**(2022) 05 GAU CK 0020**

**In the Gauhati High Court**

**Case No :** Writ Petition (Civil) No. 324 Of 2012

Mukul Chandra Buragohain APPELLANT

Vs

State Of Assam And Ors RESPONDENT

**Date of Decision :** 11-05-2022

**Acts Referred:**
Constitution Of India, 1950 — Article 311, 311(2)

**Citation :** (2022) 05 GAU CK 0020

**Hon'ble Judges :** Arun Dev Choudhury, J

**Bench :** Single Bench

**Advocate :** B Baruah

**Final Decision :** Allowed

# Judgement

1. Heard Mr. B. Bara, learned counsel for the petitioner. Also heard Mr. D. Nath, learned Addl. Senior Govt. Advocate.

1. The challenge in the present writ petition is the order dated 17.9.2011 issued in exercise of power under Executive Instruction 115 incorporated in Chapter VIII of Assam Land and Revenue Regulation 1886, whereby the petitioner who was serving as Mouzadar was dismissed.

2. The basic ground of challenge is non adherence of procedure under Article 311 of the Constitution of India. The petitioner claims that the post of Mauzadar is a civil post and Mouzadar being a civil servant under provision of Article 311, the petitioner could not have been dismissed without following the procedure mandated under Article 311 of the Constitution of India.

3. The petitioner became Mouzadar of Saikhowa Mauza on the death of his paternal uncle late Gunindra Nath Gohain in the year 2000.

4. While taking over the charge of the Mauza in question by the petitioner, the Deputy Commissioner issued one instruction to the petitioner to deposit the collected cash/revenue which was in the hands of the Mauzadar.

5. Pursuant to such communication the petitioner preferred a representation before the State Government in Revenue Department inter alia contending that the total due of Rs.5,92,838.77 is accumulated from the time of earlier Mouzadar and an amount of Rs 5,60,982.22 was also due to deceased Mauzadar from the State Government towards commission for managing the said Mauza and on that calculation, an amount of Rs 31,856.55 is actually due to the Government It was further contended that an amount of Rs. 59,000 is due against the subsidy. Accordingly, there remains nothing with the petitioner as cash in hand.

6. The said representation was forwarded by the Joint Secretary of the Department of Revenue to the Deputy Commissioner to do the needful and inform the Government at the earliest.

7. The petitioner alleges that while keeping such representation pending, the Addl. Deputy Commissioner, Tinsukia issued communication dated 14.11.2008 asking the petitioner to deposit an amount of Rs. 6,66,104/- within ten days, in the Government treasury. Such communication was issued on the basis of quarterly report submitted by the Circle Officer.

8. On receipt of such direction, the petitioner submitted a representation on 29.11.2008 before the Deputy Commissioner explaining his position.

9. Subsequently, an inspection was carried out and the inspection report was submitted observing that the Mouzadar of Saikhowa Mauza has kept cash in hand an amount of Rs. 13,47,547/- which is beyond the permissible limit. Such excess cash was directed to be deposited within ten days from receipt of communication dtd.14.11.2014. Subsequent to such notice/communication, the petitioner by communication dated 17.6.2019 intimated the Circle Officer that the petitioner had already deposited some amount of money, in one occasion Rs.5 lakh and in another Rs.7 lakh in the Govt. Treasury. And thereafter, on 29.6.2009 another amount of Rs 2 lakhs was deposited by the petitioner in the treasury.

10. Thereafter, the petitioner filed a representation before the Hon’ble Minister of Revenue, Government of Assam. While the matter was at that stage, alleging misappropriation the petitioner was put under suspension by order dated 3.6.2009 and Circle Officer took charge of the Mauza on 11. 6. 2009. Situated thus the petitioner deposited an amount of Rs 10,31,300/- and claims that in spite of deposit of such amount, no positive steps were taken for withdrawal of order of suspension though while taking the charge of the Mauza, the Circle Officer verbally asked the petitioner to deposit Rs 5 lakh to 6 lakh by 16.6.2009 so that suspension order can be withdrawn.

11. Subsequently, The Commissioner, Upper Assam Division , Jorhat on 19.6.2011 accorded approval to dismiss the petitioner as Mauzadar and accordingly the Deputy Commissioner issued the impugned order dismissing the petitioner from Saikhowa Mauza as Mauzadar.

 

12. The Executive instruction 115 under Part VIII of Assam Land and Revenue Regulation’1886 provides for appointment and dismissal of Mauzadars.

Executive instruction 115 provides that Mauzadar shall be appointed and dismissed by Deputy Commissioner subject to Commissioner’s approval in either case.

The power of suspension of a Mauzadar is vested with the Deputy Commissioner on his own authority. The procedure mandates that notice of suspension ordinarily be served on Mauzadar by an officer of the status of Revenue Officer and such Revenue Officer is empowered to take over all books and papers of Mauza and any collected revenue at the time of Mauzadars hand.

It is further mandated that Mauzadars suspension shall immediately be communicated to the raiyats of Mauza by beating of drums at the nearest hut or in any other convenient and shall be reported to the Commissioner without delay.

The said executive instruction further provides that Mauzadar shall be suspended by Deputy Commissioner only in cases in which it seems likely that dismissal shall be followed.

13. In the case in hand the suspension order was issued by Deputy Commissioner, Tinsukia. The suspension order dated 3.6.2009 reveals the following:

(i) Enquiry report /Inspection report dated 7.5.2009 reflects that the Mauzadar of Saikhowa Mauza kept an amount of Rs.13,47,547.68 in cash beyond permissible limit.

(ii) Mauzadar was asked to deposit excess cash in hand by communication dated 14.11.2018 within 10 days, which the Mouzadar failed to do.

(iii) In view of such failure, it appeared to the Deputy Commissioner that the Mauzadar has committed gross irregularities and such irregularities invite strict disciplinary action .

(iv) Accordingly Mauzadar was put under suspension pending departmental enquiry.

14. However, the dismissal order reveals that no departmental proceeding, as contemplated in the suspension order was held and the Commissioner Upper Assam Division approved the dismissal of the petitioner as Mauzadar.

15. It is not in dispute that prior to issuance of the impugned order of dismissal, no enquiry as contemplated in the suspension order was held nor any other proceeding was held giving any reasonable opportunity of hearing to the petitioner before passing of the order of dismissal.

16. The Assam Land and Revenue Regulation’1886 is silent regarding procedure to be adopted for dismissal of Mauzadar. No executive instruction is available in this regard.

 

17. Though it is contemplated in the suspension order that suspension order was issued pending drawal of the departmental proceeding, Mr. D. Dath learned Senior Govt. Advocate submits that as no enquiry procedure is mandated, there was no scope for the Deputy Commissioner or the Commissioner to follow one.

18. The Hon'ble Apex Court while dealing with the question whether a Mauzadar in Assam Valley holds a civil post under State of Assam and is entitled for protection under Article 311 (2) of the Constitution of India held at Paragraph 11 in the State of Assam and others Vs Kanak Chandra Dutta reported in AIR 1967 SC 884, held as under:

11. Judged in this light, a Mauzadar in the Assam Valley is the holder of a civil post under the State. The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is a responsible officer exercising delegated powers of Government. Mauzadars in the Assam Valley are appointed Revenue Officers and ex-officio Assistant Settlement Officers. Originally, a Mauzadar may have been a revenue farmer and an independent contractor. But having regard to the existing system of his recruitment, employment and functions, he is a servant and a holder of a civil post under the State.

(Emphasis added)

19. In the backdrop of aforesaid judicial pronouncement of the Constitution Bench of the Hon'ble Apex Court, no further discussion is required to hold that the petitioner was holding a civil post and he is protected under the provision of Article 311(2) of the Constitution of India.

20. The allegation against the petitioner was misappropriation of public money, which is revealed in the order of suspension. However, before dismissal of the petitioner no charges based on such allegation were informed. Such allegation reflected in the order of suspension cannot be treated as "Charge" as contemplated under Article 311 (2) of the constitution of India, the same being in the nature of allegations on the basis of which order of suspension was issued. Those are not definite charges asking the petitioner to reply. Even if the allegation is presumed to be charge, no enquiry was held on the basis of such allegation/Charge wherein the petitioner was given any reasonable opportunity of hearing. Therefore, the dismissal of the petitioner without any enquiry in which the petitioner was informed of the charges against him, is in derogation of the Provision of Article 311 (2) of the Constitution of India and accordingly, the

 

impugned order of dismissal dtd.17.9.2011 is set aside and quashed.

21. Having thus concluded, now this court is to decide on the further direction that is necessary to be issued in the present proceeding.

22. Mr. D. Nath, Learned Senior Government Advocate, alternatively argues that in the event, the dismissal is set aside on the ground that the proceeding was not conducted, the court needs to direct the Deputy Commissioner, Jorhat to conduct an enquiry by framing definite charges by giving reasonable opportunity of hearing to the petitioner and be directed to conclude the same. However, in that case the suspension order needs to continue during such proceeding.

23. It is by now well settled that once the court sets aside an order of punishment on the ground that enquiry was not properly conducted, the court may not reinstate the employee and it must remit the concerned case to the Disciplinary Authority for it to conduct the enquiry from the point it was vitiated and conclude the same. Such conclusion finds support from the decisions of the Hon’ble Apex Court in Chairman, LIC of India and others –Vs- A. Masilamoney reported in (2013) 6 SCC 530 .

24. In Masilamoney (Supra) the Hon’ble Apex Court held that Whether or not the disciplinary authority should be given an opportunity to complete the enquiry afresh from the point that it stood vitiated, depends upon the gravity of delinquency involved. It was further held that the court must examine the magnitude of misconduct alleged against the delinquent employee and accordingly, the courts/tribunals are not competent to quash the charge-sheet and related disciplinary proceedings, before the same are concluded, on the said ground

25. In the case in hand no procedure was initiated or pending at the time of dismissal of the petitioner. However, the petitioner was under suspension and Deputy Commissioner is empowered to suspend a Mouzadar when the Deputy Commissioner is satisfied that the allegation may lead to dismissal. The allegation made in the suspension order is serious in nature which involves allegation of misappropriation of revenue. Therefore, this Court is of the considered opinion that the following order shall meet ends of justice:

(i) The order of dismissal dated 17.9.2011 is hereby set aside and quashed, being in derogation of Article 311(2) of the Constitution of India.

(ii) The respondent Deputy Commissioner shall proceed de-novo against the petitioner by following due procedure contemplated under Article 311(2) of the Constitution of India.

(iii) The entire proceeding shall be completed within a period of six months from the date of receipt of a certified copy this order.

(iv) The petitioner is hereby reinstated as Mouzadar, Saikhowa Mauza for the purpose of the de-novo enquiry; however, he shall continue to remain under suspension during pendency of the enquiry.

(v) No person shall be appointed permanently as Mouzadar of Saikhowa Mauza till a decision is taken on the basis of enquiry as directed.

(vi) In the aforesaid terms, this writ petition is allowed, no order as to cost.

 