

(2021) 03 GAU CK 0026
In the Gauhati High Court
Case No : Writ Petition (C) No. 5814 Of 2020

Mitali Konwar

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 17-03-2021

Acts Referred:

Catchment And Land Protection Act 1994 — Section 14
Juvenile Justice (Care And Protection Of Children) Act, 2015 — Section 75
Indian Penal Code, 1860 — Section 34, 326, 344
Assam Services (Discipline And Appeal) Rules, 1964 — Rule 6(2)

Citation : (2021) 03 GAU CK 0026

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : P J Saikia

Final Decision : Allowed

Judgement

1. Heard Mr. P.J. Saikia, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned counsel for the respondents No. 1, 2, 3 and 4.

2. We have taken note of that the order dated 02.03.2021 of the Lawazima Court provides that notice on respondent No.5 had been served. None appears for the respondent No.5.

3. The petitioner who is the Principal of Moran College, Sivasagar was placed under suspension by the order dated 08.09.2020 of the Director of Higher Education.

The order reads as follows:-

"Pending drawal of Departmental proceeding and in pursuance of the W.T. Message dated 06- 09-2020 and letter dated 04-09-2020 received from the Officer In-Charge of Dibrugarh Police Station Dibrugarh, Dr. Mitali Konwar, Principal, Moran College, Moranhat, Sivasagar is hereby placed under suspension with immediate effect as Dr. Mitali Konwar, Principal, Moran College, has been

arrested and sent to Judicial Custody vide Dibrugarh P.S. Case No.1443/20 U/S 344/326/34 IPC, R/W Sec. 14 CALP Act and R/W Sec. 75 JJ (Care and Protection of Children Act, 2015)

During the suspension period Dr. Mitali Konwar will get subsistence allowance as admissible. Dr. Mitali Konwar will not leave the Headquarter without prior permission from the Director of Higher Education, Assam."

4. A reading of the order dated 08.09.2020 goes to show that pending drawal of departmental proceeding the petitioner was placed under suspension on the basis of a WT message dated 06.09.2020 of the letter dated 04.09.2020 from the Officer In Charge of Dibrugarh Police Station. As per the information the petitioner was arrested and sent to judicial custody in connection with Dibrugarh P.S. Case No.1443/20 U/S 344/326/34 IPC R/W Sec. 14 CALP Act and R/W Sec. 75 JJ (Care and Protection of Children Act, 2015).

5. Apparently, the allegation in the Dibrugarh P.S. Case No.1443/20 against the petitioner was that she was entertaining a person under the majority age at her residence for some purpose. A reading of the materials in the Dibrugarh P.S. Case No.1443/2020 goes to show that the allegation in the police case against the petitioner was not because of any act done by her in course of her official duty as a Principal of Moran College, Moranhat. The petitioner relies upon Paragraph-21 of Ajay Kumar Choudhary -vs- Union of India reported in (2015) 7 SCC 291 which provides that in the event the charge memo is not served on the delinquent within a period of three months from the date of suspension or in a given case no review had been undertaken for continuance of the suspension, the suspension would no longer be sustainable.

6. In the instant case, it has been taken note of that the petitioner was placed under suspension under Rule 6(2) of the Assam Services (Discipline and Appeal) Rules, 1964 (in short Rules of 1964).

6(2) of the Rules of 1964 is extracted below:-

"A Government servant who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of such detention, by an order of the Appointing Authority and shall remain under suspension until further orders.

Provided that where the detention is made on account of any charge not connected with his position as a Government servant or continuance in office is not likely to embarrass the Government or the Government servant in the discharge of his duties or the charge does not involve moral turpitude, the Appointing Authority may vacate the suspension order made or deemed to have been made when he is released on bail or is not otherwise in custody or imprisonment."

7. The proviso to Rule 6(2) of the Rules of 1964 provides that if the detention is made on any charge not connected with his position as a government servant or

the continuance in office is not likely to embarrass the government or the charge does not involve moral turpitude, the appointing authority may vacate the order of suspension made or deemed to have been made when the employee concerned is released on bail or is not otherwise in custody or imprisonment.

8. In the instant case, we find that the allegation against the petitioner in Dibrugarh P.S. Case No.1443/2020 is not in connection with her position as a government servant. Whether the continuance of the petitioner in office would embarrass the government is a matter for the appropriate authority in the government to take its decision. Further whether the act alleged against the petitioner involves any moral turpitude is also a matter to be decided by the appropriate authority in the government. In doing so, the true meaning of 'moral turpitude' would also have to be understood and whether the act alleged against the petitioner would be a case of 'moral turpitude' would also have to be decided by the authorities or whether the act alleged against her is an illegal act which violates any law.

9. The expression "moral turpitude" had been discussed by the Supreme Court in Allahabad Bank -vs- Deepak Kumar Bhola reported in (1997) 4 SCC page-1, wherein a view was formed that moral turpitude implies depravity and wickedness of character or disposition of the person charged with the particular conduct. 'Depravity' again means moral corruption or wickedness.

10. The authorities would have to take a decision whether the act of the petitioner in engaging a person below the age of majority, which was the allegation in Dibrugarh P.S. Case No.1443/2020, would be an act of any depravity or wickedness or it was merely an act which may have had violated the certain provisions of law.

11. In view of the provision of Rule 6(2) of the Rule of 1964 we require the appointing authority of the petitioner i.e. Director of Higher Education, Assam to take a decision as indicated above, as to whether the suspension of the petitioner is required to be further continued. The decision be taken within a period of two weeks from the date of receipt of the certified copy of the order.

12. Writ petition stands allowed as indicated above.