
(2006) 11 GAU CK 0046
In the Gauhati High Court

Manik Majumder

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 23-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 2 GLR 333 : (2007) 3 GLT 493

Hon'ble Judges : R.B. Misra, J;Hrishikesh Roy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The present Writ Appeal has been preferred against the order dated 6.3.2000 of learned Single Judge of this High Court passed in Writ petition No. 31 of 2000, whereby, the writ petition was dismissed summarily at the admission stage.

2. In the impugned order dated 6.3.2000 learned Single Judge has observed that a sum of Rs. 27,850 was allocated to the writ petitioner for execution of certain work and on the allegation of non-execution of work a regular disciplinary proceeding was conducted against him in which he was found guilty, therefore, the above amount of Rs. 27.850 was directed to be recovered from the writ petitioner as he has already availed the opportunity of filing the appeal before the competent authority. In these circumstances, no indulgence was made by the learned Single Judge of this court in exercise of its jurisdiction under Article 226 of the Constitution and writ petition was accordingly dismissed summarily.

3. The facts necessary for adjudication of the present Writ appeal is that the writ petitioner was appointed initially on 16.1.1987 as Panchayat Secretary under the Directorate of Panchayat and during the year 1995 an amount of Rs. 27,850 was allocated him for Lowgung Gaon Panchayat for implementation of various projects. According to the writ petitioner, at the relevant time, Srimati Photarani Majumder, Pradhan and Sri Satyapriya Bhowmik, were Pradhan and Upa Pradhan respectively, who were said to have been disbursed with the above money for

execution of the work in question against different receipts alleged to have been obtained by the writ petitioner. The work was executed, however, the required certification of completion of work could not be obtained from them because of some differences which had arisen between the Pradhan and Upa Pradhan on one hand and the writ petitioner on the other hand, however, when utilisation of the allocated fund and the verification of work execution was not made, the matter was reported to the State officials and Block Development Officer, (B.D.O.), who had made an preliminary inquiry reported the matter to the Director Panchayat, Government of Tripura. Accordingly. The Director of Panchayat even demanded necessary documents and statement of imputation of misconduct etc. for preparation of the charge-sheet A Memorandum dated 20.1.1999 was issued where by the writ petitioner was informed that an action under Rule 16 of Central Civil Services (Classification, Control and Appeal) Rules 1965 (in Short CCS (CCA) Rules, 1965) in reference the statement of imputation of misconduct/misbehavior action was proposed to be taken against the writ petitioner. Opportunity was provided to the writ petitioner to make representation, and after considering his representation, an order dated 30.3.1999 by Director of Panchayat was passed, whereby, it was indicated that the petitioner was responsible for misappropriation of government amount of Rs. 27,850 and, accordingly, Director of Panchayat Raj being a disciplinary authority has indicated that the entire misappropriate amount of Rs. 27,850 was required to be refunded by the writ petitioner and in case of default, the amount was to be recovered by Drawing and Disbursing officer from the salary of the writ petitioner in installments at the rate 1/3 of his salary.

4. Being aggrieved against the order dated 30.3.1999 the writ petitioner preferred an appeal under Rule 23 of "CCS (CCA)" Rules, 1965 before Secretary Rural Development Department of Panchayat, State Government of Tripura, which too, was dismissed by an order dated 26.6.1999. Above two orders dated 30.3.1999 and 26.6.1999 were challenged in the writ petition, which was summarily dismissed by learned Single Judge at the admission stage by the impugned order dated 6.3.2000.

5. During the course of hearing it has been submitted by Mr. S. Talapatra, learned senior counsel for the appellant that for serious offence a disciplinary enquiry under "CCS (CCA) Rules 1965", could have been conducted by serving the charge sheet and by appointing Inquiry officer, the inquiry could have been conducted in consonance to the principle of natural justice, thereafter, in reference to the inquiry report the disciplinary authority could have taken the decision.

6. On behalf of the State Government Mr. N.C. Paul, learned Government Advocate has submitted that the Director Panchayat while passing an order dated 30.3.1999 for imposing penalty in para 4 of the decision has indicated that inquiry was conducted by the Block Development officer, R.D. Block, Bagafa on the issues, and during inquiry both Pradhan and Upa Pradhan of Lowgang Gaon

Panchayat had denied the allegations of receipt of any amount from the writ petitioner which was, however, endeavour to be corroborated in view of the statements of Shri Jiban Krishna Patari, Rabindra Kumar Baidya, all members of the Gram Panchayat and Shri Pradip Mohari, DRW. In support of the stand taken by the State Government, the original records have been produced. On perusal of the original records it reveals that the B.D.O. Bagafa has given his report on 21.2.1997, however the Director Panchayat has subsequently vide letter dated 3.1.1997 addressed to the B.D.O. Bagafa Block South Tripura has directed to furnish the following materials/papers/documents for framing charge-sheet against the writ petitioner:

- (i) The statement of articles of special charge;
- (ii) Statement of imputation of misconduct or misbehavior;
- (iii) In support of article of charge ;
- (iv) List of documents by which the articles of charge are proposed to be sustained;
- (v) List of witnesses by whom the article of charge are proposed to be sustained, to be sustained.

Thereafter, the Block Development officer vide its letter dated 21.2.1997 informed the Director of Panchayat, Government of Tripura about the materials for framing of charge sheet against the writ petitioner which was placed under suspension. Thereafter, it appears that the Memorandum dated 20.1.1999 was issued by the Director of Panchayat to the writ petitioner. From records it could not be divulged that charge sheet was ever framed, or Inquiry officer was ever appointed and any enquiry was ever conducted or not. However, at this stage a prayer was being made for allowing some time to obtain instruction which is being declined by this Court as the original records have already been produced for perusal.

7. The part V of "CCS (CCA) Rules, 1965" deals the penalties and Disciplinary Authorities, Rule 11 deals with the penalties. Part VI deals the Procedure for imposing penalties; Rule 16 provides the procedures for imposing minor penalties. Part VII deals the "Appeals".

The Rule 11 while dealing the penalties provides as below:

Minor penalties

- (i) censure ;
- (ii) Withholding of his promotion ;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders ;
- (iii) (a) reduction to a lower stage in the time-scale of pay for a period not

exceeding 3 years, without cumulative effect and not adversely affecting his pension.

(iv) Withholding of increments of pay;

Rule 16 : Procedure for imposing minor penalties:

(1) subject to the provisions of Rule 15, no order imposing on a Government servant any of the penalties specified in Clause (i) to (iv) if Rule 11 shall be made except after

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in Sub-rule (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under Clause (a) and the record of inquiry, if any, held under Clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehavior; and

(e) consulting the Commission where such consultation is necessary.

(1A) Notwithstanding anything contained in Clause (b) of Sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under Clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in Sub-rule (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include -

(i) a copy of the intimation to the Government servant of the proposal to take action against him ;

(ii) a copy of the statement of imputations of misconduct or misbehavior delivered to him ;

(iii) his representation, if any ;

(iv) the evidence produced during the inquiry ;

(v) the advice of the Commission, if any ;

- (vi) the findings on each imputation of misconduct or misbehavior; and
- (vii) the orders on the case together with reasons, therefore.

8. We have heard the learned Counsel for the parties and have also perused the original records. We find that for the allegations of miss-utilisation of money, without framing of charge and without appointing Inquiry Officer and without conducting the inquiry in consonance to the provisions of "C.C.S. (CCA) Rules, 1965" only on the basis of the statement of imputation of Rules, only on the basis of the statement of imputation of misconduct/misbehavior only after obtaining reply representation of the writ petitioner the order dated 30.3.1999, by the Director of Panchayat Raj imposing the said penalty has been passed, which too was affirmed by the appellate authority vide order dated 25.6.1999. The entire approach of the State Government and its authorities to award punishment was de hors the provision of "CCS (CCA) Rules 1965" and in utter disregard to the principles of natural justice. In these circumstances, these two order dated 30.3.1999 and 25.6.1999 are not legally sustainable. However, these orders were under challenged in the Writ Petition No. 31/2000 which was summarily dismissed by the impugned order dated 6.3.2000 passed by the learned Single Judge. Therefore, we allow the Writ appeal and set aside the impugned order dated 6.3.2000 passed by the learned Single Judge, consequent upon both the orders dated 30.3.1999 and 25.6.1999 are also set aside.

9. It is suffice to say that the State Government is at liberty to proceed the disciplinary inquiry against the writ petitioner in accordance with law if so advised and the inquiry if any is to be conducted in consonance of the provisions of principal of natural justice, which shall be completed within six months and the writ petitioner is expected to render all possible cooperation in expediting the inquiry if so conducted by the State Government.