could not have and ought not have initiated a departmental enquiry. He further submits that even assuming but not admitting that the departmental proceeding was maintainable against the petitioner, the rules ought to have been followed in penalising the petitioner.

7. Countering the above argument, Mr. Das, learned counsel for the respondents submits that the departmental enquiry having been conducted on the basis of the allegation made against the petitioner and the other delinquent and the petitioner having been provided with all reasonable opportunities of being heard,

this Court exercising writ jurisdiction will not sit on appeal over the findings recorded by the enquiry officer, disciplinary authority and the appellate order. According to him, misconduct attributed against the petitioner was so serious, there was no option left for the disciplinary authority than to conduct the enquiry and when it was found that the charge against the petitioner stood established in the enquiry, the disciplinary authority thought it prudent to impose the penalty of compulsory retirement.

8. As to what was the charge against the petitioner, has been noted above. The disciplinary authority conducted the enquiry by appointing an enquiry officer. On perusal of the enquiry proceeding file, what is found is that although the presenting officer was appointed by the disciplinary authority, but the entire enquiry was conducted by the enquiry officer by putting direct questions to the witnesses including the petitioner to the extent of putting leading questions.

9. The respondents in their counter affidavits have referred to the statements made by different witnesses, but on perusal of the entire proceeding file what is found is that some of the witnesses examined in respect of the charge levelled against other delinquent, namely Shri K.R. Nag, were never examined in presence of the petitioner giving her an opportunity to cross examine them. She was also not provided with the opportunity to engage her defence counsel.

10. Alongwith the counter affidavit filed by the respondents, the documents relating to enquiry have also been enclosed. On perusal of the same, it gives an impression that on the particular date of enquiry, i.e. 04.04.2005, the particular witness namely Shri Paban Baruah, was examined in presence of the petitioner. However, on perusal of the entire proceeding file, it is found that the said witness was examined in connection with the enquiry conducted against the other delinquent, namely Shri K.R. Nag and in the said proceeding, the petitioner was not associated, although her name was initially included in the order sheet recorded on 04.04.2005, but later on same was struck off as she was never associated in the said enquiry proceeding.

11. Above being the position, the deposition made by the said witness and for that matter all other witnesses who were examined to sustain the charge against Shri K.R. Nag, could not have been used against the petitioner as much as none of them was examined in presence of the petitioner, she was also not given the opportunity to cross examine them.

12. Mr. Prasad, learned counsel for the petitioner has argued that the said witness, Shri Paban Baurah being the disciplinary authority, ought not have been examined as witness on behalf of the disciplinary authority itself. However, that aspect of the matter need not detain us as the said witness did not depose in respect of the enquiry that was conducted against the petitioner.

13. Another witness, namely Shri Hiralal Choudhury, examined by the disciplinary authority, had deposed in respect of the charge levelled against Shri Nag, and not in respect of the charge levelled against the petitioner. The said

witness was also examined in absence of the petitioner and thus, she did not get any opportunity to cross examine him. The other delinquent, Shri K.R. Nag was also examined in absence of the petitioner. Moreover, as stated above, in the entire enquiry proceeding the witnesses were examined even to the extent of putting leading questions by the enquiry officer, and not by the Presiding officer who was appointed by the disciplinary authority.

14. On conclusion of the enquiry conducted in the said manner, it was the turn of the petitioner to participate in the enquiry proceeding which was also held on 04.04.2005. As per the normal procedure of departmental proceeding, the witnesses on behalf of the disciplinary authority are required to be examined first giving right to cross examine to the delinquent. It is only thereafter the delinquent is examined alongwith his/or witnesses. But in the instant case, the petitioner was straight way put to the witness box and the enquiry officer examined her thoroughly by putting different questions including leading questions. However, on perusal of the answers given by the delinquent officer to the questions put by the I.O., I do not find anything to sustain the charge against the petitioner.

15. Only witness that was examined on behalf of the disciplinary authority is one Shri Tulan Ch. Nath who in his deposition stated that he did notice anything objectionable between the other delinquent and the petitioner. The said witness is working as Chowkidar in the office. To the specific question as to whether he knew the petitioner and the other delinquent, his answer was in the affirmative. However, he denied that said Shri Nag had visited the office of the petitioner. He also specifically stated that he did not see said Shri Nag alongwith the petitioner.

16. After examining the petitioner and said Shri Tulan Ch. Nam, the enquiry officer examined once again the other delinquent, namely Shri K.R. Nag. This time, the enquiry officer associated the petitioner. On conclusion of this statement, the enquiry officer again examined the petitioner without giving her opportunity to cross-examine the other delinquent. She was put specific questions about the particular application allegedly submitted by the other delinquent desiring to marry her to which her reply was that she was not aware of any such application.

17. It is on the above basis the enquiry officer held the petitioner guilty of the charge referred to above. I am afraid, adopting such a procedure in conducting departmental proceeding, the delinquent could not have been held to be guilty of the misconduct attributed to her. It is also very doubtful as to whether on the basis of the aforesaid allegation, the departmental proceeding could have been initiated by the respondent authority.

18. As the records have revealed, the petitioner is a divorcee and is the mother of a daughter who at the time of levelling the allegations, was a Higher Secondary student. The respondent authority before levelling serious allegations against the petitioner ought to have considered as to the impact it would have on

the family. Such nature of allegation has the potential of destroying the family life of the petitioner casting stigma on her in the society. Be that as it may, the enquiry having been conducted in a very perfunctory manner, the same is not at all sustainable and so also the consequential orders.

19. For all the aforesaid reasons, the impugned orders are set aside and quashed directing the respondents to reinstate the petitioner forthwith in her service maintaining continuity in her service. However, considering the facts and circumstance involved in the case, it is hereby provided that the petitioner will be entitled to only 50% of the back wages from the date of suspension, i.e. 07.07.2004 to the date of reinstatement in service, in terms of this judgment and order. Writ petition is allowed, without, however, any order as to costs.